

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A No. of 2012

IN

Special Leave Petition (C) No. 21339 of 2012

IN THE MATTER OF

AJAY DUBEY

PETITIONER

VERSUS

UNION OF INDIA AND ORS

RESPONDENTS

AND IN THE MATTER OF

KALPAVRIKSH

THROUGH ITS FOUNDER MEMBER

ASHISH KOTHARI,

Apt. No. 5, Shree Dutta Krupa,

908, Deccan Gymkhana,

Pune-411004

APPLICANT/ INTERVENOR

Paper book

I.A. NO. OF 2012: AN APPLICATION FOR INTERVENTION

FOR DETAILED INDEX: KINDLY SEE INSIDE

ADVOCATE FOR THE APPLICANT: APARNA BHAT

INDEX

SL.NO.	PARTICULARS	PAGE NO.
1.	AN APPLICATION FOR INTERVENTION ALONG WITH AFFIDAVIT	

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APPLICANT/ INTERVENOR

TO,

The Hon'ble Chief Justice of India

And His Lordship's Companion justices

Of the Supreme Court of India,

The humble application of the applicant abovenamed,

Most Respectfully Showeth:

1. That the aforesaid Special Leave Petition is pending before this Hon'ble Court.
2. That the Applicant herein is a Environmental Action group set up in 1979, focuses on issues related to conservation and development, biodiversity conservation, and environmental education. It has specifically been working on the issues concerning the rights and conservation practices of communities living in and around National Parks and Sanctuaries across the country.
3. That the present Intervention Application is being filed in order to bring to the attention of this Hon'ble Court of the social and environmental impact due to the declaration of Buffer areas of Tiger Reserve without following the procedure as contemplated in the Wildlife (Protection) Act, 1972 and the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. The principle contention of the petitioner herein is that the short time frame as stipulated by this Hon'ble Court (Three Months) for declaration of Buffer Areas of Tiger Reserves is contrary to the provisions of the Wildlife (Protection) Act, 1972 which provides for specific conditions to be fulfilled prior to declaration of the Buffer Areas. Further, in view of the fact that specific rights are recognized and vest with the Forest dwelling communities, the same need to be recorded and cannot be arbitrarily extinguished while declaring Buffer Areas of Tiger

Reserve. Applicant submits that unless the due process as provided in the Act is followed in letter and spirit, it is likely to cause hardship and violates the fundamental rights of the local people under Article 14 and Article 21 of the Constitution. It is further submitted that any arbitrary declaration without following the process is also detrimental to wildlife conservation, as it takes place without proper scientific basis, and without consulting the affected communities thereby creating more conflicts between the local people and forest Department .

4. That this Hon'ble Court while hearing the present Special Leave Petition has directed the States to notify 'buffer areas' of Tiger Reserves. The Hon'ble Court in its order dated 03-04-2012 directed as follows:

“We direct all the concerned States to notify the Buffer/Peripheral area as required under the Wildlife (Protection) Act, with regard to tiger reserve falling in the States as expeditiously as possible, in any event, within three months from today.”

5. That the Hon'ble Court passed the above order in view of the fact that many of the State Governments (Jharkhand, Rajasthan, Andhra Pradesh, Arunachal Pradesh, Uttar Pradesh, Tamil Nadu, Bihar, Tamil Nadu, Karnataka and

Maharashtra) have not issued an order notifying Buffer Zones of Tiger Reserves.

6. That it is imperative to point out that a declaration of a Buffer Area of a Tiger Reserve has to be done in accordance with the procedure as stipulated in Section 38 V of the Wildlife (Protection) Act, 1972. It is pertinent to point out that the procedure as stipulated in the Wildlife (Protection) Act, 1972 for declaration of a Tiger Reserve which includes 'Core or Critical Tiger Habitats as well as Buffer and Peripheral areas' is to be done in such a manner that the rights of Scheduled Tribes as well as other Forest Dwellers are fully respected and recognized. The relevant paragraphs of the Wildlife (Protection) Act, 1972 is herein reproduced for easy reference:

Section 38 V 4 (ii) Buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and

objective criteria in consultation with the concerned Gram Sabhas and an expert Committee constituted for the purpose.

7. That a plain reading of the above provisions for declaration of the Buffer Area of Tiger Reserve reveals that the following process as well as criteria needs to be complied with:

- (i) The area should be in the periphery of a critical Tiger habitat or Core Area;
- (ii) The limits of a Buffer Area are to be determined on the basis of scientific and objective criteria;
- (iii) The scientific and objective criteria should be developed based on consultation with the Gram Sabha.
- (iv) In addition an Expert Committee should be constituted for determination of the scientific and objective criteria for identification of Buffer areas of tiger reserve.
- (v) The identification and demarcation of the Buffer Area must be done keeping in view and recognizing the 'livelihood', 'developmental', 'social' and 'cultural rights' of the local people.
- (vi) The Buffer areas should aim at promoting co-existence between Wildlife and human activity.

8. That it is clear from the reading of Section 38 V of the Wildlife (Protection) Act, 1972, that declaration of a 'Buffer Area' of a

Tiger Reserve requires a detailed process to be followed as provided in the Act. The Applicant would like to specifically emphasize on the statutory requirement for consultation with the Gram Sabha which is mandatory prior to declaration of a Buffer Area of a Tiger Reserve. Applicant fears that if a very short time frame is given for declaration of Buffer Zone, in a situation where there are several dozen villages in such areas, the whole consultation process is likely to be undermined and reduced to a mere cosmetic exercise. This Hon'ble Court held that consultation ' postulates an effective consultation which involves exchange of mutual view points of the other and the examination of relative merits of other point of view." **[State of J&K vs A.R Zakki 1992 Supp (1) SCC 548]**. It has been further held that where the offending action affects the fundamental rights consultation is mandatory and non consultation renders the action ultra vires, or invalid or void **[Indian Administrative Service (SCN) vs Union of India, 1993 (1) SCC730]**. It has been further emphasized that consultation must be 'effective conscious and meaningful' **[Andhra Bank Vs Andhra Bank Officers, 2008 (7) SCC, 203]**. The consultation with the Gram Sabha is also critical in view of the fact that they can provide valuable input in the identification of the areas to be included in the Buffer Area of the Tiger Reserve. This Hon'ble Court had observed in **Lafarge Umium Pvt Ltd vs Union of India [2011 (7) SCC 388]** that

'Public Participation provides a valuable input in the process for identification of forest'. On a parallel ground, one can say that the process of public involvement is a valuable input in the process of identification of Buffer Areas.

9. It is submitted that the Wildlife (Protection) Act, 1972 specifically provides for the recognition of the 'livelihood', 'developmental' 'social' and 'cultural' rights of the people who are residing in the buffer. The right to livelihood has been held to be a part of Right to Life under Article 21 of the Constitution [**Olga Tellis vs Bombay Municipal Corporation (1985) 3 SCC 545**]. Cultural rights are the rights that are vested in groups of people in relation to their art and culture. It means the right to preserve and develop one's cultural identity, as well as the right to protect endangered cultures. Cultural rights are human rights that guarantee people and communities the freedom to access and participate in the culture of their choice. Cultural rights mainly aim at ensuring enjoyment of a culture and its components in conditions of equality, human dignity, and non-discrimination. This Hon'ble Court in various judgments has emphasized the need to protect and recognize the cultural rights of the people particularly the poor, the dalits and the tribes [**Samatha Vs State of Andhra Pradesh 1997 (8) SCC 191, Chameli Singh Vs State of Uttar Pradesh 1996 (2) SCC 549,**]. It is submitted that if proper recognition of these rights

are to take place it will necessarily take reasonable time. It is submitted that given the fact that areas in and around Tiger Reserves are also culturally and socially diverse in view of the existence since time immemorial of different communities, the recognition of the above mentioned rights would also need to be done systematically and with full participation of the local people. Any attempt to short circuit the process would be arbitrary, unjust and violative of their Fundamental Rights enshrined in the Constitution. The declaration of Buffer Area of a Tiger Reserve is bound to affect the rights of the people and it is essential that full and effective participation of the participation takes place. It was held by this Hon'ble Court in **Baldev Singh Vs State of Himachal Pradesh [(1987) 2 SCC 510]** 'People who will be affected by change should be given an opportunity of being heard'. It is submitted that given the limited timeframe given for declaration it is unlikely that the people likely to be affected will be provided an opportunity for participation in the process of declaration of Buffer Areas.

10. That in addition to the Wildlife (Protection) Act, 1972, the Applicant would like to bring to the notice of the Hon'ble Court of the provisions of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. This Act is significant since it 'recognises' and 'vests' the forest rights and occupation in forest land in forest dwelling Scheduled Tribes

and other Traditional Forest dwellers who have been residing in such forests for generations. The term 'Forest Land' includes Protected Areas (National Parks and Sanctuaries).

The following sections are relevant:

Section 3: The 'Forest Rights' include the 'right to hold and live in forest land', community rights such as Nistar, right of ownership, access to collect, use and dispose off minor forest produce, right of settlement, grazing and seasonal resource access of nomadic or pastoralist communities, right of access to biodiversity and community rights to traditional knowledge related to biodiversity and cultural diversity, other traditional customary rights enjoyed by forest dwelling Scheduled Tribes and other traditional forest dwellers.

Section 4: As per this Section, the Central Government vests the forest rights in the Forest Dwelling Scheduled Tribes and other traditional Forest dwelling communities.

Sub clause (5) provides that no member of a forest dwelling Scheduled Tribe or other Traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.

11. That the combined reading of the provisions of the Wildlife (Protection) Act, 1972 and the Scheduled Tribes and Other

Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 clearly reveals that the rights of communities and people living in forest land is clearly recognized. Both the laws, specify the process to be followed in either declaration of Buffer Areas or in recognition of the rights of forest dwelling communities including Scheduled Tribes. Elaborate procedure which involves participation of the affected communities, consultation with the Gram Sabha's, formation of expert committees, framing scientific and objective criteria for declaration of Buffer areas, together with recognition of the livelihood, cultural, developmental, social rights of the communities are provided in the Act. The Ministry of Tribal Affairs 'has noticed several problems which are impeding the implementation of the Act in its letter and spirit' in the guidelines issued on 12 July 2012. The latest MoTA status report on implementation of the Act, for the period ending on 31 July 2012, has admitted that 455273 filed claims under the Act have still not been disposed of. It is therefore imperative that the process as provided in the two statutory enactment be strictly followed in letter and spirit and areas be declared Buffer only if it follows the statutory scheme as provided in the two Acts. The Hon'ble Supreme Court in **State of Uttar Pradesh Vs Singhara Singh [AIR 1963 SC 359]** it has been held that where a power is given to do certain thing in a certain way, the thing must be done in that way or

not at all and other methods of performance are necessarily forbidden. This Hon'ble Court observed:

“The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

12. That India is a signatory to the international Convention on Biological Diversity. The CBD Programme of Work on Protected Areas (2004) mentions that ‘In implementing the programme of work, parties are encouraged to pay due regard to the social, economic and environmental costs and benefits of various options.’ The goal 1.4 of the programme (to substantially improve site-based protected area planning and management) states as its target that ‘All protected areas to have effective management in existence by 2012, using participatory and science-based site planning processes that incorporate clear biodiversity objectives, targets, management strategies and monitoring programmes, drawing upon existing methodologies and a long-term management plan with active stakeholder involvement’. India is thus obliged under this

convention to follow participatory and science based site planning which will not be possible to be completed in the time frame currently fixed.

13. In these circumstances it is important the applicant is permitted to intervene in the petition and make submissions before this Hon'ble Court.

14. That the application is bonafide and made in the interests of justice.

PRAYER

In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (A) Allow the application and permit the applicants to Intervene in the Special Leave petition;
- (B) And pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

DRAWN BY:

FILED BY:

Ritwick Dutta &
Rahul Choudhary
Advocates

Aparna Bhat
(Advocate for the applicant/intervenor)

New Delhi
Dated: 16.8.2012