

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

**Original Application No. 325 of 2018
(M.A No. 1135/2018)**

IN THE MATTER OF:

1. **Gaurav Kumar Bansal
S/O Sh. Vishnu Bansal
A26, Basement,
Jangpura Extension
New Delhi - 14**

.... Applicants

Versus

1. **Union of India
Through Secretary
Ministry of Environment & Forest
Prayavaran Bhawan, CGO Complex
Lodhi Road, New Delhi-16**
2. **National Board for Wildlife
Through Secretary
Prayavaran Bhawan, CGO Complex
Lodhi Road, New Delhi -16**
3. **National Biodiversity Authority
Chairperson
5th Floor, TICEL Bio Park
CSIR, Road, Taramani,
Chennai - 600113**
4. **State of Uttar Pradesh
Through Chief Secretary
U.P Sachivalaya
Lucknow - 226005**
5. **Uttar Pradesh Biodiversity Board
Through Secretary
A Block East Wing, IIIrd Floor
PICUP Bhawan, Vibhuti Khand**

**Gomti Nagar, Lucknow
Uttar Pradesh – 22605**

- 6. Principal Secretary
Forest & Wildlife Department
State of Uttar Pradesh
Aaryan Bhawan
17, Rana Pratap Marg
Lucknow, Uttar Pradesh - 226001**
- 7. Principal Chief Conservator of Forests (Wildlife)
State of Uttar Pradesh
Aaryan Bhawan
17, Rana Pratap Marg
Lucknow, Uttar Pradesh – 226001**
- 8. Divisional Forest Officer
DFO Office
Bijnore – 246701**
- 9. Divisional Forest Officer
DFO Office
Muzzafarnagar – 251001**
- 10. Divisional Forest Officer
DFO Office
Merrut – 25001**
- 11. Divisional Forest Officer
DFO Office
Hapur – 245101**
- 12. Divisional Forest Officer
DFO Office
Amroha – 244221**
- 13. District Magistrate
Meerut
Lal Kurti Bazar
Police Lines, Meerut
Uttar Pradesh – 250001**
- 14. District Magistrate
Muzzarfarnagar
Jila Parisad Colony
Muzaffarnagar, Uttar Pradesh – 251001**
- 15. District Magistrate
DM Office
Amroha**

COUNSEL FOR APPLICANT (S):

Mr. Gaurav Kumar Bansal, Applicant in person

COUNSEL FOR RESPONDENTS:

Mr. Ravindra Kr. Gupta, Advocate for MoEF, R-1 & 2
Mr. Krishna Kumar Singh, Advocate for NBA, R-3
Mr. Sanjay Upadhyay, Mr. Bhanwar Pal Singh Jadon, Ms. Eisha Krishn and Mr. Umesh along with Ms. Kalpana Awasthi, Principal Secretary, Forests, UP for State of U.P.

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)

Reserved on: 20th May, 2019

Pronounced on: 31st May, 2019

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

1. In this application, the applicant has raised the issue of the protection of biodiversity of Hastinapur Wildlife Sanctuary which is an eco fragile area and is an important habitat for swamp deer, hog deer, reptiles, gangetic dolphins and gharials etc. According to the official gazette dated 30.07.1986, State of Uttar Pradesh declared the area, spread over 2073 sq km falling in Muzaffarnagar, Bijnor, Meerut, Hapur and Amroha forest divisions as Hastinapur Wildlife Sanctuary. This sanctuary was notified to specifically provide protection for swamp deer and hog deer, though the sanctuary is home to many other mammalian species like leopard, hyena, nilgai etc.

2. It has been stated in the application that swamp deer habitat in the sanctuary is highly fragmented and is subjected to severe anthropogenic pressure, livestock grazing as well as other associated human activities. The applicant has mentioned about a report, namely, 'Indian Bird Conservation Network Report on Uttar Pradesh' issued in the year 2015 wherein it has been stated that Hastinapur Wildlife Sanctuary was established mainly to accord protection to swamp deer and to conserve the fast vanishing, unique biome called Gangetic Khaddar. But today, the natural vegetation and species are endangered due to industries, human settlement and cultivation which are flourishing within the sanctuary.

3. The applicant has also brought to our notice a survey report of Hastinapur Wildlife Sanctuary submitted by Wildlife Institute of India and the object of the study was ***"Identification of critical wildlife habitats with specific reference to swamp deer in Hastinapur Wildlife Sanctuary, Uttar Pradesh"***. The survey report of Wildlife Institute of India mentions that at present fauna of the Hastinapur Wildlife Sanctuary is fighting for its sustenance because of severe anthropogenic pressure in terms of livestock grazing and other associated human activities. Thus, it is extremely important to have an action plan to save the fauna of Hastinapur Wildlife Sanctuary. The applicant has also stated that the Eco Sensitive Zone Notification of the Hastinapur Wildlife Sanctuary has

not been issued till date. The applicant has, therefore, prayed as below:

- “A. Direct the Respondents to protect the Biodiversity and Ecosystem of the Hastinapur Wildlife Sanctuary.*
- B. Direct the Respondents to Restitute the Environment, Ecology and biodiversity of the Hastinapur Wildlife Sanctuary, Uttar Pradesh.*
- C. Direct the Respondents to formulate and ACTION PLAN to protect the wildlife habitats within Hastinapur WLS (forest and specifically the grassland patches) as the same are highly fragmented with high anthropogenic disturbances.*
- D. Direct the Respondents to forthwith prevent the illegal and unauthorized operation of industries running within Hastinapur Wildlife Sanctuary, Uttar Pradesh.*
- E. Direct the Respondents to declare the Eco Sensitive Zone of the Hastinapur Wildlife Sanctuary, Uttar Pradesh.*
- F. Direct the Respondents to do Critical analysis and mapping of remaining wildlife habitats in Hastinapur Wildlife Sanctuary so that required steps may be taken to strategise protection of endangered species in the Hastinapur Wildlife Sanctuary.*
- G. Award appropriate cost and expenses incurred by the Applicant.*
- H. Pass any such other or further order as this Hon’ble Tribunal may deems fit and proper in the facts and circumstances of the present case.”*

4. The applicant has also submitted that there are large number of industries which are operating within Hastinapur Wildlife Sanctuary which are adversely affecting the biodiversity of the area.

5. It is seen from the records made available that Hastinapur Wildlife Sanctuary was notified on 30.07.1986 under the provisions of Section 18 (1) of the Wildlife Protection Act, 1972 covering an area of 2073 sq km which is spread across Muzaffarnagar, Bijnor, Meerut, Hapur and Amroha forest divisions, with an objective to conserve endangered gangetic grass land biome and the state animals like swamp deer.

6. The Respondent authorities have submitted that Hastinapur Wildlife Sanctuary was notified for the conservation of swamp deer, hog deer, spotted deer, leopards, wild boars, pythons and many aquatic species like Dolphins and Gharials, turtles and tortoises which are also found in the water bodies flowing through the sanctuary. The Hastinapur Wildlife Sanctuary, like many other sanctuaries, is a typical example of co-existence of human activities and wildlife. Over the years, due to increase in population, agricultural activities have been increasing to meet the growing demand of food grains which has naturally lead to increase in human activities in the sanctuary.

7. It has been submitted that Hastinapur Wildlife Sanctuary is being developed and managed in accordance with National Wildlife Action Plan 2017 to 2031, within the prevailing budgetary allocation. There are various projects, for conservation of species, which are being implemented by the Forest Department like

Ghariyal Re-Introduction Programme and Turtle Conservation Program in collaboration with World Wide Fund for Nature-India (WWF-India). Apart from this, various schemes like Integrated Development of Wildlife Habitat, Protection of Wildlife Outside Protected Areas and Forest Fire Prevention and Management scheme etc., are also being implemented to protect and conserve wildlife, its habitats and the flora and fauna in the sanctuary.

8. The Ministry of Environment, Forest and Climate Change (MoEF & CC), in the affidavit filed on their behalf on 20.07.2018, has stated that the proposal of Eco-sensitive Zone of Hastinapur Wildlife Sanctuary sent by the State Government was discussed in 30th meeting of the ESZ Expert Committee on 26.06.2018 and after detailed deliberations the Expert Committee recommended the proposal and the MoEF & CC has finally notified the Eco-sensitive Zone on 18.09.2018. The Eco-sensitive Zone Notification dated 18.09.2018 gives details of activities, namely, prohibited, regulated and promoted within Eco-sensitive Zone which are governed by the provisions of the Environment (Protection) Act, 1986. As per this notification, no polluting industries are allowed to be set up within the Eco-sensitive Zone.

9. The Respondents authorities have also submitted that on the advice of Uttar Pradesh State Biodiversity Board, Government of Uttar Pradesh has issued a notification vide which the Divisional

Forest Officers and their subordinate Officers have been delegated with powers to implement provisions of Biological Diversity Act, 2002, Biological Diversity Rules, 2004 and guidelines issued from time to time, in order to conserve the biodiversity in the area. The Government of Uttar Pradesh and Panchayati Raj Department have also issued Government orders for constituting Biodiversity Management Committee at each Gram Sabha level. In order to take up effective protection and conservation measures in the sanctuary, the State Government, on the direction of the State Board of Wildlife in its meeting dated 30th August, 2018, has sanctioned a project to Wildlife Institute of India (WII) to undertake critical analysis and mapping of swamp deer habitats. Presently this wildlife sanctuary is being managed and protected, as per the existing laws.

10. It is, however, an admitted fact that there are large number of industries and industrial estates which are operational within Hastinapur Wildlife Sanctuary. The Principal Secretary of Forest, who is present before us today, has sought to clarify that many such industries have been in operation since period prior to 1986, when Hastinapur Wildlife Sanctuary was notified under Section 18 (1) of the Wildlife Protection Act, 1972. It has been submitted that Hastinapur Wildlife Sanctuary includes about 186 sq km of forest land (both reserve forest and proposed reserve forest); about 1886 sq km of private land and other Government land. It has been stated that the notification under Section 18 (1) of the Wildlife

Protection Act, 1972 was only for the purpose to designate an area with broad boundaries and the process of settlement was required to be done subsequently through detailed process before final notification could be issued under Section 26 (A) of the Wildlife Protection Act, 1972. It was in 1991, that the law was amended to convert the Notification under Section 18(1) to an Intention Notification, pending compliance of provisions under Section 19-25 of the Wildlife Protection Act, 1972. Subsequently final notification was to be issued under Section 26-A. It has been submitted that Section 26-A also governed the process of alteration of boundaries of the protected area which is under the domain of the State Legislature, which was subsequently amended in 2003 after taking into account the orders of the Hon'ble Supreme Court of India in the case of CEL-WWF-India Vs. Union of India (C.W.P No. 337/1995, particularly orders dated 22.08.1197 and 09.05.2002.

11. After amendments in Wildlife Protection Act, 1972 Collectors were appointed in 1994 for all concerned districts within the Hatnapur Wildlife Sanctuary. However, the process was extremely slow. Thereafter, it was decided, after delegation of powers-under Section 26 of the Wildlife Protection Act, 1972 that Divisional Forest Officers/Divisional Directors were to act as Collectors to determine the rights within the limits of sanctuary, vide Government order dated 27.11.1996. It has been submitted that the process of acquisition of rights under Section 24 of the Wildlife

Protection Act, 1972, regarding admitting or rejecting the claims attracted the compliance of the order of Hon'ble Supreme Court of India in determination of the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the Hastinapur Wildlife Sanctuary which could not reach finality.

12. The Respondent Authorities have brought to our notice that the Hon'ble Supreme Court of India in the case of **Centre for Environmental Law Vs. Union of India & Ors., (W.P No. 337/1995) dated 13.11.2000** ordered that no forest, National Park or Sanctuary can be dereserved without its approval. In light of this order, the process of acquisition of rights under Section 24(2) (a) of Wildlife Protection Act, 1972 (exclude such land from the limits of the proposed sanctuary) with respect to private land inside the proposed wildlife sanctuary could not be finalized.

13. The Respondent Authorities have also brought to our notice that detailed order passed on 05.10.2015 by the Hon'ble Supreme Court of India in **I.A No. 2365 in 1406/2005 in Civil Writ Petition no. 202 of 1995 (T.N. Godavarman Thirumulkpad Vs. Union of India & Ors.)** regarding various categories or matters which were pending before its green bench. These were the matters relating to wood based industries, matters relating to national parks, wildlife sanctuaries, exemptions from payment of NPV, for compliance of orders of the Hon'ble Supreme Court and the matters

which were to be transferred to this Tribunal. In all the above-mentioned categories specific directions were given, including the one relating to National Parks and Wildlife Sanctuaries.

“All matters for grant of permissions for implementation of projects in areas falling in national parks/sanctuaries, including rationalization of boundaries etc., will be considered by the Standing Committee of the National Board for Wildlife (“NBWL”) on its own merits and in conformity with the orders and directions passed by this Court from time to time”

In compliance of the above orders, for presenting the matter of rationalization of boundaries of Hastinapur Wildlife Sanctuary before the Standing Committee of the National Board for Wildlife (NBWL), a Committee was constituted in the year 2017 by the Chief Wild Life Warden with the objective to look into the proposals received under Section 26 of the Wildlife Protection Act, 1972 and suggest changes for better management of the sanctuary.

14. By making these submissions the State Government have sought to explain that despite their sincere efforts they have not been able to complete the process that would have enabled them to issue notification under Section 26 (A) of the Wildlife Protection Act, 1972, in respect of Hastinapur Wildlife Sanctuary

15. We are of the considered opinion that State Government Authorities have mixed up the issue of rationalisation of boundaries of the National Parks/ Wildlife Sanctuaries, including permissions

for implementations of the Projects falling within National Parks/ Wildlife Sanctuaries, with issuance of notification of Wildlife Sanctuaries, in accordance with the provisions of the Wildlife Protection Act, 1972. The Section 18 (1) of the Wildlife Protection Act, 1972 reads as under:

- “(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment. ”*
- (2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.”*

16. The purpose of notification under Section 18 is to protect the forest wealth or wildlife in an area which is of ecological, faunal, floral, geomorphological, natural or zoological significance and admittedly the area covered under Hastinapur Wildlife Sanctuary is of such importance. The State Government is required to appoint officers as Collector, under the Section 18 (b) of the Wildlife Protection Act, 1972 within 90 days of coming into force of the Wildlife Protection Amendment Acts 2002 or within 30 days of the issue of notification under Section 18, to inquire into and determine the existence, nature and extent of rights of any person in or over the land comprised within the limits of the sanctuary which may be

notified under Section 18 (1). Thereafter, under Section 19 of the Wildlife Protection Act, 1972 the Collector is required to inquire into and determine the existence, nature and extent of rights of any person in or over the land comprised within the limits of the sanctuary. As per Section 21, when a notification has been issued under Section 18, the Collector is required, within a period of 60 days, to publish in the regional language, in every town and village or in the neighbourhood of the area comprised therein, a proclamation:

- “(a) Specifying, as nearly as possible, the situation and the limits of the sanctuary; and*
- (b) Requiring any person, claiming any right mentioned in section 19, to prefer before the collector, within two months from the date of such proclamation, a written claim in the prescribed form, specifying the nature and extent of such right with necessary details and the amount and particulars of compensation, if any, claimed in respect thereof.”*

Section 24 provides for the acquisition of the rights, in and over of any land, falling within the sanctuary notified. This section reads as under:

- “(2) If such claim is admitted in whole or in part, the Collector may either :*
 - (a) Exclude such land from the limits of the proposed sanctuary, or*
 - (b) Proceed to acquire such land or rights, except where by an agreement between the owner of such land or holder of rights and the Government, the owner or holder of such rights has agreed to surrender his rights to the Government, in or over such land, and on payment of such compensation, as is provided in the Land Acquisition Act, 1894 (1 of 1894),*

(c) Allow, in consultation with the Chief Wild Life Warden, the continuation of any right of any person in or over any land within the limits of the sanctuary.”

And Section 25 provides for Acquisition proceedings. The time limit for completion of the acquisition proceedings, as provided under Section 25 (A), is two (2) years from the date of declaration of sanctuary under Section 18. It is also provided under Section 25 (A) (2) that the notification shall not lapse if, for any reason, the proceedings are not completed within a period of two (2) years. Thereafter, notification specifying the limits of the area which shall be comprised within the sanctuary issued under Section 26 (A). The Section 26 (A) of the Wildlife Protection Act, 1972 reads as under:

“26A. Declaration of area as Sanctuary – (1) When-

(a) A notification has been issued under section 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as sanctuary, have been disposed of by the State Government; or

(b) Any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be propagating or developing wild life or its environment, is to be included in a sanctuary.

The State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be a sanctuary on and from such date as may be specified in the notification.”

17. It is, therefore, clear that the entire process of notification of the Wildlife Sanctuary, in accordance with the provisions of the Wildlife Protection Act, 1972, is required to be completed as far as possible within a period of two (2) years from the date of issuance of notification under Section 18 (1). Therefore, even if we take into account the Wild Life (Protection) Amendment Act, 2002 then the process of the notification of Hastinapur Wildlife Sanctuary should have been completed latest within two (2) years at least by 2004. We see that in none of the orders of the Hon'ble Supreme Court of India which have been brought to our notice we find that nowhere it has been mentioned that procedure as laid down in Wildlife Protection Act, 1972 should not be followed. In fact there is no commentary in any of the orders brought to our notice on the procedure laid down in Wildlife Protection Act, 1972 for notification of Wildlife Sanctuaries. The Hon'ble Supreme Court of India has only stated that:

“ No Forest, National Park or Sanctuary can be dereserved without the approval of the Hon'ble Supreme Court of India¹ ”

And

“ All matters for grant of permission for implementation of projects in areas falling in National Parks/Sanctuaries, including rationalisation of boundaries, etc., will be considered by the Standing Committee of the National Board for Wildlife (“NBWL”) on its own merits and in conformity with the orders and directions passed by this Court from time to time²”

18. In our opinion, as stated above, the Hon'ble Supreme Court of India has neither put any restriction nor directed the States to

¹ Order dated 13.11.2000 in W.P No. 337 of 1995

² Order dated 05.10.2015 in IA NO. 2365 in 1406/2005 in Civil Writ Petition No. 202 of 1995

deviate from the procedure laid down under the Wildlife Protection Act, 1972. Therefore, inordinate delay in notification of Hastinapur Wildlife Sanctuary under Section 26 (A) is not acceptable. It is only because of these reasons that there are large numbers of industries which are flourishing within the sanctuary and these have been adversely affecting various wildlife species, for whose protection and conservation this sanctuary was primarily notified. Also, there are umpteen numbers of orders passed by the Hon'ble Supreme Court of India that no industries can be allowed to be operated within a wildlife sanctuary.

19. We are, therefore, of the considered opinion that despite number of projects or schemes undertaken by the State for protection and conservation of the wildlife species and habitat of Hastinapur Wildlife Sanctuary there have not been desired results. And none of these interventions will yield stated objectives until and unless habitats within the sanctuary are kept free of any anthropogenic interference. In fact, the measure of success of any management intervention in a protected area is the extent to which we have been able to create habitat which is pristine and free of human interference. Even though, we are satisfied that State Forest Department has taken necessary steps for the conservation and protection of the wildlife species & habitat and the biological diversity of the area, in accordance with Wildlife Protection Act, 1972 and Biological Diversity Act, 2002, these measures will not be

effective until or unless notification under Section 26 (A) is issued. We dispose of this application with the direction that the Section 26 (A) notification under the Wildlife Protection Act, 1972 in respect of Hastinapur Wildlife Sanctuary be issued within six (6) months from the date of issuance of this order i.e., by 30.11.2019. Compliance of the same be filed in the registry of this Tribunal.

20. Accordingly, Original Application No. 325 of 2018 stand disposed of with no orders as to cost. The Miscellaneous Application No. 1135 of 2018 does not survive for consideration as the main application itself is disposed of.

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Raghuvendra S. Rathore, JM

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Dr. Satyawan Singh Garbyal, EM

Dated: 31.05.2019
Place : New Delhi

NGT