

Item No. 04

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No.11/2021(CZ)

Rajendra Tiwari

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 04.10.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

Applicant: Mr. Shailesh Tiwari, Advocate

Respondent: Mr. Shafiq Khan, Advocate for R - 4, 8 & 18
Mr. S.N. Bohra, Advocate for R - 17

ORDER

1. Grievance in this application is against non-forest activities being carried out in Nahargarh Wildlife Sanctuary including Nahargarh Fort near Jaipur, Rajasthan.

2. Averments in the application are that Nahargarh sanctuary is located about 12 km from Jaipur on the Jaipur-Delhi highway. It encompasses a large area and is situated under the Aravali range. The Nahargarh Biological Park is famous for its vast flora and fauna. It has 285 species of birds, including white-naped tit. Nearby, Ram Sagar is famous among bird watchers. The Nahargarh Zoological Park houses animals such as Asiatic lions, Bengal tigers, panthers, hyenas, wolves, deer, crocodiles, sloth bear, Himalayan black bear, wild bear, etc. The

Department of Revenue, Government of Rajasthan, vide notification dated 22.09.1980, under the provisions of Wildlife (Protection) Act, 1972, declared the area mentioned in the notification as Nahargarh Wildlife Sanctuary. Vide notification dated 21.11.1961, under the Rajasthan Forest Act, 1953, the area of Nahargarh was declared as reserved forest land with effect from 15.01.1962. The District Collector, Jaipur issued proclamation order No. R-6/(24)39/6784 dated 21.08.1998 and decided right and concession of the interested persons under the provisions of Section 21 of the Wildlife (Protection) Act, 1972, in compliance of order dated 22.08.1997 of the Hon'ble Apex Court. The Ministry of Environment, Forests and Climate Change, Government of India, New Delhi notified, on 08.03.2019, area to the extent of 0 (zero) to 13 kilometers around the boundary of Nahargarh Wildlife Sanctuary, in Jaipur district of Rajasthan as Eco-Sensitive Zone. According to aforesaid notification, the Nahargarh Wildlife Sanctuary is lying between latitudes 26°56'15.0814 & 26°57'5 81"N and longitudes 75°48'55.70"E & 75°46'54 65"E. The Sanctuary was notified vide Government of Rajasthan notification No. F11 (39) Revenue/8/80 of dated 22nd September, 1980. The sanctuary is situated in the Aravalli ranges at Amber hills, Jaipur district of Rajasthan and is spread over an area of 52.40 square kilometers. The Sanctuary has "Tropical Dry Deciduous Forest" and "Tropical Thorn Forest" as per classification of Champion and Seth. The forest is spread over the area on various geological and soil formations over the hilly terrain of Aravallis and hence varies in composition; the Wildlife Sanctuary has a variety of habitats for diversified flora and major flora of this sanctuary includes solar (Boswellia serrata), gurjan (Linnaea graces), tendu (Dispyros melanoxyton), karaya (Sterculia urens) gugal (Commiphora mukul),

amattas (*Cassia fistula*), awanla (*Embellica officinalis*), binna (livesparathusa cranulala), urn (*Seccopetalum tomentosa*), goya khir (*Dishrostachya cineraria*), sainja (*Maringa plerygosperma*), dhak (*Butea monosperma*), rahan (*Soydmdida febriguga*), mokha (*Scherebra swetenoides*), rohini (*Mallatus phillpnensis*), ber (*Zizhus jujuba*), jamun (*Syzyguim cumini*), gular (*Ficus glomerata*), kadam (*Mitragyna parvifolia*), bahira (*Terminalia bellerica*), dhaora (*Anogeissus latifolia*), kahjur (*Phoenix syvestris*), hingot (*Balanites aegyptica*), khair (*Acacia catechu*), sevan (*Gmelia arborea*), arjun (*Terminalia arjuna*), neem (*Azadirachta indica*), peepal (*Ficus religiosa*), bargad (*Ficus benghalensis*), shiham (*Dalbergia sissoo*), bijasal (*Pterocarpus marsupium*), kakon (*Flacourita indica*), kharni (*Wrightia Unctoria*), dudhi (*Wrightia tomentosa*), jhinjha (*Bauhinia recemosa*), casaeria (*Casaeria tomentosa*), barn (*Creataeva releglosa*), bel (*Aegle marmelose*), ron (*Acacia marmelose*), Lisora (*Cordia myxa*), churel (*Holoptelia intergrifoila*), aam (*Mangifera andica*), Imli (*Tamannus indica*), kaith (*Limonia acidissima*), siris (*Albizzio lebbek*), semal (*Bombax celba*), celastrus (*Cleastrus paniculatus*), etc. The Sanctuary has variety of habitats for diversified fauna. Fish species recorded from of this Sanctuary include catal (*Calla calla*), greyer (*Channa marullus*), lanchi (*Walago attu*), mahseer (*Tor tor*), mirgal (*Cirhinus mrigala*), roho (*Labeo rohita*), savank (*Channa punctatus*), seenghari (*Mystus seenghala*). Apart from fishes, the common Indian toad (*Bufo melanostictus*), common frog (*Rana tigerina*), banded krait (*Bugorus lasciatu*), cobra (*Nara naja*), common krait (*Bungarus caeruleus*), fresh water swamp crocodile (*Crocodylus palustris*). Indian python (*Python molurus*), north Indian flap shelled turtle (*Lissemys punctata punctata*), rat snake (*Ptyas mucosus*), leopard (*Panthers pardus*). etc. the main fauna of the sanctuary. The Durg Cafeteria

situated in the Naharagh Fort is operating by the respondent Rajasthan Tourism Development Corporation limited (in short hereinafter referred to as 'RTDCT) under the license issued by a nominal fee of Rs 25000/- vide receipt dated 22.02 2013 by the respondent Excise Department. The respondent Chief Conservator of Forests and Chief Wildlife Warden, Rajasthan, Jaipur issued order dated 24.06.2011 whereby certain guidelines were set out for allowing entry in the Sanctuary area. It is specifically mentioned in the said order that in all other sanctuary areas permission for entry and stay in the sanctuary area will be from sunrise to sunset, fixed the license fee for nature guides, entry fee for visitors, vehicles were also fixed. Further, the Forest Department, Government of Rajasthan vide notification dated 20.07.2011 amended the Rule 23 of the Wildlife (Protection) (Rajasthan) Rules, 1977 and issued fees structure for venous categories.

3. Case of the applicant further is that as per judgment of the Hon'ble Supreme Court in *T.N. Godavarman Thirumalpad v. UOI & Ors.*,¹ no non-forest activities is permissible in forest area in view of Section 2 of the Forest (Conservation) Act, 1980 (FC Act) but in violation of the said provision, non-forest activities have been allowed in the form of above restaurant and Excise Department has issued license of Bar to the resorts/ hotels cafeterias situated in the Nahargarh Wildlife Sanctuary – 'Padao Bear Bar', 'Once Upon a Time' and 'Durg Cafeteria' of RTDC etc. without prior permission of Forest Department. The same are operating without requisite prior approval under the Forests (Conservation) Act, 1980 and against the object of Wildlife (Protection) Act, 1972. District Supply Officer, Jaipur illegally granted permission to the sale of food articles in the sanctuary area which is also illegal and unlawful. The

¹ (1997) 2 SCC 267

Tourism Department and Archeology and Museum Department granted and operated illegal activities in the sanctuary area without prior permission of the Forest Department for which they have no authority. Respondent Amber Development & Management Authority granted illegal permissions for shooting of films, TV serials, Documentaries, photography etc and recovered high fees from the concerned persons, agencies or institutions or producers etc. which were not deposited with the Forest Department. Permission to operate Light and Sound Show in the sanctuary area and permission for parking in the Sanctuary area without prior approval of the Forest Department is totally illegal, unlawful and against the provisions of the Wildlife (Protection) Act. 1972. The said activities adversely affect the flora and fauna as well as eco system, and environment of sanctuary area.

4. This Tribunal, vide order dated 20.05.2021, while issuing notice to the respondents including Forest Department, Tourism Department, Archeology Department, Excise Department, Jaipur Vidyut Vitran Nigam Limited, Amber Development and Management Authority, Beer Bar Padey, Durg Cafeteria, RTDC, Nahargarh Fort and Once Upon a Time, Nahargarh Fort, constituted a joint Committee comprising Collector, District Jaipur, Rajasthan, the Chief Wildlife Warden, Forest Department, Govt. of Rajasthan, Aranya Bhawan, Jhalana Institute Area, Jhalana, Doongri, Jaipur and Rajasthan State PCB to visit the site and submit a factual and action taken report in the matter.

5. Accordingly, the joint Committee has filed its report on 23.07.2020 to the effect that the Collector, Jaipur vide order dated 21.08.1999 has settled in the prescribed area. Reply has also been filed by the respondents to which reference is made.

6. Reply of the Forest Department is as follows:-

“3. At the outset, it is submitted that the Fort area is a reserved forest under the provision of Rajasthan Forest Act 1953 and due to commercial activities operated at Fort natural habitats of animals and plants are being destroyed. Therefore, if no stringent steps are taken to save wildlife, it won't be long when they will place on the list of extinct species.

4. The Nehergerh Fort built in 1734, stands on the edge of Arevalll Hill the oldest mountain range of the world. The Fort houses a palace complex and the fortress walls (Parkota). The State Government vide its notification dated 21.11.1961 had declared the area of Fort as Reserve Forest. Fort area comprises 52.04 Square Kilometre. Copy of the Notification dated 21.11.1961 is annexed as Annexure R-1.

5. It is humbly submitted that as per the map of Nahargarh sanctuary, the Fort is inside the limits of reserve forest, comprised under pillar No.392 to 4-47. Copy of the Map of Nahargarh Sanctuary is annexed as Annexuro R-2.

6. It is submitted that the Fort premise comprises 15 edifices mentioned as under:

Doongar Gate	Maharaja Mahal (Once Upon A time)
Step Well	Khazana Bhawan
Ghatl Gate	Madhvendra Bhawan
Tadi Gate	Pani Ka Tanka
Silakhana (Wax Museum)	Kaptan Ka Dera
SanikVishramGrah (Office)	Hajari Burj (Padao Restaurant)
Diwan-e- Aam (Food Court)	Kali Burj
Wireless office	

7. It is submitted that in vide order dated 21.08.1998 in compliance with the Hon'ble Apex Court Order dated 22.08.1997 the area of forest was classified and reserved right had been determined regarding existence, nature and extent of rights to any person over the land in the limits of the sanctuary.

8. It is submitted that the order dated 21.08.1998 clarifies that the Area (Fort Area) declared under notification of 1961 under the Rajasthan Forest Act 1953 shall be reserve forest and the remaining area shall be 'Varnit Shetra.'

9. That since there was many residential buildings, institutions, Hospitals, Government offices, agriculture lands, and right of way

dedicated or maintained for public use within the limit of the sanctuary, therefore, to operate those, reserve rights had been determined and conferred only in the Varnit Shetra. **It is pertinent to note that the Fort area was already declared reserve forest therefore no right was determined or awarded to run non-forest activity in the Fort area.**

10. It is submitted that commercial activities conducted by the Department of Archaeology & Museums at Fort Premises are as under;

Facilities / Services	Agreement expires
Fine Dine Restaurant	22.04.2025
Food Court	18.11.2025
Telescope	20.11.2021
Wax Museum	15.03.2026
Paid Parking	14.02.2022
Segway	13.06.2022
Kisok	26.07.2021
ATM	18.05.2020
Padao Restaurant	Allotted to RTDC.

11. **That with regard to above said commercial activities provided to the tourists, operative timing is from 10 Am to 10 Pm. The timing itself explicates the exploitation inflicted by mankind.**

12. **It Is submitted that from time and life, life has depended on earth's predictable rhythm of day and night. Species depend on earth's daily cycle of day and night to regulate life sustaining behaviours such as reproduction, nourishment, sleep and protection from predators. But said commercial activities which Is operated till late night in reserved forest radically disrupted wild life. Artificial lights disrupt the ecosystems. Light pollution radically alters their night time environment by turning night into day. Predators use light to hunt, and prey uses darkness as cover.**

13. **That in regard to the above-mentioned commercial activities operating at Fort i.e. reserve forest the forest department has issued notice dated 23.05.2019 to RTDC and Department of Archaeological but no satisfactory response legitimizing to operate commercial activities in reserve forest was presented.**

14. **It is submitted the Forest (Conservation) Act, 1980 came into force on October 25, 1980. Under the Act, the central government is vested with powers to make any new rule or make any changes in the existing laws. It has placed restrictions on the state government to make any decisions**

related to forests' matters mentioned in the Act without prior permission of the central government. it has also prescribed penalties for those who contravene any provision of this Act and prescribed for the proceedings when the offences are committed by the government departments.

15. It is submitted that section 2 of 1980 Act restricts the use of forest land for non forest activity and according to section 3B (1). whenever any offence under this Act is committed by any department of the government, head of the government, any authority or any person who at the time of the commission of the offence was responsible for the conduct of business, shall be made liable for the offence under the Act. Hence the commercial exercises administered by the Department of archaeology as well as RTDC are in contravene to wildlife Act.

16. **That in the instant case, despite the fact that area is declared Reserve Forest, commercial activities as mentioned earlier is continuing illegally and it is settled law that whenever an area is declared the reserve forest, non-forest activity cannot be carried in the reserved area. In Tarun Bharat Singh v. Union of India, 1994 (2) Suppl. SCC 342 the Hon'ble Supreme Court held that whenever an area is declared a reserved forest or protected forest it comes within the purview of the Forest (Conservation) Act and the State government cannot carry on any non-forest activity in the reserved area without the prior permission of the Central government.**

17. It is submitted that the constitutional mandates for forest conservation. The 42nd amendment Introduced Article 48& part of the Directive Principles of State which read, "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. "Article 51A (g), part of the Fundamental Duties read, "It shall be the duty of every citizen of India to protect and improve the natural environment.

18. **It is submitted that electric connections by JVVNL, Restaurants such as 'Padao' and 'Once Upon A time are being in operation without approval of forest department and in violation of wildlife protection Act 1972 and Forest (Conservation) Act, 1980 and impacting wildlife health. Forest Department has communicated letters to JVVNL to disconnect the electric connections but no action initiated by the JVVNL. Copy of the letters issued to JVVNL is annexed as Annexure R-3.**

Copy of the Notice issued to once upon time Restaurant by the Forest Department is annexed as Annexure R-4.

19. **It is submitted that film shooting is illegal in reserve forest as constitutes a violation of wildlife protection Act 1972 and Forest (Conservation) Act, 1980. Further, the Light and Sound show held at fort is a major contributor to disturbing wildlife and caused severe noise pollution to wildlife. The timing of the show is 45 minutes which creates sound pressure level of 98 decibels tantamount to the city**

traffic adversely affecting the wildlife. Artificial light caused most drastic impact on wildlife resulting in migrate too early or too late and miss ideal climate conditions for nesting, foraging and other behaviours.

20. **The light & noise pollution, known as anthropogenic noise caused by commercial activities interferes with animal communication, hinders their foraging abilities and impact where they live. For example, bats use ultrasonic sound waves to get around and to locate their prey but noise pollution interferes with this and causes them to spend more time and energy locating their food source.**

21. **It is humbly submitted that illegal commercial activities are carried out at reserved forest i.e. Fort is in violation of wildlife protection Act 1972 and Forest (Conservation) Act, 1980. The forest department has communicated various notices to restrict unlawful activities in reserved forest areas but all efforts are to no avail. The said commercial activities are major contributor and grave concern for wildlife and shall be stopped for the protection of wildlife.**

22. *It is submitted that the Fort is 15 kilometres from Jaipur can be reached through private transportation only, therefore paid parking facility is operated by the Department of Archaeology without authorisation from Forest Department. A picture of a parking site illustrates that parking space has been carved out after felling of trees. A copy of picture of parking space is annexed as Annexure R-5. Copy of the letter dated 08.07.2020 for seeking possession of the Fort by forest department is annexed as Annexure P-6. Copy of the Notification dated 22.09.1980 is annexed as Annexure P-7.*

Copy of the proposed Management plan of Forest Department of Nahargarh Wildlife Sanctuary is annexed as Annexure P-8, Copy of the relevant rules of Forest conservation Act 1980 is annexed and marked as Annexure P-9.

23. *It is submitted that the object of forest department is the protection and conservation of flora, fauna, forests, and wildlife to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium, which is vital for sustenance of all life forms, human, animals and plants. The object envisages that Forest Department is proficient to protect, preserve, and maintain the wildlife. Hence, administration of Fort premises i.e. Reserve Forest shall be handover to the forest department.”*

7. As against above, the stand of Tourism Department is as follows:-

“1. That the allegation/accusation levelled in the present Application/Petition against the answering Respondents by the Applicant/Petitioner are false/frivolous and without any objectivity or merit because the Durg Cafeteria (Unit of RTDC limited- Operated since 1982 till 2015)/Padav Restaurant at Hazar Burj (Operated since 7th September, 1992 till today), is located

*in the compound of Nahargarh Fort which comes under direct control/management and supervision of Department of Archaeology and Museums (State Government of Rajasthan) and therefore the Department of Forest/Office of Deputy Forest Conserver, Wildlife Sanctuary, Jaipur has no intervention or control over same and hence it cannot be presumed or alleged that the Durg Cafeteria (Unit of RTDC Limited), Padav, Nahargarh, Jaipur is being run without any permission/approval of Department of Forest /Office of Deputy Forest Conserver, Wildlife Sanctuary, Jaipur. This is submitted **Durg Cafeteria (Unit of RTDC limited-Operated since 1982 till 2015)/Padav Restaurant at Hazar Burj (Operated since 7th September, 1992 till today)** was established by approval/permission of Department of Tourism (State Government of Rajasthan) and also have approval/authorization from Department of Archeology and Museums (State Government of Rajasthan) and State Excise Department, Jaipur (State Government of Rajasthan) for running Bear Bar and serving Foods/Refreshment items and all such facilities are provided therein for the Tourists/Visitors to promote Tourism in the State and to popularize the Wildlife Sanctuary in the notified area of Nahargarh precincts and it's habitants. Copy of Letter dated 18.05.1982 and Letter dated 02.07.2012 issued by Department of Archeology and Museums (State Government of Rajasthan) are enclosed herewith and marked as ANNEXURE-1 (Colly).*

2. That the allegation/accusation made in the present Application/Petition in reference/context of answering Respondents for allegedly doing of non-forest activities are vague and baseless because only Foods/Refreshments and Bear are served to the visitors/Tourists within stipulated time of opening and closing of Restaurant i.e. between 10 AM to 10 PM. and thereby nothing is violated/contravened and till today nothing has been contravened/violated since starting up of the Unit/Restaurant from 1982 & 1992 and hence it cannot be presumed or alleged that the answering Respondents have committed any legal acts or failed to prevent acts which can be categorized/ termed as an Offence in view of Rajasthan Forest Act, 1953/Wildlife Protection Act, 1972/Forest Conservation Act, 1980 Wildlife Protection (Rajasthan) Rule, 1977.

3. That the present Application/Petition is misuse and above of process of Law because it has been learnt that the Applicant/Petitioner is a local resident and is engaged in Real Estate business of illegal allotment of Land and Construction thereon nearby/adjacent to Nahargarh area and is facing criminal cases/litigations and with view to take vengeance and disrupt the peaceful functioning/running of Units at Nahargarh Fort Compounds and adjacent area and deliberately has developed falsehood by filing the instant Application/Petition and thereby has endeavored to misled this Hon'ble Court by placing wrong facts and evidence for seeking desired remedy for self interest which is can be detrimental to the interest and promotion of State Tourism and Nahargarh Wildlife Sanctuary area/Nahargarh Fort precincts."

8. Archeology Department in its reply states as follows:-

- “3. That at the outset it is submitted that Nahargarh Fort has been declared 'Ancient Monuments' vide covenant dated 24 March 1949 executed between Government of India and the Ruler of Jaipur. The relevant extract of covenant dated 24.03.1949 is annexed and marked as Annexure R-1.
4. The fort is a protected monument and governed under 'Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961, provides for the preservation, protection, upkeep, maintenance, acquisition and regulation of, and control over, ancient and historical monuments, archaeological sites and antiquities in the State of Rajasthan.
5. The Archaeology & Museums Department is a premier department for the protection and maintenance of protected antiquity, ancient monuments. Department was constituted in 1950 with aim to develop cultural and eco-tourism integrating with the monuments and preservation, conservation and environmental development of protected monuments and maintenance of gardens & development of new gardens surrounding protected monuments and sites.
6. The primary object of forest department is the protection and conservation of flora, fauna, forests, and wildlife to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium, which is vital for sustenance of all life forms, human, animals, and plants. However, this object does not envisage that Forest Department is proficient to protect, preserve, upkeep and maintain the protected monuments & protected antiquity. Hence, the prayer to hand over the administration of Fort to forest department shall be dismissed in limine.
7. The Nahargarh Fort was built in 1734, stands on the edge of the Aravalli Hills, The Fort houses a palace complex and the fortress walls ("the Parkota"). Vide Gazette Notification dated 16.09.1968, the State had declared the fort to be a "protected monument" under Section 3 (4) of the Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961. (Hereafter Act, 1961). The relevant extract of rule 3 (4) is as under:-

"3. Power to declare monuments etc. to be protected-(1) The State Government may declare for the purposes of this Act

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(4) On the expiration of the said period of two months, the State Government may, after considering the objections, if any, received by it, declare by notification in the Official Gazette-

(i) any ancient or historical monument to be a protected monument, or

(ii) any archaeological site to be a protected area, or

(iii) any antiquity to be a protected antiquity."

Relevant extract of Gazette Notification dated 16.09.1968 is annexed and marked as Annexure R-2.

8. *It is submitted that prior to Gazette Notification i.e. 1968, till now, Ownership, possession, and administration of the Fort area is with the Archaeology and Museums Department who is responsible for the conservation and maintenance of the Fort. Therefore, provision of approval from the forest department is not applicable as the forest department has no ownership, possession, and administrative rights on the protected monuments.*
9. *The Fort premises comprise 15 edifices mentioned as under:*

<i>Doongar Gate</i>	<i>Maharaja Mahal (Once Upon A time)</i>
<i>Step Well</i>	<i>Khazana Bhawan</i>
<i>Ghati Gate</i>	<i>Madhvendra Bhawan</i>
<i>Tadi Gate</i>	<i>Pani Ka Tanka</i>
<i>Silakhana (Wax Museum)</i>	<i>Kaptan Ka Dera</i>
<i>Sanik Vishram Grah (Office)</i>	<i>Hajari Burj (Padao Restaurant)</i>
<i>Diwan-e-Aam (Food Court)</i>	<i>Kali Burj</i>
<i>Wireless office</i>	

10. *It is submitted, there are many residential buildings, dwellings Houses Govt./Private education institutions, Hospitals, Government offices, agriculture lands, and right of way dedicated or maintained for public use within the limit of the sanctuary. And to operate these institutions reserve rights had been determined & accorded vide Order dated 21.08.1998 by District Magistrate in compliance of the Hon'ble Apex Court order dated 22.08.1997 rendered in W.P. Civil No.337/1995. It is apposite to bring up these rights had been determined in conformity with Forest Department, therefore, permission from forest department is not required. Typed Copy of the order dated 22.08.1997 rendered in W.P. Civil No.337/1995 is annexed herewith and marked as Annexure R-3.*
11. *The submission of the appellant that activities such as electric connections by Jaipur Vidyut Vitran Nigarn Ltd., License to run restaurants, approval to sell food articles in Wildlife Sanctuary are illegal and without consent of the forest department, is ill founded as approval is not required from the forest department.*
12. *The order dated 21.08.1998 explicates that reserved right had been awarded to the tourism department to operate the hospitality and tourism facilities for tourists in conformity with the forest department. Relevant Part (Clause 11 to 15) is annexed on Page 46 of OA.*
13. *That the Tourism services which have been allowed in the Fort premises are in compliance with Rajasthan Transparency in Public Procurement Act 2012 on the lease agreement and in order to facilitate the Tourism.*

14. Presently following facilities are being provided by the Department of Archaeology & Museums at Nahargarh Fort.

<i>Facilities / Services</i>	<i>Agreement expires</i>
<i>Fine Dine Restaurant</i>	<i>22.04.2025</i>
<i>Food Court</i>	<i>18.11.2025</i>
<i>Telescope</i>	<i>20.11.2021</i>
<i>Wax Museum</i>	<i>15.03.2026</i>
<i>Parking</i>	<i>14.02.2022</i>
<i>Scgway</i>	<i>13.06.2022</i>
<i>Kiosk</i>	<i>26.07.2021</i>
<i>ATM</i>	<i>18.05.2020</i>
<i>Padao Restaurant</i>	<i>Allotted to RTDC</i>

15. With regard to facilities provided to tourists, operative timing of all facilities is restricted from 10 Am to 10 Pm, and the same complies rigorously. All these facilities are provided under GF & AR and RTPP Act, 2012.
16. The Fort is built on the oldest mountain range of the world, Aravalli Hills, 15 kilometres from Jaipur, can be reached through private transportation only, therefore parking facility is managed by the Department of Archaeology & Museum Rajasthan since 2000 which contributes to guests' pleasant experience at a destination, resulting in potential benefit in the form of repeat visits. Parking facility is reserved right as per clause 14 of order dated 21.08.1998 which explicates that transport facilities such as Truck, Bus, Jeep, personal vehicles, and other means to ferry are permitted as per the present arrangements. To establish parking zone, the felling of trees is not allowed, and no tree has been cut so far to carve out the parking space.
17. The submission of the petitioner to effect that Keoladeo National Park and Tiger Reserves of Ranthambhore and Sawai Madhopur are being managed by the forest department but Nahargarh fort is not operated by the Forest department is defective. In this regard, it is submitted that said park & reserves are managed by the forest department but the protected monuments i.e. Forts situated in park & reserves are controlled by the Archaeological Survey of India (ASI) under Ancient Monuments & Archaeological Sights & Remains Act, 1958 (Central Act) and forest department has no role in operation or administration of said protected monuments.
18. The submission regarding illegal permission being granted for films shooting ill founded. In this regard, it is submitted that permission for shooting is granted in accordance with section 38 of 1961 Act and Rules made thereunder after depositing processing fee to the exchequer. Copy of the relevant Rules, 1961 is annexed and marked as Annexure R-4.
19. That as per Film Shooting Regulations, 2012, the Tourism Department is a nodal agency and a single window clearance mechanism is facilitated for time bound permission from

departments such; as Archaeology, Museum Department, Forest Department, Local Self Government, Police, etc. Copy of the Order dated 29.07.18 is annexed and marked as Annexure R-5.

20. Restaurants such as 'Padao' and 'Once Upon A time' is run through under Government regulations & RTPP Act, said facilities contribute towards adding value to pleasurable experience to guests and being operated without impacting wildlife health. The said restaurants are operating since 1982.
21. The Amber Development & Management Authority exclusively designed to meet the needs of protected monuments has spent Rs.1,841.86 lacs from 2012-13 to 2020-21 in conservation and 'maintenance of Fort premises. Details of expense is annexed as Annexure R-6.
22. The Light and Sound show held at Kesar Kyari is peculiar attraction of the Amer Fort. The show highlights the local legends, folklore, and celebrates the maestros of folk music. The timing of the show is 45 minutes and the sound pressure level is below 98 decibels tantamount to the sound pressure of Motorcycle. For the show, speaker arc place away front the forest to protect the wildlife which diminishes the possibility of noise pollution. Further, no tree is cut or uprooted and relocated for the show.
23. That at one hand petitioner assailed that all activities such as restaurant, shop at Fort premises are illegal, affecting the wildlife but keep silent when similar services (Cafeteria, Souvenir Shop, Kisok, parking) provided by the Forest Department at Nahargarh Biological Park. The Jaigarh Fort, which is also located at the hills of Aravalli, also offered similar facilities. Therefore, it is justifying that facilities/services offered by the Archaeology & Museums Department are required for eco-tourism.
24. That in order to protect trees, plants from water stress, department has spent Rs. 52.69 lacs on water supply system and plantation work to conserve the ecosystem.
25. It is humbly submitted that no illegal activities are conducted by the Archaeology & Museums. All the activities are operated as per law as they are reserved rights, conferred with consonance with Forest Department. Fort is a Protected Monuments and control and possessed by the Archaeology Department even prior to Gazette Notification i.e. 1968. No grievance has been received from Forest department that activities are illegal. To the extent of encroachment, it is submitted that department is vigil and measures have taken to prevent, potential encroachment. Copy of the various actions taken by the Archaeology & Museums Department is annexed as Annexure R-7.”

9. From the above, it is clear that there is conflict in the stand of the Forest Department on the one hand and the Tourism and Archeology Departments on the other. The issue can be resolved by referring to the settled law and undisputed facts. We have heard the learned counsel for the parties and perused the record and relevant material has been quoted above. We may now refer to the statutory provisions applicable.

10. Section 2 of the FC Act is as follows:-

*“Restriction on the dereservation of forests or use of forest land for non-forest purpose.—Notwithstanding anything contained in any other law for the time being in force in a State, **no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,—***

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose; 1[(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

Explanation.—For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

11. Sections 19 and 27 of the Wildlife Act is as follows:-

Section 19 –

Collector to determine rights. —1[When a notification has been issued under section 18] the controller shall inquire into, and determine, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary.

Section 27

27. *Restriction on entry in sanctuary.*—(1) No person other than,—
(a) a public servant on duty,
(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,
(c) a person who has any right over immovable property within the limits of the sanctuary,
(d) a person passing through the sanctuary along a public highway, and
(e) the dependents of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under section 28.
(2) Every person shall, so long, as he resides in the sanctuary, be bound—
a) to prevent the commission, in the sanctuary, of an offence against this Act;
(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;
(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;
(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and
(e) to assist any forest officer, Chief Wild Life Warden, Wild Life Warden or police officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.
1 [(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, 1860 (45 of 1860), alter, destroy, move or deface such boundary-mark. (4) No person shall tease or molest any wild animal or litter the grounds of sanctuary.]

12. Main contention raised on behalf of the Forest Department is that once the area is reserved forest, non forest activities cannot be allowed therein, as defined above. What can be determined by the Collector is only area falling outside 'forest'. Stand of the Tourism Department is that in view of the Section 19 of the Wildlife Act, the Collector has the authority to determine the existence and nature and rights of any person

in the land in the sanctuary. Archaeology Department has also pleaded similar case.

13. It is well settled and is statutorily provided that no non-forest activities can be allowed in the forest area without approval of the Central Government. Thus, the order of the Collector does not change the legal position as far as forest land is concerned. Further, order of the Collector under Section 19 has to be consistent with the objects of the Wildlife Act as shown by the long title of the Act itself - protection of wild animals, birds and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country.

14. In view of the above, restaurants and light and sound program have to held to be non forest activities which are not permissible in forest area and are also not congenial to the objects of the Wildlife Act. Such activities have thus to be closed.

15. Accordingly, we direct that all restaurants operating in the notified forest area of Nahargarh Wildlife Sanctuary/Nahargarh Fort be discontinued with effect from December 01, 2021. In case of any dispute the boundaries be verified jointly by the Forest Department and Collector Jaipur. We also direct that the light and sound program in the area of wildlife sanctuary be discontinued from the said date. It is however made clear that this will not affect parking and entry of visitors in the Fort/Museum. However, the Forest Department will install noise barriers at appropriate locations to mitigate the impact of noise generated by the vehicles. The Forest Department will also regulate number of vehicles and locations of parking. The Forest Department may also undertake and regulate such other activities as may be consistent with object of the

Wildlife Act and FC Act in the notified forest and wildlife area, including Fort. The Collector, Jaipur may ensure compliance of this order.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretary, Rajasthan, Secretary, Ministry of Culture, Govt. of India, PCCF (HoFF), Rajasthan, Chief Wildlife Warden, Rajasthan and Collector, Jaipur by e-mail for compliance.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

Dr. Arun Kumar Verma, EM

October 4, 2021
Original Application No.11/2021(CZ)
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