Legal Issues Arising out of the 1952 Notification- Waste Land or Forest Land – The Implications on Development Projects in Himachal Pradesh

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By Sanjay Upadhyay[1]

1. Introduction

A notification issued in 1952[2]declaring all forest land and waste land which are the property of the government or over which the government has proprietary rights by the Chief Commissioner of the then Himachal State, apparently to check rampant illicit felling of trees and encroachments over those government lands has left the State government grappling with severe lack of land for welfare and developmental activities. This is due to the current legal interpretation of the said notification and also due to the views of the Ministry of Environment Officials.

The notification resulted in all forest and wasteland as protected forest without the settlement of revenue and forest rights actually being carried out[3]. The Notification (and later the law itself) presumes that after such a blanket notification, in the said areas it shall be followed by inquiry and record in case the survey and settlement of such areas are not complete and the nature and extent of rights of both government and private persons are not recorded. The revenue and forest settlement since then have been completed but not notified. As a result even today, after the completion of revenue and forest settlement and after having identified the forest areas and the government wasteland, 1952 notification has been interpreted to have an overriding effect.

After coming in to the force of the Forest Conservation Act (FCA), 1980, the state government is required to take prior permission of the central government before being able to use any forestland for non-forestry purpose[4]. All the social welfare and infrastructure development activities intended to be carried out by the state are non-forest activity and therefore before the government can actually use this land, prior permission of the central government is mandatory. The objective of FCA to ensure conservation of forest can not be undermined but a peculiar situation has arisen in the state of HP due to its applicability on practically all land which was not surveyed

[1] The author acknowledges the assistance of Ms. Archana Vaidya, Advocate
[2] Notification No. FT 29- 241-49 dated 25 February, 1952
[3] This is because Chapter IV of the IFA provides for declaring areas as Protected Forests without actually carrying out survey and settlement.
[4] Section 2 of FCA

and settled and also that land declared as wasteland[5] (by virtue not having assessed to revenue) in 1952. The 1952 notification assumed all such land as wasteland and declared it as protected forest.

This paper examines whether the above view is legally tenable and explores the possibility of striking a balance between carrying out development activities while ensuring the sustainability of forests in the state.

1.1. History, rationale scope and ambit of 1952 notification:

A historical premise of the 1952 notification would be useful at this stage. The state of Himachal Pradesh (HP) came into existence[6] as a result of merger of many hill states in 1947. The state of HP was governed by a Chief Commissioner, appointed by the Union Government. As stated earlier, in 1952, a notification was issued by the Chief Commissioner of the state, apparently to check rampant illicit felling of trees and encroachments over those government lands which were neither reserved forests nor protected forests. Under the then existing legal frame the government could only take action again such illicit activities under the provisions of IPC which entailed a long and cumbersome process. Further, these areas were out of the purview of the Indian Forest Act (IFA) as applicable in HP and hence could be used to regulate such areas. It is in this light that the 1952 notification was issued and such areas were brought under Chapter IV of the IFA.[7]

This notification intended protecting the rights of the government in those areas which were at that time out of the purview of the IFA. This would have yielded the desired objective if the exercise of settlement of rights in the state was complete and there was a clarity about the ownership and other legal rights regarding these lands vis -a -vis government and private persons. Although the settlement operations were carried out in the erstwhile hill states, yet due to limited resources of income, uncultivated land was not measured and the rights of the government and private persons remained undecided in such areas. Some rights were however written in the working plans pertaining to the Demarcated Protected Forests (DPF) and the reserved forests but the exercise of settlement of rights was not complete.

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[5] The term wasteland is not defined in any revenue or forest legislation. The dictionary meaning of the word wasteland as per Concise Oxford dictionary is barren or empty area of land. In revenue terminology[5] barren and unculturable land includes mountains, deserts etc. which can not be brought under cultivation or abandoned after few seasons for one reason or other. Such lands may be lying either fallow or covered with shrubs which are not put to any use. They may be assessed or un –assessed to land revenue.

[6] For details on political history see annexure I

[7] Section 29 of the IFA as applicable in the state of HP read with the GOI Ministry of States notification NO. 146-J dated 6th December 1950, a similar notification was issued by the Chief Commissioner of Bilaspur state which was merged with the HP in 1954.

Settlement of rights is a time consuming process and the government felt necessary to issue this notification to check the rampant forest destruction and felling of trees in areas sought to be covered by this notification. To start and complete the survey and settlement process over the entire territory covered by the 1952 notification was an enormous task and needed time, human resource and money. This notification was issued subject to the survey and settlement to be carried out to inquire and record the nature and extent of the rights of the government and the private persons over the forest land and the wasteland[8] comprised in the notification.

During the course of the survey and settlement it also would have ascertained whether the land needed to be forest out of such revenue land. After this broad categorization the remaining revenue land could be further categorized in to wasteland and other categories.

As a follow up, the revenue and forest settlement was completed in Chamba, Mandi, Kangra, Una, Kinnaur, Lahual and Spiti and Shimla districts[9]. In these districts, the nature and extent of rights of the government and of private persons in or over the forest land and the wasteland have been inquired into and recorded in settlement reports. These operations were completed in some districts prior to 1980 when the FAC came in to being. After completion of the settlement operations a revised notification of the forest area is required to be issued as per the mandate of section 29(3) of IFA[10]. In the state of HP however such notifications have not been issued so far. However, certain reserved forests declared by erstwhile rulers were exempted from the purview of the 1952 notifications. See Box 1.

Box – 1

Reserved forests declared by erstwhile rulers exempted from the purview of 1952 notification

- Rantu, Saliana, Chambi, Kupar, Kalala and Tomru of Kothkhai ilaqua and Nagkelu of Kotgarh ilaqua declared as reserved forests in the Punjab Governmnet notification No. 175, dated 15th April, 1885.

-Chamba state forests declared reserved forests vide Chamba Darbar Notification no. W-76-43, dated 10th November, 1943

- Sirmaur state forests declared reserved forests in Sirmaur Darbar's notification

No. 1 dated 17 jaith 1958 Bikrami
No.2 dated23rd Chait, 1991 Bikrami.
No.14 dated the 17th Sawan, 1990 Bikrami.
No.38 dated the 27-12-1992 Bikrami.
No. nil dated 1st Chait 1937 Bikrami.

[8] the term wasteland is used for all uncultivated land or land which did not have forest on it and was not in use for cultivation

[9] As per the Dhani Ram committee report page no 28

[10] Although, Section 29 is not categorical on this aspect it is a logical assumption that a revised notification with clear boundaries of forest land or waste land and the extent and nature of right of private persons as well as the government is issued for clarity.

No. nil dated 1st Chait, 1917 Bikrami. No.11 dated 2nd Po1 1919 Bikrami. No.1 dated 17th Jaith 1952, Bikrami. No. nil dated 11 bhadon 1992 Bikrami

1.2. Forest settlement in erstwhile Mandi state recognized by 1952 notification

This notification applies to all lands in old Mandi State containing the 'growth' except such lands as have been excluded in the forest settlements as cultivated or as in the Malguzari[11] of a private person[12]. This notification therefore categorically excludes all those areas from the operation of this notification, which were not forests and were held as cultivated or in the malguzari of a private person as per the forest settlement done in the area. The forest settlement of the area has thus been recognized and the same has been given finality impliedly by this notification in the erstwhile state of Mandi. This fact has enormous implications as explained later in the current interpretation and applicability of the 1952 notification.

1.3. Implication of 1952 notification – lack of government land for developmental purposes

As a result of 1952 notification, in the state of HP, there is either private land or forest land. This situation has arisen due to the fact that 1952 notification has declared all government forest land and wasteland in HP as protected forest. Since the forest and revenue settlement in the state was not done in 1952, there was an ambiguity regarding the nature of land (whether it actually needed to be classed as forest land or not) and also regarding the nature and extent of rights vis-à-vis the government and private persons on that land i.e. whether the wasteland in question belonged to the state or to private persons. This notification therefore led to all land, which was not assessed, to revenue in the state to be termed as wasteland and thus protected forest.

In 1980, as stated earlier, the FCA was enacted and all forests were to be governed by this new legislation as well. Wherever FCA is applicable there is a need for prior permission of Government of India (GoI) for use of this land for non forest activity[13]. This resulted in a virtual lack of government land for developmental activities in the state, as the state had to go and seek the permission of GoI for any non-forest use of forestland. Use of land for developmental purposes is deemed to be non-forest use. The government believes that the welfare activities and the social and infrastructure

[11] Land revenue or revenue assessment
[12] See Section 2 of the 1952 notification no. FT29-241-49 dated 25th Feb. 1952.
[13] Section 2 of FCA

development activities are hit the hardest as it does not have enough revenue land at its disposal to carry out its duties and functions.

Additionally, the term "wasteland" is not defined in any forest or revenue legislation. Due to lack of any statutory definition of wasteland, all government land which is barren and empty has been termed as wasteland and has been interpreted as protected forest due to this notification. Even at times of natural calamities like flood, cloud burst and earthquake the hands of the state government are tied due to the applicability of FCA on most of the land it owns.

1.4. MoEF strikes down 1998 notifications by HP government which sought to bring three categories of land out of the purview of government wasteland

To ameliorate the genuine constraints and to have access to some land for developmental purposes the state issued two notifications[14] which clarified that the government wasteland classed as *gair mumkin, charagah bila drakhtan* and *na kable charand* shall not be treated as waste land or will not fall within the ambit of wasteland.

It would be pertinent to mention here that the state had issued these notifications after an affidavit[15] was filed by the state in the SC in T.N. Godavarman V UOI matter on 2.5.1997, stating categorically that for the purpose of FCA, government wasteland classed as "gair mumkin" would be outside the purview of the Act and 1952 notification, and after deep consideration has decided to pave the way to grant this land to landless as nautors, developmental activities like construction of roads, laying of transmission lines, rehabilitation purposes and for other welfare purposes as a welfare democratic state.

As per MoEF's opinion[16], in view of section 2 of FCA, the government of HP needed prior approval of the Central Government to change the use of any forest land for non forest activity. The State Government's notification was viewed as an attempt to divert forest land for non forest purpose using the State's executive powers. MoEF rejected the notification issued by the HP government and put pressure on the state government to withdraw the said

[14] Dated 24.8.1998 and 5.12.1998 clarifying that the government wasteland classed as gair mumkin, charagah bila drakhtan and na kable charand shall not be treated as waste land or will not fall within the ambit of wasteland.

[15] We need to see this affidavit and the logic advanced by the government. How could government especially after the SC order move this category of wasteland out of the purview of 1952 notification and FCA. What did the SC had to say to this?

[16] See Dhaniram Committee report

notification. The state government finally conceded to the demands of MOEF and these notifications were withdrawn with effect from 9.9.2003[17].

1.5. Implication of 1952 notification on lands vested in the state government under various land reform legislations and schemes

Another important implication of the 1952 notification was its impact on the various land reform legislations such as Himachal Pradesh Tenancy and Land Reform Act, 1972, Himachal Pradesh Ceiling on Land Holdings Act,1972, Himachal Pradesh Utilisation of Surplus Area Scheme,1974, Himachal Pradesh Village Common Land vesting Land Utilisation Act, 1974 and HP Nautor Land Rules, 1968. The Expert Committee[18] constituted by the state government to understand the legal implications of the 1952 notification, as well as the law department expressed their opinion that the same shall not be hit by FCA 1980. The logic advanced by the expert committee and the law department was that these land reform legislations were passed and enforced before FCA, 1980, after getting clearance from the Government of India therefore the land declared surplus or earmarked in reserve or allotable pools in the said legislations would not come within the purview of the 1952 notification.

Technically speaking, if the 1952 notification is considered alive i.e. to have continuing effect, then any land which is recorded as forest and wasteland shall be covered by 1952 notification as soon as the same falls in the ownership of the government or vests in the government even under the land reform legislation. If the revenue records pertaining to these land were not changed and these lands continue to be recorded as either forest or wasteland then by virtue of 1952 notification they shall be covered under FCA as soon as it came in to operation i.e.1980.

However, if the status of these lands was changed and the revenue records were modified as soon as they got vested in the government, prior to coming in to force of FCA, then they would not be attracted by the FCA. Also the lack of definition of wasteland and the lack of clear linkage of various revenue categories of land with the understanding of wasteland adds to the confusion and misinterpretation.

However, in the interest of equity, even if the status of the land vested in the government after their acquisition and vesting in the state government under land reform legislation, by the state was not changed, they should be allowed to be changed now, at least for lands, which vested in the government before FCA became operative.

[17] See Notification no. FFE-B (F)-8-76/96-Loose dated 9th September, 2003.
[18] Details of the expert committees are mentioned in chapter II

These lands were acquired by the government for some specific purpose under special legislation before FCA came in to being. It would be prudent not to make all the special legislations first subject to 1952 notification and then to FCA even for lands which were acquired for a specific objective under special legislation prior to coming in to the force of FCA. Apathy or inefficiency on the part of the state government should not result in the change of legal status of the lands and deprive the poor and landless their due. The land reform legislations should not be allowed to be sacrificed at the alter of the technicality of forest conservation law.

2. Committees and Commissions on the 1952 Notification:

As has been mentioned in the previous chapter, there is a scarcity of revenue lands in the state of H.P. due to the legal implications of 1952 notification read with FCA which mandates prior central government approval for use of any forest land for non forest purpose. The interim Order of the Supreme Court in the ongoing Godavarman case[19] has further complicated the matter as it has categorically brought all types of forest as per the dictionary meaning and as per the government records, irrespective of ownership under the FCA purview and mandated central government's prior permission for carrying out any non forest activity in these forests.

To have a clear understanding of the situation that the state government is in, and to find its way out of the current predicament, the government entrusted the task of analyzing the implications of 1952 notification[20] particularly with reference to the directions issued vide interim orders dated 12.12.96 of the Hon'ble Supreme Court in TN Godavarman V UOI[21] and change in ground realities consequent to completion of survey and forest settlement operations to an expert committee under the Chairmanship of Choudhary Dhani Ram (CDRC)[22] which also included experienced administrative officers. To see a note on the findings of the committee see **Annexure II.** The TN Godavarman V UOI[23] is a landmark case in the history of forest related judicial pronouncements in this country. The court in its interim order clarified and removed all ambiguity regarding the definition of forest, forest land and the true scope of FCA.

Terms of Reference (TOR) of CDRC

1. To examine the implications, particularly with reference to the interim order of the SC dated 12.12.1996 and orders of the GOI, MOEF from time

[19] SC order dated 12.12 1996 in WP(c) No. 202 Of 1995 titled T.N. Godavarman Thirumulpad Vs. Union of India and Others was filed in 1995 in the SC
[20] no. Fts 29-24I-BB/49 dated 25.2.1952 and notification no Fts. (A) 1/52 dated 15.1.1952
[21] CWP no. 202/95
[22] The Committee had 8 more members and was constituted on January 27 2004. To see a note on the findings of the committee see **Annexure II**
[23] For details of relevant order see annexure III

to time thereof in context of implementation of various developmental programmes/schemes in HP.

2. To examine the implications of the notifications dated 25.2.1952[24] and 15.1.1952[25] on the land vested in government after 1952 (like vesting of lands under Ceiling Acts/Village Common Land Act) and finalization of revenue and forest settlements and preparation of records of rights etc there under in the light of above mentioned SC orders and letters received from the GOI.
3. To suggest remedial measures to thrash out the issues in the larger interest of the state.
4. To examine the implications of the above mentioned changes incorporated under various Revenue Laws, Settlements (Revenue and Forest) and also in the context of the letters of the government of HP issued to the secretary MOEF, GOI dated 22.4.2003 and 15.12.2003 and various communications received from GOI from time to time in this context.

2.1 Recommendations of CDRC

- It has recommended that the SC should be requested that after due enquiry under section 29 of IFA 1927, necessary areas are being demarcated as forest and the rest may be left at the disposal of the state government to meet the requirements of the state.
- The committee also recommended that the term "wasteland" should be defined and incorporated in the Land Revenue Act and Forest act. According to the committee the term wasteland can be qualified under section 29 of IFA also. This needs to be examined at administrative level.
- The 1952 notification was just an intention notification of the government of HP[26]. Proper notification[27] was to be issued after survey, demarcation and settlement of the government rights and other right holders. Since revenue and forest settlement has been completed in many districts and the nature and extent of rights of government and private persons in or over the forest land or wasteland in such districts have been enquired in to and recorded in settlement reports. All those districts where the settlement was done before 1980 i.e. before the coming in to the force of FCA therefore should be allowed to be notified as forests as per this settlement. This is also possible in view of the clarification given in Annexure IV to the FCA, 1980 according to which decisions taken prior to 25.10.1980 under the provisions of state/local

[24] This notification was issued by the chief commissioner of HP under section 29 of IFA declaring provisions of protected forests i.e. chapter IV of the Act applicable to all forests land and wastelands which are the property of the government or over which the government had proprietary rights.
[25] This notification was issued by the chief commissioner of Bilaspur regarding the forest and government wasteland which was merged with HP later.
[26] as envisaged under proviso (3) to section 29 of IFA
[27] under sub para (1) and (2) of section 29 of IFA

laws/enactments can be implemented either wholly or partially after the enactment of FCA on 25.10.1980[28]. The committee is also of the view that the notifications of 1998, attempting to take some categories of land out of the ambit of wasteland, thus 1952 notification, could be covered by the order of the SC dated 4.3.1997[29]. This matter can still be decided at the government level in view of the decision (sic) of the SC.

- Land declared surplus and vested in the government under various land reform legislation e.g. HP Big Landed Estates Act, HP Ceiling Act and HP Village Common Land Vesting and Utilization Act etc. do not attract the provisions of FCA because they were enacted before the enactment of FCA and with due clearance from the central government.

- All areas which have been surveyed and settled with land classification and recorded as forests in revenue record during settlement operations could now be notified under section 29 of the IFA and the rest can be notified similarly once settlement is done in those areas as well.

- As far as administrative and legal remedies are concerned the committee was of the view that since the SC has in its order given liberty to any state for seeking any modification to the interim orders if local laws/customs relating to the forest in the state lead to any difficulty in the enforcement of these local laws. State government may pursue the case regarding the wasteland and change in the status of 1952 notification with MOEF because of the change in the legal status after the settlement process is over. If that does not work the state should approach the Centrally Empowered Committee (CEC) of the Supreme Court in this regard. However before this all administrative and political options should be explored to get out of this situation.

2.2. Chamel Singh Sub committee

Another sub committee under the chairmanship of Sh. Chamel Singh was constituted on 20th January, 2005. The TOR for this sub committee were

- to examine the recommendations of the CDRC and
- to frame the issues to be projected before the CEC constituted by the Hon'ble SC.

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[28] This is not clear as no such provision exists. Such clarifications are for regularization of encroachments and not for valid notifications and its extent of applications prior to 1980

[29] The relevant text of the order dt 4.3.1997 "It is made clear that all the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the State Government. An Efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these maters."

This subcommittee also highlighted the ground realities existing in the state in terms of lack of revenue land with the state government especially in view of the state being hilly. It agreed with all the legal reasoning of the CDRC in 1952 notification being just an intention notification pending survey and settlement of rights. It also recommended that the state should be allowed to issue final notification as per section 29(1) of IFA where the settlement was done prior to coming in to the force of FCA.

2.3 Issues recommended by Chamel Singh committee to be taken before the GOI and the Supreme Court

- 1952 notification were issued with a pious intention of saving the forests from being denuded without giving any opportunity to people of being heard. The notification had sweeping consequences and resulted in all government wasteland becoming protected forest.

- It cannot be made applicable to the merged areas because the merger was on 1.11.66 after the issue of the said notification.

- Land declared surplus under HP Land Ceiling Act enacted after clearance from GOI and to be distributed among the landless and eligible persons should be out of the purview of the 1952 notification, IFA and FCA.

- Land vested with the government after the Village Common Land Act having the clearance of the GOI should also be out of the purview of the above Acts and notifications.

- Land identified as non forest and including *gair mumkin* land, *charagah billa darakhatan, charagah darakhtan* should also be brought out of the purview of these laws.

- The area of land classified as under which is not forest land at all may be considered for taking out of the purview of the IFA, FCA and notifications of 1952.

It is clear from the above discussion that both the committees were of the view that forest and revenue settlement completed at least prior to 1980 should be allowed to be implemented at once. The state has been advised to try and sort out this matter at administrative level failing which they are of the opinion that the Supreme Court should be approached. The committees also recommended that to get some categories of land out of the purview of the wasteland the state should explore legislative option by defining the term wasteland.

3. Impact of Supreme Court Orders in Godavarman Case

The Supreme Court removed all ambiguities regarding the definition of the word forest and the scope of applicability of FCA. As mentioned earlier while dealing with T.N.Godavarman matter as per its interim order dated 12.12.1996 the word forest includes within its ambit not only the area as per the dictionary meaning of this word but also all that land which has been recorded as forest in the government records. All wasteland which was declared as protected forest as per 1952 notification becomes recorded forest. After this interim order there is no scope for any authority in the country to interpret it otherwise unless the order itself is modified. This decision makes it mandatory to have prior central government permission in case the state of HP intends to move any category of land outside the meaning of wasteland as that would impliedly mean changing the nature of recorded forest. Whatever has been included in the definition of wasteland explicitly or impliedly prior to this order therefore cannot be moved out of this definition by any executive order in any case after this decision. Whatever ambiguity was there as to the definition and scope of FCA and regarding the definition of word forest has been put to rest.

However the SC order cannot fetter the legislative power of the state. The way out of this situation for the state government is to define the word wasteland in state forest or revenue enactment. We should not loose sight of the fact that the SC's decision was also a desperate measure to save the forest wealth of the country from being decimated. If however because of this order there is a genuine problem being faced by any state they can approach the court with its grievances.

SC itself has been maintaining that and has mentioned the same in its orders time and again. The relevant text of the order dt 4.3.1997

"It is made clear that all the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the State Government. An Efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these maters."

The state government would be well with in its right to approach the court and ask for relief in terms of implementation of forest and revenue settlement in the state.

4. Recommendations to deal with the implications of 1952 notification

In view of the hardships being faced by the state government due to severe scarcity of government land for developmental activity and social welfare activity of the state, it is necessary that the scope of 1952 notification is

reduced. Land which is not determined as forest after the completion of settlement operation should be taken out of the scope of the 1952 notification. To deal with this situation the state can adopt one of the following strategies.

4.1. Forest and revenue settlement should be notified

There is no disputing the fact that the 1952 notification was issued in times of grave emergency to save the forests in the state and the same was subject to the settlement of rights. It is however difficult to understand and defies any legal logic as to why after the rights were settled, the final notification under section 29 (3) of IFA was not done or is not allowed to be done now. Why the settlement process is not recognized and the notification is being allowed to prevail, is a question, which needs investigation. Legally the areas which are not forest after the settlement can be allowed to come out of the scope of the FCA. One very important fact which should not be lost sight of is that even the notification when it was issued in 1952, recognised impliedly the forest settlement of the erstwhile state of Mandi. This notification categorically excluded all those areas from its operation, which were not forests and were held as cultivated or in the malguzari of a private person as per the forest settlement done in the area. When the forest settlement done in the erstwhile state could be recognized then the fact that forest and revenue settlements done in the state as per the revenue laws is not being allowed to be recognized is beyond reasonable comprehension. The state can approach the court in this regard and seek appropriate directions.

4.2 The Supreme Court should be moved to get required classes of lands out of the purview of wasteland

If the state is interested in moving the government wasteland, classed as *gair mumkin, charagah bila drakhtan* and *na kable charand* out of the scope of wasteland, thereby 1952 notification and thus FCA, it should approach the apex court or the CEC whatever is the appropriate forum. The state should emphasize on the circumstances under which the 1952 notification was issued before the apex court. The SC has very clearly in one of its orders[30] said that it is made clear that

"All the concerned authorities would, in the meantime, continue to examine the various aspects of the problems requiring solution and try to solve these problems in collaboration with the Central Government and the State Governments. An efficacious exercise of this kind would enable reduction of the area which may require judicial scrutiny and adjudication in these maters."

[30] Order dated 4.3.1997 in Godavarman matter

The state government can plead the hardships it has to undergo in view of lack of any revenue land. It also needs to be ascertained from field as to why the state does not have any land other than the wasteland? Don't other states have a similar consequences notification? How do they deal with this situation? How could wasteland be allowed to be given such an interpretation so as to include every land, which is not under cultivation under its ambit?

4.3. Wasteland should be statutorily defined

The state government does have the legislative power to bring in the necessary legislative amendment and **define the word "wasteland"** in the revenue and forest legislation as applicable in the state. The Supreme Court order can definitely not be a constraint on the legislative power of the state government. Although, some progress in this direction was made when the state government constituted a core group to attempt to define the phrase "wasteland" within the scope of the SC judgment, this needs to be taken ahead. The SC order is no constraint on the legislative power of state assembly if the same is exercising its rights within the constitutional mandate. The Supreme Court at the most can test the constitutional validity of the amendment and cannot be assumed to have power to decide the contours of the legislative powers of the state assembly.

A core group constituted for this purpose had suggested[31] adding the definition of word wasteland and forestland in section 29 of the Indian Forest Act, 1927 by adding an explanation after subsection (1) *"Explanation: for the purpose of this section*

(i) Forest land shall mean the tract of land covered with trees, shrubs, vegetation and undergrowth mingled with trees with pastures, be it of natural growth or man made forestation.

(ii) Wasteland shall mean any land which is unfit for cultivation or habitation, desolate barren land with little or no vegetation thereon.

It has also been proposed to add the following proviso after sub-section (2) of this section

Provided that the state government may by issuing a notification declare that the waste land comprised in notification(s) issued under sub-section (1) and (2) above, which is required for bonafide public purpose of the state government shall cease to be protected forest from the date of the publication of such notification in the official gazette.

Explanation: For the purpose of this proviso the term bonafide public purpose shall mean construction of roads, bridges, government buildings/offices, dams, canals and hydel projects only."

[31] As per the cabinet note

4.4. Continuing effect of 1952 notification should be challenged

The 1952 notification was issued on February 15th 1952 and it declared the promulgation of chapter IV of the IFA on all government forest land and government owned wasteland. It said that all those forests and wastelands were covered by this notification which

1. At that point in time (emphasis supplied) were the property of the government or
2. Over which the government had proprietary rights or
3. The government had rights over all or any part of the produce as recorded in the forest or land revenue settlement records of the integrated state or otherwise.

This notification pertains to government's ownership at the time of its issuance. This notification cannot be assumed to have a continuing effect for ever meaning thereby that all land which in future shall belong to the government shall automatically be covered by this notification. By this logic, in case of land acquired by the government under the HP Ceiling on Land Holding Act, 1972, and HP Village Common Land Vesting and Utilization Act, 1974, is recorded as forest or wasteland then keeping in mind the repercussion of 1952 notification they shall be protected forest as soon they are vested in the government. If their status in the revenue records is not changed and was the same on the date when FCA came into being then they shall be covered by FCA also. Another important point to be borne in mind is that in light of Godavarman case forest shall in any case be covered under FCA as the definition of forest to be covered by FCA has been held to be independent of ownership in the SC's 12.12.1996 order in Godavarman matter.

One needs to know the legal reasoning as to how this notification is being made applicable in perpetuity despite it being very clearly worded. This notification brought within its ambit all the new lands of above description when new areas were merged with the state and in 1971 when the state was again reconstituted. In view of the interpretation given to the provisions of the State of HP Act 1970[32] and the Himachal Pradesh Adaptation of Laws (State and concurrent subjects) order 1973, as per which all the laws existing in the erstwhile state of HP were made applicable in the new state in toto. "Notification" also gets covered in the definition of the word "law" as per section 2(f) of the State of HP Act 1970; therefore 1952 notification also became applicable in the new areas. There should not be any ambiguity about the fact that this 1952 notification got revived because of the HP State Act and not because it had a continuing effect. If this notification was still alive or for that matter any other notification was still alive then there was no reason why they needed to be included in the definition of the word law in

[32] Section 49(1)

this State of HP Act 1970. If the notification were of indefinite validity then on one subject matter only one notification was required and as and when the

Brief political background of the state

After India attained independence in 1947, 21 hill states of Punjab signed an agreement to come together and form a collective political entity. The government of India (GOI) by virtue of authority vested in it by Foreign Jurisdiction Act issued the Himachal Pradesh (Administration) Order, 1948, in view of this agreement. This order resulted in the constitution of a separate political entity called Himachal Pradesh.

The state of Bilaspur was taken under the central administration in the year 1948. Himachal Pradesh and the state of Bilaspur were made chief commissioner's province with effect from August 1, 1948, by making an order to that effect by GOI.

After the constitution of India came in to force, on 26th January, 1950, both the chief commissioner's provinces, Himachal Pradesh and the state of Bilaspur were made part C states. In the year 1954 the parliament passed the Himachal Pradesh and Bilaspur (New State) Act, to merge both theses part C states to one political entity, to be called the state of Himachal Pradesh with effect from July 1, 1954.

The state thereafter became a union territory in the year 1956 consequent upon the passing of the constitution (seventh amendment) Act, 1956 and remained a union territory till 31st October 1966. Himachal Pradesh during this time consisted of 6 districts namely Bilaspur, Chamba, Kinnaur, Mahasu, Mandi and Sirmaur.

Thereafter in the year 1966 some more parts of erstwhile Punjab were added to the union territory of Himachal Pradesh. By virtue of Punjab Re-organisation Act, 1966. The territories so added were made part of the various districts and tehsils and four more districts of Simla, Kangra, Kullu, Lahaul and Spiti were added to the union territory of Himachal Pradesh w.e.f 1st November, 1966.

From 25th January 1971 by virtue of Himachal Pradesh Act 1970, the state of HP was established and full state hood was granted to the state. The state was reorganized and divided in to 12 districts. As of January 1, 2002 there are 12 districts, 51 sub-divisions, 75 tehsils and 34 sub-tehsils in the state of HP.

requirements mentioned in that notification would stand fulfilled the notification would become automatically operational. This surely cannot be the case. It is clear from the above that the continuing effect of this notification be challenged in appropriate court of law i.e. the Supreme Court so that this impasse is removed and huge chunks of land can be used for developmental purposes.

Annexure I

Findings of Chaoudhari Dhani Ram Committee

- The committee was of the view that presumably these notifications were issued with the background that it will be followed by survey, settlement and notifications of the forest area in these states which were subsequently completed and the notification of 1952 became automatically redundant in such district where settlement operations stood completed and areas to be notified as forests determined. This notification was issued without any enquiry to ascertain the nature and extent of the rights of the government and private persons over wasteland comprised therein. It is very clearly mentioned in section 29(3) of the IFA that
  "No such notification shall be made unless the nature and extent of the rights of government and private persons in and over the forest land or wasteland comprised therein have been enquired in to and recorded at a survey or settlement or in such other manner as the state government thinks sufficient."

  It however also provided that in case of any forest land or wasteland if the state government think that such enquiry would occupy such length of time as to endanger the rights of the government then the state government may pending such enquiry and record declare such land to be a protected forest. This shall in no case abridge or affect any existing rights of individuals or communities.

  1952 notification resulted in all land other than demarcated protected forest and reserved forest under the ambit of protected forest leaving practically no land for the state to discharge its obligations as a welfare state and to implement developmental activities. As per MOEF interpretation even rivers, streams, nallahs, rocks, hills, dhanks, grazing land etc which are devoid of any trees are also to be considered as forest land by virtue of them being wasteland. When 1952 notifications were issued as it was imperative for the state government to take an effective step to check illegal felling of trees. These notifications therefore were issued without any enquiry to ascertain the nature and extent of the rights of the government and of private persons over wasteland comprised therein. As a follow up action since then the settlement operations have been completed, the wasteland and the forestland has been identified during the settlement operations after deciding the extent of the rights of the private persons and the government. Infact the government of HP was required to issue proper notification of the forest area so identified in the settlement operations as per the mandate of section 29(3) of IFA.

As per the committee, 1952 notification automatically ceases to operate in the district where the process of survey and settlement has been completed.[33] The committee opined that when the settlement operations in the state were complete and the state could act as per the mandate of section 29(3) IFA, FCA had come in to being as a result of which the MOEF (GOI) objected even to the notifications issued in 1998.[34]According to the committee the 1952 notification was only a stop gap arrangement pending survey and settlement operations in the area.

The committee has agreed that the HP government is facing numerous problems because of the lack of revenue land at the disposal of the government to carry out its welfare state activities and other developmental activities.

- Land use classification is the systematic arrangement of various types of land on the basis of certain defined characteristics, mainly to identify and understand their fundamental utility. After independence the central and the state governments diverted their efforts and energies in order to fulfill the social obligations of a welfare state. The state of HP also enacted several land reforms legislation in order to provide land to the landless persons. Under the Land Ceiling Acts, excess land was acquired by the government, the culturable portion was allotted to the landless persons and the remaining was put at the disposal of the collectors for developmental activities. As per the committee since these enactments were passed before the FCA and with the permission of the central government they can not come under the purview of the FCA.
  The committee reported the fact that after the forest and revenue settlements are completed the records of rights have been up dated and edited in terms of the rights of the individual persons through proper notification under section 29 of IFA. The committee felt that whatever government forest land has been notified as forests are forest land and the rest are non forest land.
  The committee was of the firm opinion that the provisions of the 1952 notification are not applicable to the lands already settled by revenue and forest settlement. The lands which were transferred in the allotable and reserve pools under the Local laws before 1980 are not covered under the provisions of 1952 notification.

- The implication of 1952 notification resulted in all land which was not assessed to revenue as being treated as forest by virtue of it being assumed as wasteland. This phrase wasteland has not been defined in any forest or land related enactment. In Concise Oxford English Dictionary,

[33] Not automatically only after the government issues necessary notification as per section 29(3) IFA as mentioned above also.
[34] Where the government only attempted to bring certain categories of land out of the purview of government wasteland

meaning of wasteland has been given as “barren or empty area of land”. Such areas could be used for developmental activities but is treated as protected forest as a result of the consequences of 1952 notification.
The state government after following proper procedure and determining the rights of people have declared DPF and RF in District Mandi, Bilaspur, Chamba, Shimla, Kinnaur etc. Had the entire region been considered as forest in these districts then there was no need to identify only DPFs and RFs in the settlement process or in other words there was no need to have a settlement process in the first place.

- The committee found that the revenue records in most districts are either updated or in the process of getting updated and changes have been incorporated in these records as per the provisions of the revenue laws applicable in the state. As the annual season and crop report 2000-2001 the entire land in HP has been classified in the following categories.

    1. **Forest land**- all actually forested area on lands classed or administered as forests covered by any legal enactment dealing with forests, whether state owned or private or whether actually wooded or maintained as potential forest land comes under this category.. If any portion of private forest land is not actually wooded but is put to some agricultural use then the same shall be included under the appropriate heading of cultivated or **uncultivated land**.
    2. **Barren or unculturable land-** like mountains deserts which can not be brought under cultivation except at an exorbitant cost.
    3. **Land put to non agricultural uses-** land occupied by buildings, roads, railways, rivers and canals.
    4. **Permanent pastures and other grazing land-** village common grazing land. The land under this category forms the largest chunk of reporting area serving the basic requirement of animal wealth of the people.
    5. **Culturable wasteland-**land which is available for cultivation whether taken up or abandoned after a few years. Such land can be fallow or covered with shrubs or wild growth which is not put to any use. Lands once cultivated but not cultivated for five years or more in succession shall be included under this head.

Annexure II

Forest defined

The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of section 2(1) of the Act.

Forest land defined

The term 'forest land', occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act.

Scope of FCA clarified

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately resulted in ecological imbalances and therefore the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof.

Scope of Section 2 FCA applicability

The provisions enacted in the Act for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. It is reasonable to assume that any state government, which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

The court also made the following general directions

All ongoing activity within any forest anywhere in country without prior approval of the FCA must stop forthwith

In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any forest. In accordance with section 2 of the Act, all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government must stop forthwith. Accordingly, any such activity is prima facie violation of the provision of the Act. Every State Governments must promptly ensure total cessation of all such activities forthwith.

Each State Government should constitute within one month an Expert Committee to identify forests, areas which were earlier forests and areas covered by plantation trees

Each State Government should constitute within one month an Expert Committee to:

- Identify areas which are 'forests', irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest.
- Identify areas which were earlier forests but stand degraded, denuded or cleared; and
- Identify areas covered by plantation trees belonging to the Government and those belonging to Private persons.

Each State Government would constitute a Committee to oversee the compliance of this order and file status reports

Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Office to oversee the compliance of this order and file status reports.

The SC while hearing this matter on 13.1.1998 also observed:

"If there be any local laws, customs relating to the forests in any state, the concerned state government may apply to this court for needed modifications if any, with alternative proposals."