

Item No. 05

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 366/2018
(M.A. No. 1780/2018)

Banni Pashu Uchherak Maldhari Sangthan

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 20.05.2021

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

Applicant: Mr. Sanjay Upadhyay, Advocate

Respondent: Mr. Gigi C. George, Advocate. for MoEF & CC
Mr. Parth Bhatt, Advocate. for State of Gujarat
Mr. Malak Bhatt, Advocate for R - 7 to 10

ORDER

1. Grievance in this application is against continuing of non-forest activities in Banni Grassland, Kutch, State of Gujarat, in violation of the Forest (Conservation) Act, 1980 and directions of the Hon'ble Supreme Court in *T.N. Godavarman v. UOI & Ors.*¹.

2. The applicant claims to be environmental activist for the rights of the tribals called *Maldharis*, engaged in rearing of cattle. It is stated that there is rampant encroachments in Banni protected forests, declared as protected forest vide Government of Kutch Notification dated 11.05.1955 in the Kutch District, Gujarat. It is further stated that non-forest

¹(1997) 1 SCC 267

activities are without following the provisions of the FC Act and MoEF&CC Notification dated 03.08.2009 read with Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights, Act, 2006 (FRA, 2006). The FRA 2006 is in respect of pre-existing rights of the tribals in the forest. There is lack of coordination between Forest and Revenue Departments on account of which no effective action is taken for protection of the forests. Banni grasslands are spread over in area of ca. 2618 km, and account for approximately 45% of the pastures in the State. Banni area comprises 48 hamlets/villages organized into 19 Panchayats with a population of approximately 40,000 people. The Banni area consists of two eco systems in juxtaposition, viz., wetlands and grass lands, Banni falls under Dischahnthium-Cenchrus Lasiurus type of grass cover. These grasslands harbor a rich array of flora and fauna including 192 species of plants, 262 species of birds, several species of mammals, reptiles and amphibians. Traditionally, Banni grasslands were managed following a system of rotational grazing. Encroachments are affecting the rights of the tribals, the old Maldharis. Their main occupation is rearing of livestock. Vide Notification of 1955 by the Kutch Government, the entire grass land was declared as protected forest. On 18.06.1997, the Gujarat Government asked the Forest Department to prepare the requisite plan. The same was prepared and approved by the MoEF&CC on 11.01.2010

3. We note that this application was filed on 28.05.2018 and has been pending for the last three years. Several orders have been passed but we may only refer to some significant orders and response of the respondents. On 29.05.2018, notice was issued to the respondents - the MoEF&CC and the Authorities of Gujarat Government. On 11.07.2018,

the Tribunal directed that no non-forest activities be allowed on Banni grasslands.

4. The stand of the MoEF&CC is that the issue concerns the State Administration in accordance with the FC Act and judgment of the Hon'ble Supreme Court. The stand of the Forest Department, Gujarat is that the area of grasslands is 2,49,674.45 hectares covering 48 villages. The grasslands are primarily occupied by tribals were protected under Section 3 of the FRA, 2006. The application is barred by limitation prescribed under Section 14(3) and 15(3) of the National Green Tribunal Act, 2010 (NGT Act) as the cultivators and inhabitants are in their respective possession before 1960 when the State of Gujarat was established, on reorganization. The applicants have not mentioned the date of cause of action nor shown how their application is within limitation. State Government has issues Notification dated 09.07.2008 for 38,000 hectares as Kutch Rann Sanctuary and 22,700 hectares to be Chharindhandh Conservation Reserve. Notification under Section 30 of the Indian Forest Act, 1927 is yet to be issued.

5. The matter was comprehensively considered on 03.07.2019 and it was observed that there was no demarcation of Banni Grasslands which was directed to be undertaken. The operative part of the order is reproduced below:-

“In this case the dispute is with regard to non-forest activities in Banni Grass Land (Protected Forest) in District Kachchh, State of Gujarat. During the course of hearing our attention has been drawn to the notification issued on 11.05.1955 by the Chief Commissioner, Government of Kachchh, in exercise of power under Section 29 of Indian Forest Act, 1927. But neither the exact boundary nor the total area was clarified therein. Subsequently, a working plan of Banni Protected Forest was issued in the year 2009 by the Forest Department, Government of Gujarat which had also been approved by MoEF & CC. In the said plan it has been mentioned that the

forest area of Banni was surveyed through GPS from 13.12.2005 to 03.03.2006 by the Settlement Commissioner & Land Record Director, Gujarat State for demarcation of the boundary. The total area came out to be 249,674.45 ha i.e. 2497 km². It has also been mentioned that the area lies between 230 22'15" N 230 48' 07" N latitude and 690 09' 14" to 700 10'23" E longitude with a perimeter of 367 km.

However, till date the said area of Banni Grass Land has not been demarcated on the ground. It is noteworthy that in the Working Plan, table 1, para 1.7.1, it has been mentioned that "the boundaries of the area are not demarcated on the land so far and no settlement procedure was carried out in this Protected Forest."

*In view of the aforesaid position and the fact that the demarcation of the area is yet to be made, the grievance of the applicant with regard to non-forest activities /encroachments can be properly appreciated only when the area in question is demarcated on the ground. Therefore, before proceeding further, **we direct respondent State to demarcate the boundaries of the Banni Grass Land, in accordance with aforesaid details, on priority and the said work be completed at the earliest.***

Accordingly, we grant a period of four months to respondent State i.e. upto 31st October, 2019 to complete the demarcation of Banni Grass Land and a report be submitted to the Tribunal."

6. Accordingly, report of survey and demarcation has been filed by the Deputy Conservator of Forest, Banni Grassland Division, Gujarat on 21.01.2021 to the effect that survey of the outer boundary of Banni grassland has been completed by District Inspector Land Record (DILR) Kutch – Bhuj. In addition, survey of 15 villages inside Banni has also been recently completed by DILR, Kutch-Bhuj. Based on the survey done by DILR, Kutch-Bhuj, demarcation of the outer boundary of the Banni Grassland has been completed by the Banni Grassland Division through construction of 580 A-type pillars and digging of 1,13,500 R.M. boundary trenches. Further report dated 17.05.2021 has been filed on the status of removal of encroachment to the effect that a team has been constituted comprising of Deputy Conservator of Forests, Banni Grassland Division, Bhuj, Mamlatdar, Bhuj (Rural), DILR, Bhuj, Taluka Development Officer, Bhuj for taking appropriate action regarding removal of encroachment in Banni. The team had cleared approximately

70 acre land in Daddhar village of Banni from encroachment. The joint team has issued notice to encroachers to clear the land in Mishriyado, Bhinrandiyara and Reladi village of Banni. The team had cleared 150 hectare land in Mishriyado, Bhirandiyara and Reldi village in Banni. Report of the Collector annexed to the report dated 17.05.2021 mentions the status of encroachments as follows:-

“Measurement of Banni Area has been done three times from here in Year 1969 to 1972, Year 2005-2006 and in Year of 2019.

- 1. Maps are prepared by measuring Villages of Banni by theodolite Instruments during Year 1969 to 1972, the same is annexed herewith (A-II). Schedule of the name of the villages along with details of area is also annexed (A-II). Measurement is done with this theodolite Instruments, which measure between two Stones (Points) by Chain, from which Sudbuk of 55 Villages was prepared. During this measurement Sukuran which is known as Vekariya Ran is situated between the villages of Banni and Revenue Village. There is no survey drawing or Sudbuk or any records are available to find out area. Notification of Year 1955 shows the four sides - northern side shows the boundary of Bhachau, Anjar, Bhuj, Nakhatrana and Lakhpat Taluka. Looking at the record of this Taluka's, Promulgation has been done through the survey of Bhachau Taluka in the year 1960, Survey of villages of Taluka Anjar in the year 1961, survey of Bhuj Taluka in the year of 1970 and survey of villages of Taluka Nakhatrana in the year 1960-63. And by fixing the said village boundary present measurement is done with DGPS instruments and calculated the area.*
- 2. 2nd Time Measurement of Banni is, done during Dt, 13/12/2005 to 03/02/2006 by creating control point through DG.PS Machine. Map of the same has been annexed herewith (A-1V), Total Area of Mimi is shown Hecter 2498.53-86-00 Aare as per that measurement. This measurement is done by creating the Control point, not measured by coordinate each and every point. Therefore, there is difference in the area.*
- 3. Third Time Measurement of Banni Project Forest is done as per the Notification of Revenue Department of Gujarat Dt.. 27/09/2018 and as: per the four sides mentioned in order of Hon'ble Collector, Bhuj wide Order No. JMN/4/Banni/Rakshit/98 Dt, 17/10/1998. Copy of same is annexed (A-V). This Measurement is done between 15/07/2019 to 25/10/2019, Measurement is as per the four Sides of Notification issued in 1955 i.e. Southern side of Banni's Boundary is Lakhpat, Nakhatrana, Bhuj, Anjar, Bhachau Taluka's village boundary, North side: Great Desert of Kachchh. East side: Great Desert of Kachchh and West. side: Villages of Lakhpat Taluka and Great Desert. Boundaries of Villages situated on South side and Schedules. of Travers and by measuring the Border 'Stone situated at Spot with DGPS*

Procedure, a Group Map is prepared as per the Map Prepared during Year 1969 to 1972 of Borders (Misardiyaro, Berdo, Bhojardo etc.) of Banni village, and prepared by super imposed on coordinating the old Stone available at Village Boundary and Villages of Banni. Therefore, there is no change: in Border or village boundary, village's border and stature of Original Map of Banni of Year 1969 to 1972 A.D.

As per the coordinate of maps prepared by this- procedure marking of periphery boundary of 723:pOitits. are done along with the representative of Forest Department, Necessary Rojkam is made.

After preparing the Group Map, and by marking the boundary marks, calculated the area in AutoCAD by measuring all periphery point or Banni Area, Presently as per the survey measurement done with DGPS Instruments the Banni area means. in 1972, preparing the villages and villages of Banni and the Village Boundaries of Lakhpatt, Nakhatrana and 13hachau including the Sukuran (Vekariya Ram) situated in the centre of the said villages of southern side. And the area of Banni Villages is also extracted by calculating in the AutoCAD. And at present as per the calculated in the computer –Auto CAD by measuring by MIPS DGPS Procedure Area of Banni village is Hector 197633-63-13 aare and Area of Sukuran is Hector 48873-51.-51 aare total area Shown is Hector 246507-14-28 Aare.

As per the Measurement done in 1:972 Total Area of Banni Villages is shown Hector 195566-38-00 aare.

As per recent measurement done Total Area of Banni Villages is shown 19763363-13 Aare. And in which no reduction is there.

As per the Schedule prepared in 1972 Area of Desert Area (Sukuran) is shown 53430-88-00 Aare. And which is Hector 48873-51-1.5 Aare area as per Current Measurement. That on further verifying the record measurement of DGPS done in Year 2005-2006 doesn't shows the Northern side of Border. of Bibber, Tal. Nakhatrana as per the map of 1971. And on measuring recently the outskirts of nearby area of Bibber Tal. Nakhatrana is approved as per the map of 1971. Copy of said Map is annexed (A-VI). And on calculating again as per the same the land is, surplus of Sukuran is 615-00-00 Aare. and tthe total area of Sukuran is Hector 49488-51-15 aare land and Total area of Banni 247122- 14-28 aare.

That recently at the time of Banni in Year 2019 Map is prepared

by showing the limits accurately. That Map is prepared as per the four sides of notification issued in 1955 and by Balancing the Borders of villages of South side of Banni— Fixing the Limit intect of Nakhtrana, Bhuj, Anjar Bhachair Talukaand the limits of Village Lodai, Khengarpar, Vatra, Dhrang Tal. Bhuj and by keeping the borders intact of Village: Devisar, Tal. Anjar and the by balancing the limits of Banni Villages situated on southern side prepared in Year 1969 to 1972

Raiyad (Banni), Udai(Banni) etc. a superimposed map -is prepared. And the same is annexed as mentioned above (A-VIII). And on correcting as per the same Total Area of Sukuran is Hecter 49488-51-15 aare. And total Area of Banni Villages, as mentioned above Hecter 197636-63-13 aare. By Calculating both Total Area of Banni is Hecter 247122-1448 Aare.

That the present measurement is done by DGPS Instruments and by superimposing the Available Maximum Points(Stones) of Banni map got area in Computer-AutoCAD and because of that there is no chance of error.

Variation of Old written Area and Present Measurement is in 5% limit, which can be subject to change as per the Re-Survey Manual. Copy of the same is annexed herewith (A-VIII).

Measurement is done as per the old Four sides. of Banni Notification, There is no change is made in Limit(figure) of inside or outside villages, As the area of this region is huge and the measurement is done within time limit measurement is done by keeping the area, lime limit as per DGPS procedure as per the Notification issued by Mc Settlement Commissioner, Gujarat State No. SR-1-227/A.S, Ma11/07 Dt. 17/04/2007, Copy of said Notification is annexed herewith (A-IV).

Photograph of Shanku-Shankal, Theodolite, for measurement of A.D, 1969 to 1972 is annexed herewith (A-X), And also Book of Shanku-shankal, Theodolite Measurement Procedure is also annexed herewith (A-XI).”

7. We have heard learned counsel for the applicants and the State of Gujarat.

8. On the issue of limitation, the fact remains that there is no mention of the date of alleged encroachments and details of the alleged encroachers nor such alleged encroachers are party to the application. Under Section 15(3) of the NGT Act, 2010, remedy before the Tribunal can be taken only within five years from the accrual of cause of action. However, instead of rejecting the application on these technicalities, we adopt pragmatic approach in larger public interest. Since the application has been filed on 28.05.2018, it is made clear that order of this Tribunal will apply only to cause of action accruing after 28.05.2013. However this will not affect action of the authorities even for earlier

encroachments, if otherwise permissible in exercise of their powers, as limitation is applicable only to the remedy before this Tribunal.

9. As per stand of the State of Gujarat encroachment are undisputed. Some encroachments are claimed to have been removed and process to remove the remaining is said to be underway. We are of the view that to enforce the rule of law and to protect the forest lands, meaningful further action should be taken expeditiously and completed as far as possible within six months. For this purpose, we direct a joint Committee of Divisional Commissioner, Kutch and Chief Conservator of Forest, Kutch to prepare an action plan within one month clearly defining the extent of encroachments and modalities for removing the same. Execution of action plan may be reviewed by the said Committee atleast once in every month. The Committee will be at liberty to take the assistance of any other experts/authority in the matter. Minutes of the joint Committee may be placed on the website and a copy thereof be sent to the Chief Secretary, Gujarat for such further action as may be found necessary.

The application is disposed of.

A copy of this order be forwarded to the MoEF&CC, Chief Secretary, Gujarat, Divisional Commissioner, Kutch, Chief Conservator of Forest, Kutch and PCCF (HoFF), Gujarat by e-mail for compliance.

In view of order in the main matter, M.A. No. 1780/2018 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 20, 2021
Original Application No. 366/2018
(M.A. No. 1780/2018)
Avt