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T.N. GODAVARMAN THIRUMULPAD VS UNION OF INDIA

K.Manasa

1. TITLE AND CITATION

T.N. Godavarman Thirumulpad vs Union of India & Ors .

Supreme Court of India | Writ Petition (Civil) No. 20 of 1995

Citations: (1997) 2 S.C.C. 267; A.I.R. 1997 S.C. 1228

Lead Judgment Date: 12th December, 1996 | This is a continuing mandamus

2. INTRODUCTION

This case is not a regular one. It has gone through the process of one man fighting to save Nilgiris from illegal timber felling to becoming the longest running forest protection case in the history of Indian judiciary. The writ petition filed by T.N. Godavarman[1] has evolved into the Supreme Court taking up the responsibility of protection of all forests in India. The crux of the controversy lies within what is the definition of a forest? Can you fell the trees and take up any kind of project without the permission of the centre? My argument is that the Court has done what the executive failed to do; widened the meaning of a forest to conserve it but at the cost of the Court taking up the responsibility of a judicial forest governance system which the country follows even today.

3. FACTS OF THE CASE

T.N. Godavarman Thirumulpad from Kerala filed a writ petition to stop the illegal felling of trees and smuggling of timber from Gudalur, Nilgiris (Tamil Nadu).

While looking into the facts of the case, the Supreme Court saw that even beyond the state, the timber was being felled in the Northeast, sawmills were operating illegally and states were giving a very restricted meaning to the term forest in order to allow non forest activities.

The Court took the petition to a national level and there was no lower court history. It came straight to the Supreme Court under article 32[2] as a PIL petition for violation of article 21[3] (right to life) that encompasses the right to environment.

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The involved parties turned out to be the Union of India, all the State Governments, wood based industries, mining companies etc and later on the Central Empowered Committee (CEC)[4].

4 .LEGAL ISSUES

The four main issues that the court had to answer to were:

a) What is the true meaning of a forest according to the Forest (Conservation) Act, 1980?[5] Does it include only notified reserve forests or does it include the dictionary meaning and recorded forests too?

b) Can felling of trees be allowed without an approved working plan and the previous approval of the Central Government according to section 2 of the FCA, 1980?[6]

c) Can mining activities, construction of parks (like the NOIDA park case in UP),[7] sawmills, etc be allowed in the forest lands without environmental clearance?

d) How to ensure compliance if the enforcement of the concerned laws is in the hands of the executive.

5. COURT'S DECISION AND REASONING

The decision of the Court is not a final decision but a series of orders and the basic order was delivered on 12th December 1996,[8] and on this, the Court has issued various interim orders to govern the country's forests.

Wide meaning of a forest: The Court holds that "forest" should be interpreted according to its dictionary definition and this includes all kinds of forests, whether notified, recorded, revenue forests including the private forests. It said that the defining quality is the character of the land.[9]

Total ban of felling: The Court ordered that all trees felling across India be stopped unless there is an approved working plan by the Central Government. The unregulated sawmills and wood-based industries were directed to close immediately or move to industrial estates.

Permission to take any non forest activity to be allowed only after the prior approval of the Centre as mentioned in the section 2 of FCA, 1980 and Court's permission. The case of NOIDA park that had cut down more than 6000 trees was put under a similar lens.[10]

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The Court made three important institutional interventions:

a) Central Empowered Committee (CEC) – 2002: A committee was formed to monitor the compliance and report on any violation of the orders.[11]

b) Compensatory Afforestation Fund (CAMPA) (2006): This is the Net Present Value (NPV) to be paid whenever any forest land had to be diverted and it was very innovative to see the forest's value in financial terms.[12]

c) Continuing mandamus: The writ petition was kept alive for the past 30 years and various orders were passed down to govern the forests of India.

There was no dissent. It was a unanimous Division Bench (initially led by Chief Justice J.S. Verma and Justice B.N. Kirpal) to evolve over time.

6. CRITICAL ANALYSIS (THE CORE)

This is the most important part of the case commentary as this is where we discuss what is and what isn't.

What was good about this case?

The reasoning behind the orders that the Court passed were entirely constitutional. The Court rightly invoked article 48A[13] and 51A(g)[14] and linked the deforestation to the violation of article 21.[15] It was right to take the dictionary meaning to plug the loophole that the states had taken advantage of. It was very visionary to apply the concept of NPV and CAMPA.

What created confusion?

Firstly, Separation of Powers: The Court has come to be known as the manager of the nation's forests. It takes decisions on the mining activity in Aravallis, whether a piece of land in Uttar Pradesh is a forest or not or what are the conditions with which sawmills can operate in the forest. This ideally should have been the domain of the MoEFCC. While I admire the judicial intervention to plug the executive's lacunae, it does create confusion as several projects have had to be halted due to this judicial governance.

Secondly, Development vs Environment: The case has had far reaching repercussions. The wide meaning of the forest is a double-edged sword. The Forest (Conservation) Amendment Act, 2023,[16] tried to amend this to exclude border projects and linear projects but the Supreme

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Court had to stay it in February 2024[17] because the 1996 definition will continue to hold in protected areas. So again, the case has been the central player in this debate.

Thirdly, Precedent: This case has been the genesis of all environmental law cases. It created the concepts of Precautionary Principle, Public Trust Doctrine and Sustainable Development in a practical law enforceable form (in India) which has been cited in all green cases thereafter.

In summation, this case helped in saving the forests when there was no help in sight but it has also highlighted the fact that if the executive fails, even the judiciary will have to step in.

7. CONCLUSION

T.N. Godavarman Thirumulpad vs Union of India is not only India's environmental constitution for forests but also an illustration of the need for environmental clearances and a continuing mandamus. Its final significance is that it brings out the fact that a law should not be interpreted to exclude a citizen as a human being but should include the forest land as a forest. And that is how we are still protecting the trees even today.

Footnotes (Bluebook 20th Ed.)

[1]: See T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 S.C.C. 267.

[2]: INDIA CONST. art. 32.

[3]: Id. Art. 21.

[4]: See T.N. Godavarman Thirumulpad v. Union of India, A.I.R. 2003 S.C. 724, 726.

[5]: The Forest (Conservation) Act, 1980, No. 69, Acts of Parliament, 1980 (India).

[6]: Id. § 2.

[7]: See Anand Arya v. Union of India, (2011) 1 S.C.C. 744.

[8]: T.N. Godavarman Thirumulpad, (1997) 2 S.C.C. at 269.

[9]: Id. At 272, ¶ 4.

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[10]: See Anand Arya, (2011) 1 S.C.C. at 747.

[11]: See Notification No. S.O. 1008€, Ministry of Environment and Forests (Sept. 17, 2002).

[12]: See T.N. Godavarman Thirumulpad v. Union of India, (2006) 1 S.C.C. 1, 13–15.

[13]: INDIA CONST. art. 48A.

[14]: Id. Art. 51A, cl. (g).

[15]: Id. Art. 21.

[16]: The Forest (Conservation) Amendment Act, 2023, No. 15, Acts of Parliament, 2023 (India).

[17]: See T.N. Godavarman Thirumulpad v. Union of India, WP© No. 20/1995, order dated Feb. 19, 2024 (SC) (India).