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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 05.12.2023

Judgment pronounced on: 07.12.2023

+ W.P.(C) 9965/2016 & CM APPL. 27478/2017, CM APPL. 29901/2017

DEVINDER

..... Petitioner

Through: Mr. Gautam Narayan, Mr. Aditya N. Prasad, Ms. Prabhsahay Kaur, Amici Curiae with Ms. Asmita Singh, Mr. H Goel, Mr. BI Singh, Advs.

versus

THE LT. GOVERNOR & ORS

..... Respondent

Through: Mr. Satyakam, ASC with Mr. Pradyut Kashyap, Ms. Vishnupriya Pandey, Advs.

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

J U D G M E N T

: **JASMEET SINGH (J)**

1. This writ petition is filed seeking the removal of illegal and unauthorised encroachment in the reserved and notified forest land on the Aravalli hill range in village Asola, Delhi which forms part of the Southern Ridge.
2. The learned *Amici Curiae* has moved a note apprising the court and raised their concerns over proposed events at the Asola Bhatti



Wildlife Sanctuary (*hereinafter referred to as the Sanctuary*) by the Department of Forest on 9th and 10th December 2023, namely “Walk with Wildlife,” which is to include a Walkathon, a Cyclothon, a half marathon and “Jungle on Wheels” to be conducted over a stretch of 16 kms. However subsequently, I am informed that the event is restricted to a Walkathon and a Cyclothon.

3. The learned *Amici Curiae* submit that the same cannot be permitted since it is not only violative of the orders of this court and the Hon’ble Supreme Court but also in violation of the Indian Forest Act, 1927, the Wildlife (Protection) Act, 1972 and the Forest Conservation Act, 1980.
4. The same is refuted by Mr. Satyakam, learned ASC for the Department of Forest and Wildlife on the ground that the event will be taken up in the Eco-Sensitive Zone of Asola Bhatti Wildlife Sanctuary. The said activity would be undertaken to promote awareness and appreciation of the Sanctuary amongst the residents of Delhi-NCR. It would be waste-neutral and no noise would be generated. He brings the court’s attention to section 28 of the Wildlife (Protection) Act, 1972 wherein permission can be granted to people under certain circumstances to enter or reside in a sanctuary. It reads, *inter-alia*, as under:-

“28. Grant of permit.—(1) *The Chief Wild Life Warden may, on application, grant to any person a permit to enter or reside in a sanctuary for all or any of the following purposes, namely:—*

(a) investigation or study of wild life and purposes ancillary or incidental thereto;



- (b) photography;*
 - (c) scientific research;*
 - (d) tourism;*
 - (e) transaction of lawful business with any person residing in the sanctuary.*
- (2) A permit to enter or reside in a sanctuary shall be issued subject to such conditions and on payment of such fee as may be prescribed.”*

5. He further states tourism in the sanctuary has always been envisaged. He places reliance on the Management Plan of Asola Bhatti Wildlife Sanctuary 2015-2015 to 2024-25 prepared by the Resource Survey and Management Division, Forest Research Institute, Dehradun (*hereinafter referred to as the Management Plan*) wherein Chapter 7 is titled as ‘*Tourism, Interpretation and Conservation Education.*’ It reads as under:-

“7.1 General

Wilderness recreation is an important value and has an important role in support of management. It can directly benefit the cause of conservation as tourism can expose diverse categories of tourists to the process of conservation education which is best achieved in the field. Conservation education and nature interpretation are therefore integral to wildlife tourism. However, tourism can also generate pressures that can adversely affect the PA and create administrative problems.

Tourism, therefore, can be allowed inside the sanctuary on a limited and regulated basis provided it does not cause disturbance to the environment, wildlife and its habitat. It is emphasized that although conservation and protection of natural resources and wildlife should be the main aim but environmentally responsible travel and regulated visitation



should also be allowed. It is important to educate people about the biodiversity and conservation while also building mass support through them by enhancing visitor's experience. Thus wildlife tourism is a growing concern which has already established its usefulness in the overall objective of conservation.

7.2 Objective

- i. Educate people about the biodiversity/ wildlife and need for their conservation.*
- ii. Create awareness amongst a larger section of the society and gather public support,*
- iii. Improve quality of educational recreation and wilderness experience.*
- iii. Promote species conservation.”*

6. In addition, the learned ASC has placed on record the Eco-Tourism Plan for the Asola Bhatti Wildlife Sanctuary by the Department of Forests and Wildlife which states that the present eco-tourism infrastructure includes the division into three zones:
 - a. Asola Zone: 3 km long cycling track, butterfly park, Native Plant Conservation and Interpretation Centre, Arravali Biodiversity Park and DFO office.
 - b. Asola Bhatti Zone: A viewing deck near the Neeli Jheel.
 - c. Bhatti Zone: No eco-tourism facilities are available in this zone.
7. It also denotes a 13km long cycling track which will be developed starting from the DCF Office and ending at the Neeli Jheel. It is understood that the proposed event will be hosted at this track. The Plan shows the total carrying capacity of the proposed track would be



about 750 visitors per day, and the Department is only expecting 100-200 visitors for this event. Hence, there is no environmental obstacle in the conducting/organizing of such an event.

8. The learned *Amici Curiae* submits that at the outset the submission of the learned ASC that the proposed event is an endeavour of the Department of Forest is incorrect. It is based on a proposal received from a third party, i.e an organisation named Summit India, which is a registered trust comprising of educationists, bureaucrats, technocrats, Padma Awardees for an awareness program called “Safe Forest” whereby a Walkathon is proposed to be conducted and is expected to be attended by ‘*eminent sports personalities, international players, government officials and professionals.*’
9. The learned *Amici Curiae* draws the attention of the court to the ‘Copy of notings’ which shows that the learned DCF requested approval to the proposal on 16.10.2023 at 6.07 pm, which was accepted and forwarded by the Chief Wildlife Warden, Department of Forest, GNCTD on 17.10.2023 at 1:22 pm to the Principal Chief Conservator of Forests, Department of Forest, GNCTD and the same was accepted. The ‘Copy of notings’ are reproduced as under:-



Note # 1

Note # 1

File No. 10/DCF(S)/Wildlife/2023-24

**GOVERNMENT OF NCT OF DELHI
DEPARTMENT OF FOREST & WILDLIFE
OFFICE OF THE DEPUTY CONSERVATOR OF FORESTS (SOUTH)
NEAR DR. KARNI SINGH SHOOTING RANGE
TUGHLAKABAD, NEW DELHI-110044**

Sub:- Proposal for Walkathon at Asola-Bhatti Wildlife Sanctuary from 28th Nov to 10th Dec.2023 under South Forest Division.

A proposal has been received from Ms. Shilpa Puri, CEO of Summit India, Office at 137, Anriksh Bhawan, 22 KG Marg, New Delhi 110001 regarding WALKATHON in Asola-Bhatti Wildlife Sanctuary. They want to initiate an awareness program of "SAFE FOREST" and have requested for permission to organize "Forest Walkathon 2023" from 28th Nov to 10th Dec 2023 (Each Saturday & Sunday) in Asola-Bhatti Wildlife Sanctuary under South Forest Division, Department of Forests & Wildlife, Govt. of NCT of Delhi. Copy of request letter is placed at page 01 /c.

In this regard they have also informed that Sports Authority of India (SAI) and Sports Sector Skill Council also desire to participate in this event. Eminent Sports personalities, International players, government officials/representatives and professionals would be participating in this initiative.

Summit india (www.summit-india.org) is a registered trust with the group of eminent people i.e. educationist, bureaucrats, technocrats, scientist, padma awardees, entrepreneurs and other professionals who are working towards the betterment of society and enhancing the awareness and individual involvement towards special causes.

Keeping in-view of above, the proposal is being submitted for seeking obtaining approval form the Competent Authority to organize "SAFE FOREST" walkathon in Asola-Bhatti Wildlife Sanctuary on 28th Nov to 10th Dec 2023 (Each Saturday & Sunday) in Asola-Bhatti Wildlife Sanctuary under South Forest Division, Department of Forests & Wildlife, Govt. of NCT of Delhi.

The walkathon will be held on 2nd, 3rd, 9th & 10th December. The number of participants would be limited to 100 in a single day. The participants will walk from DCF South office Main Gate to Neeli Jheel covering of distance of about 16km (Sixteen Kilometers).

Submitted for kind perusal and approval please.



File No. F.10/DCF(S)/Wildlife/2023-24 (Computer No. 181838)

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16/10/2023 06:07 PM

Mandeep Mittal
DEPUTY CONSERVATOR OF FORESTS**Note # 2**

It is very good step , it shall be under the banner of Department of Forest and Wildlife in association with Summit India. The name of the awareness program may also be considered like Make Delhi Greenest Capital or Asola Bhatti Forest Run or any interesting idea which gives impact .Save Forest is indicating that forests is in crisis but in reality Delhi Forest is enhancing day by day by all the greenung agencies steered by Forest department. If agreed for we may consider the request with abovesaid remarks.

Submitted please

17/10/2023 01:22 PM

Suneesh Buxy
CHIEF WILDLIFE WARDEN**Note # 3**

17/10/2023 04:53 PM

C.D. SINGH
PRINCIPAL CHIEF CONSERVATOR OF FORESTS**Note # 4**

18/10/2023 12:05 PM

Suneesh Buxy
CHIEF WILDLIFE WARDEN**Note # 5**

Sub:- Expenditure Sanction for conducting walkathon "Walk with Wildlife, 2023" in Asola-Bhatti Wildlife Sanctuary on 2nd, 3rd 9th & 10th December 2023.

With reference to note #3 the Competent Authority has given approval for conducting walkathon to be held on 2nd, 3rd, 9th & 10th



10. It is submitted by the learned *Amici Curiae* that the permission was given hastily and there is no due application of mind. The permission was given without any assessment of the eco-tourism plan, no plan for waste management or any plan to counter noise pollution was discussed at any stage. It is submitted that under section 33 of the Wildlife Protection Act, it is the duty of the Chief Wildlife Warden to ensure due safety and security of the wild animals. It reads as under:-

“33. Control of sanctuaries.—The Chief Wild Life Warden shall be the authority who shall control, manage and maintain all sanctuaries and for that purpose, within the limits of any sanctuary,—

(a) may construct such roads, bridges, buildings, fences or barrier gates, and carry out such other works as he may consider necessary for the purposes of such sanctuary:

[Provided that no construction of commercial tourist lodges, hotels, zoos and safari parks shall be undertaken inside a sanctuary except with the prior approval of the National Board.]

(b) shall take such steps as will ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein;

(c) may take such measures, in the interests of wild life, as he may consider necessary for the improvement of any habitat;

(d) may regulate, control or prohibit, in keeping with the interests of wild life, the grazing or movement of 1 [live-stock.]”

11. It is submitted by the learned *Amici Curiae* that unlike the National Parks where tourism is permitted, there is a lack of demarcation of inviolate and sensitive areas in the Asola Bhatti Wildlife Sanctuary. The Management Plan of the Sanctuary does not have any division of



buffer zone and core zone. In this instance to permit this event is not only endangering the wildlife but also the people.

12. Further, with regard to the grant of permission under section 28 of the Wildlife (Protection) Act, the learned *Amici Curiae* submits that Section 28 is an exception to Section 27 of the Wildlife (Protection) Act and therefore grant of permits can only be given in exceptional circumstances with due consideration and application of mind. It reads as under:

“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 dependants 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.*
- [(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 the sanctuary.]*

13. In addition, the learned *Amici Curiae* submits that the Sanctuary is also a protected reserved forest. Therefore, no non-forest activities are permissible without the approval of the Central Government.
14. I have heard the arguments on behalf of the learned *Amici Curiae* and learned ASC.
15. Admittedly, sanctuaries are made for the preservation and protection of wildlife in their natural habitat. It is given that animals and humans must co-exist, but lately, man has been encroaching on the habitat of wildlife.
16. The purpose of sanctuaries is given in Section 18 of the Wildlife and Protection Act which reads as under:



“18. Declaration of Sanctuary.—2 [(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.]

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation.—For the purposes of this section, it shall be sufficient to describe the area by roads, rivers, ridges or other well-known or readily intelligible boundaries”

Emphasis supplied

17. With this devout object, the Asola Bhatti Wildlife Sanctuary was made on a stretch of 32.71 sq.kms. The DCF, who is present in court, on my query, states that there are many kinds of species/animals in the Sanctuary, ranging from reptiles, herbivores and carnivores. He states that in addition to the flora and fauna, there are about 7-8 leopards, however, it is admitted that neither the animals are tagged nor is the area isolated.

18. During arguments it has been submitted that all sanctuaries have a core zone and buffer zone. The core zone is the most important zone where human intervention is minimal and there is total prohibition of any movement of unauthorised persons. The Buffer Zone permits



tourism and the movement of persons with prior approvals. As per the Management Plan, the zonation of the Asola Bhatti Wildlife Sanctuary is given in Clause 6.3, which reads as under:

“6.3. Zonation and Zone Plans

A Zone is an area of specific management category distinguishable on account of its objectives. The number and kind of Zones that are required depend on the objectives and how different they are with respect to each other so as to necessitate the separation of strategies by area. Thus spatial separation process is usually referred as Zonation. Presently there is no separate demarcation of core and buffer zones in ABWLS. With the ban on removal of biomass from WLS area as per Hon'ble Supreme Court of India, now there is hardly much difference in core and buffer zone. Asola Bhatti WLS put together have an area of 6873.28 acres. The PA is very important and vital owing to its location amidst in large metropolis which also happens to be the capital city of the country, Apart from their bio-geographical and physiographic location they serve as important carbon sink and green lungs for the thickly populated city, The PA is therefore very important to be conserved as green cover with maximum possible biodiversity of flora and fauna. Protection of the entire area as a unit is therefore of vital importance. This being in a capital city can also become popular destinations for students, researchers & conservationists and will need to be managed with that angle as well. Considering the above facts the zonation of this small PA has not to be conventional but strategic in nature. The entire area needs to be disturbance-free in the strict sense.



As per the management needs and objectives of management following zones are prescribed -

- 1. Core zone*
- 2. Eco-tourism zone*
- 3. Habitat Restoration zone*
- 4. Monkey Rehabilitation Zone (overlapping)”*

19. The above para shows that as far as the Asola Bhatti Wildlife Sanctuary is concerned, there is no demarcation of core and buffer zone meaning thereby there is no separate, exclusive, core area where the movements of leopards and other animals such as pythons, hyenas are confined to.
20. There has been a recent spotting of a leopard in Sainik Farm which adjoins Asola. Six days have passed and yet the forest officers have failed to locate the stray leopard. According to the press news, this leopard has strayed in from the Asola Bhatti Wildlife Sanctuary and three people have been attacked. This is worrisome.
21. The above-narrated facts show that the conducting of such an event has all the trappings of it turning out to be a misadventure as the location of the animals are unknown, their area of movement is not isolated, the certainty with regard to number and species are guesswork and there appears to be no plan in place.
22. A combined reading of sections 27 and 28 of the Wildlife (Protection) Act shows that there are stringent restrictions on entry in Sanctuaries and only in exceptional circumstances, as contained in section 28, the Chief Wildlife Warden may permit the entry for specific purposes. In the present case, no such exceptional reasons have been given for grant of permission/approval except that it is for “eco-tourism”.



23. The 'Copy of notings' clearly shows that the permission for the proposed event has been granted in a mechanical manner with no analysis of the threat perception to the people, the animals and the Sanctuary. The locations frequented by the leopards, jackals, hyenas, and pythons has not been discussed by the Department of Forest and Wildlife, while granting the permission.
24. The advertisement shows a walkathon and a Cyclothon to be conducted in the reserved and notified forest land, which according to me cannot be permitted as it not only endangers the lives of citizens who will be willing to participate in the event but also the lives of the animals existing in the wildlife sanctuary, no arrangement for safety and security put forth.
25. The literature shows that safaris and entries into Sanctuaries are to be very delicately, minutely worked out and intrinsically planned activities to ensure a good balance between eco-tourism and the protection of wildlife. In the present case, the respondent is expecting at least 100 participants for the event; however there is nothing on record to show any arrangement for the same. There is no plan/arrangement for the disposal of waste including human waste. There is no arrangement put forth for the prevention of loud noise created by the organising of such a mass event.
26. Under the Policy for Eco-Tourism in Forest and Wildlife Areas, the Ministry of Environment, Forest and Climate Change ('MoEFCC') on 19.09.2018 stated that for effective eco-tourism management, a State/District/Protected Area Steering Committee may be set up that shall oversee the implementation of the eco-tourism strategies,



making recommendations to the Eco-Tourism board, to monitor activities of the tour operator to ensure that all safety norms are followed. This Eco-tourism board is to review the tourism activities and make suggestions/advise the State government accordingly. The guidelines in the policy have been updated dated 29.10.2021. The updated Guidelines on Sustainable Eco-Tourism in Forest and Wildlife Areas mandate the promotion of eco-tourism on the basis of science-based planning. This includes the demarcation of eco-tourism zones upon assessment of management requirements of target wildlife, the habitat or geographic entity and their behavioural and ecological entities. It mandates the monitoring mechanism to include biological parameters to monitor stress on wildlife vis-a-vis the number and pattern of tourist visitation. Nothing has been shown to me to show that these guidelines are enforced. The existing Management plan was made prior to the guidelines laid down.

27. The Asola Bhatti Wildlife Sanctuary has been restricted to 32 sq.km due to heavy encroachment on Forest Land on the Aravalli range in the Southern Ridge. The Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad v UOI and Ors.*, (2022) 9 SCC 306, stated the following:

“18. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the



suspicion of concrete danger but also by justified concern or risk potential [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718] .

19. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest [M.C. Mehta v. Union of India, (2004) 12 SCC 118]. This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.”

Emphasis supplied

28. In view of the above and for the aforesaid reasons, the Respondents are restrained from conducting the proposed event, i.e. Cyclothon and Walkathon, till further orders.

29. List the matter for further proceedings on the date already fixed, i.e. 15.12.2023.

JASMEET SINGH, J

DECEMBER 07th, 2023/DJ

Click here to check corrigendum, if any