

**IN THE GAUHATI HIGH COURT**  
 (THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,  
 MIZORAM & ARUNACHAL PRADESH)  
ITANAGAR BENCH.

**WRIT PETITION(C) NO.20 (AP) 2009**

1. Shri Vijoy Tachang  
Resident of Golosao Village,  
PO & PS- Seijosa,  
East Kameng District,  
Arunachal Pradesh.
2. Shri Taluk Bagang,  
Resident of Golosao Village,  
PO & PS- Seijosa,  
East Kameng District,  
Arunachal Pradesh.
3. Shri Kamta Nampe,  
Resident of Golosao Village,  
PO & PS- Seijosa,  
East Kameng District,  
Arunachal Pradesh.
4. Shri Sisu Lamnio,  
Resident of Golosao Village,  
PO & PS- Seijosa,  
East Kameng District,  
Arunachal Pradesh.

(Common cause)

.....Petitioners.

**By Advocates:**

Mr. A. Kashyap,  
Mr. D. Lazi,  
Mr. L. Tapa.

**-Versus-**

1. The State of Arunachal Pradesh  
represented by the Chief Secretary to the  
Government of Arunachal Pradesh,  
Land, Itanagar.
2. The Secretary, District Administration,  
Govt. of Arunachal Pradesh,  
Itanagar.

3. The Deputy Commissioner,  
East Kameng District, Seppa,  
Arunachal Pradesh.
4. The Sub-Divisional Officer,  
Seijosa Sub-division,  
East Kameng.
5. The Conservator of Forests,  
Western Circle,  
Banderdewa.
6. The Divisional Forest Officer,  
Khelong Forest Division,  
Bhalukpong.
7. Smti. Maya Dolo,  
Wife of Sri Kameng Dolo,  
Resident of Village Golosso,  
PO & PS- Seijosa,  
East Kameng District, Arunachal Pradesh.
8. The Director,  
Department of Tourism,  
Government of Arunachal Pradesh,  
Itanagar.
9. The Executive Engineer,  
Water Resource Department,  
Seppa Division, East Kameng District.

.....Respondents.

By Advocates: *Adel*  
*Ms. G. De Ka*, Sr.G.A. for Resp. 1 to 6, 8 & 9  
 Mr. A.Apang, Advocate for Resp. No.7.

BEFORE  
 THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing : 04.03.2010

Date of Judgment & Order : 07.04.2010

### JUDGMENT & ORDER

(CAV)

The petitioners, members of indigenous Nyishi tribe of Arunachal Pradesh take on the misplaced elitist discriminatory favourism shown in the matter of settlement of some plots of land situated in and around the notified Reserved Forest by issuing Land Possession Certificate (LPC) to an affluent lady who often moves in the corridor of power, being the elected member of the local Zilla Parishad and also the wife of a powerful minister in the State at the relevant time, who in her bid to project herself as a generous person, donated the land to a Govt. Department for construction of tourist lodge near a wild life sanctuary. The simple living unsophisticated poor tribal counterpart cultivators like the petitioners, who are born to and living in the forest for generations, are now being ousted and uprooted from their land due to elitist antipathy while allowing the said lady-respondent for non-forest use. The petitioners complain blatant infraction of forest and wild life conservation laws in the backdrop narrated as under:

1.1 The petitioners have been living in the Golosso village for last 20/25 years and they have their cultivable land in and around the Seijusa Reserved Forest, which they have been enjoying as their private as well as community land since the days of their forefathers. They are dependent on the forest land and various projects by cultivating the said forest land for their livelihood and various other needs. The said lands were possessed by the petitioners along with other members of the tribe as customary common forest land within the traditional and customary boundaries of the village for seasonal use for cultivation. The Village council authority and Chairperson of local Gaon Panchayat under which/whom the village Golosso falls issued certificates to the effect that the petitioners have been possessing their respective plots of land under the Reserved Forest for last more than 10/15 years.



1.2 The Union of India enacted " **The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** ( hereinafter referred to as the "**2006 Act**" only), which was published in the gazette of India dated 02-01-2007 to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled tribes and other traditional forest dwellers, who have been residing in such forests for generations but whose rights could not be recorded and also to provide for a frame work for recording the forest rights so vested. The petitioners, under the provisions of the aforesaid 2006 Act, applied to the Government of Arunachal Pradesh for recognition of their rights over the forest land. They also applied for issuance of Land Possession Certificate (LPC) furnishing all supporting documents but the respondent authorities kept the matter pending.

1.3 The State Govt. issued Government circular as far back as on 19-12-1998 providing inter alia that no person would be given LPC in respect of land possessed by him which falls under the Reserved Forest Area and whoever desires to obtain such LPC, he has to obtain "**NOC**" from the Divisional Forest Officer (DFO) concerned.

1.4 The respondent No.7, Smti Maya Dolo, was favoured with LPC issued by the Respondent-Deputy Commissioner without following any procedure, particularly without obtaining any "**NOC**" from the DFO concerned. By order dated 31-10-2007, 27-11-2007, 24-12-2007, 26-12-2007 and 23-02-2008, the Deputy Commissioner, East Kameng District, Seppa surreptitiously issued 10 (ten) LPCs in favour of the Respondent No.7 for an area covereing 36.88 hectares. The question of granting LPC in favour of the Respondent No.7 was raised in the floor of the Assembly on 11-09-2008.

1.5 The Respondent No.7 after receipt of the LPC, donated the aforesaid land in favour of the Tourism Department and the Tourism Department in its turn, by a correspondence dated 14-10-2008, directed the Executive Engineer, WRS, East Kameng District to undertake a project for construction of a tourist lodge for development of tourism infrastructure at Golosso village near Phakui Wife Life Sanctuary at Seijusa on the foresaid land of Respondent No.7.



1.6 The petitioners along with other villagers filed representation on 24-10-2008 before the State Chief Secretary seeking cancellation of the LPC issued in favour of the Respondent No.7 but to no effect. The tourism department forcibly dispossessed the petitioners from their lands and started the construction work of tourist lodge. The petitioners lodged an FIR on 08-11-2008 with the Seijusa Police Station against the illegal dispossession. They also submitted a joint representation before the SDO, Seijusa against the said illegal dispossession. They received no protection from the respondent authorities and therefore, they had to file writ petition being **WP(C) No.496 (AP) 2008** before this Court challenging the illegal dispossession and construction of tourist lodge over the lands of the petitioners. The said writ petition was dismissed with liberty to the petitioners to approach the Court by filing an appropriate writ petition challenging the validity of issuance of the LPC in favour of Respondent No.7.

1.7 The petitioners have filed the present writ petition for setting aside and quashing the LPCs issued in favour of the petitioners inasmuch as the same have been issued in complete violation of the 2006 Act and also for handing over the possession of the said forest land to the petitioners.

2. The claims of the private Respondent No.7 are as follows:-

2.1 She is a native of Golosso village under Seijusa Circle by virtue of her marriage with Shri Kameng Dolo, son of Late Yape Dolo who expired in the year 1996. Kameng Dolo's parents had veneers-cum-saw mill and immovable assets at Golosso and Seijusa Circle. She has been living at Golosso for last 25/30 years.

2.2 The State of Arunachal Pradesh became a Union Territory on 20<sup>th</sup> January, 1972 and became a State in the year 1987. After 1962 Chinese aggression but before 1968, ex-army men were also given settlement at Seijusa. Some Aruanchalees were also settled at Seijusa. There are many people, who are in possession of LPC at Seijusa and she is one of them.

2.3 According to the Respondent No.7, in the State of Arunachal Pradesh, there are 4(four) types of land namely,

- (1) Private land (owned by inheritance or by purchase)
- (2) Community land.
- (3) Government land (owned by acquisition or by donation)
- (4) Forest land acquired as per provisions under the Forest Act.

2.4 There was no system in the State for issuing written documents for ownership of private land before attaining the Statehood. The Government of Arunachal Pradesh introduced the system of LPC only in the year 1988. The LPCs are issued only in respect of private lands.

2.5 The land in question is a private land which the respondent No.7 inherited and she planted blue pine trees but it become unsuccessful.

2.6 As a matter of fact, some of the petitioners were brought by her to the village to help her family to cultivate on her family land and the petitioners have no right, title or interest in the land in question.

2.7 Over and above, she raises preliminary objection as to the maintainability of the present writ petition, as it is hit by principle of *res judicata* inasmuch as the petitioners approached this Court earlier by filing **WP(C) 496 (AP) 2008**, which was dismissed on 08-01-2009 with a direction to the Chief Secretary to the Government of Arunachal Pradesh to consider the representation made by the petitioners and dispose of the same in accordance with law.

3. Raising the preliminary issue, Mr. Apang, learned counsel for Respondent No.7 submits that the present writ petition is not maintainable as it involves disputed question of facts, which cannot be enquired into by a writ court and adjudicated upon. The present writ petition is also pre-mature as the same has been filed before any order has been passed by the State Chief Secretary in compliance to the order dated 08-01-2009 passed in **WP(C) 496 (AP) 2008**. Reliance has been put on **State of Uttar Pradesh & Another Vs. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti & Others**, reported in **(2008) 12 SCC 675**. Further the petitioners have no locus standi to challenge the LPCs issued



in favour of Respondent No. 7 in respect of her private land over which, they have no right, title or interest. The petitioners have filed this writ petition without furnishing any particulars like location, boundary etc. of the land over which, they want to establish their right, title or interest and as to how the Respondent No.7 has encroached upon their lands. The present writ petition is civil in nature and a PIL in character, which cannot be entertained in the present form and therefore, the same is liable to be dismissed.

4. Countering the preliminary issues raised by the Respondent No.7 as above, it has been submitted by Mr. A. Kashyap, learned counsel for the petitioners that there is no disputed question of facts in so far as the land in question falls under the notified Reserved Forest and the petitioners have been dispossessed from the land under their occupation thereby affecting their right, title and interest over their private and community land. The petitioners had approached this Court for ventilating their private rights and interest over the land and as such, it cannot be said that the present writ petition has been filed in the nature of PIL. While disposing of the earlier writ petition filed by the petitioners, liberty was granted to them to approach this Court with such other application as may be permissible in law and as such, it is argued by Mr. Kashyap that the present writ petition is not hit by the principle of *res judicata*. The petition cannot be termed as pre-mature simply because the Respondent-Chief Secretary has failed to dispose of the representation as directed by this Court. The preliminary objections as raised by Respondent No.7 are not sustainable under the law inasmuch as the same have been raised only to defeat the interest of justice.

5. Before going to the merit, it is necessary to answer the aforesaid preliminary objections. I have perused the order dated 08-01-2009 passed by this Court in **WP(C) 496 (AP) 2008**, which has been annexed as annexure-III to the affidavit-in-opposition filed by the Respondent No.7. The operative portion of the aforesaid order is quoted below to appropriate the real position.

*"What is, however, extremely important to note is that the petitioners have not sought for any relief against the issuance of Land Possession Certificate. In such circumstances,*



*the directions, which the petitioners have sought for, cannot be granted in favour of the petitioners inasmuch as granting any relief, as has been sought for, would amount to giving them a relief, which they have not even sought for.*

*In view of the above, I do not find that this writ petition can be maintained for the purpose of merely stopping construction of the tourist lodge, particularly, when no relief against issuance of the Land Possession Certificate has been sought for by the petitioners in this writ petition.*

*In view of the above and in the interest of justice, this writ petition is not admitted and the same shall accordingly stand dismissed. The petitioners shall, however, remain at liberty to approach this Court with such other application(s) as may be permissible in law.*

*Before parting with this writ petition, the Chief Secretary to the Government of Arunachal Pradesh, is hereby directed to consider the representation made by the petitioners and dispose of the same in accordance with law. ...."*

6. By virtue of the liberty granted in the aforesaid order, the petitioners have filed the present petition for a direction to set aside and quash the LPC issued by the respondent authorities in favour of the Respondent No.7 in violation of the provisions under 2006 Act and procedure prescribed by the Government. There is no difficulty to discern that the petitioners have been allowed by the Court in the earlier proceeding to agitate their grievance against the alleged illegal issuance of LPC and in that view of the matter, there is no scope for coming to a conclusion that the present writ petition is pre-mature, hit by principle of *res judicata* and without any locus standi. Accordingly, the preliminary objection stands rejected.

7. On the merit of the case, Mr. Kashyap, learned counsel for the petitioners makes the following submissions.

- (i) The land in question falls under Seijusa Reserved Forest, which was notified under Khellong Forest Division by the Government as Reserved Forest under the Assam Forest Regulation, 1891 read with Section 3 of the NEFA, Regulation, 1965.
- (ii) The LPCs were issued in favour of the Respondent No.7 without "**NOC**" from the Forest Department which is in violation of the 2006 Act and also public policy of the Government by playing fraud in collusion with the district revenue authorities which are liable to be cancelled.
- (iii) The donation of the land in question to a particular department for construction of tourist lodge near the Phakui wild life sanctuary cannot be permitted inasmuch as the land in question is being used/utilized for non forest purpose and causing disturbance/pollution in the wild life sanctuary.

Any order obtained by playing fraud is non est in the eye of law and such order is liable to be cancelled as held in **Papaya Shastri Vs. Government of Andhra Pradesh**, reported in **AIR 2007 SC 1545**.

8. Countering the arguments advanced by the petitioners, Mr. Apang, learned counsel for the Respondent No.7 submits that:

- (a) Petitioner No.1, Shri Sakam Paffa has withdrawn from this Case by filing MC No.64 (AP) 2009 and this proves that the present petition has been filed with oblique motive. Moreover, many of the signatories of the representation submitted before the Chief Secretary for cancellation of LPC in favour of the Respondent No.7 that they have not written such complaint. Some of them have stated that they have been misguided and lured for contract work.
- (b) As per the records available in the affidavit of Respondent Nos. 5 & 6, there are as many as 181 individuals, who have been issued LPC covering the land measuring 1300 hectares in the said area. This proves that the Respondent No.7 is not the only person in whose favour the LPCs have been issued.



(c) The LPCs were issued in favour of the petitioners after observing due procedure and on the basis of NOC issued by the Forest Department. The LPCs were issued in a form not prescribed under the notification of 19-12-1988 but on that score only the LPCs cannot be said to be illegal. It is only an irregularity which can be cured. In support of this submissions, he relies on the decisions rendered by the Apex Court in **State of M.P. & Others Vs. Lalit Kumar Verma**, reported in (2007) 1 SCC 575 and **Secretary State of Karnataka & Others Vs. Uma Devi (s) & Others**, reported in (2006) 4 SCC 1.

(d) The 2006 Act has not yet been given effect in the State of Arunachal Pradesh and as such, there was no question of application of the aforesaid provisions of the said Act. There was, therefore, no illegality or irregularity in issuing the LPCs in question in favour of the Respondent No.7.

(e) The Govt. of India having not been made a party, no effective order/direction could be issued and as such, the present petition is liable to be dismissed for non-joinder of necessary party. In this regard, he relies on **C. K. Prahalada & Others Vs. State of Karnataka and Others**, reported in (2008) 15 SCC 577.

9. <sup>Addl.</sup> ~~Mr. G. Deka~~, learned Sr. Govt. Advocate, supporting the impugned action of the respondent authorities in issuing the LPCs in favour of Respondent No.7, submits that the Respondent-DFO, Khellong Forest Division issued "NOC" on 06-08-2007 for implementation of certain schemes in the forest land after having met the requisite terms and conditions. Based on "NOC" issued by the Respondent-DFO, the LPCs were issued in favour of the Respondent No.7 as she was found to be in possession of the land in question as inherited from the parents of her husband. The Respondent No.7 donated the land measuring 2.70 hectares free of cost to the tourism department in the larger interest of the public and the Govt. has undertaken construction of tourist lodge as a measure of development of tourism infrastructure on the land donated by the Respondent No.7 near Phakui wild life sanctuary at Seijusa covered by the LPCs in question. Referring to the averments made in paragraph 5 of the affidavit-in-opposition filed by the Respondent Nos. 3 & 4, it is submitted that the land in question, in the present writ petition, does not



fall under Reserved Forest. Moreover, since as per the traditional tribal right, the respondent No.7 is in possession of the said land, she applied for LPC to record her right in the revenue records as provided under the Government Circular issued in that regard. Based on averments made in paragraph 15 of the said affidavit, it is also submitted by Mr. <sup>Addl.</sup> ~~S. Deha~~ learned Senior Govt. Advocate that the area in question does not fall under Reserved Forest and there is no ceiling limit for issuing LPC by the authorities concerned.

10. The crux of the matter as could be understood from the pleadings and arguments advanced by the parties is whether-

- (1) The lands in question in respect of which LPCs have been issued in favour of the Respondent No.7 are included in the notified Reserved Forest,
- (2) If the lands in question are covered or included in the reserved forest, whether the competent/authorised Forest Officer issued any "NOC" enabling the district revenue officer/district authority to issue the LPCs in question, and
- (3) Whether the LPCs in question were issued bona fide and without affecting the interest of the petitioners.

11. In regard to first question, I would like to refer to notification No.FOR.34/54 dated 01-07-1966 issued by the Advisor to the Governor of Assam (Annexure-A/1 of the rejoinder to affidavit-in-opposition of Respondent No.3) whereby the Government declared Papum Forest as Reserved Forest. For better appreciation of the factum of notifying the said Forest Reserved, it is necessary to extract the said notification hereunder:-

"Annexure-A

The 1<sup>st</sup> July, 1966

No. FOR.34/54:- In exercise of the power conferred by Section 17 of Assam Forest Regulation, 1891 (VII of 1891), read with Section 3 of the North East Frontier Agency (construction of References to State Government) Regulation, 1965 (No.4 of 1965) the Government of Assam hereby declares that the land described

in the Schedule hereto annexed shall be a Reserved Forest from the date of publication of this Notification.

SCHEDULE

District Kameng (NEFA)

Name of forest	Approximate area in acres	Description of Boundaries.
Papum	2,62,880.0 Acres or= 1,06,387.53 Hecter as Communicated vide CCF No.Stat. 123/77/6011-26 Dt.25.6.77.	North- From the confluence of Papum Pani River and one of its tributaries about 4 <sup>th</sup> Mile East of the Junction of Papum Pani and Miri lpathar rivers East-ward along the right bank of the Passu Pani river to its source and across the rdge East-ward to the source of Par river. Thence along the left bank of the Par Nadi to its confluence with one of its tributaries between Tani and Legi village.
	illegable 3.8.77	East- Thence south-ward along this tributary to its source and across the ridge South-wards to peak 7,590. Thence south wards along the ridge to the confluence of Poma and Papum rivers. Thence along the Burai river to the point where it crosses that inner line.
	Corrected as per Correspondence No.FOR.34/54 Dt.26.8.73 (P.91/C of file KD/107/70)	South- Thence along the inner line West-ward to the point where it crosses the Phakui river near Seijusa.
	illegable 26/9/74.	West- Thence along the right back of the Pakhui river till it reaches the confluence with one of its tributaries which crosses the semakalangganika Pakhui river. Thence North-ward along the right bank of this tributary to its source and across the ridge to thesource of one of the tributaries of the Passu Pani river. Thence along the right back of this tributary to the starting point.

Sd/- P.N.Luthra  
Adviser to the Governor of Assam.



12. The said notified area previously came under the territorial jurisdiction of DFO, Khellong Forest Division, Bhalukpong and the land in question in respect of which the LPCs have been issued to Respondent No.7 comes under Seijusa Forest Range. The said Seijusa Forest Range was bifurcated into two independent Forest Ranges namely Seijusa Range and Namorah Range vide Government Order No. FOR-160/67 dated 15-09-1969 issued by the Advisor to the Governor of Assam, Shillong (Annexure-A/2 to the aforesaid rejoinder). The official respondents including the Respondent-DFO concerned have not denied the issuance of the aforesaid notification constituting the Papum forest as Reserved Forest. It is rather stated in paragraph 7 of the counter affidavit filed on behalf of the Respondent Nos. 5 & 6 that Reserved Forests are constituted through notification under Section 17 of the Assam Forest Regulation, 1891. It is stated therein that no land under duly notified Reserved Forest could be allotted for non forestry use without de-reservation and no "NOC" for the purpose of granting LPC could be issued in respect of the land within the notified Reserved Forest.

13. It must, therefore, be accepted that the lands in question are within the aforesaid notified Reserved Forest and the Respondent-Deputy Commissioner as well as the Respondent No.7 were well aware about the same. They were also well aware about the requirement of "NOC" from the Forest Department and as such, the Deputy Commissioner after receipt of applications from the Respondent No.7 for granting her LPCs, made correspondences with the Respondent-Forest Officials requesting them to issue "NOC" from their end. From the conduct of the Respondent-Deputy Commissioner and Respondent No.7, it becomes clear that they accepted the status of the lands in question as part of the Reserved Forest. From the aforesaid discussions, there would be no difficulty in coming to a conclusion that the lands in question fall under the Reserved Forest.

14. The question as to whether any "NOC" was issued by the Forest Department has been answered in paragraph 10 of the counter affidavit filed for and on behalf of the Respondent Nos. 5 & 6. A categorical denial has been made by the Forest officers concerned making averments as follows:-



*“10. That with regard to the statement made in paragraph 6 of the writ petition your humble deponent begs to state that since the Department of Environment & Forest has not issued any NOC for issuance of Land Possession Certificate (LPC) by the competent authority from the notified Reserved Forest, the Department has no details of LPC issued to any individual”*

It has been made clearer in paragraph 15 of the said counter affidavit, which reads as follows:

*“15. That with regard to the statement made in paragraph 22 of the writ petition, your humble deponent begs to state that as the forest land within the notified Reserved Forest has not been de-notified under the Forest (Conservation) Act, 1980 and NOC for Land Possession Certificate (LPC) has not issued by the concerned DFO, hence, the question of handing over the forest land in question to any individual for possession does not arise.”*

From the above, it has become clear that the Forest Department did not issue any NOC for granting LPC to Respondent No.7 inasmuch the lands in question come under the notified Reserved Forest and the said area was not de-notified under the Forest (Conservation) Act, 1980 (hereinafter referred to as the “1980 Act”)

15. The question as to whether the LPCs were issued in favour of the Respondent No.7 bona fide is to be examined. From the materials placed before this Court, it has been disclosed in the affidavit filed on behalf of the Respondent Nos. 3 & 4 that the Govt. of India, Ministry of Tourism vide letter No.9-NE(7)/2007 dated 27-03-2008 informed the Commissioner-cum-Secretary (Tourism), Govt. of Arunachal Pradesh about the sanction of Rs.33.651 lakhs ( Ruppes 3 cores 36 lakhs and 51

thousand) for the purpose of development of tourism infrastructures near Pakoi Wild Life Sanctuary at Seijusa in East Kameng District. Out of the above sanctioned amount, an amount to the tune of Rs.269.21 lakhs was released on 31-03-2008 as first instalment for construction of the project. In the said affidavit it has also been disclosed that Respondent No.7 donated some lands to the Government free of cost for construction of tourist lodge. There is a background how it was processed with the Govt. of India for development of tourism infrastructures at the said place. It can be traced out from the communication dated 30-08-2008 made by the Respondent No.7 in the capacity of ZPM of 3-East Kameng Zilla Constituency with the Chief Minister stating inter alia that her predecessor Mr. Taram Nyari processed the case in the year 2006 with the then DFO, Pakke Wild Life Sanctuary and accordingly, the said DFO wrote a letter to the Director (Tourism), Govt. of Arunachal Pradesh on 27-03-2006. On the basis of the said proposal, it was taken up with the Director (Tourism), Govt. of India and accordingly two tourist centres for the N.E.Region--- one at Phakui Wild Life Sanctuary in Arunachal Pradesh and another in Assam were sanctioned.

16. After the sanction of tourist centre in Arunachal Pradesh, the Govt. selected a site which was not found suitable due to erosion by flood. At that stage, Respondent No.7 wrote a letter to the Chief Minister to change the tourist centre site to her land i.e. the present land in question, which she was ready to donate for construction of tourist lodge. This letter dated 30-08-2008 is available in the rejoinder affidavit filed by the petitioners to the affidavit-in-opposition of Respondent Nos. 3 & 4 (Annexure-A/22). The respondent No.7 with intention to get the tourist centre site shifted to her land made application before the Respondent-Deputy Commissioner for granting her LPCs and she became successful in getting the LPCs in question granted in her favour during October, 2007 and February, 2008. The Respondent No.7, as it appears from the various correspondence made by her, is a registered Class-II contractor of the CPWD. She also runs an "NGO" known as "DDDWO" at Seijusa. She made application in the capacity of Member, ZPM before the Chief Minister on 12-06-2008 for awarding the work of development of tourism infrastructures near Phakui Wild Life Sanctuary. She also made similar application before the Secretary (WRD) on 12-06-2008 and also before the Director (Tourism) for awarding the contract work to her. Her husband Shri Kameng Dolo in the capacity of the MLA, as he was then,



also requested the Chief Minister vide his note dated 27-06-2008 for early execution of scheme of tourism infrastructures near Phakui Wild Life Sanctuary at Seijosa. Copies of all those correspondences referred to above are available in the aforesaid rejoinder filed by the petitioners. The letter dated 12-06-2008 aforesaid is reproduced-

"Itanagar,  
12/6/2008

To

The Hon'ble Chief Minister,  
Arunachal Pradesh,  
Itanagar.

Subject: - Award of work Development of Tourism Infrastructure near Pakhui Wild Life Sanctuary at Seijosa in East Kameng District.

Hon'ble Sir,

With due regard, I am to inform you that I had been elected as Zilla Parishad Member from 3-East Kameng Zilla Constituency (Seijosa) recently. It has come to my knowledge that a scheme-Development of Tourism Infrastructure near Pakhoi Wild Life Sanctuary at Seijosa in East Kameng District, Arunachal Pradesh for an amount of Rs.336.51 lakhs by Ministry of Tourism, Govt. of India vide their letter No.9- NE(7)/07 dated 27-03-2008 ( copy of the sanction order is enclosed herewith)

It is understood that the work has yet to be awarded to anybody. The Executing Agency of the above proposed word is the Water Resource Department of Arunachal Pradesh.

I am having vast experience for construction of road, buildings, bridges, etc. as well as my name is enlisted in to Class II Contractor list of CPWD, having the vast experience for construction of similar nature of work. Since the public has approached me to undertake the work in the name of an NGO "DDDWWO" Seijosa which is run by the public of Seijosa area, I shall be extremely grateful if you could kindly aware the aforesaid work in the above registered firm.

In this connection, I already approached Secretary (WRD), to award this work and accordingly, the Secretary (WRD) vide his U.O No.Secy/WRD/01/2008/ Dtd. 12-06-2008 his comments has been conveyed to Chief Engineer (WRD) to allot the work in favour of DDDWWO, Seijosa ( A copy is enclosed herewith).



Above all, I very fervently request you to kindly instruct Chief Engineer (WRD) to award the above work in favour of DDDWWO Seijosa, so that, large number of public can be benefited accordingly.

Thanking you Sir,

Yours faithfully,  
Sd/-(Mrs. Maya Dolo)  
ZPM (Elect.), Seijosa,  
Camp-Itanagar."

17. It has thus become clear that the Respondent No.7 used her official power and influence backed by her husband, who was at times, a powerful cabinet minister in the State, in getting the LPCs issued in her favour expeditiously without any "NOC" from the Forest Department in violation of the provisions under the Forest Act/Regulation and also in violation of the existing procedures prescribed by the Govt. Besides she put tremendous pressure on the Chief Minister through the Minister (Land Management etc.) and her husband to get the aforesaid work settled in favour of the "DDW", an "NGO" run by her. Behind the donation of the land, she had an object of getting the govt. contract work awarded in the name of an "NGO" run by her. It is totally unbecoming of an elected public representative like Respondent No.7 to introduce herself as a registered contractor and seek govt. contract work holding such important public office. There is no difficulty in understanding that she obtained LPCs from the district authority by playing fraud in collusion with some officials concerned in violation of the existing law and procedures prescribed for issuance of LPCs and as such, the LPCs in question are liable to be cancelled.

18. The petitioners on the contrary are ordinary citizens and disadvantaged people who also applied for LPC before the Respondent-Deputy Commissioner but were denied of the same. They have been denied LPC on the basis of a so called report of some officials who reported that the petitioners have no possession over the land and they were not found at the place when a spot verification was made. There is no record to show that any notice was issued to the petitioners about the proposed spot verification by the officials concerned. The petitioners were not served with any notice as claimants of the land in question before the LPCs were issued in favour of the Respondent No.7. It is,

therefore, easy to understand that the interest of the petitioners were affected by the impugned action of the respondent authorities in issuing the LPCs in question without considering the claim of the petitioners, who are also similarly indigenous tribe of the locality living since the days of their forefathers, if not time immemorial or generations. The Apex Court on several occasions has been expressing serious concern in several cases over the wanton destruction of forest affecting the ecological balance. The 1980 Act was enacted to provide for conservation of forest and for matter connected there with or ancillary or incidental thereto. The object and reasons for enactment of the said Act is to check de-forestation and save ecological balance and environmental deterioration. For this purpose, restrictions have been imposed on "**de-forestation of forest**" or use of forest land for "**non forest purpose**" under Section 2 of the said Act. For the purpose of properly appreciating the case at hand, it is necessary to have a close look at the provision under Section 2 of the said Act which is quoted below:

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

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved.;
- (ii) that any forest -land or any portion thereof may be used for any non-forest purpose.
- (iii) That any forest-land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- (iv) That any forest-land or any portion thereof may be cleared of trees which have grown naturally in that



land or portion, for the purpose of using it for reafforestation.

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

(b) any purpose other than reafforestation.

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

19. In the present case, the State Government, after obtaining sanction for setting up tourism infrastructures with huge fund, started construction of tourist lodge near the Phakui Wild Life Sanctuary. From the pleadings of the respondent authorities, it does not appear that a prior approval of the Central Govt., particularly from the Department of Environment and Forest, has been obtained for construction of such tourist lodge inside or near the Phakui Wild Life Sanctuary as required under Section 2 of the Act. The State Government or any authority cannot escape from obtaining such prior approval for using the land in the Reserved Forest particularly for "**non forest purpose**". It has been held in **Tarun Bharat Sangh Vs. Union of India**, reported in **1993(Supp) 3 SCC 115** that once an area is declared as a protected forest, it comes within the purview of the 1980 Act and it becomes a forest land within the meaning of Section 2 of the Act. The effect of this decision is that no non forest activity can be carried on in and on the said area without the prior approval of the Central Govt. Even the State Government cannot carry on any such non forest activity in the said area without prior approval from the Central Govt. The Apex Court in **Nature Lovers Movement Vs. State of Kerela and Ors**, reported in **(2009) 5 SCC 373** further held that the ratio of relevant judgment of the Supreme Court, the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after the date of enforcement of the said Act i.e. 25-10-1980, neither the State Government nor can any other authority make an order or issue direction for de-reservation of reserved forest or any portion thereof or permit use to any forest land or any portion thereof for any "**non forest purpose**" or assign any forest land

or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organisation not owned, managed or controlled by the Govt. except after obtaining prior approval of the Central Government.

20. The respondents having not shown by sufficient materials that the prior approval from the Central Govt. has been obtained, the respondent authorities have violated the provisions under Section 2 of the 1980 Act. It may be recalled that in **T. N. Godavarman Thirumulkpad Vs. Union of India & Ors**, reported in (1997) 2 SCC 267, the Apex Court expressed serious concern over felling of trees in certain districts of Arunachal Pradesh and it directed stoppage of felling of trees forthwith. It is worth quoting the direction issued by the Supreme Court in para 5 of the said judgment.

*"5. We further direct as under:*

**1. GENERAL**

1. *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 on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.*
2. *In addition to the above, in the tropical wet evergreen forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills,*



*veneer mills and plywood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 Kms from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.*

3. *The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments, as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.*
4. *There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or waterways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other government purposes. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest."*

21. Now the question arises as to whether the construction of a tourist lodge for development of tourism infrastructures near the Phakui Wild Life Sanctuary can be said to be for "forest purpose" or "non forest purpose". As per the explanation to Section 2 of the 1980 Act, "non forest purpose" means the breaking up and clearance of any forest land or portion thereof for the cultivation of tea, coffee, spices etc and for any purpose other than re-forestation. The construction of tourist lodge for development of tourist infrastructures is a long terms plan. It involves construction of houses for the visiting tourists and also residential houses for the staff. In such construction of houses including the road and other facilities, there would be cutting down of trees, breaking up or clearance of the forest land which would amount to de-forestation in the said area. After all, in the present days, tourism is an industry and it would like to expand its industry in future, which would amount to further destruction or

de-forestation in the said area. There is every possibility of causing disturbance to the wild lives and the forest flora and fauna and also causing serious ecological imbalance and environmental deterioration. Of course, this is only an apprehension of the Court without any expert opinion but it must be said that before allowing construction of the tourist lodge, the respondent authorities should have taken steps to obtain expert opinion. From the materials placed before this Court, it does not appear that the Respondent authorities took any step to obtain such expert opinion from any corner in spite of serious concern expressed by the Supreme Court in such matter and also objection raised by the conscious citizens including the lovers of wild life and nature. Of course it is not to speak against the principle of sustainable development in the backward State like Arunachal Pradesh.

22. There again, speaking for the principle of sustainable development, the Apex Court laid down the necessary consideration to be made in **T. N. Godavarman Thirumulkpad Vs. Union of India**, reported in (2008) 2 SCC 222. The same is quoted from Para 3 as under-

*"3. As a matter of preface, we may state that adherence to the principle of sustainable development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs is sustainable development. Therefore, courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity (see A.P Pollution Control Board v. Prof. M.V. Nayudu). Mining is an important revenue-generating industry. However, we cannot allow our national assets to be placed into the hands of companies without a proper mechanism in place*



*and without ascertaining the credibility of the user agency."*

23. As regard the petitioners, it has been abundantly made clear that they are illiterate or half literate indigenous tribal people of the State who have been living in the aforesaid area unconcerned about their rights, privilege and security. They were equally unconcerned about the necessity of obtaining any document for occupying the lands in the Reserved Forest since the days of their forefathers. They are not instructed about the existing statutory provisions and they have been used by some vested interests to serve their purpose. Due to prevailing inner line permit system, there has been a little check on settling down of general people in the said area but amongst their tribesmen, who have attained affluency, have been enjoying the land and other facilities at the cost of the fellow backward disadvantaged tribesmen. One can see in the present case how the affluent person like Respondent No.7 has been active in exploiting the fellow tribesmen like the petitioners by way of depriving them in getting the LPCs in the area where they have been living for long. She became more active when she found that she can earn huge financial gains if the construction works of tourist lodge could be grabbed by her. She used all her power and influence for obtaining the LPCs granted within a short period of time by circumventing and violating all prevailing provisions of law and procedure prescribed by the State. In such cases, the Court cannot close its eyes and ears to protect the unprivileged and disadvantaged tribesmen like the petitioners who are not in a position to establish their right and interest. The State must provide protection to these people under the provisions of 2006 Act which has recognised the rights of the forest dwelling scheduled tribes and other traditional forest dwellers, which has come into force with the publication of the same in the official gazette of the Govt. of India on 2<sup>nd</sup> January, 2007. The Government is bound to consider the applications if so submitted by the petitioners, for protecting their rights and privileges under the said Act. It is the duty of the Government to inform and educate the indigenous tribal people dwelling in the forest about their rights granted under the said Act and to take necessary action/measure so as to enable them to enjoy the said rights and privileges.

24. For the foregoing discussions made and reasons given in the light of the observations and rulings of the Apex Court, I direct the

respondent authorities, particularly Respondent No.3, Deputy Commissioner, East Kameng District, to pass necessary orders cancelling all LPCs in question issued in favour of the Respondent No.7 forthwith within a period of 30 days from the date of receipt of this order. The respondent-Government may, if so advised, consider her case for granting the LPCs under the strict provisions of 1980 Act and 2006 Act and office memorandum No. LR-31/84 dated 19-12-1988 and memo No. KD/29/99/TECH/1819 dated 06-08-2007 along with the present petitioners and other similarly situated persons, if such applications are made by them after spot verification in presence of all the parties concerned and providing them with due opportunity of hearing. And, if on enquiry and verification, it is found that the Respondent No.7 or any other person/persons, had illegally dispossessed the petitioners from any land over which they have rightful claim and interest as forest dwellers under the 2006 Act, the Respondent authorities shall take necessary steps to restore the physical possession of the same to the petitioners forthwith. It is also directed that the State respondents shall obtain expert opinion about the apprehended destruction to forest and causing ecological imbalance and environmental deterioration in the area in question due to construction of tourist lodge for so called development of tourism infrastructures near the Wild Life Sanctuary and take appropriate decision as to whether such project should continue or not on the basis of the expert opinion.

24. With the aforesaid reasons, observations and directions, this writ petition stands allowed. There shall be no order as to cost.

25. The Registry shall send true copy of this judgment and order to all the official Respondents and also to the Secretary, Ministry of Environment & Forest, Govt. of India, New Delhi, immediately for taking necessary steps.

  
JUDGE