

IN THE HON'BLE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Urgency Application no..... of 2009.

IN

P.L.L. WRIT PETITION No. OF 2009 (M/B)

(Under Article 226 of the Constitution of India)

Distt.- Naini Tal.

Prof. Ajay Singh RawatPetitioner.

Versus

Union of India and others.Respondents.

To,

The Hon'ble Chief Justice and his other companion judges of the
aforesaid Court.

The Humble Application on behalf of the Petitioner-Applicant,
above named, most respectfully showeth as under.

1. That all the facts and circumstances have been narrated in the accompanying affidavit, which may form part of this application.
2. That for the facts and circumstances narrated in the accompanying affidavit, it is necessary in the interest of justice that the instant writ petition be heard during the winter vacations, otherwise the Applicant-Petitioner shall suffer irreparable loss.

Ashawat

P R A Y E R

(2)

It, is therefore, most respectfully prayed that this Hon'ble Court may very graciously be pleased to hear the instant writ petition during the winter vacations, otherwise the Petitioner/Applicant shall suffer irreparable loss.

Date : 21/1/2009

(Rajeev Singh Bisht)
Advocate
Counsel for the Applicant/Petitioner.

IN THE HON'BLE HIGH COURT OF UTTARAKHAND
AT NAINITAL

AFFIDAVIT

IN

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P.I.L. WRIT PETITION No. OF 2009 (M/B)

(Under Article 226 of the Constitution of India)

Distt.- NainiTal.

Prof. Ajay Singh RawatPetitioner.

Versus

Union of India and others.Respondents.

Affidavit of : Prof. Ajay Singh Rawat,

Aged about 61 years,

S/o Late Thakur D.S. Rawat,

R/o 'Sai Sadan', Joy Villa Compound,

TalliTal NainiTal

(Deponent)

I, the above named deponent do hereby solemnly affirm and state on oath as under :-

1. That, the deponent is the sole Petitioner in the instant Writ Petition and is as such well acquainted with the facts deposed to below.
2. That the indiscriminate boring and water pumping work is being carried on by the builder in the area adjacent to the Khurpatal Lake in connivance with the respondent authorities.
3. That if the instant writ petition is not heard by this Hon'ble Court during the Winter Vacations the builder would be able to achieve his target of

Aj Singh Rawat

infructuous.

4. That the Hon'ble Court may entertain the instant writ petition during the winter vacations in the interest of justice otherwise the Petitioner would suffer irreparable loss.

I, the above named deponent do here by swear and verify that the contents of paragraph No. 1 & 2 of the accompanying Application and para nos.1,2,3 & 4 of the instant affidavit are based on my personal knowledge, which all I believe to be true and no part of it is false and nothing material has been concealed.

So help me God.

Ashwat
Deponent.

I, Rajeev Singh Bisht, Advocate High Court, do here by declare that the person making this affidavit and alleging himself to the deponent is the same person who is known to me from the production of the papers by him.

Advocate

Solemnly affirm before me on this 29..... day of Jan.....2009 at about 7.11.11 P.M...by that the deponent who has been identified by the aforesaid advocate.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him by me.

Oath Commissioner

Ashwat

IN THE HON'BLE HIGH COURT OF UTTARAKHAND

AT NAINITAL

DATES & EVENTS

IN

P.I.L. WRIT PETITION No. OF 2009 (M/B)

(Under Article 226 of the Constitution of India)

Distt.- NainiTal.

Prof. Ajay Singh RawatPetitioner.

Versus

Union of India and Ors.Respondents

S.No.	Dates	Events
1.	---	From time immemorial the villagers of Khurpatal, Patikhet, Jogyura and Silmoria have been living being dependant on the sole source of water being springs generated under the Khurpatal Lake.
2.	1975	The erstwhile State Legislature passed the U.P. Act no.46 of 1975 for regulation and control of water in Kumaon and Garhwal regions.
3.	2000-01	The builders buy land near the Khurpatal Lake and start constructions of borings against which the villagers agitated and the construction was stopped.
4.	2006	The builders again start boring activities but the agitation of the matter before the prescribed authority and the courts.
5.	03-08-2006	The prescribed Authority stops the boring activities of the CPWD on the instance of the villagers.
6.	03-05-2006	Status Quo order granted in the injunction suit filed by the villagers against the boring activities done by the builder society, i.e., Army Welfare Housing Organisation.
7.	18-08-2006	Appeal against the rejection of Temporary Injunction application of the villagers was admitted and the rejection order was stayed by the District Judge, NainiTal.
8.	June 2006	Detailed Survey Report submitted by Dr.D.S. Kotilya, with Executive Engineer, Jal Nigam, saying that the boring would have precarious consequences on the water resources of the villages.
9.	2008-09	The builder again starts boring activities but the respondent authorities do not check it from doing illegal boring.
10.	19-01-2009	Petitioner represents before the District Magistrate, giving the details of the consequences of illegal boring but the authorities do not act.
11.		Hence This Petition.

Date: 21/1/2009

(Rajeev Singh Bisht)
Advocate

Counsel For the Petitioner.

IN THE HON'BLE HIGH COURT OF UTTARAKHAND
AT NAINITAL

P.I.L. WRIT PETITION No. OF 2009 (M/B)
(Under Article 226 of the Constitution of India)

Distt.- NainiTal.

Prof. Ajay Singh Rawat,
C/o Indian National Trust for Art and Cultural Heritage,
Uttarakhand Chapter, NainiTal, through its Convener.

.....Petitioner.

Versus

1. Union of India, through the Secretary, Ministry of Water Resources,
Government of India, New Delhi.
2. Union of India, through the Secretary, Ministry of Environment and Forest,
Government of India, New Delhi.
3. State of Uttarakhand, through Secretary, Ministry of Environment and Forest,
Government of Uttarakhand, Dehradun, Uttarakhand.
4. State of Uttarakhand, through Secretary, Ministry of Water Resources,
Government of Uttarakhand, Dehradun, Uttarakhand.
5. Chief Conservator of Forest, Kumaon Region, NainiTal.
6. Commissioner, Kumaon Region, NainiTal.
7. District Magistrate, NainiTal.
8. NainiTal Lake Special Area Development Authority, through its Secretary.

.....Respondents.

To,

The Hon'ble Chief Justice and his other Companion Judges of the
aforesaid Hon'ble Court.

The humble Petition of the Petitioner abovenamed most respectfully
showeth as under: -

1. That the present Petition is being filed under Article 226 of the Constitution
of India by way of public interest and the Petitioner has no personal interest

A. S. Rawat

in the instant matter. It is submitted that the Petition is being filed in the interest of the public at large, including the residents of Naini Tal district, more particularly the residents of the villages Khurpatal, Patikhet, Jogyura and Silmoria and the area surrounding the Khurpatal Lake.

2. That the Petitioner has retired as the Head of the Department of History, Kumaon University, Naini Tal, and has always supported the Environmental causes. The Petitioner is the Chairman of the History Division, International Union of Forestry Research Organizations, Vienna. It is also submitted here that the Petitioner is the recipient of the international award, the *Order of the Golden Ark*, Netherlands, for conservation of Environment, both as an academic and as an activist. The Petitioner has been continuously engaged in the environmental causes and has been fighting against the human attack on the fragile eco-system of the young *Shivalik* range of the Himalayas.
3. That the subject matter of the instant Petition is the illegal and dangerous construction and boring activity going on near the Khurpatal lake by a builder society styled as Army Welfare Housing Organization, *inter alia* large constructions posing constant ecological, geological and environmental threat on the area of and around the aforesaid villages.
4. That the Lake Khurpatal is situated at an elevation of 1580 meter above sea level and is famous for the scenic beauty and quiet location among the tourists. It is submitted that the Lake is a closed basin without any outlet and is the only water body catering the water needs of the entire area.
5. That the village Khurpatal is situated around the Lake while the three villages, namely, Patikhet, Jogyura and Silmoria are located towards the South of the Lake at a lower altitude than the Lake level. It is pertinent to submit here that, for their water needs, the aforesaid villages are entirely dependent upon the springs that are regenerated from the Lake water underneath the Lake basin and they have no other source or supply of water from the Irrigation department or any other department. It is also relevant to state here that lone source of income of the villagers is through the vegetables they grow and the milk of their cattle and the water requirement for both these activities is catered by the aforesaid springs in the villages. It is submitted here that the whole economy, as well as living, of the aforesaid villages is entirely dependent on the springs which are under threat from the illegal construction and boring activities being done by the builders under the protection of the Respondent authorities.

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6. That with the objective to regulate and control in the public interest the water sources in the hill tracts of the Kumaon and Garhwal Divisions in order to ensure a rational distribution of water for the purpose of human and animal consumption, irrigation and industrial development, an act was passed by the Legislature of erstwhile Uttar Pradesh, named as the Kumaon and Garhwal Water (Collection, Retention and Distribution) Act, 1975. It is stated that the provisions of the act had been framed keeping in view the exceptional geographical conditions of the area. A copy of the U.P. Act no.46 of 1975 is being annexed herewith as Annexure-1. It is stated that as per section 6 of the aforesaid U.P. Act no.46 of 1975 several restrictions have been placed on the construction etc. of various kinds, including the installation of a pumping machine, without prior permission of the Sub-Divisional Officer.
7. That it is pertinent to state here that the Lake Khurpatal is itself a *Reserved Forest Area* as per the information given by the Respondents vide letter dated 20-01-2009 and the Law does not permit any non-forest activity in and around any kind of Forest area. A copy of the letter dated 20-01-2009 is being annexed herewith as Annexure-2.
8. That the aforesaid letter also informs that the area around the Lake is *Wetlands*, which are equally important to the environment as the Forests are. It is relevant to state here that the *Wetlands* have been defined as bogs, swamps and marshes. They provide numerous ecosystem services including water purification, maintaining surface moisture, curbing soil erosion, reducing the impact of floods and droughts and re-charging wells. The wetlands support a host of wildlife such as birds, fish, reptiles, amphibians and insects. It is important to state here that the Respondents are duty bound to promote the conservation of wetlands habitat since India was a contracting party to the '*Ramsar Convention*', an Inter Governmental Treaty on Wetlands, held in February, 1971.
9. That the villagers of the aforesaid villages have always been fighting against the disturbance to their ecosystem caused by the heavy constructions around the Lake Khurpatal and they have continuously defeated the ill intention of the builders to destroy their water resources. It is submitted that due to the agitation of the villagers neither the private builders/hoteliers have been able to disturb their water resources nor the Government building agency, i.e. the Central Public Works Department, was able to commence boring for water in the area. It is submitted that on the representation of the villagers the C.P.W.D. was ordered to stop boring

and remove the construction from the area vide the order dated 03-08-2006 passed by the Prescribed Authority/ Sub Divisional Officer, NainiTal. A copy of the order dated 03-08-2006 is being annexed herewith as Annexure-3.

10. That it is stated here that though one of the builders was stopped by the Prescribed Authority another builder styled as the Army Welfare Housing Organisation restarted the construction and boring activity in the area. It is submitted that earlier in the year 2001 the same builder had forcibly tried to do boring in the area but on the agitation of the villagers and the intervention of the District Magistrate, NainiTal, the construction was stopped.
11. That the said builder again tried to forcibly construct boring in the year 2006 and the villagers again agitated the matter before the concerned authorities. It is also submitted that the villagers also approached the Hon'ble Court on 03-05-2006 through Civil Suit no.22 of 2006 wherein after hearing the case of the villagers the Hon'ble Court was pleased to order *status-quo*. A copy of the order dated 03-05-2006 is being annexed herewith as Annexure-4. It is submitted that the villagers had contended the violation of section-6 of the U.P. Act no.46 of 1975 as no prior permission had been granted by the Prescribed Authority under the Act to construct the boring.
12. That the villagers also made a representation to the Commissioner, Kumaon Division, NainiTal, registering their grievance before him and requesting him to conduct a survey of the area and the consequence of boring on the springs of the villages. It is stated that a thorough survey was conducted by Dr. B. S. Kotilya, Department of Geology, Kumaon University, NainiTal, along with the Executive Engineer, Jal Nigam, NainiTal, and a report was submitted to the authorities asserting the fear of the villagers that the construction of boring would have precarious consequences over the springs of the aforesaid villages. A copy of the report of the survey is being annexed herewith as Annexure-5.
13. That in the meanwhile the Temporary Injunction Application in the Civil suit no.22 of 2006 was rejected by the learned Civil Judge(S.D.), NainiTal, on 14-08-2006. It is stated that the same was assailed by the villagers in Misc. Civil Appeal no.19 of 2006 before the learned District Judge, NainiTal, whereby vide order dated 18-08-06 the Appeal was admitted and the order dated 14-08-2006 passed by the learned Civil Judge(S.D.),

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NainiTal was stayed. A copy of the order dated 18-08-2006 is being annexed herewith as Annexure-6. It is submitted here that the Appeal is still pending before the Court of the District Judge, NainiTal, and the same is fixed for hearing on 12-03-2009.

14. That since then there had been no construction or boring activity in the area around the Lake and the villagers were enjoying their daily work with a peace of mind when suddenly at the present time the builder styled as the Army Welfare Housing Organisation has started construction and boring work. It is submitted that when the villagers agitated against the boring work the builder threatened them with dire consequences. It is further stated that the villagers approached the concerned authorities but they have turned deaf to the prayers of the villagers and are sitting blind over the illegal construction of the bore-well.
15. That it is pertinent to state here that the Petitioner also represented before the District Magistrate, NainiTal, protesting against the illegal protection to the builder in permitting him to do boring and pumping water against the Court's orders and the ecological considerations. A copy of the representation dated 19-01-2009 is being annexed herewith as Annexure-7.
16. That it is submitted here that if the Respondent Authorities sit idle over the matter and let the illegal boring construction activity go on, the springs, being the only water supply to the villages, would be devastated and the poor residents of the aforesaid villages would loose all their means of living.
17. That it is further submitted that the said builder, i.e. the Army Welfare Housing Society is constructing about 93 flats near the Lake, consisting of more than 300 rooms. It is pertinent to state here that a structure of this magnitude would definitely spoil the ecology, as well as geology, of the beautiful Lake and the area around the Lake. It is submitted that the Khurpatal Lake is a closed basin lake with no outlets and the site of construction of these 300 plus rooms is almost touching the lake. It is stated that the geographical situation does not permit the sewer and waste to go into any other direction and the same is bound to enter the Lake and destroy its very existence.
18. That it is also pertinent to state here that if the Respondent authorities allow the pumping of water for these large number of flats the water contents of the Lake is bound to decrease threatening its extinction. It is submitted that

the contraction in the amount of water in the Lake will directly affect the residents of villages Khurpatal, Patikhet, Jogyura and Silmoria, who do not have any other place to live and who neither have any other means for living.

19. That the voluminous construction that would be erected adjacent to the Lake definitely comes under the meaning of the word "Multi Story/Group Housing" structure and is under the jurisdiction of the Naini Tal Lake Special Area Development Authority, which has been directed by the Hon'ble Apex Court for not allowing such construction in its order in the Writ Petition Ajay Singh Rawat Vs UoI. {1995 (3) SCC 266}. It is submitted here that the subject matter in that matter was the threat to the Naini Tal Lake while in the present matter the threat is even worse to the small Khurpatal Lake.
20. That the Respondent authorities are flouting the enactment made by the State Legislature, International Conventions as well as the Law settled by the Courts in various environmental litigation from time to time by illegally allowing the builders to go on with their voluminous constructions in the ecologically as well as geologically fragile areas thus threatening the very existence of many villages and their residents.
21. That it is stated here that the builders all over the Kumaon region of this beautiful State are carrying on such indiscriminate construction work which would be certainly hazardous to the very existence of the entire hilly region.
22. That it is evident from the preceding paragraphs that the continuance of the illegal boring construction activity in the above-mentioned zone would prove hazardous to the environment as well as the human life. It is submitted here that the Respondents have turned their blind eyes on the joint expert reports of the Government Departments. It is stated that they have forgotten their official duty towards the Government and the citizens and they would not act in a prudent manner unless this Hon'ble Court intervenes under the provisions of Article 226 of the Constitution of India.
23. That the Hon'ble Apex Court has held that the *public trust doctrine* is a part of the law of the land, which says that the State is the trustee of all the natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running water, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. It is stated here that the action of the Respondents explained above is in clear violation of the public trust

doctrine, thereby violating the right to a wholesome environment, which is a facet of the right to life guaranteed under Article 21 of the Constitution of India.

24. That there is no other equally efficacious alternative remedy available to the Petitioner except to invoke the Writ Jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India, *inter-alia* on the following grounds:

GROUNDS

- A- Because there has been a violation of the provisions of the U.P. Act no.46 of 1975, passed by the State Legislature;
- B- Because the Respondents have ignored the Geologically unstable, as well as the ecologically fragile, nature of the area while permitting the illegal construction as well as boring activity in the aforesaid area;
- C- Because the inaction of the Respondents in not stopping the illegal construction as well as boring activity suffers grave illegality and violation of public trust;
- D- Because the resuming and continuance of the aforesaid boring activity would be detrimental to the very existence of the villages Khurpatal, Patikhet, Jogyura and Silmoria and their residents;
- E- Because the Respondents have decided to go on with their arbitrary plans without even adhering to the existing laws as well as the Apex Court directions;
- F- Because non-forest activities cannot be allowed in and around the Reserved Forest area;
- G- Because no construction can be allowed on the wetlands threatening their existence;
- H- Because there has been a violation of the International Convention;
- I- Because the arbitrary action of the Respondents is in clear violation of the public trust doctrine, which is a part of the law of the land;
- J- Because the violation of the public trust doctrine itself violates the right to a wholesome environment, which is a facet of the right to life guaranteed under Article 21 of the Constitution of India;

K- Because any action threatening the very existence of the Lake Khurpatal would be threatening the lives of the citizens living in and around the whole area described above, which would be violative of the Constitutional right to life as guaranteed under Article 21 of the Constitution of India;

L- Because there is no other equally efficacious alternative remedy available to the Petitioner except to invoke the Writ Jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

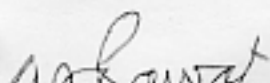
P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may very graciously be pleased to allow this Writ Petition and:

- (i) To issue, a Writ, order or direction in the nature of *mandamus* directing the Respondents to stop the illegal construction of boring and pumping water in the area adjacent to the Khurpatal Lake, which is threatening the water resources of the villages Khurpatal, Patikhet, Jogyura and Silmoria;
- (ii) To issue, a Writ, order or direction in the nature of *mandamus* directing the Respondents to stop the voluminous construction in the area adjacent to the Khurpatal Lake, which is a very Geologically instable and ecologically fragile region;
- (iii) To issue, a Writ, order or direction in the nature of *mandamus* directing the Respondents to take immediate steps for maintaining the Geological stability of the whole area surrounding the *Reserved Forest* of the Khurpatal Lake;
- (iv) To issue an order or direction which this Hon'ble Court deems fit in the facts and circumstances of the instant case;
- (v) To award the costs in favour of the Petitioner.

Date : 21/11/2009

(Rajeev Singh Bisht)
Advocate
Counsel for the Petitioner.



IN THE HON'BLE HIGH COURT OF UTTARAKHAND
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AFFIDAVIT

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Affidavit of : Prof. Ajay Singh Rawat,
Aged about 61 years,
S/o Late Thakur D.S. Rawat,
R/o 'Sai Sadan', Joy Villa Compound,
TalliTal NainiTal

(Deponent)

I, the above named deponent do hereby solemnly affirm and state on oath as under :-

1. That, the deponent is the sole Petitioner in the instant Writ Petition and is as such well acquainted with the facts deposed to below:

I, the above named deponent do here by swear and verify that the contents of paragraph No. 1, 2, 3, 4, 5, 8, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, of this Writ Petition are based on my personal knowledge and the contents of the paragraphs 7, 9, 11, 12, 13, 15, of the Writ Petition are true from the Official Records and the contents of the paragraphs 7, of the

Ajay Singh Rawat

..... of the Writ Petition are based on the information received and the contents of the paragraphs 6p, 23p, 24.....
..... of the Writ Petition are based on Legal Advice, which all I believe to be true and no part of it is false and nothing material has been concealed.

So help me God.

ashwat
Deponent.

I, Rajeev Singh Bisht, Advocate High Court, do here by declare that the person making this affidavit and alleging himself to the deponent is the same person who is known to me from the production of the papers by him.

Advocate

Solemnly affirm before me on this 20.... day of Jan.....2009 at about...7:12 A.M. by that the deponent who has been identified by the aforesaid advocate.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which has been read over and explained to him by me.

Oath Commissioner

passed.

**THE KUMAUN AND GARHWAL WATER (COLLECTION,
RETENTION AND DISTRIBUTION) ACT, 1975¹**

(U. P. Act No. 46 of 1975)

(As passed by the Uttar Pradesh Legislature)

An Act to regulate and control in the public interest the water sources in the hill-tracts of the Kumaun and Garhwal Divisions in order to ensure rational distribution of water for the purpose of human and animal consumption, irrigation and industrial development.

It is hereby enacted in the twenty-sixth year of the Republic of India as follows :—

1. Short title and extent.—(1) This Act may be called the Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975.

(2) It extends to the whole of Kumaun and Garhwal Divisions except the Kashipur, Bhabar, Rudrapur and Khatima sub-division in the district of Naini Tal and Kotdwara Bhabar area of Garhwal Division.

2. Definitions.—In this Act, unless the context otherwise requires—

(a) "protected area" means an area demarcated as such under clause (b) of sub-section (1) of Section 4 ;

(b) "prescribed" means prescribed by this Act or by rules made under this Act ;

(c) "water" means water of rivers, streams flowing in natural channels, natural lakes and ponds or reservoirs and includes rain water ;

(d) "water sources" means natural oozing out of water from underground streams, channels and rivers, lakes, ponds, reservoirs and other collections of still water including rain water ;

(e) "water channel" means a channel used for the communication of water for the purposes of human or animal consumption, irrigation or industry, including the running of water mills.

3. Abolition of the right of the user of water.—On and from the fifteenth day of July, 1975, all the existing rights (whether customary or otherwise and whether vested in any individual or in village communities) of use of water, if any, in the areas to which this Act extends, shall stand abolished.

4. Power of State Government to regulate and control water and water resources.—(1) The State Government shall have the power—

1. The Act Received the assent of the President on September 7, 1975, and was published in the U. P. Gazette, Extra ordinary, dated 8th September, 1975.

(a) to regulate and control, by rules made under this Act, the collection, retention and distribution of water and water sources ;

(b) subject to the rules, if any, made in this behalf under this Act, to demarcate areas for protection of water sources and to declare the same as protected area ; and

(b) to amend or cancel any declaration made under clause (b),

(2) The State Government may, while exercising powers under sub-section (1), give preference to the persons or village communities whose rights in respect of water have been abolished under Section 3.

5. Power of the State Government to construct water channels, etc.—

(1) The State Government shall have the power to construct any water channel, tank or reservoir, or install any pumping machine or lay out any pipeline in, upon or through the land belonging to or held by any person, but it shall not thereby be deemed to have acquired any right in such land other than the right of user for the said purposes.

(2) In exercise of the powers under sub-section (1), the State Government shall cause as little damage to the land as possible, and where during the course of any activity referred to in that sub-section, the whole or part of the land is rendered unfit for the purpose for which it was being used immediately before the commencement of such activity, the persons interested in the land shall be entitled to compensation in accordance with the provisions of the Land Acquisition Act, 1894 ;

Provided that no compensation shall be payable in respect of mere laying out or passage of any pipeline in or through the land belonging to any person where such pipeline is laid not less than two feet below the surface of the land :

Provided further that nothing in this sub-section shall be construed to prevent any activity referred to in sub-section (1) being started or continued until payment of compensation under this sub-section.

(3) The amount of compensation referred to in sub-section (2) shall, be determined by the Sub-Divisional Officer.

(4) Any party aggrieved by the order of the Sub-Divisional Officer determining compensation under sub-section (3) may, within thirty days of the date of such order, prefer an appeal to the District Judge and the District Judge may either dispose of it himself or assign it for disposal to any Additional District Judge under his administrative control, and may recall it from any such officer, or transfer it to any such officer, and the order passed on such appeal shall be final.

(5) Notwithstanding anything contained in sub-section (4), the compensation determined under sub-section (3) by the Sub-Divisional Officer shall be paid as soon as may be without waiting for the result of such appeal.

6. Restrictions on construction, etc.—

No person not being a Jal Sansthan constituted under the Uttar Pradesh Water Supply and Sewerage Ordinance, 1975, shall construct or cause to be constructed any water-channel, tank, reservoir or water-mill, or install or cause to be installed any pumping machine, or lay out or cause to be laid out any pipeline, intended for taking the supply of water from any water sources, without prior permission in writing of the Sub-Divisional Officer.

7. Prohibition of against cutting trees etc. in catchment area.—

No person not being a Jal Sansthan constituted under the Uttar Pradesh Water Supply and Sewerage Ordinance, 1975, shall cut any tree, bushes, shrubs, or burn dried

grass in any protected area without prior permission in writing of the Sub-Divisional Officer :

Provided that in respect of any nap land comprised in or protected area, this section shall have effect as if references to bushes and shrubs were omitted.

8. Grant of permission.—(1) Any person may apply to the Sub-Divisional Officer for permission to construct, install or lay out any of the things mentioned in Section 6 or to do an act mentioned in Section 7.

(2) On receipt of an application under sub-section (1), the Sub-Divisional Officer shall make an enquiry and may in the public interest grant or refuse to grant the permission applied for, and where the permission is so granted, the officer may impose such conditions as it considers just and proper.

(3) The order of the Sub-Divisional Officer under sub-section (2) shall, subject to the result of an appeal under Section 11, be final.

9. Revocation of permission.—(1) Any permission granted under Section 8 or any permission granted under the Kumaun Water Rules, 1930 and continuing in force by virtue of Section 18 may be revoked by the Sub-Divisional Officer, if the person concerned commits a breach of any of conditions governing such permission or otherwise contravenes any provision of this Act or the rules made thereunder.

(2) No order under sub-section (1) shall be made by the Sub-Divisional Officer, unless the person concerned has been given an opportunity of being heard.

(3) Every order of the Sub-Divisional Officer under sub-section (1) shall, subject to the result of an appeal under Section 11, be final.

10. Removal of unauthorised act.—(1) If any water-channel, tank, reservoir or water-mill has been or is being constructed or any pumping machine has been or is being installed, or pipeline has been or is being laid in contravention of the provisions of this Act, the Sub-Divisional Officer may, after notice to the person concerned and after giving him an opportunity of being heard, by order require him to remove or stop the same or as the case may be, to restore the land to its original condition within a period specified in the order.

(2) If the order made under sub-section (1) is not complied with by the person to whom it is directed within the specified period, the Sub-Divisional Officer may get any work done in accordance with that order at the cost of that person and may also use or cause to be used such force as may be necessary, for securing compliance with such order.

(3) Every order of the Sub-Divisional Officer under sub-section (1) or sub-section (2) shall, subject to the result of an appeal under Section 11, be final.

(4) Any cost incurred under sub-section (2) shall on a certificate of the Sub-Divisional Officer be recoverable as arrears of land revenue from the person mentioned in the certificate.

11. Appeals.—Any person aggrieved by an order of the Sub-Divisional Officer under Section 8 or Section 9 or Section 10 may file an appeal in the manner prescribed, before the Collector within thirty days of the date of such order, and the order of the Collector on appeal shall be final.

12. Power of various authorities and procedure to be followed by them.—(1) The Sub-Divisional Officer, the Collector and District Judge shall for the

purposes of holding any inquiry or determining any dispute or hearing any appeal under this Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person examining him on oath;
- (b) receiving evidence on affidavits;
- (c) making any local inspection, or issuing commissions for the examination of witness or local investigation;
- (d) requiring the discovery and production of documents;
- (e) awarding, subject to any rules made in that behalf, costs or special costs to any party or requiring security for costs from any party;
- (f) recording a lawful agreement compromise and making an order in accordance therewith;
- (g) dismissing an application or appeal for default and to restore it for sufficient cause;
- (h) deciding a case *ex parte* and to set aside, for sufficient cause, an order passed *ex parte*;
- (i) allowing amendments of any application, objection or memorandum of appeal;
- (j) issuing temporary injunction, both prohibitory as well as mandatory;
- (k) substituting legal representatives in case of the death of any party;
- (l) any other matter which may be prescribed.

(2) Without prejudice to the provision of sub-section (1), the Sub-Divisional Officer or the Collector, or the District Judge as the case may be, shall have power to make any order for the ends of justice or to prevent the abuse of process of its or his authority under this Act.

13. Application of Limitation Act, 1963.—The provisions of Sections 4, 5 and 12 of the Limitation Act, 1963, in so far as may be applicable shall apply to all proceedings under this Act.

14. Savings in respect of rights and powers of Municipal Boards and Notified Area Committee.—Within the limits of a Municipality or Notified Area as defined in the U. P. Municipalities Act, 1916, or a town area as defined in the U. P. Town Areas Act, 1914 the provisions of this Act shall have effect subject to the following modifications, namely—

- (a) the provisions of Sections 6, 8 and 9 shall have effect as if for the words "Sub-Divisional Officer" the Municipal Board, the Notified Area Committee or the Town Area Committee as the case may be, or an officer authorised by it in that behalf were substituted;
- (b) Section 11 shall have effect as if the words "Section 8 or Section 9 or" were omitted;
- (c) any water sources or water channels, whether situated within the limits of the municipality, notified area or town area or outside, in the possession of the Municipal Board or Notified Area Committee or Town Area Committee immediately before the commencement of this Act shall not be affected by any provision of this Act;
- (d) if after the commencement of this Act, the Municipal Board, the

Notified Area Committee, the Town Area Committee requires any new water sources or any new water channels outside the limits of the municipality, or notified area or town areas it may take supply of water from such water source or construct or cause to be constructed any such water channel, tank or reservoir or install or cause to be installed any pumping machine or lay out or cause to be laid out any pipeline outside such limits only with the prior permission in writing of the State Government.

15. **Prohibition of use of injurious substances in water sources.**—No person shall use in any water source chemicals, explosives or any other substance which may cause injury to or endanger any fish or other aquatic organisms.

16. **Power of exemptions.**—The State Government may, by notification in the *Gazette* grant, subject to such conditions, if any, as may be specified, exemptions from all or any of the provisions of this Act in respect of such persons or class of persons or in respect of such class of ponds or reservoirs or other collections of still water (including rain water) as may be specified, and the State Government may, by a subsequent notification withdraw or modify any such exemption.

17. **Power to delegate.**—The State Government may, by notification in the *Gazette* delegate, subject to such conditions, if any, as it may specify, any of its powers (except the power under Section 21) to the Nigam or to a Jal Sansthan constituted under the Uttar Pradesh Water Supply and Sewerage Ordinance, 1975, or to the Uttar Pradesh Parvatiya Vikas Nigam, Limited, a company registered under the Companies Act, 1956.

18. **Penalties.**—(1) Whoever, without proper authority and voluntarily does any of the following acts, namely,—

- (a) damages, alters, obstructs or interferes with or increases or diminishes the supply of water in or the flow of water from, through, over or under any water source ;
- (b) interferes with or alters the flow of water from, through, over or under any water channel, tank or reservoir or any pumping machine or pipeline, whether existing from before the commencement of this Act or constructed, installed or laid after the commencement of this Act, by the State Government or any municipal board or town area committee, notified area committee or Jal Sansthan or by any other public authority or with the permission of the Sub-Divisional Officer by any other person ;
- (c) contravenes the provisions of Section 15, shall be punishable with imprisonment which may extend to one year and shall also be punishable with fine which may extend to one thousand rupees.

(2) Whoever contravenes any other provisions of this Act or any order made thereunder shall be punishable with fine which extend to five hundred rupees, and if the offence is a continuing offence, with a further fine not exceeding twenty-five rupees for every day during which the offence continues after the date of first conviction for such offence.

(3) Provisions of sub-sections (1) and (2) shall also apply in respect of any attempt or abetment of offence referred to in the said sub-sections.

(4) All offences punishable under sub-section (1) shall be cognizable.

19. **Offences by companies.**—(1) If the person committing an offence

under this Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence had been committed with the consent or connivance of, or that the commission of offence is attributable to any neglect on the part of any managing agent, secretaries, and treasurers, directors, managers or other officer of the company, such managing agents, secretaries and treasurers, director, manager or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section—

- (a) "company" means any body corporate, and includes a firm or other association of individuals ; and
- (b) "director" in relation to a firm, means a partner in the firm.

20. *Protection of action.*—No proceeding or order purporting to be taken or made under this Act shall be called in question in any court and no civil or criminal proceeding shall be instituted against any person for anything done or intended to be done in good faith under this Act.

21. *Power to make rules.*—(1) The State Government may by notification in the *Gazette* make rules for carrying out the purpose of this Act.

(2) All rules made under this Act shall, as soon as may be, after they are made, be laid before each House of the State Legislature while it is in session for a total period of thirty days comprised in its one session or more than one successive sessions and shall unless some later date is appointed, take effect from the date of their publication in the *Official Gazette*, subject to such modification or annulments as the two Houses of Legislature may during the said period agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

To,

Dr. A.S. Rawat,
Joy Villa,
Nainital.

Sir,

Kindly refer to your letter dt. 18-01-2009 regarding information on Khurpatal under Right to Information Act, 2006. As desired the information is as under:-

- 1- As per Working Plan of Nainital Forest Division Khurpatal lake is in reserved forest. It is in Khurpatal Block, Compartment No. 3A.
- 2- The Draft notification on Regulatory Framework Conservation of wetlands circulated by the Ministry of Environment And Forests, Govt. of India has defined wetland. As per the definition Khurpatal lake comes under the purview of wetland.

Encl. - A copy of Draft notification.

Sincerely,

[Handwritten Signature] 20.1.09

Chief Conservator of Forest/
Public Information Officer .
Mallital, Nainital.

मुख्य वन संरक्षक (कुमाऊँ)
उत्तराखण्ड, ननीताल

दिनांक 19/4 3-8-2006-06
अधिकारी
नैनीताल

विपक्षी: कार्यपालक अभियंता
अल्मोडा केन्द्रीय मण्डल
केन्द्रीय लोक निर्माण विभाग,
अल्मोडा।

अन्तर्गत धारा 10 कुमाऊँ एवं गढ़वाल जल वितरण एक्ट 1975

निर्णय

उपरोक्त मामले में दिनांक 1-8-06 को ग्राम प्रधान/समस्त ग्रामवासी सुर्पाताल/ पातीखेत/ जोम्बूडा एवं सिलगोड़िया (गहलना) द्वारा प्राथमिक तौर पर सम्मुख इस आशय का प्रस्तुत किया गया था कि विपक्षी के द्वारा प्रा. सुर्पाताल में तालाब के पास अनाधिकृत रूप से ट्यूबवैल स्थापित किया गया है जिससे सुर्पाताल तालाब की तलहटी में बसे गॉव पातीखेत, जोम्बूडा एवं सिलगोड़िया में निकले प्राकृतिक जल स्रोतों के सूखने का खतरा उत्पन्न हो गया है। इस पर मेरे द्वारा विपक्षी को दिनांक 1-8-2006 को अन्तर्गत धारा 10 कुमाऊँ एवं गढ़वाल जल वितरण अधिनियम 1975 एक नोटिस दिनांक 3-8-2006 को न्यायालय में उपस्थित होकर अपना पक्ष प्रस्तुत करने हेतु दिया गया।

दोनों पक्षकार मेरे समक्ष न्यायालय में उपस्थित हुए। विपक्षी द्वारा उक्त नोटिस का जवाब पत्रावली में प्रस्तुत किया गया जिसमें विपक्षी ने यह स्वीकार किया कि उनके द्वारा अपनी प्रिजिरोज के अन्दर एक ट्यूबवैल लगाने हेतु बोरिंग किया गया है। विपक्षी द्वारा बोरिंग कर पानी निकालने हेतु कोई अनुमति मेरे न्यायालय से प्राप्त नहीं की गयी है। कुमाऊँ गढ़वाल जल (वितरण संघ) अधिनियम 1975 (एक्ट नं 46 सन् 1975) के तहत विपक्षी के द्वारा राक्षम अधिकारी से बोरिंग कर पानी निकालने हेतु अनुमति लिखित रूप से लेनी जरूरी है। सुर्पाताल तालाब के आस-पास बोरिंग कर पानी निकालने से निकले स्तर में बसे गॉवों पातीखेत, जोम्बूडा एवं सिलगोड़िया में निकले प्राकृतिक जल स्रोतों के सूखने की पूर्ण आशंका है। इस तथ्य को कुमाऊँ विश्व विद्यालय नैनीताल के भूगर्भ वैज्ञानिक डा० वी०एस० कोटलिया द्वारा अपनी सर्वे रिपोर्ट में भी स्पष्ट किया है। यह सर्वे रिपोर्ट पत्रावली में उपलब्ध है।

मैंने दोनों पक्षकारों को सुना और पत्रावली का अध्ययन किया। इस मामले में विपक्षी द्वारा बिना अनुमति के बोरिंग कार्य किया गया है जिसे हटाया जाना न्याय हित में आवश्यक है।

आदेश

अतः विपक्षी को आदेश दिया जाता है कि उसके द्वारा सुर्पाताल तालाब के किनारे जो बोरिंग कर ट्यूबवैल का निर्माण किया गया है उसे यह इस आदेश को पाने के तत्पश्चात् तुरंत ही हटाने तथा बन्द करे, अन्यथा उसे उक्त अधिनियम की धारा 10 (2) में उल्लिखित प्रक्रिया के अन्तर्गत तल पूर्वक हटाया जायगा। इस आदेश की एक प्रति भेयजल निगम देहरादून (नैनीताल) को सूचनाार्थ एवं आवश्यक कार्य हेतु प्रेषित की जायगी।



पूरा होने की तिथि 3-8-06
दिनांक 3-8-06
दिनांक 3-8-06
दिनांक 3-8-06

लिखित पत्रावली
दिनांक 3-8-06
दिनांक 2006

RUB COPI

वादीगण—श्री दीवान सिंह आदि।

बिना

प्रतिवादीगण—आर्मी वेलफेयर हाउसिंग आर्गनाइजेशन सोसाइटी आदि।

वाद के प्रस्तुत होने का दिनांक—03-05-2006

वाद का प्रकार—स्थाई निषेधाज्ञा

वाद का मूल्यांकन—रु० 50,000/--

अदा की गई कोर्ट फीस—रु० 500/-

वादीगण के अधिवक्ता का नाम—श्री एन०बी०सिंह एवं श्री ए०एस०कनवाल

प्रतिवादीगण के अधिवक्ता का नाम—

03-05-2006:—आज वाद वास्ते स्थाई निषेधाज्ञा का मय शपथपत्र के न्यायालय में पेश हुआ। मुन्सरिम/रीडर की आख्या का अवलोकन किया गया। दर्ज दीवानी वाद हो। प्रतिवादीगण को नोटिस जारी हो। पत्रावली वास्ते जवाबदावा दिनांक 10-5-06 को एवं वास्ते तनकी दिनांक 12-5-06 को पेश हो।

प्रभारी सिविल जज(अ०ख०)
नैनीताल।

7ग :-अस्थाई निषेधाज्ञा प्रार्थनापत्र मय शपथपत्र 8ग के पेश हुआ।

7ग प्रार्थना पत्र पर सुना गया।

वादीगण अपने प्रार्थना पत्र एवं शपथ पत्र में कहकर आये हैं कि वादीगण उपरोक्त में से वादी सं०-1 ग्राम खुर्पाताल कुर्पाखा तहसील व जिला नैनीताल के तोक पातीखेत एवं वादी सं०-2 उपरोक्त ग्राम के तैमोजोगूडा का स्थाई निवासी भूमिधर एवं काश्तकार है तथा वादी सं०-3 ग्राम सभा गहलना सिलमोड़िया का स्थायी निवासी भूमिधर व काश्तकार है। प्रतिवादी संस्था द्वारा बिना अनुमति के जोर जबरदस्ती के साथ वादीगण क प्राकृतिक जल स्रोत के मुख्य आधार खुर्पाताल तालाब व उसके आस-पास की भूमि में छेड़छाड़ करने की कार्यवाही आरम्भ की है, जिसका कि उसे कोई अधिकार नहीं है। अतः न्यायहित में बिना अनुमति के जो बोरिंग का कार्य प्रतिवादी संस्था द्वारा किया जा रहा है, उसे तुरन्त रोका जाना न्यायहित में आवश्यक है अन्यथा प्रतिवादी संस्था अपने मकसद में सफल हो जायेगा।

वादीगण ने अपने कथनों के समर्थन में सूची 10ग से 11ग/11गायत 11ग/14 सेल डीड, 11ग/15 नक्शा, 11ग/16 अति० यही जिल्द, 12ग/1 ता 13ग/3 जिलाधिकारी नैनीताल को प्रेषित पत्र की फोटोप्रति, 14ग/1 ता 14ग/2 व 16ग उद्धरण खतौनी एवं 15ग फसली वर्ष 1408-1413 प्रस्तुत की है।

चूँकि पत्रावली पर 12ग व 13ग जिलाधिकारी को प्रेषित पत्र की प्रति उपलब्ध है तथा उपरोक्त प्रार्थना पत्र के सम्बन्ध में एस.डी.एम. नैनीताल के द्वारा प्राकृतिक जल स्रोत के आस-पास बोरिंग से पानी निकालने हेतु तत्काल प्रभाव से रोकने का आदेश दिया है। ऐसी स्थिति में उपरोक्त परिस्थितियों को देखते हुए वादीगण का प्रथम दृष्टया मामला सिद्ध है। अतः प्रार्थना पत्र के निस्तारण तक उभय पक्षकार विवादित स्थल पर यथास्थिति बनाये रखें। प्रतिवादी को अविलम्ब नोटिस जारी हो।

पत्रावली वास्ते आपत्ति निस्तारण 7ग नियत तिथि दि०-8.5.2006 को पेश हो तथा आदेश-39, नियम-3 सी.पी.सी. की पेशी अविलम्ब हो।

5-5-06
सिविल जज(अ०ख०)

नैनीताल



True Copy
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DEPARTMENT OF GEOLOGY, KUMAUN UNIVERSITY
 THE DURHAM, NAINITAL, 263 002 (UTTARANCHAL), INDIA

Phone: 0091-5942-239314/235114 Res. 0091-5942-233227 Fax: 0091-5942-235493

BSK/UGC/J111
 15.07.2006

Dr. B. S. KOTLIA
 UGC Scientist "C" (Professor)

[Handwritten signature]
 18/7/06

Mr. H. C. Semwal
 The Additional District Magistrate
 Nainital,
 263 002

Subject: Your letter no. 214/30/G.C./2006-2007, dated 14th June, 2006

Dear sir,

Kindly refer to your above mentioned letter, we are enclosing the report on Khurpatal. The report is based on the extensive geological field work and laboratory analysis of the data obtained from around all the villages mentioned in your letter with respect to Khurpatal.

Our observations suggest that the boring at Khurpatal will have precarious consequences on the water budget of the three springs, i.e., Patikhet, Jogura and Silmoria. We assert that the joint planes along which the underground water flows have a direct bearing from Khurpatal to Silmoria.

We also suggest that additional water system may be provided to the population of three villages, mentioned above, as the existent springs are not sufficient to produce the vegetables which is the only source of revenue. We urge you to go through the report and take an action instantly.

Therefore, we suggest that the boring at Khurpatal MUST be banned with immediate effect.

Yours sincerely

[Handwritten signature]
 (Dr. B. S. KOTLIA)
 Research Scientist (Professor)
 Department of Geology
 Kumaun University
 NAINITAL (Uttaranchal)
 Pin-263002 India

The Kalkhet & Jogura Springs have Khurpatal as their origin and withdrawal from Khurpatal would adversely affect available discharges in these Springs
 Dr. B. S. Kotlia

BORING AT KHURPATAL- A DISGRACEFUL ATEEMPT

B. S. Kotlia

Assisted by G. C. Kothyari, R. K. Dumka, H. C. Upreti, N. Arya and B. S. Dhalla

INTRODUCTION: Khurpatal (N 29°22'19": E 79°25'40") (Fig. 1), situated at an elevation of 1,580m, is a boon to the inhabitants of Khurpatal and neighboring villages. It is unneeded to reveal that it is the stunning touristic spot of Uttaranchal. The lake is a closed basin without any outlet. At the moment when the monsoon is in its peak, the water level is 5m lower than the last shoreline (see Fig. 1), explaining that the water budget is decreasing.

Three villages, namely, Patikheth, Jogura and Silmoria are located at lower levels of the lake and are entirely reliant upon the three springs, the only source of their revenue. The above villages have no other supply of water, strangely enough, not even a water tap provided by the Irrigation or any other Department. A lone source of income of villagers is vegetables and milk which they use as the cash crop. With a total area of about 44 Lakhs sq. ft. agricultural land, about 1,200 inhabitants live in three villages. A total of about 6,000 buffaloes and cows also form a part of the economy of villages.

Until some years ago, The inhabitants of Khurpatal used to acquire water from Sariatal through a canal, constructed in 1965. Today, it does not exist. However, an empty water storage tank (Fig. 2) near the lake temple reminds of an antique canal.

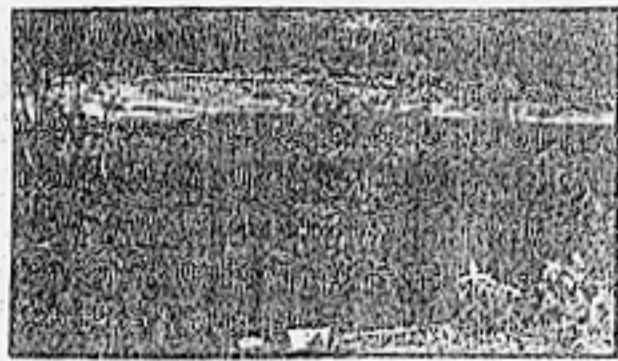


Fig. 1. Khurpatal (note the last shoreline)

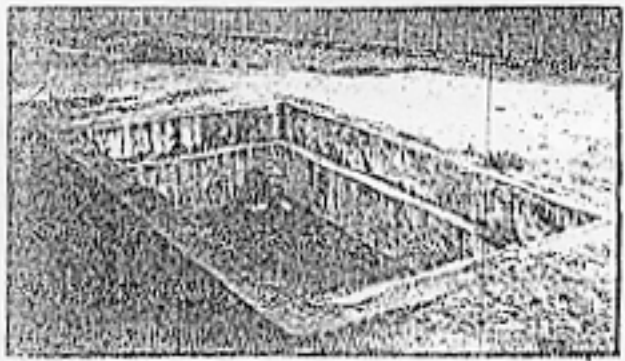


Fig. 2. Remnant of old water storage tank

The Army Welfare Society has fixed two boreholes (each with a diameter of 22.8cm) near the shore of Khurpatal (see Figs. 3,4), about 5m above the lake level. Sources, though not confident, say that the boring is done until about 200ft, although the lifting of water has not yet been started. The aim of this

report is to figure out the consequence of water lifting on the water budget of springs flowing at the lower levels. To achieve this, we conducted geological

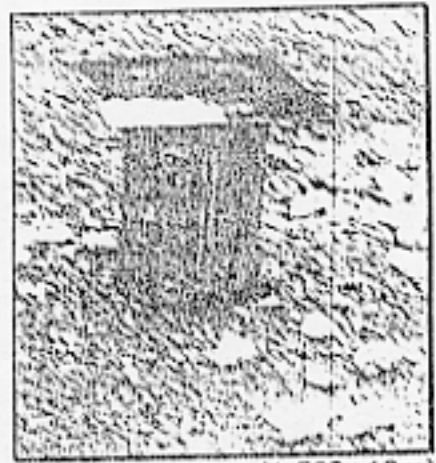


Fig. 3. Borehole-1 (1,580±12m)

Fig. 4. Borehole-2 (1,582±12m)

survey, studied joint planes, used GPS method and also the water chemistry. We finally came out with a model confirming that the lifting of Khurpatal water will certainly effect the springs located at Patikhet, Jogura and Silmoria villages.

Patikhet spring (1,534±12m) (N 29°21'57": E79°25'46", Fig. 5) is located at 46m lower than the boring point-1 and 48m lower than the boring point-2. At

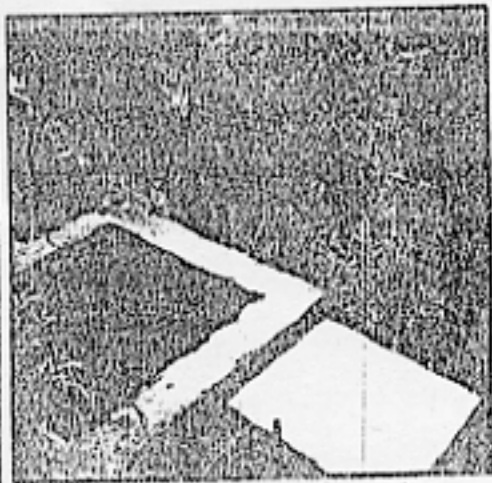


Fig. 5. Patikhet spring

Fig. 6. Spring at origin

Fig. 7. Tanks waiting for water

the origin itself, it is divided into two channels, one contributes water to Patikhet village and other to upper part of Silmoria (Fig. 6). The water is tapped through small channel to the village and finally re-distributed to individual house. One can imagine the amount of water each family of Patikhet

GEOLOGICAL OBSERVATIONS BETWEEN KHURPATAL TO SILMORIA:

The Digital Elevation Model (DEM) of the area (Fig. 13) reflects southward flowing sub parallel drainage system and accuracy of each elevation point.

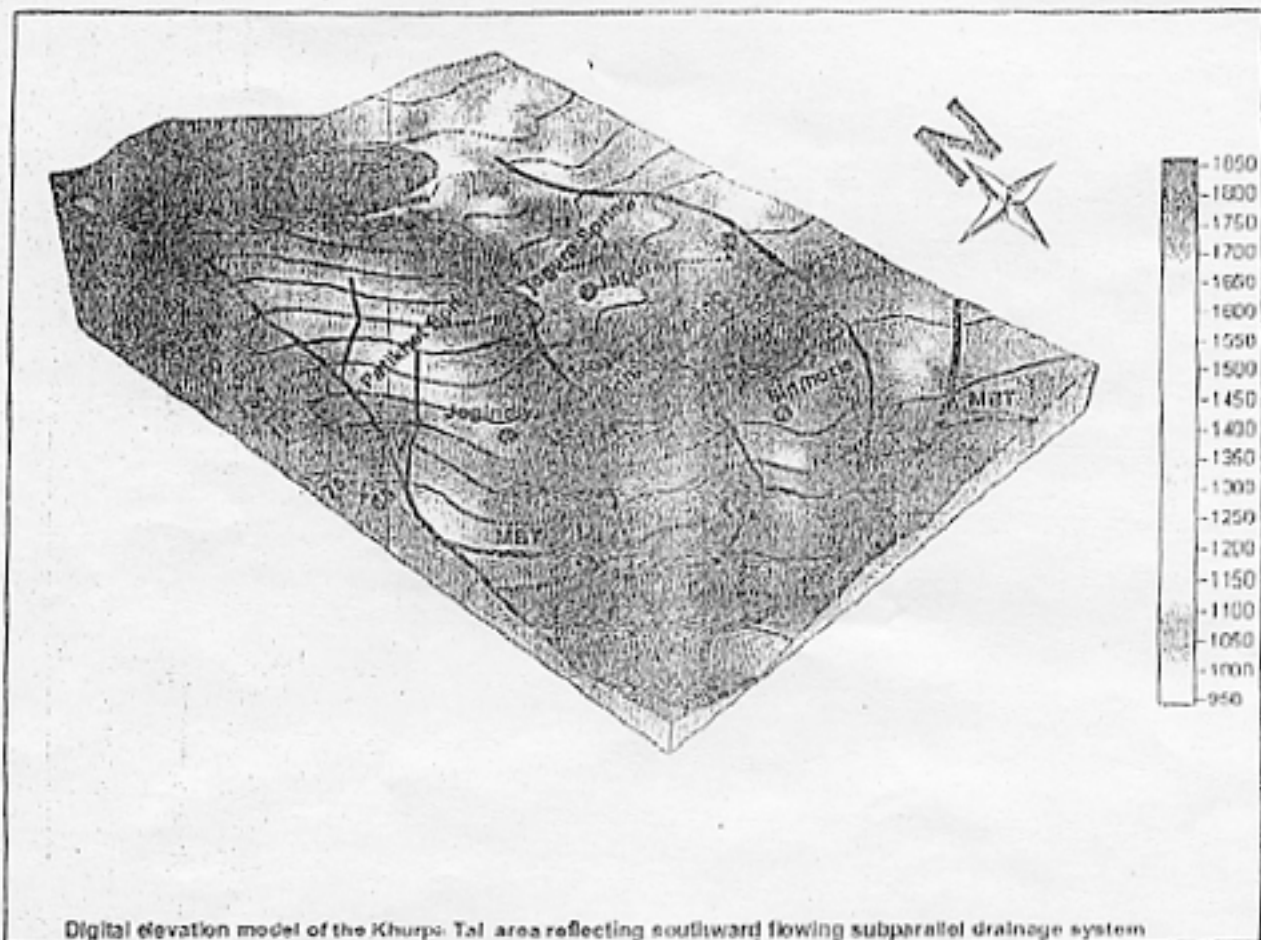


Fig. 13. Digital elevation model showing a direct relation of Khurpatal with all three springs (blue triangle are the springs described in the report)

The southward flowing drainage system around this area is mostly controlled by three major sets of joint pattern. The drainage frequency is very low around this area and is characterized by sub-parallel drainage having steep gradient between 40° to 60° (GPS observed). In addition, high relief and acute slope of the rocks are characterized by the development of joint set trending NNW-SSE and NE-SW whereas bedding planes are trending NW-SE which is inclined by 45° towards NE direction.

Fig. 13 very clearly shows that there is a direct structural relation of Khurpatal with Patikhet, Jogura and Silmoria springs. Thus, it is concluded that the

watershed/ground water table of this particular area is controlled by the NNW-SSE and NW-SE trending joint pattern and acute bedding slope. Fig. 14 marks

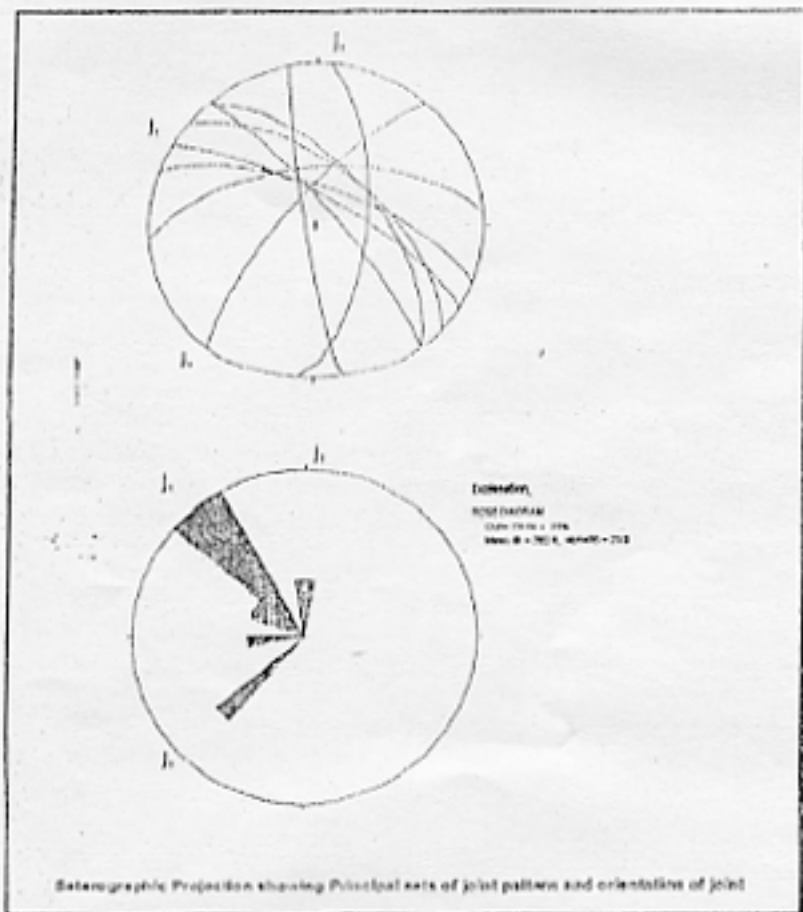


Fig. 14. orientation of joint planes (note the most prominent plane is NNW-SSE, exactly in a direction from Khurpatal to Silmoria (see Fig. 13)

the orientation of the major joint planes in the area, confirming the relationship of Khurpatal with springs, located in the lower elevations.

WATER CHEMISTRY:

We carried out the water chemistry on both Jogura and Silmoria springs to understand the similarity of characters in the springs. The following parameters were measured in the laboratory:

watershed/ground water table of this particular area is controlled by the NNW-SSE and NW-SE trending joint pattern and acute bedding slope. Fig. 14 marks

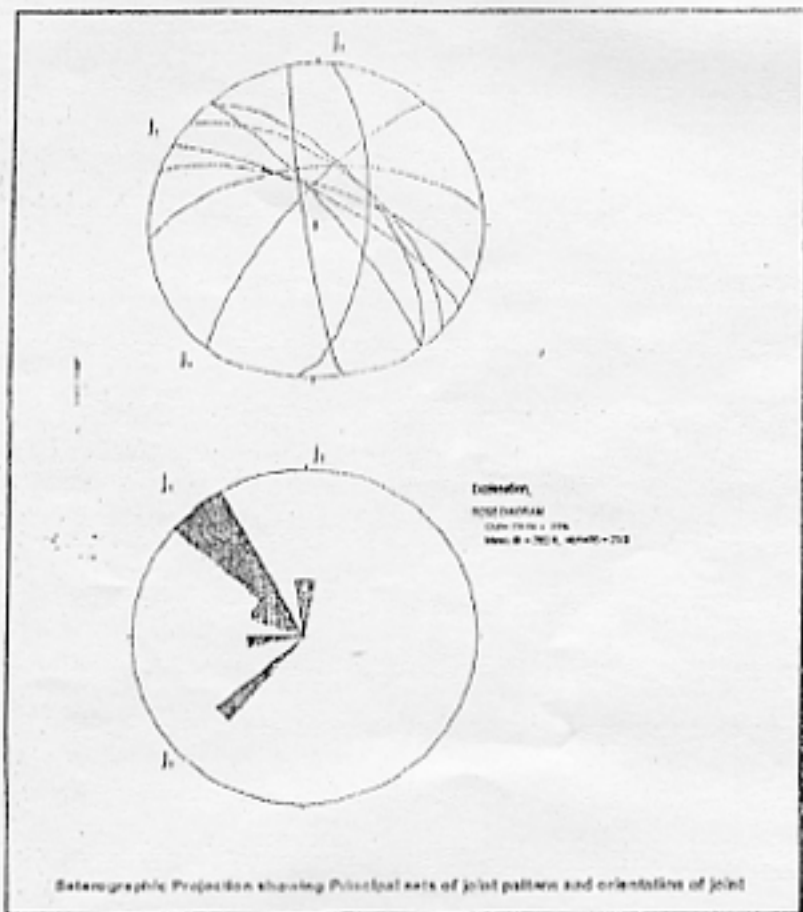


Fig. 14. orientation of joint planes (note the most prominent plane is NNW-SSE, exactly in a direction from Khurpatal to Silmoria (see Fig. 13)

the orientation of the major joint planes in the area, confirming the relationship of Khurpatal with springs, located in the lower elevations.

WATER CHEMISTRY:

We carried out the water chemistry on both Jogura and Silmoria springs to understand the similarity of characters in the springs. The following parameters were measured in the laboratory:

Spring	Hardness	Alkanity	pH	TDS	Nitrate	Phosphate	Fe
Jogura	58mg/l	51mg/l	7.6	70mg/l	0.08mg/l	.007mg/l	0.03
Silmoria	61mg/l	54mg/l	7.7	72mg/l	0.09mg/l	.008mg/l	0.03

This clearly proves that the water of Jogura and Silmoria are from the same source.

Based on the detailed and careful geological and other observations, it is suggested that the lifting of water from Khurpatal will directly effect the springs, located at Patikhet, Jogura and Silmoria. The villages are situated in the zone of the Main Boundary thrust resulting in heavy landslides and failure of agricultural land. There would surely be a further loss if the springs are deteriorated.

Nearly 1,200 inhabitants and about 6,000 animals--economy solely dependent upon vegetables and milk for which water is a existent requisite cannot survive long without springs. Thus, we suggest that all three springs must be saved so that a variety of vegetables in a single field (Fig.15) remains as it is. We must let the villagers have whatever a little they have through the springs.

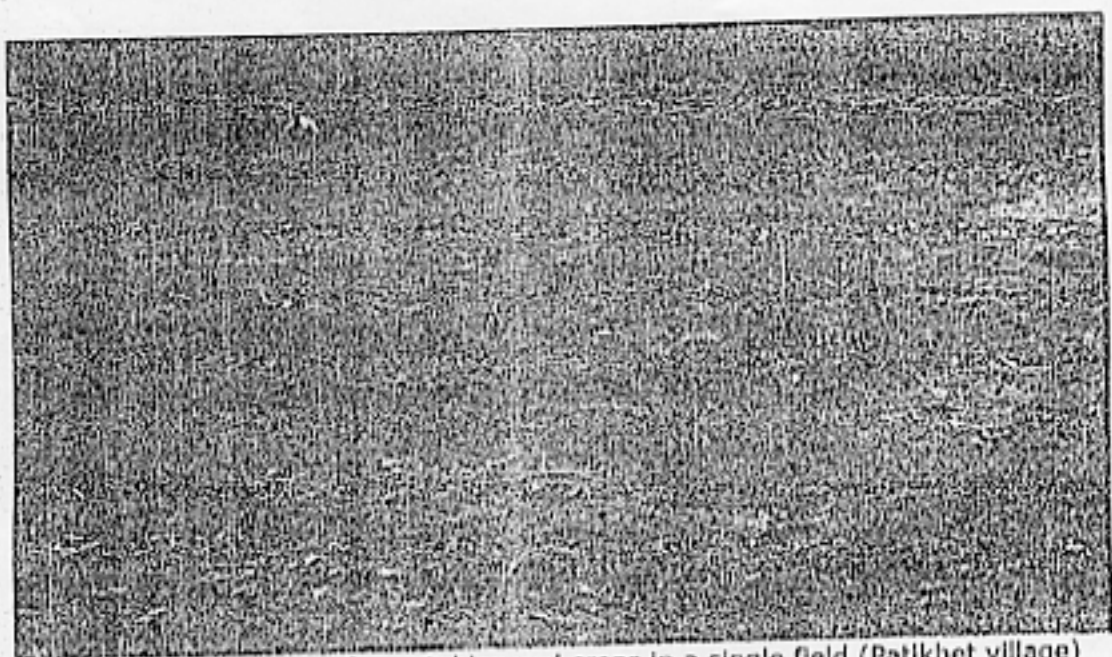


Fig. 15. A variety of vegetables and crops in a single field (Patikhet village)

Therefore, we unquestionably condemn the water lifting and any kind of boring at Khurpatal.

6
Bali
 Dr. H. S. KOVIA
 Research Scientist (Professor)
 Department of Geology
 Pimpri University
 S. N. P. AL. (Warananagar)
 P. N. 21, 2002 India

जय जिला एवं सेशन न्यायाधीश, मैत्रीताल

जी०

दीवानी अपील सं० 19 सन् 2006

अपीलार्थी.....

वीरानाथि माथी

श्री ०० एन ५५५५/०६

बनाम

विपक्षी.....

श्री वेंकटेश साहसि कोठारी माथी

18-8-06 आज 19 अपील न्यायालय में पेश हुयी ।
मुसरिम की आख्या का अवलोकन किया गया ।
आदेश हुआ कि

heard, admitted, registered &
issue notice to O.P. fixing
6/9/2006 for objection and disposal
pursuant to the record steps forth
with.

5/ग. heard & revised record
available with the Appeal.
The operation of the order
passed by lower court on
14.8.2006 is hereby stayed
interim.



1) श्री वेंकटेश साहसि कोठारी (पुत्र) श्री न्यायालय
को प्रत्येक रूप में आवेदन कर अपीलार्थी से अपील।
लगाविका श्री. वाद 22/06 दीवानी न्यायालय में पेश हुयी।
माथी वेंकटेश कोठारी माथी 14-8-06 का.

Muzarim
District Judge's Court
18/8/06

Typed copy of Annexure-6.

न्यायालय जिला एवं सैरान न्यायाधीश नैनीताल

प्रकीर्ण दीवानी अपील सं० 19 सन 2006

अपीलार्थी दीवान सिंह आदि

बनाम

विपक्षी आर्मी वेलफेयर हाउसिंग सोसायटी

18-8-06..... आज प्रकीर्ण दी० अपील न्यायालय में पेश हुयी ।
मुंसरिम की आख्या का अवलोकन किया गया ।
आदेश हुआ कि ..

Heard. Admitted . Register.
Issue notice to OP fixing
6/9/2006 for objections and disposal.
Summon the Record. Steps forthwith.

5/ग Heard & Perused record.
..... with the Appeal.
The operation of the order
passed by the lower court on
14.8.06 is hereby stayed meanwhile.

प्रतिलिपि आदेश सिविल जज प्र०ख० नैनीताल को सूचनाार्थ एवं आवश्यक
कार्यवाही हेतु प्रेषित ।
सम्बन्धित दी०बाद 22/08 दीवान सिंह आदि बनाम आर्मी वेलफेयर
हाउसिंग सोसायटी आदि का आदेश 14-8-06 का

Munsarim
District Judge's Court
Nainital.

Prof. Ajay S. Rawat

Head, Department of History,
Kurukshetra University, Nainital,
Order of the Golden Ark, Netherlands.
Chairman, International Union of Forestry
Research Organizations, Vienna, 6.07.01
Uttaranchal Ratna, Vijay Shree
Glory of India (Gold Medal)
Godfrey Phillips Social Bravery Award (Gold Medal)



ANNEXURE - 7

(35)

Sai Sajan,
Joy Villa Compound,
Tallital, Nainital
Pin Code-263002
Uttaranchal

Phone No. - (05942) 236266

e-mail: ajaysrawat@rediffmail.com

Ref. _____

Date 19.11.2009

To, The District Magistrate,
Naini Tal.

Subject: Protest against permission granted to Army Welfare
Association for boring and pumping of water in
Khurpa Tal against court and ecological considerations.

Sir, This is to bring to your august notice that
the villagers of: Patikhet, Jagura and Silmorla got
from the District Court where they did not
Temporary Injunction from the Munsif Court
against boring and pumping of water by the Army
Welfare Association in Khurpa Tal (Annexure 1).

However against the stay, the Army Welfare
Association is still carrying the boring and pumping as
reported to you several times by the villagers.

2) Moreover the boring and pumping of water
will reduce the water level of the lake and will have
a negative impact on agriculture in the villages Patikhet,
Jagura and Silmorla. Regarding the water issue the
administration had asked Dr. Kotaliya to make a
thorough study and he too has made a deep probe and

Ajay S. Rawat

Department of History,
University, Nainital,
of the Golden Ark, Netherlands.
erman, International Union of Forestry
Search Organizations, Vienna. 6 07.01
Uttaranchal Ratna, Vijay Shree
Glory of India (Gold Medal)
Godfrey Phillips Social Bravery Award (Gold Medal)



(36)

copy

Sai Sadan,
Joy Villa Compound,
Tallital, Nainital
Pin Code-263002
Uttaranchal
Phone No. - (05942) 236266
e-mail : ajaysrawat@rediffmail.com

Ref. _____

Date _____

reported about the water crisis which will be caused by boring and pumping of water. (Annexure 2)

3) The boring and pumping is being done on the fringe of the lake ~~area~~, which gets submerged during the rains.

It is like a flood plain and a part of the lake. Moreover the lake of Khurpa Tal comes under Reserved Forest and boring and pumping of water should not be permitted there. It will also have a negative impact on the biodiversity of the lake and the neighbouring area.

4) Khurpa Tal is a Wetland and according to the International Ramsar Convention of February 2, 1971 of which India is a signatory, wetlands have to be preserved. UNESCO serves as the Depository for the convention and granting permission of boring and pumping is against an International Treaty.

(5) In view of the ecological considerations Pumping and boring started by the CPWD in their guest house at Khurpa Tal was stopped. How can there be two yardsticks for the same (Annexure 3). I hope the boring and pumping will be stopped in Khurpa Tal in consonance with the above considerations. Thanking you,
I am requesting on behalf of the villagers. Truly yours,

SAVE TREES - CONSERVE WATER

Ajay Singh Rawat

Typed copy of Annexure-7:

To,
The District Magistrate,
Nainital.

Date 19th January 2009

Subject: Protest against permission granted to Army Welfare Association for boring and pumping of water in Khurpatal against court and ecological considerations.

Sir,

This is to bring to your august notice that the villagers of Patikhet, Jogura and Silmoria got a stay from the District Court where they did not get a Temporary Injunction from the Munsif Court against boring and pumping of water by the Army Welfare Association in Khurpatal (Annexure-1).

However against the stay, the Army Welfare Association is still carrying the boring and pumping as reported to you several times by the villagers.

- 2) Moreover the boring and pumping of water will reduce the water level of the lake and will have a negative impact on agriculture in the villages Patikhet, Jagura and Silmoria. Regarding the water issue the administration had asked Dr. Kotaliya to make a thorough study and he too has made a deep probe and reported about the water crisis which will be caused by boring and pumping of water.(Annexure 2)
- 3) The boring and pumping is being done on the fringe of the lake, which gets submerged during the rains. It is like a flood plain and a part of the lake. Moreover the lake of Khurpatal comes under Reserved Forest and boring and pumping of water should not be permitted there. It will also have a negative impact on the biodiversity of the lake and the neighbouring area.
- 4) Khurpatal is a Wetland and according to the International Ramsar Convention of February 2,191 of which India is a signatory, wetlands have to be preserved. UNESCO serves as the Depository for the Convention and granting permission of boring and pumping is against an International Treaty.
- 5) In view of the ecological considerations pumping and Boring started by the CPWD in their guest house at Khurpatal was stopped. How can there be two yardsticks for the same. (Annexure 3).

I hope the boring and pumping will be stopped in Khurpatal in consonance with the above considerations.

I am requesting on behalf of the villagers.

Truly yours,
Sd/-(Ajay Singh Rawat)

IN THE HON'BLE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Interim Relief Application no..... of 2009.

IN

P.I.L. WRIT PETITION No. OF 2009 (M/B)

(Under Article 226 of the Constitution of India)

Distt.- NainiTal.

Prof. Ajay Singh RawatPetitioner.

Versus

Union of India and others.Respondents.

To,

The Hon'ble Chief Justice and his other companion judges of the
aforesaid Court.

The Humble Application on behalf of the Petitioner-Applicant,
above named, most respectfully showeth as under.

1. That, all the facts and circumstances have been narrated in the
accompanying Writ Petition, which may form part of this application.
2. That, for the facts and circumstances narrated in the accompanying Writ
Petition, it is necessary in the interest of justice that the illegal boring
construction and water pumping activities being carried on near the
Khurpatal Lake with the connivance of the respondent authorities be
stayed, otherwise the Applicant-Petitioner shall suffer irreparable loss.

PRAYER

It, is therefore, most respectfully prayed that this Hon'ble
Court may very graciously be pleased to issue an ad-interim
mandamus staying the illegal boring construction and water
pumping activities being carried on near the Khurpatal Lake

(39)

with the connivance of the respondent authorities, otherwise the
Petitioner/Applicant shall suffer irreparable loss.

Date : 21/1/2009

(Rajeev Singh Bisht)
Advocate
Counsel for the Applicant/Petitioner.