

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6639 of 2004

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Ashok Kumar son of Late Chandra Maulishwar Prasad, retired District & Sessions Judge, E-122 & 124, Peoples' Cooperative Colony, Kankarbagh, Town/District Patna, PIN - 800020

.... Petitioner/s

Versus

1. The State of Bihar through the Forest Secretary
2. The Secretary, Department of Forest, Government of Bihar, Secretariat, Patna
3. Chief Conservator of Forest, Government of Bihar, Patna
4. The Conservator of Forest, Munger Circle, Munger, Bihar
5. Divisional Forest Officer, Munger Division, Munger, Bihar
6. Divisional Forest Officer, Jamui Division, Jamui, Bihar
7. The District Collector/Magistrate, Munger District, Munger, Bihar
8. The District Collector/Magistrate, Jamui District, Jamui, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sidhartha Prasad, Advocate
Ms. Surya Nilamber, Advocate
For the Respondent/s : Mr. Jai Shankar Barnwal, GA 5
Mr.Ravi Bhardwaj, AC to GA 5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 14-07-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the notification dated 19th April, 1955, whereby in exercise of powers under Section 29 (3) of the Indian Forest Act, 1927 (in short, "the Act") the lands included in that notification have been declared and notified as "protected forest". Though in the original writ petition, copy of the aforesaid notification was not brought on the record, but the said notification has been brought on record by the respondents by filing their 2nd supplementary counter affidavit and has been marked as Annexure-D to the aforesaid 2nd supplementary counter affidavit filed on behalf of the respondent nos. 1 to 6. The

petitioner has further prayed for other incidental and consequential reliefs including that for payment of compensation for the lands included in that notification.

3. The present writ petition was filed before this Court on 21.06.2004 and while the writ petition was being admitted for hearing by a Bench of this Court (Coram: Dr.Ravi Ranjan,J.) by order dated 20.10.2011, it was observed that the issue raised by the State regarding delay and laches in preferring this application be also considered at the time of final hearing.

4. Indisputably, the impugned notification as contained in Annexure-D was issued on 19th April, 1955 and the present writ petition was filed on 21.06.2004. Therefore, this writ petition suffers from delay and laches of about long 50 years.

5. Learned counsel appearing on behalf of the petitioner submits that the lands detailed and described in paragraph 5 (ii) of the writ petition were belonging to one Sumitra Devi, who was mother of the petitioner. According to learned counsel, the impugned notification was issued without following any procedure prescribed under the law. It is contended that even compensation was not paid to the petitioner. Therefore, she pleaded that the direction may be issued to the respondents for payment of compensation. Learned counsel has also placed reliance upon Sections 11 and 84 of the Act and has pleaded that the requirement of Sections 11 and 84 of the Act was not complied with before issuance of the impugned notification dated 19th April, 1955.

6. Per contra, learned GA 5, appearing on behalf of the respondents, submits that the present writ petition is liable to be dismissed on the ground of delay and laches since the petitioner has approached this Court after about 50 years from the date of issuance



of the impugned notification. According to him, several other developments have taken place during the interregnum period including the issuance of notification dated 27.05.1976, whereby the lands included in that notification including the lands in question as claimed by the petitioner were declared as a part of Bhimbandh wildlife Sanctuary, but the validity of the aforesaid notification is not the subject matter of challenge in the present proceeding. By referring to an order passed in F.S. Case No. 464 of 1961-62 (Annexure-B to the counter affidavit filed on behalf of the respondent no.5), it is contended that the objections filed by the villagers were considered and were finally rejected way back in the year 1965 by the Forest Settlement Officer, Munger. Therefore, according to him, at this belated stage, all these issues which have attained their finality cannot be re-opened or permitted to be re-agitated in the present proceeding.

7. After having heard the parties and on consideration of the materials available on the records, this Court finds that by impugned notification dated 19th April, 1955, the lands in question have not been acquired by the State Government, rather those lands have simply been declared as a part of “protected forest”. As per case of the petitioner himself, the lands detailed in paragraph 5 (ii) of the writ petition was originally belonging to the one Sumitra Devi, mother of the petitioner. In paragraph 5 (iv) of the writ petition it has been stated that the aforesaid Sumitra Devi passed away in December, 2001. In the whole writ petition it has nowhere been stated that the said Sumitra Devi, mother of the petitioner, who was admittedly the owner of the lands, ever challenged the validity and correctness of the impugned notification. Admittedly, she was surviving for more than 45 years after issuance of the impugned notification, but for the reasons best known to her, she did not challenge the validity and

correctness of the impugned notification declaring the land in question as “protected forest” under Section 29 of the Act. Only after death of aforesaid Sumitra Devi in December, 2001, the present writ petition was filed on 21.06.2004 by the writ petitioner making all sorts of allegations/claims with respect to the lands in question, which cannot be permitted to be raised and agitated at this belated stage after such a long time.

8. For the reasons recorded above, this Court is of the considered opinion that the petitioner is not entitled to be granted any relief as claimed by him in the present proceeding. The writ petition suffers from delay and laches of about long 50 years. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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