

THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

W.A.No.747 OF 2005

JUDGMENT: *(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)*

This intra court appeal under Clause 15 of the Letters Patent is directed against the order dated 20.12.2004 passed in W.P.No.1584 of 2003. The appellant in the instant W.P. challenged the order dated 05.04.2002 passed by the Conservator of Forests rejecting the appellant's application dated 20.11.1997, filed seeking permission to fell and transport the trees in Sy.No.10/2 measuring Acs.14-31 gts and Sy.No.112 measuring Acs.0-20 gts i.e., total Acs.15-11 gts of land situated at Udampur Village, Kadem Mandal, Karimnagar(for short "the said land"), on the ground that the land is included in reserved forest without basis.

The appellant claims that he had purchased the said land some time in 1994. According to him, the said land is adjacent to the reserved forest, Kawal Block, Adilabad district. In the said land, there is forest growth of about 50 to 60 years old. Since the appellant desired to sell the said forest growth, he had executed a general power of attorney and entered into a partnership with one D.Prabhakar Rao, and made application on 20.11.1997 to the Divisional Forest Officer, Jannaram Division, Adilabad District seeking permission to fell and transport the trees in the said land. Since his application was kept pending for long time, he, through his power of attorney, had approached this Court by way of W.P.No.10785 of 2001.

The said writ petition was, however, dismissed vide order dated 01.10.2002 on the ground that the petitioner did not have locus since the original owner was a different person. In the meanwhile, it appears that the Conservator of Forests passed the order dated 05.09.2002 impugned in the writ petition, rejecting the application dated 20.11.1997. In this backdrop, the learned Single Judge, after having considered the documents placed on record and also the contentions urged on behalf of the parties,

dismissed the writ petition with the following observations:

“Considering the submissions made and on perusal of the material, the main question which falls for consideration is as to whether the claim for permission to cut and transport forest growth in the aforesaid lands in survey nos. 10/2 and 112 is sustainable?

There is no dispute to the fact that there is a reserved forest area adjacent to the land claimed by the petitioner. The petitioner asserts that it is a patta land, but according to the respondents, the said land was already included in the forest area as per the proceedings as long back as in 1350 fasli and the same was also published in Gazette no.17 dated 05.05.1350 fasli. It is the further contention on behalf of the petitioner that in the joint inspection, it was found that the land is vested in his area, whereas the said fact is denied in the counter affidavit and to show that such inspection has in fact yielded the Government to say that the land is within the reserved forest area.

Having regard to such rival assertions - one as a patta and another as the one included in the forest area, the only course left open for the petitioner is to make a proper challenge in the appropriate court of law to establish any of his proprietary rights. However, the fact remains that as long back as 1350 fasli, as pointed from out of the records of notification, the land is shown as part of reserved forest area, and except referring to ipse dixit records, there is no other proper conclusive authority pointed out on behalf of the petitioner to get over the notifications issued in 1350 fasli, which show conclusively that the land has been included in the forest area. In view of such disputed question, it is not open for this court to go into the same or give any finding thereon. The fact remains that the records disclose that the land is a part of the forest area and even the joint inspection conducted by respondents with the revenue and survey authorities, show that it is a part of reserve forest area. In view of the same, it can not be said that the petitioner has got any right to make any claim in regard to the forest growth. Therefore, the very application is not maintainable and the impugned orders of rejection, are perfectly valid. In the circumstances, it is to be held that having regard to the conclusive material as produced on behalf of the respondents herein to show that the land is a reserved forest area, it can not be said that the petitioner can seek any claim for the forest growth therein. Hence, the petitioner is not entitled to any relief as sought for in this Writ Petition. I do not find any merits in this Writ Petition.”

In the backdrop of the findings recorded by learned Judge, we heard learned

counsel for the appellant to find out whether there is sufficient material on record to show that the said land is reserved forest under the provisions of the Andhra Pradesh Forest Act, 1967 (for short “the Act”) or a sanctuary under the provisions of the Wild Life (Protection) Act, 1972 (for short “the Wild Life Act”).

Learned counsel for the appellant vehemently submitted that though a notification under Section 4 of the Forest Act was issued by the Government, final notification contemplated under Section 15 thereof was not issued and hence the said land under any circumstances cannot be treated as reserved forest. Insofar as the provisions contained in the Wild Life Act are concerned, he submitted that though the Government claims that though there was a declaration of area as sanctuary covering the said land under Section 26A thereof, the notification under Section 18 of the Wild Life Act has not been issued, therefore the said land cannot be treated as a part of the sanctuary.

On the other hand, learned counsel appearing for the respondents invited our attention to the counter affidavit filed by the Conservator of Forests to submit that in view of the notification under Section 4 of the Forest Act and declaration under Section

26A of the Wild Life Act, under any circumstances, the appellant cannot claim any right whatsoever in the said land and that the permission to fell trees has been rightly rejected by the Conservator of Forests.

It is pertinent to note that the averments in the additional counter affidavit dated 08.09.2004, filed by the Conservator of Forest, at paragraphs 8, 9, 10, 11 and 16, which read thus:

“It is humbly submitted that during the reservation process by the Forest Settlement Officer as per the above notification none of the land holders have submitted any claim on the ownership of the land in Sy.No.10/2 of Udampur Village. Hence in the notification vide Gazette No.17 dated 9-5-1350 Fasli this area was included in the kawal Reserve Forest block which was notified U/s 4 (Section 7 of the Hyderabad Forest Act 1326 Fasli), which was approved by

Government, vide then G.O.Ms.No.261 dated 21.3.1350 Fasli. Same was published in Gazette No.17 dated 9-5-1350 Fasli. In the above notification the Sy.No.10/2 of Udampur Village, Kaddam Mandal was included in Reserve Forest block of Kawal, as per the prohibitory order book register and area statement. It is further submitted that Section 2 of the Forest Conservation Act, 1980 is applicable and as per this Act no forest land can be diverted for any non-forestry purpose.

It is further submitted that the said reserve forest area is declared as Kawal Wildlife Sanctuary vide G.O.Ms.No.2753 dated 18.11.1965. The reserve forest area of 89223 Ha which also includes the area of the said Sy.No.10/2 of Udampur Village, Kaddam Mandal is notified as **Kawal Wildlife Sanctuary** under Section 26-A of Wildlife (Protection) Act, 1972 vide G.O.Ms.No.92 EFS & T(For.III) Department dated 14-7-1999 and is also prohibited in the Adilabad District Gazette vide Gazette No.9-A dated 6.9.1999.

It is submitted that during the process of notification as Kawal Wildlife Sanctuary proclamation was also issued U/s 21 of Wildlife (Protection) Act, 1972 in the Adilabad District Gazette vide Gazette No.12-C dated 31.12.1997 for settlement of rights if any in the area proposed to be declared as Kawal Wildlife Sanctuary. Gramsabhas were conducted in the habitations of the areas proposed to be declared as Kawal Wildlife Sanctuary for inviting the claims if any for settlement U/s 21 of Wildlife (Protection) Act, 1972. As per the schedule of the gramsabha was conducted in Udampur Village on 27.1.1998. It is submitted that after issue of proclamation U/s 21 of Wildlife (Protection) Act, 1972, publication in Adilabad District Gazette vide Gazette No.12-C dated 31.12.1997 for settlement of rights and during conducting of gramsabha none of the persons claimed any right U/s 19 of Wildlife (Protection) Act, 1972 before the concerned authority within 2 months time period given from the date of issue of proclamation.

Thus, it is submitted that one of the persons submitted any claim regard the rights in Sy.No.10/2 of Udampur Village, Kaddam Mandal during the process of declaration as Kawal Wildlife Sanctuary. Hence vide Conservator of Forests, Adilabad Circle, Adilabad Procs.No.6-042/1997-S1(i) dt.15.6.1998 orders have been issued declaring the Kawal Wildlife Sanctuary and notified vide G.O.Ms.No.92 EFS & T (For.III) Department dt.14.7.1999. The declaration of the Kawal Wildlife Sanctuary was also published in Adilabad District Gazette 9-A dated 6.9.1999.

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It is submitted that Kawal Wildlife Sanctuary is the largest sanctuary in the northern Telangana Region. It is well known for its abundance of flora and fauna. The vegetation exhibits a classical example of southern tropical dry deciduous forests with predominately teak and its associates. Kawal Wildlife Sanctuary is a perfect habitat for the National Animal i.e., Tiger with dense bamboo undergrowth and adequate prey population. As per 2004 census (23) Tigers are reported. Kawal Wildlife Sanctuary also harbors the endangered fauna like Indian Gaur, Four horned antelope and grey jungle fowl. The sanctuary has research and educational values as very rich plant diversity exists in this Sanctuary. The sanctuary has varied ecosystems. The Kawal Wildlife Sanctuary also caters for the sustenance of primitive tribes such as gonds, kolams and Naikapods besides the daily need on the fringe villages. It provides fuel, fodder and variety of non wood forest produce (NWFP)."

From perusal of the statements made on affidavit by the Conservator of Forests, it is clear that the notification under Section 4 of the Act was issued on 09.05.1940. Insofar as the appellant is concerned, he claims to have purchased the land in 1994. Keeping that in view, we perused Sections 4 and 7 of the Act.

Section 4 of the Act reads thus:

Notification by Government :-

(1) Whenever it is proposed to constitute any land as a reserved Forest, the Government shall publish a notification in the Andhra Pradesh Gazette and the District Gazette concerned, if any; i. specifying, as nearly as possible, the situation and limits of such land; ii. declaring that it is proposed to constitute such land as reserved forest; iii. appointing a Forest Settlement Officer to consider the objections, if any, against the declaration under Clause (b) and to enquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits, or to any forest produce of such land, and to deal with the same as provided in this Chapter."

Section 7 of the Act reads thus:

Bar of accrual of fresh rights and prohibition of clearings:-

(1) During the interval between the publication of a notification in the Andhra Pradesh Gazette under Section 4 and the date fixed by the notification under Section 15- i. no right shall be acquired by any person in or over the land included in the notification under Sec.4 except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before the publication of the notification under Section 4; ii. no new house shall be built or plantation formed, no fresh clearing for cultivation or for any other purpose shall be made, on such land and no trees shall be cut from such land for the purpose of trade or manufacture:

Provided that nothing shall prohibit the doing of any act specified in this clause with the permission in writing of the Forest Settlement Officer; and iii. no person shall set fire or kindle or leave burning any fire in such manner as to endanger or damage such land or forest produce.

(2) No patta in such land shall be granted by or on behalf of the Government.”

Section 4 provides that whenever it is proposed to constitute any land as a reserved forest, the Government shall publish a notification in the Andhra Pradesh Gazette and in the District Gazette concerned, if any, specifying, as nearly as possible, the situation and limits of such land; declaring that it is proposed to constitute such land as a reserved forest.

Section 7 provides bar of accrual of forest and prohibition of clearings. Under this provision, it is made clear that during the interval between the publication of a notification in the A.P. Gazette under Section 4 and the date fixed by the notification under Section 15, no right shall be acquired by any person in or over the land included in the notification under Section 4 except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before the publication of notification under Section 4. We are not referring to the other part of these two provisions.

Having regard to the provisions contained in Sections 4 and 7 of the Act

mentioned above, it is clear that once the notification under Section 4 is issued, it is not open to acquire right in the property covered by notification under Section 4. The appellant, having acquired right in 1994, cannot be stated to have acquired ownership of the said land and on the basis thereof, cannot make an application seeking permission to fell trees in the said land. Even if it is assumed that notification contemplated under Section 15 has not been issued, that would not come in the way of the respondents claiming the said land as forest land and to reject the petitioner's application to fell trees in the said land.

Section 26A of the Wild Life Act provides for declaration of area as sanctuary. Declaration under Section 26A of the Wild Life Act is not in dispute. What is contended by the learned counsel for the appellant was that a notification under Section 18 had not been issued. We are not ready to accept such submission made across the Bar, merely on the basis of the statements on the affidavit. The stand of the Government is clear that even the notification under Section 18 was issued before the declaration under Section 26A of the Wild Life Act. Having regard to the scheme of Chapter 4 of the Wild Life Act, unless a declaration under Section 18 is issued, declaration of areas as sanctuary under Section 26A cannot be issued. Since issuance of declaration under Section 26A is not disputed, we have to assume that the notification under Section 18 was also issued by the Government under the provisions of the Wild Life Act. Once declaration of area as sanctuary under Section 26 A is issued, no person such as the appellant has any right over the land which is covered by the declaration/notification under Sections 26A and 18 respectively.

In the circumstances, we do not find any merit in the appeal. Hence, the appeal is dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 10.09.2015

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