

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WP.No.258 of 2013

ORDER:

In this Writ Petition the petitioners seek a declaration that the inaction of respondent nos.1 to 3 in according permission for felling the forest growth in Sy.No.114 of Tharlapadu Village of Khanapur Mandal, and to set aside the proceedings Rc.No.7971/1991-N3 dt.17.12.2012 (for short, 'the impugned order') of 1st respondent. Consequently, they also seek a direction to respondent nos.1 to 3 to accord permission to fell the forest growth in the above land.

2. The petitioners herein are sons of Sunkari Sollu Muttanna (for short 'Muttanna'). According to them their father owned an extent of Acs.11.03 guntas in Survey No.114, situated at Tharlapadu Village, Khanapur Mandal, Adilabad District.

3. The petitioners herein had approached the 1st respondent for grant of permission to cut the tree growth in their land of Acs.11.03 gts in Survey No.114 of Tharlapadu Village of Khanapur Mandal, but the 1st respondent vide proceedings dt.17.12.2012 had rejected the same on the ground that no such application from the General Power of Attorney/pattadar of Survey No.114 of

Tharlapadu Village of Khanapur Mandal was received in the proforma prescribed by the Principal Chief Conservator of Forests (HoFF), Andhra Pradesh, Hyderabad vide Circular dt.22.04.2006.

4. They contend that they succeeded to this land after the death of their father Muttanna. They alleged that their father had earlier approached this Court in WP.No.576 of 1996 to declare the action of respondent nos.1 to 3 in not according permission for fell forest growth in respect of this land, and for a direction to them to accord permission to fell the forest growth therein, and that the said Writ Petition was allowed by order dt.20.11.2000. They alleged that in the said Writ Petition the respondents had contended that the said land is not patta land and a portion of it to the extent of Acs.5.23 guntas is located in a reserve forest, but this Court had given a finding that the Mandal Revenue Officer, Khanapur Mandal, Adilabad District (i.e., the 3rd respondent herein) who had conducted a joint inspection along with the Forest Range Officer, Khanapur Mandal, Adilabad District (i.e., the 2nd respondent herein) found that the entire land of petitioner is patta land. They allege that the MRO issued a certificate in the specified form; that this certificate was not disputed seriously by respondent nos.1 and 2; and there was no material on the basis of which respondent nos.1 and 2 can entertain any doubt as

to whether the whole land covered by Sy.No.114 is patta land since the 3rd respondent had clarified the same repeatedly. They allege that the notification produced by respondents did not show the inclusion of Survey No.114 in the proposed reserve forest; that the land in question remained clear and identified even in 1979 when the Government issued notification under Section 4 of the Andhra Pradesh Forest Act, 1967 (**for short, 'the Act'**) vide G.O.Ms.No.579, Forest & Rural Development (For.III), dt.23.08.1979 (**for short, 'the first G.O.'**) notifying the Sathanpalli Reserve Forest Block, and the land in Survey No.114 was not included in the said notification. They contend that there was no justification on the part of 1st respondent to refuse to grant permits requested by petitioner; W.A.No.508 of 2001 was filed against the judgment in WP.No.576 of 1996 by respondents, but the said Writ Appeal was dismissed for non-prosecution on 10.07.2008; and in spite of the same, the respondents were not according permission for felling of the forest growth in Survey No.114.

5. Counter-affidavit was filed by respondent nos.1 and 2 alleging that the land in Survey No.114 is not patta land and contending that the Forest Range Officer, Khanapur had carried out survey of the land in Survey No.114, and in his report dt.27.01.1994 held that Acs.5.23 guntas out of Acs.11.03 guntas, as claimed by petitioners

and their father, falls inside the Reserve Forests of Sathanpalli block notified under Section 4 of the Act, vide G.O.Ms.No.579, Forest & Rural Development (For.III), dt.23.08.1979 ; that as per the Forest (Conservation) Act, 1980, lands notified under Section 4 would come within the purview of the said Act also and all proposals for diversions of such areas for non-forestry purpose would require prior approval of the Central Government; that because portion of the land in Survey No.114 falls in the Reserve Forest area, permission to cut the forest growth was not granted; that under a notification vide G.O.Ms.No.27 Environment, Forests, Science & Technology (For.II) Department, dt.10.04.2012 published in the State Gazette No.216, dt.12.04.2012, Forest Compartment No.874 of Sathanpalli Forest block was notified as buffer zone of Kawal Tiger Reserve under Section 38-V of Wildlife (Protection) Act, 1972, and that this Acs.5.23 guntas in Survey No.114 falls under the said compartment No.874 of Sathanpalli Forest block of Beat Sathanpalli of Khanpur Range; and that this is an additional reason why permission to cut the tree growth was not granted to petitioners' father and to the petitioner according to respondent nos.1 and 2.

6. Although respondent nos.1 and 2 accept that in W.P.No.576 of 1996 this Court on 20.11.2000 directed the 1st respondent to take appropriate decision within four

(04) weeks in the light of observations made in the order and consider the request of petitioner for grant of permits in Form – II to fell the forest growth on the land located in Survey No.114 of extent Acs.11.03 guntas at Tharlapadu Village, they allege that the 4th respondent had filed a suit O.S.No.186 of 2005 against petitioner and his father before the Junior Civil Judge, Nirmal and obtained a *status quo* against petitioner on 05.10.2012, and an appeal against the said judgment was pending before the Senior Civil Judge, Nirmal. They alleged that the original pattadar Muthanna died on 25.08.2002, and petitioners, who are claiming to be his legal heirs did not produce any documents of mutation in respect of the land in Survey No.114, and that the certificate of title of the forest produce of the existing pattedars is required to ascertain rights over the produce. They allege that on account of this reason, petitioners' application was not considered and they were informed of the same by proceedings dt.17.12.2012. It is also pointed out that the petitioners have not informed about the appointment of a General Power of Attorney holder on their behalf and the said General Power of Attorney is also not registered.

7. Additional counter-affidavit was filed by respondent nos.1 and 2 reiterating the same contentions, and in addition explained why there is delay in compliance of the order dt.20.11.2000 in WP.No.576 of 1996. It is

contended that in W.A.No.508 of 2001 filed by respondent nos.1 and 2 challenging the order dt.20.11.2000 in WP.No.576 of 1996 *status quo* order was granted on 16.04.2002, and that was one of the reasons why felling permission was not issued by 2nd respondent. In the additional affidavit, the 2nd respondent further stated that he took charge as Divisional Forest Officer on 29.09.2011 and he was not aware of the order passed by this Court in WP.No.576 of 1996 on 20.11.2000 since it was not brought to his notice. It is however admitted that W.A.No.508 of 2001 was dismissed for non-prosecution on 10.07.2008, and that an application has been filed on 29.05.2013 to restore the said appeal.

8. Reply-affidavit was filed by General Power of Attorney holder of the petitioners to the above counter-affidavits pointing out that the contention of respondents that Acs.5.23 guntas in Sy.No.114 comes under the Reserve Forest of Sathanpalli was already raised by respondent nos.1 and 2 in WP.No.576 of 1996 filed by petitioners' father and there was a finding in the said Writ Petition that the subject land is a patta land and a certificate has also been issued by 3rd respondent in the specified form. It is pointed out that once the said issue had been decided in WP.No.576 of 1996 and the Writ Appeal filed against it W.A.No.508 of 2011 was dismissed for non-prosecution on 20.07.2008, it was not open to

respondent nos.1 and 2 to re-agitate the same issue again and it is barred by doctrine of *res judicata*. It is also contended that the Gazette notification dt.10.04.2012 was brought only to overcome the orders of the Court dt.20.11.2000 in WP.No.576 of 1996, and in fact, in the said notification there is no whisper that land in Survey No.114 falls in the buffer area of the Reserve Forest. They pointed out that no proceedings for acquiring the extent of Acs.5.23 guntas belonging to petitioners was initiated by respondents at any point of time, and no compensation had been paid to them for alleged reservation of their land in Buffer zone of Kawal Tiger Reserve Forest, and this itself indicates that petitioners' land is not part of the Reserve Forest or buffer zone of Kawal Tiger Reserve Forest. It is contended that the respondents, in any event, cannot deny to the petitioners permission to cut the forest growth for the extent of Acs.5.20 guntas other than the Acs.5.23 guntas which is alleged to be forest land or buffer zone since they are not disputing this claim. They contend that once the W.A.No.508 of 2001 was dismissed on 10.07.2008, the order in W.P.No.576 of 1996 dt.20.11.2000 had attained finality and binds the respondents. They further contend that 1st respondent is deliberately not complying with the order dt.20.11.2000 passed in WP.No.576 of 1996 and the respondents are harassing petitioners.

9. The counsel for petitioner Sri Avinash Reddy appearing for Sri C. Naresh Reddy, reiterated the stand of petitioners and also relied upon the decision in **Divisional Forest Officer, Nalgonda v. Forest Settlement Officer, Hyderabad and others**^[1] in support of the plea of *res judicata* raised by petitioners.

10. The learned Government Pleader appearing for respondent nos.1 and 2 reiterated the stand of respondent nos.1 and 2 in the counter and additional counter. The learned Government Pleader also relied upon a decision of a Division Bench of this Court in **Sikinder Ali Khan v. State of Andhra Pradesh, Forest Department, Hyderabad and others**^[2], and contended that once a particular land is declared to be part of a wildlife sanctuary such as Kawal Wildlife Sanctuary under Section 28-A of the Wildlife (Protection) Act, 1972, no person has any right over the land.

11. I have noted the submissions of both sides.

12. The petitioners contend that the extent of Acs.11.3 guntas in Survey No.114 of Tharlapadu Village of Khanapur Mandal is a patta land and they are entitled to grant permission to cut the tree growth therein. They contend that once the High Court in WP.No.576 of 1996 held that this land is patta land and W.A.No.508 of 2001

filed against the said order was dismissed for non-prosecution on 10.07.2008, the respondents are not entitled to refuse permits to fell tree growth in the land.

13. On the other hand, the respondent nos.1 and 2 contend that the land in Survey No.114 of extent Acs.5.23 guntas is part of the Reserve Forest of Sathanpalli block notified vide G.O.Ms.No.579, Forest & Rural Development (For.III), dt.23.08.1979, and again subsequently as part of the buffer zone of the Kawal Wildlife Sanctuary vide G.O.Ms.No.27 Environment, Forests, Science & Technology (For.II) Department, dt.10.04.2012. Their contention that the land in Survey No.114 is not entirely patta land and a portion of it viz., Acs.5.23 guntas is forest land.

THE CONSIDERATION BY THE COURT

14. A learned single Judge of this Court by order dt.20.11.2000 in W.P.No.576 of 1996 held :

“The Rules declare that no forest produce shall be moved into or from or within the State by land or water, unless such produce is accompanied by a permit therefor issued under Rule 5 of the Rules and produced for check immediately on demand. Rule 5 of the Rules says that the Divisional Forest Officer subject to the provisions of the Rules issue a permit in Form-I in respect of forest produce to be removed by the lessee of the Forest Department from leased areas and in Form-II in all other cases. We are concerned in the instant case with Form-II. The Rule further provides that the Divisional Forest Officer may refuse to issue such permits, if he has any doubt either about the ownership or the existence of authorized produce itself in

the land in respect of which such a permit is sought by an applicant. The Officer is authorized to withhold the issue of transit permits till it is proved to his satisfaction that the forest produce that exists lawfully belongs to the applicant. Sub-Rule (3) of Rule 5 of the Rules authorizes the Divisional Forest Officer to ascertain about the rights and title over the forest produce from the Revenue Officer concerned as may be specified by the Conservator of Forests for the purpose of issue of permits in Form-II for the forest produce to be removed from the private lands. Explanation to Sub-Rule (3) of Rule 5 of the Rules in categorical terms declares that a certificate issued by the Revenue Officer or other authorized person in the form prescribed by the concerned Conservator of Forests shall be conclusive evidence of the rights and titles of individuals over the tree growth.

In the instant case, the 3rd respondent having made joint inspection along with the 2nd respondent and others, found that the entire land admeasuring Ac.11.03 guntas in Sy.No.114 to be the patta land of the petitioner. The 3rd respondent accordingly issued certificate in the specified form. There is no dispute about the same. The contents of the certificate issued by the Mandal Revenue Officer are not seriously disputed. The whole demur of the counter affidavit and the additional counter affidavit would only reveal that the 1st respondent entertained some doubt as to whether the whole of the land covered by Sy.No.114 is patta land or a portion thereof actually is located in the reserved forest. But those doubts have been clarified by the 3rd respondent repeatedly. There must be some basis and material before the 1st respondent to entertain any doubt as to the location of a portion of the land in the reserved forest area. There is no material as such made available before the Court. No reasons are assigned by the 1st respondent herein as to why the certificate issued by the 3rd respondent cannot be accepted, particularly in the light of the legal position declaring that the certificate in the form prescribed issued by the Revenue Officer is required to be considered as conclusive evidence of the rights and titles of the individuals of the true growth. Mere fact that the 1st respondent once again through letter dated 7.11.2000 requesting the 3rd

respondent to have another joint inspection is of no consequence.

Yet, another important aspect of the matter.

The notification made available for the perusal of this Court by the learned Government Pleader purported to have been issued by the Government in exercise of its power under Section 4 of the Act does not show the inclusion of Sy.No.114 in the proposed reserved forest. That is the basic notification. It is true, instead of giving the survey number the location of the land itself could have been described for the purpose of inclusion of reserved forest. But such description would obviously be limited in respect of the lands which were not subjected to any survey and which do not bear any survey numbers as such.
...”(emphasis supplied)

15. The above passage in the above judgment indicates specifically that this Court had given a finding in WP.No.576 of 1996 that the land in Survey No.114 of Tharlapadu Village of Khanapur Mandal is patta land, and that it was not included in G.O.Ms.No.579, Forest & Rural Development (For.III) , dt.23.08.1979 as part of the Sathanpalli Forest block. In the said judgment it was also recorded that the 3rd respondent made a joint inspection along with 2nd respondent and others and found that the entire land admeasuring Acs.11.3 guntas in Survey No.114 is the patta land of petitioner and had also issued a certificate in a specified form, and that the genuineness of the said certificate issued by 3rd respondent certifying the land to be private land cannot be doubted, and there was no justification whatsoever on the part of 1st

respondent in refusing to grant permit to cut the forest growth as requested by petitioners' father.

16. No doubt, this was challenged in W.A.No.508 of 2001 by respondent nos.1 and 2 and a *status quo* order was said to have been granted therein, but ultimately the said appeal was admittedly dismissed for non-prosecution on 10.07.2008.

17. In view of the disposal of the said Writ Appeal, the findings in WP.No.576 of 1996 attained finality.

18. Although the learned Government Pleader for Forest representing respondent nos.1 and 2 sought to contend that an application for restoration of the Writ Appeal has been filed, the fact remains that the said Writ Appeal had not been restored to the file of this Court till date. Mere filing of the application for restoration of the W.A cannot be of any avail to respondent nos.1 and 2 and it is not open to them to again contend that the land in Survey No.114 of extent Acs.11.3 guntas belonging to petitioners is not private land but it is forest land.

19. No doubt, the learned Government Pleader for Forest placed reliance on G.O.Ms.No.27 Environment, Forests, Science & Technology (For.II) Department, dt.10.04.2012 whereunder the Government of Andhra Pradesh, in exercise of its powers under Section 38-V of Wildlife (Protection) Act, 1972 declared an extent of

892.23 Sq.kms. as Kawal Wildlife Sanctuary and also the buffer of the said Kawal Tiger Reserve and have indicated the area covered by both the core as well as the buffer in Schedules I and II thereto.

20. According to the Government Pleader the land in Sy.No.114 of Tharlapadu Village falls within the buffer zone of the Kawal Tiger Reserve. Schedule – II to G.O.Ms.No.27 Environment, Forests, Science & Technology (For.II) Department dt.10.04.2012 mentions that certain forest ranges specified therein in certain specified mandals in Adilabad District form the buffer to the core of Kawal Tiger Reserve. It also discloses that seven compartments comprising an area of 1309.50 hectares of Sathanpalli beat in Khanapur Mandal, Nirmal Forest Division of Adilabad District form part of the buffer zone of Kawal Tiger Reserve. But the said notification does not specifically mention Survey No.114 of Tharlapadu Village at all as being part of the buffer zone.

21. Since this Court in WP.No.576 of 1996 had categorically held that the land in Survey No.114 does not form part of Sathanpalli Forest block, notified vide G.O.Ms.No.579, Forest & Rural Development (For.III), dt.23.08.1979 and only notified Forest Block in Adilabad, Bellampalli, Jannaram and Nirmal Forest Divisions of Adilabad District were included in the buffer zone to the area of Kawal Tiger Reserve (area notified as Kawal Tiger

Reserve) under G.O.Ms.No.27 Environment, Forests, Science & Technology (For.II) Department, dt.10.04.2012, the land in Survey No.114 cannot be said to be part of the buffer zone to the core of Kawal Wildlife Sanctuary or Kawal Tiger Reserve at all. Therefore, the contention of learned Government Pleader for Forest that the land belonging to petitioners in Survey No.114 is deemed to be part of the buffer zone of Kawal Tiger Reserve, cannot be countenanced.

22. If such a contention is countenanced, it would amount to allowing respondents to over-rule the decision in WP.No.576 of 1996 by an executive order/notification under Section 38-V of the Wildlife (Protection) Act, 1972 which is impermissible in law for a judicial verdict cannot be annulled by an executive order. If such is the case, the action on the part of Government of Andhra Pradesh would violate the doctrine of separation of powers which forms the basic structure of the Constitution of India.

23. I am also of the opinion that the decision in **Sikinder Ali Khan** (2 supra) cited by the learned Government Pleader has no application to the facts of the present case. Although in that case, the Bench took a view that a declaration under Section 26-A of the Wildlife (Protection) Act, 1972 declaring a particular area as a sanctuary would take away the rights of private persons over the land covered by the said notification, there was

no judicial order (as in the present case like W.P.No.576 of 1996 dt.20.11.2000) wherein the land was already declared to be private land and not part of the Forest Reserve Land. Therefore, the said decision is clearly distinguishable and cannot be applied to the present case.

24. I am also of the opinion that 1st respondent vide the impugned order dt.17.12.2012 could not have been rejected permission to petitioners for felling the tree growth in the above land on the specious plea that the application was not given in the proforma prescribed by the Principal Chief Conservator of Forests (HoFF), Hyderabad vide Circular dt.22.04.2006. This is because even in WP.No.576 of 1996 there was a clear direction to respondent nos.1 and 2 on 20.11.2000 that 1st respondent should take an appropriate decision in the light of observations made in the said order and consider the requests of petitioner for grant of permits in Form-II, and the said decision was directed to be taken within a period of four (04) weeks from the date of receipt of copy of that order. Twelve years after the said order was passed, by applying a circular dt.22.04.2006 issued six years after the order in the W.P was passed, the 1st respondent could not have rejected the petitioners' application.

25. No doubt in the counter-affidavits filed by

respondent nos.1 and 2 certain additional reasons are given for not granting permission to petitioner to fell trees such as - some documents of mutation of the land in favour of petitioners after the death of their father were not filed. Such a contention cannot be raised because such a ground was not taken in the order dt.17.12.2012 passed by 1st respondent. The respondent nos.1 and 2 are not entitled to support the order dt.17.12.2012 on fresh grounds raised by way of counter affidavit in this Writ Petition without having made that a basis for the rejection of petitioners' application in the impugned order.

26. It is settled law that an order passed by a statutory authority is to be adjudged on its contents only, and fresh reasons to sustain it cannot be supplied by way of affidavit or otherwise (See **Mohinder Singh Gill v. Chief Election Commissioner**^[3]).

27. In this view of the matter, the Writ Petition is allowed. The impugned order dt.17.12.2012 of 1st respondent refusing permission to petitioner for felling tree growth in the land of Acs.11.03 guntas in Survey No.114 of Tharlapadu Village of Khanapur Mandal is set aside; and respondent nos.1 and 2 are directed to forthwith accord permission for felling the forest growth in the said land to petitioners. The respondent nos.1 and 2 shall also pay costs of Rs.10,000/- to petitioners within a period of

four (04) weeks from the date of receipt of a copy of this order.

28. Miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-12-2015

Ndr*

[\[1\]](#) 2008 (6) ALD 541

[\[2\]](#) W.A.No.747 of 2005 dt.10.09.2015

[\[3\]](#) (1978) SCC 405