

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.42285 of 2015

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ORDER:

The petitioner has filed this Writ Petition to declare the action of respondents in not granting permission to petitioner to fell forest growth in an extent of Acs.42.36 guntas in Sy.Nos.84/1, 83/3, 83/4, 83/2, 70/2, 48, 53/2, 58, 58/6, 58/3, 57/2, 55, 54/2, 87/3, 87/5, 11/5, 50/1, 67/3, 67/2, 67/1, 61, 61 and 67, situated at Laxmipur Village of Kaddam Mandal, Adilabad District as illegal, arbitrary and unsustainable and in violation of the provisions of the Andhra Pradesh Forest Act, 1967 (**for short, 'the Act'**) and Andhra Pradesh Forest Produce (Transit) Rules, 1970 (**for short, 'the Rules'**) and seek consequential direction to respondents to grant such permission.

2. The petitioner is the General Power of Attorney holder of the pattedars of above lands, who according to petitioner are absolute owners and possessors of the said lands, and who have been in peaceful possession and enjoyment of the same.

3. On 26.11.2010, the petitioner made an application under the above Rules to 3rd respondent along with a title certificate issued by 5th respondent for felling the trees grown in the above said lands.

4. The 5th respondent had issued a certificate of title of forest produce after a thorough inspection of the land and on the basis of a report dt.11.11.2010 of the Mandal Surveyor, Kaddam confirming that the above lands are patta lands under Rule 5 (3) of the Rules, and forwarded the same to 3rd respondent for granting permission for felling the forest growth to petitioner.

5. The reports dt.24.06.2011, 28.03.2012, 07.06.2012 and 02.06.2011 of respondent nos.2, 3 and 4 were also filed along with the Writ Petition.

6. Petitioner alleges that subsequently there was also an inspection by respondent nos.4 and 3 who also found that the above lands were patta lands and that despite the above reports and also identification of the forest produce, respondent nos.2 to 4, in contravention of the Rules did not grant permission in Form – II as provided under Rule 5(1) of the Rules.

7. The petitioner contended that explanation to Sub-Rule (3) of Rule 5 of the Rules categorically states that a certificate issued by a Revenue Officer or Forest Officer in the Form prescribed by the concerned Conservator of Forests shall be conclusive evidence of rights and titles of individuals over the tree growth, and so permission for felling of forest growth has to be accorded on the said basis.

8. The counsel for petitioner contended that since this has not been done, the respondents have contravened the statutory Rules warranting interference by this Court.

9. The counsel for petitioner contended that only two reasons can be given under Rule 5(1) of the Rules for refusing permission to fell trees or forest growth, i.e., (i) if 3rd respondent entertained any doubt of ownership or (ii) if he had any doubt on the existence of forest produce itself; and even though neither of these factors exist, the respondents are not granting permission to fell trees. He therefore contended that this amounts to depriving petitioner of enjoyment of rights in the above property conferred by Article 300-A of the Constitution of India.

10. Counter-affidavit has been filed by 3rd respondent on behalf of respondent nos.1 to 5. The respondents contended that the General Power of Attorney in favour of petitioner is not registered, and therefore, the petitioner cannot be held to be owner of forest growth, and on this ground the Writ Petition should be dismissed at a threshold. This contention is without any basis because registration of a General Power of Attorney is warranted only in respect of immovable property under provisions of the Registration Act, 1908. The term “immovable property” has been defined in Section 3 of the Transfer of Property Act, 1882 as not including standing timber. Therefore,

there is no necessity for petitioner to have a registered General Power of Attorney at all and this contention is totally without any merit.

11. The respondents contended that an inspection was conducted by the then Divisional Forest Officer, Nirmal of the above patta lands and their location and also the Dasturabad Reserve Forest boundary line of Compt. No.712, 722 and 721, and during inspection, it is noticed that eastern boundaries of patta lands in Sy.Nos.57/2 and 58 are common with Dasturabad Reserve Forest boundary of Compt. No.722 of Dasturabad beat; that the patta lands in Sy.Nos.58/3, 58/6 are adjacent to Sy.Nos.57/2 and 58 and that the Divisional Forest Officer, Nirmal also inspected the location of Sy.Nos.83/2, 83/3 and 83/4 and western boundaries of these survey numbers are at a distance of 0.040 to 0.080 kms from Kaddam Reserve Forest, and reported that Sy.Nos.83/2, 83/3, 83/4, 84/1, 87/3, 85/75 and 11/5 are surrounded by a large water body, viz., Laxmipur Tank. They contended that during inspection, the tank is with full of water supporting varied avifauna, and the trees in the said survey numbers are adjacent to the tank and are also noticed as roosting places for birds; that the said tank is also water source for the wildlife as it is adjacent to Kaddam Reserve Forest, which is part of core area of Kawal Project Tiger; that Divisional Forest Officer, Nirmal

submitted his report to the Chief Conservator of Forest vide Rc.No.3930/2010-N3, dt.02.12.2012 stating that the above said patta lands are surrounded by Dasturabad Reserve Forests and Kaddam Reserve Forest which are part of the core area of Kawal Project Tiger; that in the report he categorically stated that basing on the above facts and importance of the vegetation in the said patta lands surrounding/nearer to the core area of Kawal Project Tiger, felling the tree growth in the said patta lands is not recommended, and basing on the report of the then Divisional Forest Officer, the Chief Conservator of Forests, Adilabad Circle submitted his report to the Principal Chief Conservator of Forests vide his letter Rc.No.1960/2011/M10, dated 20.12.2012 as under :

"1. The Eastern boundaries of patta lands in Sy.Nos.57/2 and 58 are common with Dasturabad Reserve Forests boundary of Compt No.722 of Dasturabad beat. The patta lands in Sy.Nos.58/3, 58/6 are adjacent to Sy.Nos.57/2 and 58.

2. The patta lands in Sy.Nos.50/1, 53/2, 54/2, 55, 61, 67, 67/1, 67/2, 67/3 are located at a distance of 0.280 to 0.150 Kms. From the nearest Dasturabad Reserve Forest boundary line. In the area of the other patta lands between the patta land in Sy.Nos.67, 67/1, 67/2 and 67/3 for which application is made and the Reserve Forest, good vegetation of pole crop of teak and other species.

3. Sy.Nos.83/2, 83/4, 84/1, 87/3, 87/5 and 11/5 are surrounded by a large water body, i.e., Laxmipur Tank. During inspection, the tank is with full of water supporting varied avifauna. The trees in the said survey numbers adjacent to the said tank are noticed as roosting places for the birds. The said tank is also a water source for the other wildlife as it is adjacent and bordering the Reserve Forest,

Kaddam which is part of core area of Kawal Project Tiger."

He specifically made it clear that in view of the above factual situation, the felling of tree growth in the patta lands may not be recommended; that basing on the report of the CCF, Adilabad dated 20.12.2012, the Principal Chief Conservator of Forests, Hyderabad in Rc.No.26250/2011/FM-2, dt.18.07.2013, submitted his report to the Government; that in the report, he categorically discussed about the reports sent by the Divisional Forest Officer, Nirmal and the CCF, Adilabad; that the proposal of the petitioner was examined with reference to the draft notification *proposal* for Eco-Sensitive Zone for Kawal Wildlife Sanctuary/Tiger Reserve which has already been submitted by the Government to the Government of India; the notification of Eco-Sensitive Zone of Kawal Tiger Reserve is awaited from Government of India; and that in this case, all the patta lands are within 1.00 km. distance from Reserve Forest Boundary of Kawal Tiger Reserve.

12. A reading of the above pleading of respondents makes it clear that the lands of petitioners do not form part of the Dasturabad Reserve Forest or Kaddam Reserve Forest which is said to be part of the core area of Kawal and there is at this stage a mere proposal submitted for Eco-Sensitive Zone for Kawal Wildlife Sanctuary/Tiger Reserve to include this land.

13. The 5th respondent, in his report dt.11.11.2010 in letter A/8702/2010 addressed to 3rd respondent had categorically stated that the lands in respect of which the application to fell the tree growth was made are classified as dry agricultural lands, that there are no protected tenants over the land and he certified the title of pattedars whom petitioner represents under Rule 5(3) of the Rules for felling of trees therein.

14. Also, the 2nd respondent had addressed proceedings R.C.No.1960/2011/M10 dt.24.06.2011 to the Principal Chief Conservator of Forests, Andhra Pradesh, referring to a report of the Forest Range Officer, Kaddam that all the above patta lands referred to above are outside the Reserve Forest and that he had conducted survey with Global Positioning System. In the said report he also referred to report of the Divisional Forest Officer, Flying Squad, Nirmal assuring that the lands referred to above are near to the village, adjacent to agricultural fields and suitable for agriculture cultivation and recommended for grant of permission for felling of existing growth.

15. No doubt, the said letter also refers to the report of the Divisional Forest Officer, Nirmal that the patta lands in question are adjacent to Reserve Forest Area of the jurisdiction of Kawal Wildlife Management Sanctuary, but petitioner cannot be deprived of a felling permission if the lands fall outside the Reserve Forest boundary and are

admittedly patta lands.

16. The counsel for petitioner has also relied on the report Rc.No.3930/2010-N3 dt.28.03.2012 of 3rd respondent to the Chief Conservator of Forests, Adilabad Circle, corroborating the earlier report referred to above referring to the certificate issued by 5th respondent to petitioner asserting that the above lands are outside the forest area and stating that Compartment No.712 and 722 of Dasturabad Reserve Forest Block, which falls in core area of Kawal Wildlife Management Sanctuary, is a joint boundary for Survey Nos.57 and 58 whereas for other survey numbers, the Wildlife Sanctuary is at a distance of 100 meters to 1000 meters away.

17. This is also reiterated in the letter dt.07.06.2012 in Rc..No.44/2011/FSN addressed by the Divisional Forest Officer, Flying Squad Division, Nirmal to the Chief Conservator of Forests, Adilabad Circle and the letter Rc.No.1/patta/2012 dt.02.06.2012 addressed by the Forest Range Officer, Flying Squad Division, Nirmal to the Divisional Forest Officer, Flying Squad Division, Nirmal.

18. Unfortunately, giving a complete go-by to the above reports a stand has been taken in the counter-affidavit suggesting that the subject lands being adjacent to Reserve Forest and a water body, petitioner is not entitled to grant of felling permission.

19. In this regard, it is important to note Rule 5 of the Rules which makes the certificate of the Revenue Officials conclusive and binding on the forest department officials in regard to grant of permits for removal of forest produce from private lands.

20. Rule 5 (3) of the Rules states as under :

“... ..

(3) The Divisional Forest Officer may, for the purpose of issue of permits in Form-II for the forest produce to be removed from private lands, ascertain about the rights and titles over the forest produce from such Revenue Officer of the district, as may be specified by the Conservator of Forests.

Explanation :--A certificate issued by the Revenue Divisional Officer or other authorised person in the form prescribed by the concerned Conservator of Forests shall be considered as conclusive evidence of the rights and titles of individuals over the tree growth.”

21. In the face of the certificate issued by 5th respondent, certifying the title of pattedars to the tree growth and also asserting that their lands are patta lands and not forming part of forest, it has to be held that respondents have acted arbitrarily and illegally in keeping petitioner's application for felling of trees in the above lands for more than five years without any valid reason.

22. The Supreme Court in **T.N. Godavarman Thirumulpad etc., v. Union of India and others**^[1] had considered the provisions of the Forest (Conservation) Act, 1980 and had given certain directions for protection of

forests to check further de-forestation and specifically laid down thereunder that prior approval of the Central Government is required for any non-forest activity within the area of forest. It however specifically stated that this ban will not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

23. This was again explained by the Supreme Court in **Sri Ram Saha v. State of West Bengal and others**^[2] wherein the Supreme Court clearly stated that its direction in **T.N. Godavarman Thirumulkpad** (1 supra) is clearly confined to felling of trees in forest land and the said ban was not extended to non-forest private plantation. Therefore, the respondents cannot be allowed to impose a ban on felling of trees in non-forest areas by mis-applying the decision of the Supreme Court in **T.N. Godavarman Thirumulkpad** (1 supra).

24. In the counter-affidavit there is also a reference to a proposal for creation of an eco-sensitive zone and certain Government of India guidelines in regard thereto purporting to be issued under the Wildlife Protection Act, 1972.

25. In my considered opinion, the pattedars of the above lands cannot be deprived of the produce in the land by respondents under the guise of laws relating to

Wildlife and Protection of Environment, because this would violate Article 300-A of the Constitution of India. If they wish to deprive the pattedars represented by petitioner of their right to fell trees in their patta lands, the respondents would have no option but to acquire the same under the provisions of the Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 and pay compensation to petitioners. Otherwise, it would amount to depriving the pattedars of private land on the ostensible ground that it is a forest without following any due process of law as mandated by Article 300-A of the Constitution of India. Law cannot be interpreted in a manner which results in expropriation of property of a private citizen.

26. Accordingly, the Writ Petition is allowed and the action of respondents in not granting permission to petitioner for felling the forest growth in the extent of Acs.42.36 guntas in Sy.Nos.84/1, 83/3, 83/4, 83/2, 70/2, 48, 53/2, 58, 58/6, 58/3, 57/2, 55, 54/2, 87/3, 87/5, 11/5, 50/1, 67/3, 67/2, 67/1, 61, 61 and 67, situated at Laxmipur Village of Kaddam Mandal, Adilabad District is declared as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India, and also the provisions of the Act and Rules and consequently, a direction is issued to respondents to forthwith issue permission to petitioner to fell the forest growth in the said land. The respondents shall also pay costs of Rs.5,000/- to petitioner.

27. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-02-2016

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[\[1\]](#) AIR 1997 SC 1228

[\[2\]](#) AIR 2004 SC 5080