

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 954 of 2014**

Dharam Singh Gond S/o. late Shri Panch Ram, aged about 61 years, R/o. Faraswani, P. O. Faraswani, Tahsil and Post. Dabhara, Civil and Revenue District Janjgir-Champa (Chhattisgarh).

---**Petitioner**

**Versus**

1. State of Chhattisgarh through the Principal Secretary, Department of Revenue & Disaster Management, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, Civil and Revenue District Raipur, Chhattisgarh 492 002.
2. Collector, Janjgir-Champa, District : Janjgir-Champa, Chhattisgarh.

---**Respondents**

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For petitioner : Mr. Rajkamal Singh, Advocate.

For respondents/State : Mr. Dheeraj Wankhede, Govt. Advocate.

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**31/07/2017**

1. Impugning legality, validity and correctness of order dated 23.10.2013 passed by State Government exercising the powers conferred under Part-IV, Serial No.3, Clause 5, paragraph 30(3) of the Revenue Book Circular, this writ petition has been filed.

2. Petitioner herein applied for grant of lease of the subject land before the Collector, Janjgir-Champa, and the said application was enquired into by the Collector through Tahsildar. It was reported to him that the subject land is recorded as *Chhote Jhad Ka Jangal* and grass land as well. The Collector by its order dated 30.04.2017

rejected the application holding that allotment of such land will be in violation of the provisions of the Forest (Conservation) Act, 1980 (hereinafter called as 'Act of 1980'). The petitioner preferred appeal before the Additional Commissioner aggrieved against the order of Collector. The Additional Commissioner by its order dated 16.03.2011 dismissed the appeal affirming the order of the Collector. In further appeal filed by the petitioner, the State Government has further affirmed the order clearly recording a finding that the subject land is recorded as *Chhote Jhad Ka Jangal* and grass land as well. Being dissatisfied of that order, this writ petition has been preferred by the petitioner.

3. Mr. Rajkamal Singh, learned counsel appearing for the petitioner would submit that the orders passed by both the authorities are apparently illegal and contrary to law. He would further submit that no objection certificate has been issued by the office of the Divisional Forest Officer holding that in respect of the subject land, the provisions of the Act of 1980 are not attracted, and the land is not forest land, therefore, the order of the State Government be set aside.

4. The State counsel would oppose the submissions and support the order impugned.

5. The question to be considered is whether the land which is a forest land *Chhote Jhad Ka Jangal* can be allotted / leased to the petitioner without prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980.

6. Section 2 of the Forest (Conservation) Act, 1980 (for short 'the Act of 1980') reads as under:-

**“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.-**

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing.-

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall ceased to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.

*Explanation.-* for the purpose of this section “on-forest purpose” means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants.

(b) any purpose other than re-afforestation.

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

7. The Supreme Court in the matter of **T. N. Godavarman**

**Thirumulkpad v. Union of India and others**<sup>1</sup> has held that the word

“forest” must be understood according to its dictionary meaning, this description covers all statutorily recognized forests, whether

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<sup>1</sup> (1997) 2 SCC 267

designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act, 1980. The terms “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

Paragraph 4 of the report is as under:-

“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*<sup>1</sup>, *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>2</sup> and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*<sup>4</sup>). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*<sup>5</sup> has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to

2 (1987) 1 SCC 213

3 (1989) Supp (1) SCC 504

4 WP(C)No.749 of 1995 decided on 29.11.1996 : (1997) 11 SCC 605

5 (1985) 3 SCC 643

permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.”

8. The principle of law laid down in **T. N. Godavarman Thirumulkpad** (supra) was followed subsequently by the Supreme Court in the matters of **Sri Ram Saha v. State of W.B. and others**<sup>6</sup>, **In Re: Construction of Park at Noida Near Okhla Bird Sanctuary**<sup>7</sup> and very recently in the matter of **B.S. Sandhu v. Government of India and others**<sup>8</sup>.

9. On a close reading of Section 2 read with sub-clause (iii) of the Act, 1980, it would appear that the State Government or any authority cannot assign by way of lease or otherwise to any private person or to any authority, the reserved forest notified under Section 4 of the Indian Forest Act, 1927 read with Section 2 of the Act of 1980 without prior approval of the Central Government, as Section 2 of the Act of 1980 has been given overriding effect to any other law for the time being in force.

10. The Supreme Court in the matter of **A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.**<sup>9</sup> held that prior approval is required for diversion of any forest land and its use for some other purpose.

Paragraph 6 of the report states as under:-

“6. A bare perusal of the aforesaid provisions would show that prior approval is required for the diversion

<sup>6</sup> (2004) 11 SCC 497

<sup>7</sup> (2011) 1 SCC 744

<sup>8</sup> (2014) 12 SCC 172

<sup>9</sup> 2008 AIR SCW 5922

of any forest land and its use for some other purpose. This is further fortified by a look at Rule 4 which provides that every State Government or other authority seeking prior approval under Section 2 of the Act shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposals would be examined by a committee appointed under Rule 2-A within the parameters and guidelines postulated in Rule 5. There is nothing on record to suggest that this procedure had been adopted.”

11. Again, the Supreme Court in the matter of **Tarun Bharat Sangh, Alwar v. Union of India and others**<sup>10</sup> has held that once an area is declared as protected forest, it becomes forest within the meaning of Section 2 of the Act of 1980 and prior approval of the Central Government is a condition precedent for grant of lease under the Rajasthan Minor Mineral Concession Rules, 1986.

12. The Supreme Court in the matter of **Natural Lovers Movement v. State of Kerala & others**<sup>11</sup> held that after enforcement of the Forest (Conservation) Act, 1980, the State Government or any authority cannot make an order or issue direction for de-reservation of reserved forest or permit for the use of forest land or any portion thereof by way of lease. Paragraph 27(2) of the reports states as under:-

“27(2). After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order of issue direction for de-reservation of reserved forest or any portion thereof or premise use any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.”

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10 1993 AIR SCW 1300

11 2009 AIR SCW 3656

13. The above decision of the Supreme Court in the aforesaid case **T. N. Godavarman Thirumulkpad** (supra) has been followed by this Court in the matter of **Baliram v. Board of Revenue & another**<sup>12</sup> and it has been clearly held that once land is recorded as “*Bade Jhad Ka Jangal*” no allotment can be made by the State authorities without obtaining permission of the Central Government. Paragraph 6 of the report is as under:-

“6. There is no irregularity or infirmity in the order passed by the Board of Revenue. Admittedly, the land is recorded as “*Bada Jhad Ka Jangal*”, in revenue records. Once it is recorded as ‘*Bade Jhad Ka Jangal*’, no allotment can be made by the State Authorities without obtaining permission of the Central Government. It is evident from the various decisions of the Hon’ble Supreme Court in the matter of *T. N. Godavarman Thirumulkpad* (supra).”

14. The principle of law laid down in the above-stated cases would also apply to the subject land as it is *Chhote Jhad Ka Jangal* and it is a forest land as held in **T. N. Godavarman** (supra). The land is forest land and by operation of law, the provisions of the Act of 1980 would be attracted and the Divisional Forest Officer is not empowered to hold that it is not a forest land once it is a forest land attracting the provisions of the Act of 1980, therefore, no objection could have been allegedly given by the Divisional Forest Officer. Even otherwise classification of forest land as *Chhote Jhad Ka Jangal* by State Government will not take away the character of land as forest land and it will remain forest land under the sweep of the Act of 1980, as such, the State Government is absolutely justified in rejecting the revision/representation preferred by the petitioner.

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12 2009(1) CGLJ 30

15. There is additional reason for not interfering with the impugned order. The State Government has also clearly recorded a finding that part of subject land bearing Khasra No. 116/1 area 17.47 acre is recorded in the Revenue record as grazing land in the *Nistar Patrak* and rest of land is recorded as *Chhote Jhad Ka Jangal* and grass land and the petitioner is encroacher on the Government land.

16. Section 234 of the Chattisgarh Land Revenue Code, 1959 throws sufficient light on the preparation of '*Nistar Patrak*' and according to this provision, the Sub Divisional Officer shall prepare the '*Nistar Patrak*' embodying the scheme of all unoccupied lands of all matters indicated thereto and particular matter specified in Section 235. Section 235 of the Code relates to matters to be provided for in '*Nistar Patrak*' and according to this provision the matters highlighted from clauses (a) to (d) shall be dealt with under this provision. Section 236 of the Code speaks about provision in '*Nistar Patrak*' for certain other matters like free grazing of cattle used for agriculture; etc. as envisaged in clauses (a) to (c). Sub-section (1) of Section 237 empowers the Collector to set apart unoccupied land for certain purposes including for *grass bir*. For ready reference it would be apt to quote relevant portion of Section 237(1) and clause (b) of the Code, which reads as thus:-

**"237. Collector to set apart land for exercise of Nistar right.-** (1) Subject to the rules made under this code, the Collector may set apart unoccupied land for the following purposes, namely:-

- |     |                                           |     |     |
|-----|-------------------------------------------|-----|-----|
| (a) | ***                                       | *** | *** |
| (b) | for pasture, grass bir or fodder reserve; |     |     |
| (c) | ***                                       | *** | *** |

|     |     |     |      |
|-----|-----|-----|------|
| (d) | *** | *** | ***  |
| (e) | *** | *** | ***  |
| (f) | *** | *** | ***  |
| (g) | *** | *** | ***  |
| (h) | *** | *** | ***  |
| (i) | *** | *** | ***  |
| (j) | *** | *** | ***  |
| (k) | *** | *** | ***” |

17. Looking to entire scheme of Chapter XVIII of the Code, which includes these Sections, it is clear like a noon day that particular land will be reserved by the Collector for the purpose of grazing/grass bir for *Nistari* right of all the inhabitants of that particular village and therefore no individual of that village can enjoy that land exclusively for his own use.

18. The Supreme Court in the matter of **State of Jharkhand v. Pakur Jagran Manch and others**<sup>13</sup> highlighting the importance of *gochar* land of village held as under:-

“23. We should however note that such de-reservation of any government land reserved as *gochar*, should only be in exceptional circumstances and for valid reasons, having regard to the importance of *gochar* in very village. Any attempt by either the villagers or others to encroach upon or illegally convert the *gochar* to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not *gochar*.”

19. As a fallout and consequence of aforesaid discussion, the writ petition deserves to be dismissed and is accordingly dismissed, leaving the parties to bear their own cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

<sup>13</sup> (2011) 2 SCC 591

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Dharam Singh Gond

Versus

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**HEAD NOTE**

Grass land / grazing land cannot be allotted for any other purpose.

गोचर भूमि / चारागाह को अन्य किसी प्रायोजन के लिए आबंटित नहीं किया जा सकता।