

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 7-3-2018****Pronounced on 16-3-2018****WA No. 112 of 2018**

Dharam Singh Gond S/o Late Panch Ram aged about 61 Years R/o Faraswani, P.O. Faraswani, Tahsil Dabhara, Civil and Revenue District Janjgir Champa Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through the Principle Secretary, Department of Revenue And Disaster Management, Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Naya Raipur, Civil and Revenue District Raipur, Chhattisgarh Pin - 492002.
2. Collector, Janjgir Champa, District Janjgir Champa Chhattisgarh.

---- Respondents**A N D****WA No. 120 of 2018**

Awadh Ram Chandra S/o Bhagwat Prasad Chandra aged about 49 Years R/o Sukhada, P. O. Sukhada, Tahsil and Post Dabhara, Civil and Revenue District- Janjgir- Champa, Chhattisgarh.

---- Appellant**Versus**

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

---- Respondents

For appellants	: Shri Rajkamal Singh, Advocate.
For State	: Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT**Sharad Kumar Gupta, Judge**

1. As identical point is involved in both the above Writ Appeals, they are being disposed of by this common judgment.
2. Challenge in these two appeals is levied to the orders dated 31-7-2017 passed by learned Single Judge of this Court in Writ Petition (C) No. 954/2014 and Writ Petition (C) No.

953/2014 vide Annexure A-1 in both the appeals whereby and whereunder he dismissed the writ petitions filed by the appellants.

3. In brief, case of the appellants is that they have retired from the Indian Army and are landless persons. As per provisions of Clause 3-KH of Part-IV, No. 3 of the Chhattisgarh Revenue Book Circular, they are entitled for allotment of 5 acres non-irrigated land or 2.5 acres irrigated land. They filed separate applications for allotment of land in their native places. Gram Panchayat Faraswani and Gram Panchayat Sukhda passed resolutions of no objection that the lands in question may be given to appellants. Respondent No. 2 rejected the application filed by appellant Dharam Singh vide order dated 29-7-2008 and application of appellant Awadh Ram Chandra vide order dated 30-4-2007 (Annexure P-3 in both writ petitions). The appellants preferred two separate appeals before the Court of Additional Commissioner, Bilaspur Division. The Additional Commissioner, Bilaspur Division by orders dated 16-3-2011 vide Annexure P-2 affirmed the orders Annexure P-3 and dismissed the appeals of the appellants. The appellants then preferred separate revisions before the Revenue and Disaster Management Department, Raipur which by orders dated 23-10-2013 vide Annexure P-1 affirmed the orders Annexure P-2 and dismissed the revisions.

4. In brief, in WA No. 112/2018 case of the respondent No. 2 is that the subject matter of the land is reserved as 'Chhote Bade Jhad Ka Jungle and Grass'. In Nistar Patrak, the land is not shown as agricultural land. It is an unoccupied land. The land

may be allotted after change of its classification for public interest. The appellant is an encroacher in 3 acres of land.

5. In brief, in WA No. 120/2018 case of the respondent No. 2 is that the subject matter of the land is reserved as 'Chhote Jhad Ka Jungle and Grass'. The land may be allotted after change of its classification for public interest.

6. Being aggrieved by the orders Annexures P-1 in both the writ petition, the appellants preferred the writ petitions which have been dismissed as aforesaid.

7. Shri Rajkamal Singh, Counsel for the appellants strenuously argued that as per the letters of Forest Divisional Officer, Janjgir Champa Forest Division, Champa, according to revenue record, the lands are not the reserved or protected forest, and no Chhote Bade Jhad Ka Jungle is present in the lands, thus there is no violation of the Forest (Conservation) Act, 1980 (in brevity 'Act of 1980'), therefore, the orders Annexure P-3, Annexure P-2 and Annexure P-1 in both the appeals may be quashed.

8. Shri Prafull N. Bharat, Additional Advocate General, appearing for the respondents/State argued that the impugned orders Annexures A-1 are in accordance with the legal provisions and do not suffer from any illegality hence, do not call for any interference.

9. In WA No. 112/2018, as per copy of the report of the Patwari Panchnama filed collectively as Annexure P-10, in the Misal Bandobast, Khasra No. 116/1 is recorded as grass land, in the Nistar Patrak it is recorded as grazing land, Chhote Jhad Ka

Jungle is not present at the spot, in the Record of Right, the land is recorded as Chhote Jhad Ka Jungle and grass land.

10. In WA No. 120/2018, as per copy of the report of the Patwari Panchnama filed as Annexure P-6, Khasra No. 1699/1 is recorded as Grass Land. As per the memorandum vide Annexure P-7, in the Record of Right the land is recorded as Chhote Jhad ka Jungle and grass.

11. The letters of the Forest Divisional Officer, Janjgir Champa Forest Division, Champa vide Annexures P-12 and P-11 in respective petitions show that as per the revenue records, the lands are recorded as grass land and grazing land and further that the lands are not reserved or protected forest.

12. Absence of Chhote Jhad Ka Jungle or absence of any order showing the land as a reserved or protected forest, is not itself sufficient to change the nature/character/classification of the lands. In other words, on the strength of absence of these facts, it could not be deemed that the lands were not recorded as Chhote Jhad Ka Jungle.

13. Provisions of Section 2(iii) of the Act of 1980 are relevant to resolve the dispute in the case in hand which envisage that the State Government or other authorities should not grant lease or otherwise of any forest or any portion thereof to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government without prior approval of the Central Government.

14. The Hon'ble Supreme Court in the matter of **T. N. Godavarman Thirumulkpad v. Union of India and others**

[(1997) 2 SCC 267] has held that 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 Act of 1980. 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 or classification thereof.

15. The Supreme Court in the matter of **A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.** [(2008) 12 SCC 646] held that a bare perusal of the aforesaid provisions would show that prior approval is required for the diversion 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 of 1980 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.

16. The Supreme Court in the matter of **Nature Lovers Movement v. State of Kerala & others** [(2009 (5) SCC 373] held that after the enforcement of the Act of 1980, neither the State Government nor any other authority can make an order or issue direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion

thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organisation not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.

17. As per provisions of the Chhattisgarh Land Revenue Code, 1959 (in brevity 'Code') an agricultural and unoccupied land may be diverted by the Collector under Section 237(3) of the Code to Abadi or agricultural land.

18. In WA No. 112/2018, as per Ex. P-10, in the Misal Bandobast, Khasra No. 116/1 is recorded as grass land, in the Nistar Patrak it is recorded as grazing land, in the Record of Right, the land is recorded as Chhote Jhad Ka Jungle and grass land. In WA No. 120/2018, as per Annexure P-6, the land of Khasra No. 1699/1 is recorded as Grass. As per the Annexures P-12 and P-11 in respective petitions, according to the revenue records, the lands are recorded as grass lands and grazing land. This has been earlier decided that absence of Chhote Jhad Ka Jungle or absence of any order that the land was reserved or protected forest, does not itself change the nature/ character/ classification of the lands. These are not agricultural lands, and also they are unoccupied land which have not been diverted by the Collector under Section 237(3) of the Code to Abadi or agricultural purpose. Looking to these circumstances, the aforesaid provisions of Act of 1980, the Code, and looking to the aforesaid judicial pronouncements, this Court finds that the Revenue and Disaster Management Department, Raipur has not committed any illegality or material irregularity while passing the

orders Annexure P-1. Thus, this Court affirms the orders Annexure P-3, Annexure P-2, Annexure P-1 and Annexure A-1 in both the cases.

19. The appeals being devoid of substance deserve to be and are hereby dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge