

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.458 of 2003**

State of Chhattisgarh through the Collector, Distt. Kanker (CG)

---- Appellant

Versus

Shyamlal, S/o Rohitdas, caste Kalar, R/o village Sarangpal, Police Station Kanker, District Kanker (CG)

---- Respondent

For Appellant	:Mr.Arun Sao, Dy.A.G.
For Respondent	:Mr.Manoj Paranjape, Mr.Anurag Singh and Mr.Prasoon Agrawal, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

04/10/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this defendant's second appeal is as under:-

“Whether the First Appellate Court is justified in reversing the decree of the trial Court ignoring the fact that the subject land is 'Chhote Jhad Ka Jangle' and that cannot be lease out without prior approval of the Central Government under Section 2(iii) of the Forest (Conservation) Act, 1980?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

(2.1) The plaintiff was granted lease of suit land by Naib-Tahsildar at village Sarangpal bearing khasra No.428/915, area 0.01 hectare (0.04 decimal) in duly constituted revenue proceedings on 13.6.94. On a complaint made by the villagers, the Sub Divisional Officer (Revenue), Kanker conducted an enquiry and submitted its report to the Collector, Kanker. The Collector, Kanker by its order dated 19.7.99 revoked the lease granted in favour of the plaintiff holding that the suit land is 'Chhote Jhad Ka Jangle' and in granting lease, there is violation of the provisions contained in Section 237 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter called as "the Code"). The plaintiff did not question the order dated 19.7.99 further in appeal or revision, but instituted instant bare suit for declaration of title and permanent injunction.

(2.2) The defendant filed its written statement and denied the averments made in the plaint.

(2.3) The trial Court after appreciating oral and documentary evidence available on record by its judgment and decree dated 19.10.2000 dismissed the suit holding that lease was granted on untenable ground and therefore, it has rightly been revoked by learned Collector as the plaintiff is not in possession of the suit land.

(2.4) In an appeal preferred by the plaintiff, the First Appellate Court reversed the finding of the trial Court holding that lease can be

cancelled only in accordance with the provisions contained in Section 182(2) of the Code.

(2.5) Being aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr.Arun Sao, learned Deputy Advocate General for the appellant/defendant, would submit that the First Appellate Court is absolutely unjustified in overlooking the fact that the suit land is recorded as 'Chhote Jhad Ka Jangle' and that cannot be lease out without prior approval of the Central Government under Section 2(iii) of the Forest (Conservation) Act, 1980 (hereinafter called as "the Act of 1980"), as such, the impugned judgment and decree passed by the First Appellate Court deserve to be set aside.

4. On the other hand, Mr.Manoj Paranjape ably assisted by Mr. Anurag Singh, learned counsel for the respondent/plaintiff, would support the impugned judgment and decree and submit that the First Appellate Court is absolutely justified in granting decree in favour of the plaintiff.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records

with utmost circumspection.

6. The trial Court has clearly recorded a finding on the basis of evidence available on record that the suit land is forest land (Chhote Jhad Ka Jangle) and further recorded a finding that lease has already been revoked by the Collector, Kanker.

7. The question to be considered is whether the land which is a forest land “Chhote Jhad Ka Jungle” can be allotted / leased to the plaintiff without prior approval of the Central Government under Section 2 (iii) of the Act of 1980.

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

"2. Restriction on the dereservation 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) xxx xxx xxx

(ii) xxx xxx xxx

(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) xxx xxx xxx...”

9. The Supreme Court in the matter of T.N. Godavarman

Thirumulkpad v. Union of India and others¹ has held that the word "forest" must be understood according to its dictionary meaning, this description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act, 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. 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 recognized 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 to 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*², *Rural Litigation and Entitlement Kendra v. State of U.P.*³ and recently in the order dated 29-11-1996

1(1997) 2 SCC 267

2 (1987) 1 SCC 213

3 (1989) Supp (1) SCC 504

(Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority⁴). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi⁵ 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 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."

10. 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 others⁶, In Re: Construction of Park at Noida Near Okhla Bird Sanctuary⁷ and very recently in the matter of B.S. Sandhu v. Government of India and others⁸.

11. 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

4 WP(C)No.749 of 1995 decided on 29-11-1996

5 (1985) 3 SCC 643

6(2004) 11 SCC 497

7(2011) 1 SCC 744

8(2014) 12 SCC 172

been given overriding effect to any other law for the time being in force.

12. The Supreme Court in the matter of A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.⁹ 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 provision 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 shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposal 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."

13. Again, the Supreme Court in the matter of Tarun Bharat Sangh, Alwar v. Union of India and others¹⁰ 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.

14. The Supreme Court in the matter of Natural Lovers Movement v. State of Kerala & others¹¹ held that after enforcement of the Forest (Conservation) Act, 1980, the State Government or any authority cannot

9 2008 AIR SCW 5922

10 1993 AIR SCW 1300

11 2009 AIR SCW 3656

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 report states as under:-

"27(2). After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or 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."

15. 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**¹² 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 the 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)."

16. Keeping in view the provisions contained in Section 2 of the Act of 1980, particularly keeping in view that the land is forest land and in view

of Section 2(iii) of the Act of 1980, the suit land is forest land "*Chhote Jhad Ka Jangal*" within the meaning of Section 2(iii) of the Act of 1980, this Court is of the considered opinion that no allotment / lease could have been made by the State Government without obtaining prior permission from the Central Government to the plaintiff. Since the land is 'Chhote Jhad Ka Jangle' and it was lease out without prior approval of the Central Government under Section 2(iii) of the Act of 1980, the First Appellate Court is absolutely unjustified in holding that lease cannot be cancelled in the matter of Section 182(2) of the Code.

17. There is yet another reason for not upholding the judgment and decree of the First Appellate Court.

18. By order of the Collector dated 19.7.99 (Ex.P/1), lease has been revoked, but except declaration of title, no relief that order of the Collector dated 19.7.99 be declared null and void or setting aside that order is claimed as provided by proviso to Section 34 of the Specific Relief Act, 1963, as such, the suit itself was not maintainable and is hit by proviso to Section 34 of the Specific Relief Act.

19. In view of above-stated discussion, I am of the considered opinion that the First Appellate Court is absolutely unjustified in decreeing the suit in favour of the plaintiff. Accordingly, the substantial question of law is answered in favour of the appellant/defendant and against the respondent/plaintiff.

20. For the forgoing reasons, the judgment and decree passed by the First Appellate Court is hereby set aside and that of the judgment and decree of the trial Court are hereby restored.

21. The second appeal is allowed to the extent indicated hereinabove.

No cost(s).

22. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-