

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 07 of 2005****Judgment Reserved on 20.03.2019****Judgment delivered on 29.03.2019**

1. Rohit Kumar, S/o Kameshwar Ram, aged about 16 years, Caste : Bramhin, R/o Village Sarhari, P.S. & Tahsil Pratappur, Distt. Sarguja (C.G.)
2. Kameshwar, S/o Jhawan Pathak, aged about 40 years, Caste : Bramhin, R/o Village Sarhari, P.S. Pratappur, Distt. Sarguja (C.G.)

----Appellants/Plaintiffs**Versus**

1. Hiramani, S/o Bihari, aged about 47 years.
2. Mevaram, S/o Ramratan, aged about 54 years.
3. Dilbandhu, S/o Jaguram, aged about 29 years.
(Sl. No. 1 to 3 R/o Village Sarhari, P.S. & Tahsil Pratappur, Distt. Sarguja (C.G.))
4. Settlement Officer, East Sarguja, Ambikapur.
5. State of Chhattisgarh, through Collector, Sarguja, Distt. Sarguja, Ambikapur

---- Respondents/defendants.

For Appellant : Ms. Sharmila Singhai, Advocate.
 For Respondents No. 1 to 3 : None present, though served.
 For Respondents No. 4 & 5 : Shri Sumit Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

(1) The substantial questions of law involved, formulated and to be answered in this plaintiffs' second appeal state as under:

“1. Whether the finding arrived at by both the Courts

below upholding the order dated 13.12.1996 passed by Settlement Officer is proper or not ?

2. Whether the finding arrived at by both the Courts below is perverse or not in the light of the fact that respondents No. 1 to 3 have been failed to show their right over the suit land ?”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court).

(2) Plaintiff brought a suit for declaration of title stating that they are title holder of the suit land and the order of the Settlement Officer/defendant No. 4 passed on 13.12.1996 be declared void. That suit was dismissed by the trial Court and on an appeal being preferred, it was affirmed by the first appellate Court, against which the second appeal has been preferred in which the substantial question of law has been set out in opening paragraph of the judgment.

(3) Ms. Singhai, learned counsel appearing for the appellants/plaintiffs would submit that both the courts below were unjustified in dismissing the suit filed by the plaintiffs ignoring the fact that vide Ex.P-1, the plaintiffs were granted patta of the suit land declaring them to be the Bhumiswami and on an appeal being preferred, that was set aside by the Settlement Officer without affording opportunity of hearing to the plaintiffs and, therefore, impugned judgment and decreed of the trial Court as affirmed by the first appellate Court is liable to be set aside.

(4) None has appeared on behalf of the defendants No. 1 to 3 despite service of notice.

(5) I have heard counsel for the appellants herein and considered her

submissions made herein-above and went through the record with utmost circumspection.

(6) Said land was settled in favour of the plaintiffs (Rohit Kumar & Kameshwar) by Tahsildar by order dated 30.09.1988 by declaring them Bhumiswami holding that they are in possession of said land prior to 31.12.1975 vide Exhibit P-1 on an application preferred by defendant No.1 to 3 under Section 116 of the Chhattisgarh Land Revenue Code, 1959, the order of Tahsildar was set aside by settlement Officer- Surguja holding that suit lands newly numbered as Khasra No. 1010, 1011, 1014 are recorded as “Chhote Jhad Ka Jungle” and it is an government land and further directed for correction of record in the name of State government.

(7) The submission of learned counsel for the plaintiff/appellants is that plaintiffs were not afforded an opportunity of hearing before passing the impugned order, therefore the order of settlement Officer be declared as void and inoperative paragraph 4 of the order Exhibit P-5 clearly recorded that present plaintiffs were given sufficient opportunity to oppose the said application filed by defendant No. 1 and 3. He advanced oral submission on 13.09.1996 and submitted written submission and documents in support of their case on 16.09.1996 and after considering those submission settlement Officer passed an order on 13.12.1996 as such this submission that no opportunity of hearing was afforded before passing the impugned order *sans* merit.

(8) The question to be considered in this appeal is, whether the land which is reserved forest i.e. “छोटे झाड़ का जंगल” under Section 4 of the Act, 1927 can be allotted/leased act to the plaintiffs by the State Government or it is revenue

authority in view of Section 2(2) of Forest (Conservation) Act, 1980 ?

(9) Section 2 of the Forest (Conservation) Act, 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 "non-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 re-afforestation,

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

(10) The Supreme Court in case of **T.N. Godavarman Thirumulkpad Vs. Union**

of India and other¹ 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. The term "forest land", occurring in Section 2,

will not only include "forest" as understood in the dictionary Sense, but also any

1 (1997) 2 SCC 267

area recorded as forest in the Government record irrespective of the ownership.

Para 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 forest, 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 *Amdeica 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 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*⁴). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*⁵, 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."

(11) A close reading of Section 2 read with sub Clause (iii) of the Act, 1927, it would appear that State Government or any authority cannot assign by way of lease or otherwise to any private person or to any authority, the reserved forest

2 (1987) 1 SCC 213

3 (1989) Supp (1) SCC 504

4 WP (C) No. 749 of 1995 decided on 29.11.1996

5 (1985) 3 SCC 643

notified under Section 4 of the Act, 1927 read with Section 2 of the Forest (Conservation) Act, 1980 without prior approval of the Central Government; as Section 2 of the Act, 1980 has been given overriding effect to any other law for the time being in force.

(12) The Supreme Court in case of **A. Chowgule & Co. Ltd. Vs. Goa Foundation & Co. Ltd.**⁶, held that prior approval is required for the 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 case of **Tarun Bharat Sangh, Alwar Vs. Union of India and others**⁷ has held that once an area is declared as protected forest, it becomes forest within the meaning of Section 2 of the 1980 Act and prior approval of the Central Government is a condition precedent for grant of lease under the Rajasthan Minor Concession Rules, 1986.

(14) The Supreme Court in case of **Natural Lovers Movement Vs. State of Kerala & others**⁸ held that after enforcement of Forest Conservation Act, 1980, the State Government or any authority cannot make an order or issue direction for de-

6 2008 AIR SCW 5922

7 1993 AIR SCW 1300

8 2009 AIR SCW 3656

reservation of reserved forest or permit for the use of forest land or any portion therefore by way of lease. Para 27(2) of the report 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 aforesaid case **T.N. Godavarman Thirumulkpad** (supra) has been followed by this Court in case of **Baliram Vs. Board of Revenue & another**⁹ and it has been clearly held that once land is recorded as "Bada 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) Since the suit land is *Chhote Jhad Ka Jungle*, it is a forest land within the meaning of Section 2 of Forest (Conservation) Act, 1980, no allotment/settlement could have made by Tahsildar to plaintiffs without obtaining prior permission of Central Government. Both the court below are justified in dismissing the suit of plaintiffs and I do not find it either perverse or contrary to the record warranting

interference in the instant second appeal under Section 100 of the Code of Civil Procedure.

(17) For the foregoing reasons, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No order as to costs.

(18) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge