

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 55 of 2006**

1. Shushil Tiwari, S/o Late Jagdish Tiwari, aged about 68 years, cultivator
2. Hemant Tiwari, S/o Late Shri Jagdish Tiwari, Aged about 58 years,
Occupation Service, Both R/o. Bhagat Singh Ward No.17, Dongargarh,
Distt. Rajnandgaon (C.G.) **Sr. citizen**

---- Appellants/plaintiffs**Versus**

1. State of Chhattisgarh through Collector Rajnandgaon (C.G.)
2. Division Forest Officer, Forest Division, Rajnandgaon (C.G.)
3. Forest Range Officer, Dongargarh, Distt. Rajnandgaon (C.G.)

---- Respondents/defendants

For Appellants/plaintiffs	: Mr. Amiyakant Tiwari, Advocate.
For Respondents/State	: Mr. Saleem Kazi, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/07/2019**

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

“A. Whether the suit land was notified as Reserved Forests vide notification dated 20.10.1949 issued by the then provincial Government ?

B. If yes, whether the suit land could be settled with the father of the appellants in occupancy rights by the then Additional Deputy Commissioner vide Order dated 11.12.1957 ?

C. If yes, whether order dated 11.12.1957 Ex.P.2 confers valid title over the suit lands to the plaintiffs ?

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

(2) The suit property was originally Forest land area admeasuring 58.45 acres situated at village Harratola, District Rajnandgaon, prior to 17.12.1947 it was held by Khairagarh State. It is a case of the plaintiffs that the aforesaid suit land was settled by the then Revenue Minister of the Khairagarh State namely Shri Bansh Bahadur Singh in favour of his father namely Jagdish Prasad Tiwari in the tenancy rights and since then they are in possession of the entire land. On 11.12.1957, by order of the Additional Deputy Commissioner under Section 50(2) of the Land Revenue Code, 1954 (henceforth "Code, 1954"), 30.80 acres of the land was settled in favour of father of the plaintiff namely Jagdish Prasad Tiwari in occupancy right and by virtue of provisions contained in Section 158 of the Code, 1954, the plaintiffs have become land holder / Bhumiswami of the aforesaid land. The State of Madhya Pradesh through Department of Forest has initiated a criminal case against the plaintiffs for encroaching the suit land, which was resulted into acquittal by order dated 22.06.1973 and with the aforesaid facts, civil suit for declaration of title and permanent injunction was filed against the State of Chhattisgarh and its authorities.

(3) The defendants filed their written statement stating *inter alia* that the suit land is a part of reserved forest compartment No. 216, notified on 20.10.1949; the plaintiffs are not in possession over the suit land and the suit land being the forest land, no non-forest activities can be carried on without prior approval of the Central Government by virtue of Section 2 (ii) of the Forest (Conservation) Act, 1980 (henceforth

“Act,1980”) , as such, the suit is liable to be dismissed.

(4) The trial Court framed as many as seven issues and after appreciating the oral and documentary evidence available on record dismissed the suit holding that no tenancy right was granted by the Revenue Minister of the Khairagarh State in favour of plaintiff's father and the suit land is forest land included in the forest compartment No. 216 by notification dated 20.10.1949 and the suit is barred by limitation.

(5) On an appeal being preferred, the first appellate court agreed with the findings recorded by the trial Court and dismissed the appeal, resulting into filing of the second appeal under Section 100 of the Code of Civil Procedure by the appellants/plaintiffs, in which, substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

(6) Learned counsel appearing for the appellants/plaintiffs would submit that the suit land was never included in the forest compartment No. 216 by notification dated 20.10.1949, as such, land situated at Harratola is not included in the notification dated 20.10.1949, which is apparent from the statement of M.A. Ali (DW-1), the then Range Officer posted in the office of Sub Divisional Officer, Beejapur. He would further submit that valid order was passed in favour of the plaintiffs vide Exs. P-1 & P-2 by the Revenue Minister and Additional Deputy Commissioner settling suit land in favour of his father, the total 30.80 acres of the land in occupancy rights and, therefore, judgment & decree passed by both the courts below dismissing the suit deserves to be set aside and the suit be decreed.

(7) On the other hand, Shri Saleem Kazi, learned Deputy Advocate General for the State while opposing the submission made on behalf of the State would submit that

once the suit land is a forest land reserved in the forest compartment No. 216, which is a part of reserved forest by notification dated 20.10.1949 issued in exercise of power conferred under Section 20 of the Indian Forest Act, 1927 (henceforth "Act of 1927") with effect from 20.10.1949, no non-forest activities can be carried on, on the forest land/suit land without prior permission of the Central Government under Section 2(ii) of the Forest (Conservation) Act, 1980, as such, both the courts below have rightly dismissed the suit filed by the plaintiffs and, therefore, the second appeal deserves to be dismissed.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) It is not in dispute that land admeasuring area 58.45 was the land earlier held by Khairagarh State and it is a forest land, which the plaintiffs claimed to be settled in their favour in the tenancy rights, firstly by Revenue Minister vide Ex.P-1 and thereafter on 11.12.1957, by order of the Additional Deputy Commissioner under Section 50(2) of the Code, 1954. It is case of plaintiff that only 30.80 acres of the land was said to have settled in favour of his father namely Jagdish Prasad Tiwari in occupancy right in Ex.P-1, it has clearly been admitted by the plaintiff's father i.e. Jagdish Prasad Tiwari in Ex.P-1 that the suit land is included in the forest area giving no revenue to the State and area is culturable and permission be accorded to clear culturable land of the forest growth and it be settled in his favour, which the Revenue Minister on 27.12.1957 recommended in his favour and ultimately the Forest Officer called the report on 29.12.1957.

(10) Thereafter, Additional Deputy Commissioner, Durg passed an order on

11.12.1957 holding that Revenue Minister had power to settle the land and there is no reason to doubt the bonafide and legality of the transaction and accordingly, directed for settlement in occupancy right in favour of the plaintiffs by order dated 11.12.1957.

(11) It is the case of the defendants that the suit land is a forest land and that has been included in the notification issued on 20th October, 1949 by State Government in exercise of power conferred under Section under Section 20 of the Act of 1927. It has been disputed by the plaintiffs by making amendment in the plaint. A careful perusal of the plaint would show that no relief seeking declaration that notification dated 20.04.1949 issued under Section 20 of the Act of 1927 is illegal and bad in law has been claimed and only case putforth by the plaintiff is that notification dated 20.10.1949 does not include village Harratola, in which the suit land is situated.

(12) The trial Court as well as first appellate Court have clearly come to the conclusion that the suit land has already been included in the forest compartment No. 216 by notification dated 20.10.1949 and it being forest land, Additional Deputy Commissioner has no right or authority to settle it in favour of the plaintiffs by order Ex.P-2. The plaintiffs have challenged the inclusion of his land in the notification dated 20.10.1949 and has placed great reliance upon the statement of M.A. Ali (DW-1) and referred to the paragraph 7 of his statement.

(13) The statement of defendant No.1, if any, will not improve the case of the plaintiff as it was incumbent of the plaintiff to seek specific declaration that notification dated 20.10.1949 it void or illegal, which he did not claim for the reasons best known to plaintiff(s).

(14) The defendants' witness namely M.A. Ali (DW-1) has clearly stated that suit land is the forest land by notification No. 3281 dated 20.10.1949 issued by State Government under Section 20 of the Indian Forest Act, 1927 and it has been reserved against forest compartment No. 216 and it is a reserved forest. Once the land is reserved land under Section 20 of the Indian Forest Act, 1927, it could not have been allotted or settled by the Revenue Commissioner vide Ex.P-2 in favour of the plaintiffs on 11.12.1957, if any. The concurrent findings recorded by both the courts below that the suit land being part of reserved forest having been declared by notification dated 20.10.1949 issued in exercise of power under Section 20 of the Indian Forest Act, 1927, which the petitioner failed to challenge by seeking declaration or cancellation of it in accordance with law. I do not see any illegality or perversity in the findings recorded by both the courts below that suit land was notified as reserved forest vide notification dated 20.10.1949.

(15) Section 2 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) 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 reafforestation.

Explanation.- For the purpose of this section "nonforest 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 reafforestation,

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 communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

(16) 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.

(17) The Supreme Court in the matter of **A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.**¹ 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."

(18) Again, the Supreme Court in the matter of **Tarun Bharat Sangh, Alwar v. Union of India and others**² 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

¹ 2008 AIR SCW 5922

² 1993 AIR SCW 1300

Government is a condition precedent for grant of lease under the Rajasthan Minor Mineral Concession Rules, 1986.

(19) The Supreme Court in the matter of **Natural Lovers Movement v. State of Kerala & others**³ 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 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."

(20) The above decision of the Supreme Court in the aforesaid case **T.N. Godavarman Thirumulkpad v. Union of India and others**⁴ has been followed by this Court in the matter of **Baliram v. Board of Revenue & another**⁵ 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)."

³ 2009 AIR SCW 3656

⁴ (1997) 2 SCC 267

⁵ 2009(1) CGLJ 30

(21) Keeping in view the provisions contained in Section 2 of the Act of 1980, particularly considering that the land is forest land (reserved forest) and in view of provisions contained in Section 2(iii) of the Act of 1980, no decree can be granted in favour of plaintiff as on today and both the courts below have not committed any illegality in not granting decree in favour of plaintiff and dismissing the suit and that is hereby affirmed.

(22) Concludingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

(23) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

