

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 25 of 2011**

Bihari S/o. Kunj Dev, Aged about 43 years, Occupation Agriculturist,
R/o. Village Tangarmahari, PS Balrampur, Tahsil Pal, Distt. Surguja
(CG)

---- Appellant/Plaintiff***Versus***

1. Krishna Pratap Singh S/o. Harihar Pratap Singh, Aged about 45 years, Occupation Agriculturist, R/o. Village Tangarmahari, PS Balrampur Tahsil Pal, Distt. Surguja (CG)
2. Collector, Surguja Ambikapur (CG)
3. State of Chhattisgarh, Through Collector Surguja, Ambikapur (CG)

---Respondents/Defendants

For Appellant	: Shri AN Pandey, Advocate
For Respondent No.1	: Shri Shakti Raj Sinha, Advocate
For Respondents 2 & 3/State	: Shri Ravi Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****09.02.2021.**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein/plaintiff against the impugned judgment and decree passed by the first appellate Court reversing the judgment and decree passed by the trial Court, dismissing the suit of the plaintiff.

2. Learned counsel for the appellant/plaintiff submits that the first appellate Court was absolutely wrong in reversing the judgment and decree passed by the trial Court. He further submits that first appeal was preferred by defendant No.1 who was formal party and further the first appellate court

reversed the judgment and decree of the trial Court by recording a finding which is perverse to the record. The Naib Tahsildar granted patta in favour of the plaintiff in the year 1992, as such, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law. To substantiate his arguments, learned counsel for the appellant placed reliance in the matters of **Ranveer Singh & Ors. Vs. State of MP¹** and **Sitaram Vs. State of MP²**

- 3. Heard learned counsel for the parties, considered their submission and went through the record with utmost circumspection.
- 4. Admittedly, it has been clearly recorded by the first appellate court that the suit land was ‘Chhote Jhad Ka Jungle’/forest land which has been given in patta to the plaintiff, which was revoked by the Collector in Revision.
- 5. 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 Forest (Conservation) Act, 1980 (for short ‘the Act of 1980’).
- 6. Section 2 (iii) of the Act, 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

1. 2010RN 409
2. 1999 RN 82

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..."

7. The Supreme Court in the matter of **T.N. Godavarman Thirumulkpad v. Union of India and others**³ 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

3(1997) 2 SCC 267

Quarry Works v. State of Gujarat⁴, Rural Litigation and Entitlement Kendra v. State of U.P.⁵ and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority⁶). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi⁷ 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."

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**⁸, **In Re: Construction of Park at Noida Near Okhla Bird Sanctuary**⁹ and very recently in the matter of **B.S. Sandhu v. Government of India and others**¹⁰.

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.

4 (1987) 1 SCC 213

5 (1989) Supp (1) SCC 504

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

7 (1985) 3 SCC 643

8 (2004) 11 SCC 497

9 (2011) 1 SCC 744

10 (2014) 12 SCC 172

10. The Supreme Court in the matter of **A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.**¹¹ 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."

11. Again, the Supreme Court in the matter of **Tarun Bharat Sangh, Alwar v. Union of India and others**¹² 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**¹³ 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:-

11 2008 AIR SCW 5922

12 1993 AIR SCW 1300

13 2009 AIR SCW 3656

"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."

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**¹⁴ and it has been clearly held that once land is recorded as "Bade Jhad Ka Jungle" 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)."

14. 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 Jungle*" 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 Naib Tahsildar without obtaining prior permission from the Central Government to the plaintiff. The land is 'Chhote Jhad Ka Jungle' and it was leased out by Naib Tahsildar without prior approval of the Central

Government under Section 2(iii) of the Act of 1980, which is ex facie illegal.

15. Similarly, it is quite vivid that the land in question i.e. Chhote Jhad Ka Jungle was allotted to the plaintiff by the Naib Tahsildar which was revoked by Collector on 23.12.2002 in revision. In the suit filed for declaration of title and permanent injunction even the order dated 23.12.2002 passed by the revisional authority was not challenged. In that view of the matter, the first appellate Court has rightly held that 'Chhote Jhad Ka Jungle' /suit land could not have been allotted to the plaintiff and it has been rightly cancelled by the Collector in revision which has not been called in question. In that view of the matter, I do not find any substantial question of law involved in this appeal for admission.

16. The second appeal deserves to be and is accordingly dismissed in limine. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)

JUDGE