

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION NO. 57/2021
IN
WRIT PETITION NO. 2258/2018

PETITIONER : Shri Sai Mining and Mineral Works, through its Proprietor Shri Sanjay S/o. Dnyanesh Warke aged about 47 years, Occ. Business, R/o. Paper Mill, Opposite New Colony Gate, Kannamwar Ward, Ballarpur, Tahsil and District Chandrapur

...VERSUS...

RESPONDENTS:

1. State of Maharashtra, through Secretary, Ministry of Revenue and Forest Department, Mantralaya, Mumbai.
2. The Additional Collector, Chandrapur, Collectorate Office, Chandrapur.
3. The Collector, Chandrapur, Collectorate Office, Chandrapur.
4. The Deputy Conservator of Forests, Central Chanda, District Chandrapur, Mul Road, infront of Mata Mandir, Chandrapur.

Petitioner in person
Shri N.R.Patil, AGP for respondent nos.1 and 4

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**
DATE : 27/01/2021.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

C.A.O. NO. 536/2020

Heard.

For the reasons stated in the application, the application is allowed.

Review application be registered forthwith.

MCA NO. 57/2021

- 1] Review Application is taken up forthwith for hearing.
- 2] Heard the petitioner who has appeared in person and Shri N.R.Patil, learned AGP for respondents, who has appeared by waiving notice.
- 3] Heard finally by consent.
- 4] The reply filed on record by the respondent Nos. 1 and 4 is very clear and it shows that this review application is devoid of any merit.

5] It is the contention of the petitioner in person that although he had argued that Government of Maharashtra never issued any notification declaring the subject land of which Survey Number is 6 of Mouza Khadki, Taluka-Jivti, District - Chandrapur is a part of a forest reserve land and that this contention was not considered by this Court.

6] Learned AGP disagrees with the contention of the petitioner.

7] A bare perusal of the order would show that this contention was indeed considered by this Court in the light of the notification dated 25.09.1953 issued by the then Hyderabad State, which was a part of Adilabad District during Nizam Rule. This Court found that after Nizam, this area became a part of Nanded District and after 1960, it became a part of Chandrapur District, which was made part of newly reorganized State of Maharashtra. This is how this Court found that the effect of notification dated 25.09.1953 continued even after the area where the land of the petitioner is situated became a part of the newly reorganized State of

Maharashtra. Of course, at that time, it was not considered by this Court as to how the notification issued by the erstwhile Hyderabad State in the year 1953 continued to remain in force and followed even after the village Khadki become a part of the State of Maharashtra. But, now this fact has been clarified by respondent Nos. 1 and 4 in the detailed reply filed by them before this Court.

8] The reply of the aforestated respondents shows that the notification dated 25.09.1953 which was published in Government Gazette on 08.10.1953 was saved by virtue of the provisions made in Section 17 of the Indian Forest Act (Maharashtra Unification and Amendment) Act, 1960. Reply further shows that by virtue of Section 17, the notification dated 25.09.1953 continued to remain in force even after the State of Maharashtra was formed and it is so even today. For the sake of convenience, Section 17 of the Indian Forest Act (Maharashtra Unification and Amendment) Act, 1960, is reproduced below;

"Section 17 . The repeal of the provisions of the Hyderabad Forest Act, 1355F by section 2 shall not affect -

- a) *The previous operation of the Act so repealed, or anything duly done or suffered thereunder;*
- b) *Any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or*
- c) *Any penalty, forfeiture or punishment incurred in respect of any offence committed against any of the provisions of the Act so repealed; or*
- d) *Any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, forfeiture or punishment as aforesaid,*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

Provided that, subject to the preceding provision, anything done or any action taken (including notification and directions issued, rules, appointments, authorizations, inquiries, orders, declarations, assignment or seizures of property made, forest courts established, powers of sanction given, licenses, permissions or passes granted, proclamations published, entries recorded, notices issued or served, control or management of forest assumed and bonds executed) by or under the provisions of the Act so repealed shall, in so far as it is not inconsistent with the provisions of the principal Act as amended by this Act, be deemed to be done or taken under the corresponding provisions of the principal Act, and shall, until altered, repealed or amended by anything done or any action taken, the principal Act continue in force accordingly."

9] It would be clear from the provision made in the above referred section, that all notifications, directions issued, rules, appointments, authorizations, inquiries, orders, declarations, assignments and so and so far by deeming fiction have been considered to be done or taken under the corresponding provision of the principal Act i.e. Indian Forest Act and shall be so until altered, repealed or amended by anything done or any action taken against the principal Act. They also make it clear that till such alteration or repeal or amendment is done, all the notification and other instruments and the acts as mentioned in Section 17 would continue to have force. So the notification dated 25.09.1953 declaring the subject land to be reserved forest land even today continues to remain in force and therefore, it cannot be said that the land of the petitioner bearing Survey No. 6 of Mouza Khadki is not affected by such a declaration. The moment the land of the petitioner is found to be categorized not as a free hold land but a land under reserved forest, no mining lease can be granted by the Collector of the District.

10] So far as the provisions contained in Section 17 of the Indian Forest Act, the petitioner in person has not argued anything. His only argument is that there was no notification issued by the State of Maharashtra declaring the subject land to be the reserved forest land. This argument apart from the fact that this was considered earlier has also now been answered in details by this order.

11] In the result, we do not find any error which is apparent on the face of the record and the order sought to be reviewed by the petitioner in person. The review petition is devoid of merit and it stands dismissed. No costs.

JUDGE

JUDGE

Rvjalit

**Rajesh
Jalit**

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signed by
Rajesh Jalit
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