

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

CRIMINAL WRIT PETITION NO. 184/2019

Abdul Kadar s/o Haji Abdul Subhan
(Dead)

1. Mohammad Amir s/o Abdul Kadar,
aged 28 years, Proprietor of
M/s Royal Potteries Ceramic Industries,
r/o SBI Colony, Mul Road, Chandrapur.
2. Ramrao s/o Chandu Rathod,
aged 60 years, Occ. Private Service,
r/o Mathadi (Markagondi),
Tq. Jiwati, Dist. Chandrapur.
3. Ramesh s/o Pandurang Ade,
aged about 60 years, Occ. Driver,
r/o Mathadi (Markagondi),
Tq. Jiwati, Dist. Chandrapur.

.....PETITIONERS

...V E R S U S...

1. The State of Maharashtra, through
Principal Secretary, Forest Department,
Mantralaya, Mumbai-32.
2. The Principal Chief Conservator of
Forest, Maharashtra State having
office at Nagpur.
3. The Conservator of Forest,
Chandrapur.
4. The Deputy Conservator of Forest,
Central Chanda Forest Division,
Chandrapur.

5. The Range Forest Officer,
Forest Range Jiwati,
Dist. Chandrapur.
6. Smt. Poonam Brahmane,
Range Forest Officer,
Jiwati, Dist. Chandrapur.
7. Shri V. M. Thakre,
Forest Guard, Patan,
Tq. Jiwati, Dist. Chandrapur.

...RESPONDENTS

Mr. Firdos Mirza, Advocated for petitioners.
Mr. T. A. Mirza, A.P.P. for respondents/State.
Mr. K. N. Shukul, Advocate for respondent no.4.
Mr. R. S. Kalangiwale, Advocate for respondent nos. 6 and 7.

CORAM:- V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATE:- OCTOBER 7, 2021

ORAL JUDGMENT (Per: Amit B. Borkar, J.)

1. By this petition under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner is challenging POR N. 214/2005 under Sections 26(1)(d)(g)(h) of the Indian Forest Act dated 05.11.2018, registered by respondent no.5-Range Forest Officer. The petitioner has sought further relief seeking a direction against respondent nos. 1 to 3 to initiate disciplinary action against the respondents for the action of institution of the prosecution under Section 62 of the Indian Forest Act.

2. The facts giving rise to the present petition are as under:

The petitioner-Abdul Kadar s/o Abdul Subhan was Proprietor of M/s. Royal Potteries Ceramic Industries. It is stated that the State of Maharashtra executed lease of 30 years in respect of Khasra Nos. 111 and 115 of village Markagondi, Tq. Jiwati, District Chandrapur admeasuring 33.03 HR by lease deed dated 12.06.2003. It is the case of the petitioner that since respondent nos. 3 to 7 were disturbing the petitioner while carrying out mining activities, he filed Regular Civil Suit No.179/2009 in the Court of Civil Judge Senior Division, Chandrapur which was decreed on 06.02.2012 restraining the respondents and their officers from causing obstruction to the mining work of the petitioner in the suit area i.e. survey nos. 111 and 115 of village Markagondi, Tq. Jiwati, District Chandrapur. It is the case of the petitioner that while delivering the said judgment the Civil Court recorded a finding that survey nos.111 and 115 are not 'Forest' within the meaning of Indian Forest Act and, therefore the action on the part of the respondents to initiate prosecution is in breach of order of injunction passed by the Civil Court. It is the case of the petitioner that the petitioner is carrying out the lawful activity

of mining from survey nos. 111 and 115, which was permitted by the order of injunction and therefore the registration of the POR was without authority of law. It is the case of the petitioner that the land over which the petitioner is carrying out the mining activities is not “reserved forest land” within the meaning of provisions of the Indian Forest Act.

3. It appears that respondents no. 2 to 5, by virtue of order passed by this Court in Writ Petition No.3669/2009 dated 13.10.2010, carrying out the activity of preparation of map and demarcation of the areas as forest areas and the revenue area. It appears that during said exercise, the respondent no. 2 to 5 categorized the land survey nos. 111 and 115 as forest lands and therefore the petitioner had no right of carrying out mining activities over the said land. The respondents, therefore, on 05.11.2018 lodged POR No.214/2005 under Section 26 (1) (d) (g) (h) of the Indian Forest Act. The petitioner has, therefore, challenged the said registration of the POR by the present petition.

4. This Court on 08.03.2019 issued notice to respondents.

The respondents, pursuant to the said notice have filed reply dated 10.04.2019 stating that the respondents while acting pursuant to the order passed in Writ Petition No. 3669/2009 had carried out the demarcation of the land and it was found that the land, over which the petitioner was carrying out the mining, is a forest land. Therefore the impugned POR was registered against the petitioner. It is stated that effect of the judgment and decree passed in Regular Civil Suit No.179/2009 is taken away by the subsequent order passed in Writ Petition No. 3669/2009.

5. We have heard Mr. F. T. Mirza, learned Advocate for the petitioners, Mr. T. A. Mirza, learned A.P.P. for respondent no.1, Mr. K. N. Shukul, learned Advocate for respondent nos. 2 to 5 and Mr. Kalangiwale for respondent nos. 6 to 7.

6. It is necessary mention here that during the pendency of the petition, the original petitioner has expired. Therefore, legal representative of the original petitioner filed an application for substituting him as petitioner, which was allowed by this Court by order dated 22.09.2021. Since the proceedings which were

challenged by original petitioner are criminal in nature, the proceedings cannot be continued against the present petitioner, who is substituted as legal representative of original petitioner. Therefore, insofar as the original petitioner is concerned, the prosecution under Section 26 (1)(d)(g)(h) of the Indian Forest Act will be abated.

7. Mr. Mirza, learned Advocate for the petitioners submitted that Civil Court has recorded categorical finding in Regular Civil Suit No.179/2009 holding that the land in dispute is not forest land, hence the respondent nos. 2 to 5 had authority to institute the prosecution against the petitioner. He submitted that the said decree has attained finality with the result the finding recorded in the said decree is binding on respondent nos. 2 to 5, as the Forest Department was party to the said suit. He submitted that in view of the decree of injunction granted against the Forest Department, registration of the POR was contrary to the decree. He submitted that in any event, activity carried out by the petitioner of mining in relation to survey nos. 111 and 115 cannot be termed as illegal in view of order of injunction granted by the Civil Court. He submitted that this Court cannot go into the

question whether land in question is a forest land or not since the said issue has already been concluded by the decree of Civil Court. He placed reliance on the judgment of Supreme Court in the case of *State of Tamil Nadu Vs. State of Kerala and anr.*; reported in *(2014) 12 SCC 696*.

8. Mr. Shukul, learned Advocate for the respondent nos. 2 to 5 submitted that in view of notification dated 25.09.1953 under Section 19 of the erstwhile Hyderabad Forest Act, the entire village of Markagondi is declared as “Reserve Forest” land. He submitted that though the said Act was repealed, the repeal and saving clause of the repealing Act saved the earlier action taken in pursuant to the said Act. The notification issued under Section 19 of the Hyderabad Forest Act is akin to Section 20 of the Indian Forest Act, therefore, the said notification has an effect of final notification under Section 20 of the Indian Forest Act. He submitted that there is no positive finding recorded by the Civil Court while passing the order in favour of the petitioner that land in question is not reserve forest land. He submitted that whether the land in question is forest land or not that was not an issue, which was directly and substantially in question in the said suit as

civil suit was dealing with the suit for injunction. He submitted that the issue that was directly and substantially involved in the said was lawful authority of the petitioner and not nature of the land in question. Therefore, the finding recorded by the Civil Court in Regular Civil Suit No. 179/2009 being incidental finding will be of no help of the petitioner.

9. Mr. Kalangiwale, learned Advocate for respondent nos. 6 and 7 submitted that there is no specific allegation of mala fides against the respondent nos. 6 and 7 and therefore, prayer clause (b) of the petition cannot be granted. He submitted that the respondent nos. 6 and 7 acted in pursuance of the order passed by this Court in Writ Petition No. 3669/2009 dated 13.10.2010. Therefore, they were acting in good faith. He, therefore, submitted that in relation to respondent nos. 6 and 7, the prayer clause (b) need not be granted.

10. We have carefully considered the averments in the petition, the reply filed by the respondents and extensively heard learned Advocates for the parties. We have also gone through the entire record. The learned Civil Judge Senior Division, while

granting injunction in favour of the petitioner has observed thus:

“(7) ...The copy thereof is at Exh. No.80. Careful reading thereof disclose that the then Government had declared certain blocks to constitute reserved forest and also called the same as “Manikgarh Reserved Forest”. The suit area are lands Sy. Nos. 111 & 115 of Markagondi village, Tahsil-Rajura. It is evident from 7/12 extracts Exh. No.33 & 34. Though there is a mention of village-Markagondi in said Notification, Exh. No.80, yet whether the forest blocks in range Rajura i.e. village Markagondi constitutes Sy. Nos. 111 & 115 is nowhere mentioned in the said Notification. It is also nowhere mentioned in Exh.No.80 that Sy. Nos. 111 & 115 constitute a forest block as defined therein.”

On careful reading of the said observations, it appears that the Civil Court has not recorded positive finding that survey nos. 111 and 115 are not reserved forest lands. The Civil Court observed only to the extent that notification/publication in the Government Gazette on 08.12.1953, does not contain lands in question. It is only observed as follows:

“..it is nowhere mentioned in Exh.-80 that survey nos. 111 and 115 constitute forest blocks as defined therein”.

11. We find substance in the submission made on behalf of the respondent nos. 2 to 5 by placing reliance on the judgment of this Court in Misc. Civil Application No. 57/2021, in Writ Petition No.2258/2018, where coordinate Bench of this Court in relation to village Khadki has held that notification dated 25.09.1953 declaring the land to be reserved forest land even today continues to remain in force.

12. Mr. Mirza, learned Advocate for the petitioners placed reliance upon judgment of the Hon'ble Supreme Court in *State of Tamil Nadu Vs. State of Kerala and anr.*; supra. He invited our attention to paragraph nos 162 to 175 of the said judgment to urge that this Court cannot go into the issue as to whether the land in dispute is reserved forest land or not as the said issue has already been concluded in Regular Civil Suit No. 179/2009. We have reflected over the said submission and we are of the view that as held earlier in the judgment relied upon by Mr. Mirza, learned Advocate for petitioners, the finding will be res judicata only if the issue involved in the earlier suit is directly and substantially was an issue in the earlier suit. Undisputedly, earlier the suit was for injunction restraining defendant no. 2 from

causing hindrance/impediment in excavation work in the said area and not to disturb possession of petitioners over the said land. The issue, which was rightly framed by the trial Court, was to the following effect:

“(i) Does plaintiff prove that he was lawfully excavating the mine in S.No. 111 and 115 of village-Markagondi, Tahsil/Jivti?”

Therefore, the issue, which was directly and substantially involved in the said suit was lawful authority of the plaintiff to carry out work of excavation. The nature of forest land was never direct and substantial issue in the earlier suit.

13. The Hon’ble Supreme Court, in the case of **Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Ors.**; reported in **(2000) 7 SCC 543**, in paragraph 10, observed as under:

“10. We may also add one other important reason which frequently arises under section 11 CPC. The earlier suit by the respondent against the Panchayat was only a suit for injunction and not one on title. No question of title was gone into nor decided. The said decision cannot, therefore, be binding on the question of title. See in this connection Sajjadanashin Sayed Vs. Musa Dadabhai Ummer, (2000) 3 SCC 350, where this Court, on a detailed consideration of law in India and

elsewhere held that even if, in an earlier suit for injunction, there is an incidental finding on title, the same will not be binding in a latter suit or proceedings where title is directly in question, unless it is established that it was 'necessary' in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding of title. Even the mere framing of an issue on title may not be sufficient as pointed out in that case."

In view of the law expounded by the Hon'ble Supreme Court in the case of **Gram Panchayat of Village Naulakha** supra, we are of the opinion that prima facie there is no conclusive evidence to show that the land of the petitioners is not situated in the reserved forest, particularly when notification of 1953 applies to the entire village in which the land of petitioners is included.

14. Apart from the submissions made on behalf of respondent no.5, we are of the opinion that since the present matter relates to the existence of forest land, it has been consistently held by the Hon'ble Supreme Court and this Court that rules of pleadings and other technical rules of evidence will not stictly apply in relation to the forest land. In the facts of the present case, the Civil Court has observed that in the notification

of the year of 1953, the survey number which is subject matter of the present petition was not shown. It needs to be noted that when the entire village was notified as 'Reserved Forest' under the provisions of Hyderabad Forest Act, there was no need to specifically mention each and every survey number of the village. We can take note of the fact that when the entire village is notified as reserved forest there is no need to mention each and every survey number of the village.

15. Since we are considering this petition against registration of the POR and we are exercising powers under Section 482 of the Code of Criminal Procedure Code and Article 226 of the Constitution of India for quashing of the FIR, at this stage it is not necessary to go into the details of the rival claims. The Hon'ble Supreme Court in the case of **Rajiv Thapar & Ors vs Madan Lal Kapoor**, reported in **2013 (3) SCC 330** in paragraph 29 has held that at the stage of consideration of maintainability of FIR in the context of Section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India, it is not necessary to go into details in relation of the material on record. The Hon'ble Apex Court in paragraph 29 held as under:

"29. The issue being examined in the instant case

is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the

defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

16. Having considered the matter from the perspective of prima face case involved in the matter, in our opinion, in this case, the prosecution needs to be given an opportunity to lead oral evidence to prove its case. At this stage, we need not come to a conclusive finding regarding the nature of land which is subject matter of the present writ petition. At the time of deciding the issue as to whether the land in question is a forest land or not, learned trial Court will have to record a finding as regards the said issue. We are therefore, of the view that at this stage the petitioner failed to make out a prima facie case so as to quash the proceeding. We, therefore, find no merit in the petition. The petition is, therefore, dismissed.

Rule is discharged.

17. At this stage, Mr. Mirza, learned Advocate for the petitioners, seeks extension of interim relief which was in force during the pendency of this petition.

Considering the nature of controversy involved and the period for which the interim relief was in force, we deem it appropriate to extend the interim relief dated 10.04.2019 for further period of eight weeks. It is made clear that after expiry of period of eight weeks, the interim relief shall stand automatically lapsed.

JUDGE

JUDGE

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