

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.2692 of 2020

Fr. Sushil Kerketa

....

Petitioner

*Mr. H.M. Dhal, S.K. Nayak,
G.C. Sahu, Advocates.*

-versus-

State of Odisha & others

....

Opposite Parties

*Mr.S.S. Mohapatra,
AGA*

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
30.08.2022**

**Order
No.**

06. **1.** The petitioner in this writ petition seeks for a direction to the opposite party no.2 to grant T.T. permit in his favour by quashing the orders under Annexures-6 and 7.
- 2.** Heard the learned counsel for the parties.
- 3.** The grievance of the Petitioner in this writ petition is that for removal of Sal and non Sal trees from the recorded plots, he filed an application to the Divisional Forest Officer, Bamra Wildlife Division, Bamra, Opposite

Party No.2, vide Annexure-1. On receipt of the said application, Opposite Party No.2 asked the Petitioner to deposit power of attorney, certified copy of the ROR, encumbrance certificate, Sabik ROR etc., vide Annexure-2. The Petitioner submitted the required documents on 3.2.2018 with Opposite Party No.2. In spite of the compliance as above, the Petitioner was again asked to produce the certified copy of the Sabik ROR and document regarding status of the land as on 25.10.1980 from the Tahasildar, vide Annexure-4. On receipt of the said letter, the Petitioner approached the Tahasildar, Bamra. The Tahasildar, however, denied such document being available with him, but supplied Yaddast indicating the status of the land, as revealed from Annexure-5. In spite of the statutory mandate of Sub-Rule (8) of Rule 7 of the Orissa Timber and Other Forest Produce Transit Rules, (hereinafter referred to as "the T.T. Rules) giving time limit, no action having been taken, the Petitioner filed WPC No.22406 of 2018 before this Court, which was disposed of vide order dated 15.01.2019 with a direction to the Divisional Forest

Officer, Bamra Wildlife Division, Bamra, to dispose of the application of the Petitioner within six weeks. The aforesaid order was communicated to the Divisional Forest Officer, Bamra Wildlife Division, Bamra, on 2.3.2019 who stated that he is not competent to grant T.T. permit for cutting of trees, vide Annexure-6. Annexure-6 further discloses that the D.F.O directed the Assistant Conservator of Forests to inspect the plots in question. The Assistant Conservator of Forests after inspection submitted the report stating that most of the trees on the plots in question are naturally grown Sal trees and the same look like a grown forest. On the basis of such report, the Divisional Forest Officers came to the conclusion that the plots look like forest and felling of trees from the plots in question will violate the provisions of the Forest Conservation Act, 1980 and directed the Petitioner to follow the provisions of the Forest Conservation Act, 1980 for cutting of the trees from the plots in question. Challenging the same, Petitioner filed W.P.(C). No.15359 of 2019 before this Court, which was disposed of as withdrawn vide order dated 4.9.2019, with

liberty to the Petitioner to file an appeal before the appellate authority raising all the grounds as taken in the writ petition. Pursuant to the said direction, the Petitioner filed an appeal before the appellate authority with a prayer to direct the Divisional Forest Officers to issue T.T. permit for cutting the trees from the plots in question. It is alleged that the appellate authority without appreciating the contentions raised by the Petitioner rejected the appeal filed by the Petitioner vide order dated 16.11.2019, vide Annexure-7. The order of the appellate authority would go to show that the same is illegal and arbitrary and speaks of non-application of mind inasmuch as it is stated therein that the Sal trees with luxuriant growth have grown naturally in the area and the Petitioner has not planted such Sal trees. The area is located adjacent to the forest land with status Bad Jungle and the total area looks like forest as defined by the apex Court. The Petitioner has also not attached the enumeration list of trees intended to be removed from the said plots nor any of the trees are marked which need to be felled and as per the T.T Rules and

Forest Conservation Act, 1980, no permission is granted for cutting of trees without proper justification and rejected the appeal filed by the Petitioner. The same is assailed in this writ petition on the ground that enumeration lists of trees for removal of trees from the plot in question has been submitted after grant of T.T. permit, so also other finding of the appellate authority is not correct as the trees are located in the private land of the Church and are not adjacent to any forest land. So also it has been contended that there can be no ban for felling of trees from the private plots as held by this Court in the case of **Dr. Jaykrushna Pattnaik vs. D.F.O. Ghumsur North Division**, reported in 2005 (II) OLR 40 and the provisions of the Forest Conservation Act do not apply to non-forest activities in a private owned land. The authority has committed an error in not granting T.T. permit to the Petitioner for cutting of the trees from his private owned land.

4. A counter affidavit has been filed by the Opposite Parties justifying the same on the ground that the application in Form No.III is incomplete one as the

Petitioner has not attached the enumeration list of the trees intended to be removed from the recorded plots and also not attached the Sabik ROR. Thereafter the Petitioner was asked to submit power of attorney, certified copy of R.O.R., Sabik R.O.R. (status of the land as on 25.10.21980) and encumbrance certificate for the last thirty years vide letter no.4866 dated 24.10.2017. The Petitioner vide letter dated 03.02.2018 has submitted the power of attorney, certified copy of R.O.R, encumbrance certificate for the last thirty years and the status of the land as on 25.10.1980 in the form of Yaddast. It is submitted that without knowing the status of the land as on 25.10.1980 the authority expressed its inability to grant T.T. permit for cutting of trees standing over the plots in question as such the Petitioner was requested to submit the status of the land as on 25.10.1980 from Tahasildar, Bamra. Thereafter, D.F.O., Bamra Wildlife Division directed the Asst. Conservator of Forests to inspect the plots from which Sal and Non-Sal trees were sought to be removed. Since Asst. Conservator of Forests observed that most of the trees standing on

the plots are naturally grown Sal trees and it looks like forest, the D.F.O. disposed of the application filed by the Petitioner requesting the Petitioner to follow the provision of Forest Conservation Act, 1980. Thereafter, the Petitioner challenging the same filed an appeal before the Conservator of Forests, Sambalpur Circle. However, Annexure-7, which is the office order of the Regional Chief Conservator of Forests, Sambalpur Circle, would reveals that the trees are located on the plot where Educational Complex, Church and Residential houses are there, and the same is stated to be adding to the aesthetic value of the Institutions located over the plots. Coupled with the same, as the trees were naturally grown and located near adjacent forest land and the same looks like a forest, the appellate authority rejected the appeal on the ground that as per the T.T Rules and the Forest Conservation Act, 1980, no permission is granted for cutting of trees without proper justification. The Opposite Parties have sought to justify the order of the appellate authority on the grounds as above.

5. During the course of hearing, learned counsel for the Petitioner submitted that the Petitioner filed an application under the T.T Rules for cutting of trees from the plots in question and after receipt of the application, the D.F.O. ought to have scrutinized the same and proceeded in accordance with Rule 7(8)(b)(c)(d) of the T.T Rules but the same was not done by the D.F.O. The D.F.O. instead of conducting a joint verification asked the A.C.F to conduct an enquiry, which is impermissible. The rejection of the application for T.T permit is unsustainable and contrary to T.T Rules. After joint verification, the Petitioner was never asked to submit the enumeration list and the D.F.O vide the impugned order under Annexure-6 rejected the application of the Petitioner for non-supply of the enumeration list. The D.F.O basing on the report of the A.C.F rejected the application, which is contrary to T.T Rules. The Petitioner is the recorded owner of the plots in question for which the application for T.T. Permit was filed. In the impugned order, the Petitioner was asked to follow the provision of the Forest (Conservation) Act, 1980. The

aforesaid approach is nothing but to speak of pre-determination not to allow the Petitioner for felling of the trees which is not proper and rejection of the application is tantamount to violation of right guaranteed under Article 300-A of the Constitution. Therefore, the authority having not acted in the manner as prescribed for grant of T.T permit, and the appellate authority having not acted in accordance with the provisions of the Acts and the Rules, the impugned orders suffer from infirmity and the same are liable to be quashed, and the authority may be directed to make a joint verification under the provisions of the T.T Rules for grant of T.T permit to the Petitioner.

6. Learned counsel for the State, however, has justified the impugned orders on the ground that since the plots in question look like forest and the Sabik ROR was not produced, the application of the Petitioner remained incomplete and also the petitioner had no case to be granted with T.T. permit for felling of trees and in such a premises, grant of T.T. permit is contrary to the

provision of the Forest (Conservation) Act, 1980 which will override the T.T Rules.

7. Before addressing the contentions raised, it would be apposite to have a look to Section 2 of the Forest (Conservation) Act, 1980, which reads thus:

“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 cease 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 reforestation.

[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 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].”

8. A bare reading of the Forest (Conservation) Act, 1980 would go to show that the Forest (Conservation) Act, 1980 came into force from 27th December, 1980 and Section 2 of the Forest (Conservation) Act, 1980 speaks that 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 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 cease to be reserved; that any forest land or any portion thereof may be used for any non-forest purpose; 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; 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 reforestation.

9. Under Section 2 of the Forest (Conservation) Act, 1980, there is a restriction on the dereservation of forests or use of forest land for non-forest purpose. Restriction applies to a reserved forest / forest / forest lands. Subsequently, it has been held that ownership is immaterial, whether it is owned by a private person or Government is the owner. For the purpose of an application of the present nature, there must be a joint verification to find out if the land in question is a forest land. The Petitioner was asked to produce status of the land as on the date the Forest (Conservation) Act, 1980 came into force. When the same was not available with the Tahasildar, the Yadast which was available in his office, was produced by the petitioner. Admittedly, the land in question is presently a non-forest land. Yadast reflects that it had been prepared prior to 1980.

However, the authority without acting on the same and without making any joint verification, held that the application of the Petitioner is incomplete and thereafter, the Asst. Conservator of Forests made a spot verification and found that the trees standing on the plots are naturally grown Sal trees because Sal tree cannot be raised through plantation and the plots look like forest. Basing on the report of the Assistant Conservator of Forests, the D.F.O rejected the prayer for grant of T.T. permit for felling of the trees. The aforesaid approach of the authority is nothing but illegal as the trees are located in a private land, that too, inside the premises of the Church.

10. The ground regarding non-production of enumeration list is also misconceived inasmuch as the question of enumeration would arise at a subsequent stage that is after permission for felling of trees is granted. Therefore, the approach of the authority that the Forest (Conservation) Act, 1980 is applicable to the same appears to be erroneous. The concept that the plots look like forest is also not defined anywhere in the

statute, and the authority without looking into the same and placing reliance on the order dated 12.12.1996 of the Apex Court rendered in W.P.(C) No.171 of 1996, refused to grant T.T. permit for felling of the trees in the plots in question when there was no material that the aforesaid is a forest land and rather to show that it is purely a private land, as it appears from the counter affidavit.

11. In the case of ***Construction of Park at Noida near Okhla Bird Sanctuary, Anand Arya and another vrs. Union of India & T.N. Godavarman Thirumulpad vrs. Union of India and others***, reported in (2011) 1 SCC 744 the Apex Court have held as follows:-

“29. In order dated December 12, 1996 in Godavarman Thirumulkpad this Court held and observed as under:

"3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short the 'Act') and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

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 recognised 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 so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*, *Rural Litigation and Entitlement Kendra v. State of U.P.* and recently in the order dated 29.11.1996 (*Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority*). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* 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."

In the above order the Court mainly said three things: one, the provisions of the FC Act must apply to all forests irrespective of the nature of ownership or classification of the forest; two, the word "forest" must be understood according to its dictionary meaning and three, 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.

30. The order dated December 12, 1996 indeed gives a very wide definition of "forest". But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. In the order the Court said:

"The term 'forest land' occurring in section 2, will not only include 'forest' as understood in the dictionary sense, but also an area recorded as forest in the Government record irrespective of the ownership" (emphasis added). Now what is meant by that is made clear by referring to the earlier decision of the court in *State of Bihar v. Banshi Ram Modi*, (1985) 3 SCC 643.

31. In the earlier decision in *Banshi Ram Modi* the Court had said:

"10.....Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply....."

32. The observation in *Banshi Ram Modi* (which again was made in the peculiar context of that case!) was sought to be interpreted by some to mean that once the land was broken in course of mining operations it ceased to be forest land. It was in order to quell the mischief

and the subversion of section 2 of the FC Act that the court in the order dated December 12, 1996 made the observation quoted above italics.

33. In Samatha, this Court was dealing with cases of grant of mining leases to non tribals in reserved forests and forests that were notified as scheduled area under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959. It was contended on behalf of the lease holders that the Regulation and the Mining Act do not prohibit grant of mining leases of government land in the scheduled area to non-tribals. The Forest (Conservation) Act or the Andhra Pradesh Forest Act, 1967, does not apply to renewal of leases. The observations in regard to what constitutes a forest made in paragraphs 119, 120, 121 and 123, relied upon by Mr. Bhushan, was made when it was sought to be argued by the leaseholders that unless the lands are declared either as reserved forests or forests under the Andhra Pradesh Forest Act, 1967, the FC Act had no application. Hence, there was no prohibition to grant mining lease or to renew it by the State government. The context in which the Court expanded the definition of forest is, thus, manifest and evident.

34. In M.C. Mehta v. Union of India & Ors., (2004) 12 SCC 118, in the paragraphs relied upon by Mr. Bhushan, this Court was considering the question of permitting mining in Aravalli Hills where large scale afforestation was done by spending crores of rupees of foreign funding in an effort to repair the deep ravages caused to the Aravalli Hills range over the years by mostly illegal mining. The context is once again evident.

35. Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of National Parks and wild life sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon by Mr. Bhushan can be applied only to an extent and not in absolute terms. To an extent Mr. Bhushan is right in contending that a man made forest may equally be a forest as a naturally grown one. He is also right in contending that non forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal

application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.”

12. This Court in the case of **Dr. Jaya Krushna Pattnaik** (supra) have held that Forest Conservation Act shall not apply to non-forest activity in a privately owned land. This Court further in the case of **Siba Charan Pradhan vrs. D.F.O. Rairakhol Division and others**, reported in 2015 (II) ILR – CUT 338 have held that the Forest Conservation Act shall not apply to any trees planted in an area, which is not a forest.

13. Admittedly, in this case the land is within the boundary of a Church where Educational Complex, Church and Residential houses are there. It is neither recorded as forest land nor recorded as forest. So also, there is no material indicating the fact that when the Forest (Conservation) Act, 1980 came into force it was a forest land or a forest at all. In such premises, even if the trees are grown naturally in such land, it cannot be said that the Forest (Conservation) Act, 1980 shall have application to the felling of the trees standing therein

and, as such, the D.F.O. has no jurisdiction to grant T.T. permit in the said case.

14. In view of the same, this Court is constrained to say that the Divisional Forest Officer, Bamra Wildlife Division, without adhering to the procedure prescribed under Rule 8 rejected the prayer of the Petitioner for grant of T.T. permit which has been confirmed by the Conservator of Forests, Sambalpur Circle. Therefore, both the impugned orders are set aside and the Divisional Forest Officer, Bamra Wildlife Division is hereby directed to reconsider the prayer of the Petitioner for grant of T.T permit for felling of trees as mentioned in Rule 8 of the T.T Rules.

15. With the aforesaid order, this writ petition stands disposed of being allowed.

16. Urgent certified copy of this order be granted on proper application.