

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 7850 OF 2022

Binod Kumar Agarwal ***Petitioner***
Mr. Sushanta Kumar Joshi, Advocate
-versus-

State of Odisha and others ***Opp. Parties***
Mr. Gajendra Nath Rout &
Mr. Swayambhu Mishra,
Additional Standing Counsels

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
26.07.2022

4. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 5th January, 2022 (Annexure-7) passed by the Divisional Forest Officer, Khariar Division, whereby he has rejected the application of the Petitioner to grant permission for removal of trees from his own holding (Plot) Nos.108, 109, 110, 111, 108/1705, 108/1697 and 108/1334 under Khata No.178/273 in mouza Dumerbahal in the district of Nuapada. He also challenges the order of the Appellate Authority, i.e., Regional Chief Conservator of Forests, Bhawanipatna Circle, Bhawanipatna vide order dated 28 dated 22nd February, 2022 (Annexure-8).
3. It is the contention of Mr. Joshi, learned counsel for the Petitioner that the Petitioner sought for permission to remove the teak growth from his recorded land and filed an application to that effect. Although a joint verification was made, but the

DFO, Kharihar refused to grant permission for removal of teak growth for the following reasons:-

- “1. The area seems like naturally grown Forest.
2. It is adjoining to Chakadongar PRF of this Division for which it is not possible to identify between naturally grown trees and trees planted by the tenant.
3. Except 03 numbers of trees all other trees are below 120 cm BDH which are promising trees for future growth;
4. Cutting of huge numbers of trees as applied by you will affect the environment.”

Regional Chief Conservator of Forest, Bhawanipatna also did not consider the appeal in its proper perspective and rejected the appeal by reiterating the view taken by the DFO.

4. Taking into consideration the submission of learned counsel for the Petitioner, learned Standing Counsel was directed to take instruction in the matter. Mr. Mishra, learned ASC along with Mr. Rout, learned drew attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***T.N. Godavarman Thirumulkpad Vs. Union of India and others***, reported in (1997) 2 SCC 267, wherein the State Government was directed to form an expert committee to resolve the issue by identifying 'forest area'. Accordingly, the State Government formed an Expert Committee, which opined as under:-

“5(iii) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

There are also some private lands covered with plantations and natural growth. The smaller units are too difficult to be enumerated and it would be practical to account for only areas which are 5 ha. Or more in extent in one continuous patch.

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Accordingly, guidelines are issued by the Forest Department vide letter No.10346 dated 29th May, 2019 to the Regional

Chief Conservator of Forests and DFOs for identification of the land having tree growth for which permission for removal can be granted. Relevant portion of such guidelines is quoted below for ready reference.

“In this context, it is to note that Forest does not include plantations in non-forest land. Hence, cutting of planted trees in private non-forest land and issuing of T.T. Permit for the same, may be allowed following existing Rules. Natural trees not planted by people should not be allowed to be cut in large scale which looks like forest.”

5. For better appreciation of the case, provisions of Rule 7 (8) (d) of the Odisha Timber and OFP Transit Rules, 1980, is quoted below.

“7. Application for permit and orders thereon –

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(8) In case of an application for removal of timber and other forest produce from private holdings the following procedure shall be followed, namely,

xx xx xx

(d) On receipt of intimation from the Tahsildar, the D.F.O. shall fix the date (s) of joint verification by the Forest and the Revenue Department Officials, and intimate the same to the Tahsildar. The Assistant Conservator of Forests or the Range Officer as may be duly authorized by the D.F.O. in that behalf shall take up the joint verification. The Tahasildar or the Revenue Supervisor authorized by him shall attend the joint verification on the date fixed by the D.F.O. The applicant shall bear the Amin fees if any, for requisitioning the services of the Amin for the office of the Tahasildar for the purpose of joint verification the exercise of joint verification shall include complete joint verification with reference to the village map and Record-of-rights to determine in the field the boundaries of each of the plots and also the boundary of the adjoining forest block, if any.....”

In the instant case, it appears that the DFO has not taken any step for identifying the boundary of protected forest and boundary of the land of the Petitioner. Thus, the matter requires fresh consideration by the DFO, Khariar Division in the light of the guidelines issued supra.

5. In view of the above, the impugned order under Annexures-7 and 8 are set aside and the matter is remitted back to DFO, Khariar Division-Opposite Party No.3 for fresh consideration of the application of the Petitioner for removal of teak growth from his own land in terms of the relevant rules keeping in mind the guidelines issued supra. The DFO shall act upon production of certified copy of this order giving opportunity of hearing to the parties concerned.

6. The writ petition is disposed of accordingly.

7. A copy of this order shall be made available to learned State Counsel for communication and compliance.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy