

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

CIVIL REVISION APPLICATION NO. 140 OF 2022

1. Assistant Conservator of Forest
(Forest Labour Co-operative
Society), Tehsil: Chimur, District:
Chandrapur

IMPLEADED AS: The
Authorised Officer and Assistant
Forest Guard (Jankas-1) Buffer,
Tadoba Andheri Tiger Project,
Chimur, Tehsil: Chimur, District
Chandrapur

2. Range Forest Officer, Khadsangi
(Buffer), Tadoba Andheri Tiger
Project, Chimur, Tehsil: Chimur,
District: Chandrapur

... Applicants

.. Versus ..

1. The State of Maharashtra, Through
Collector, Chandrapur, Tehsil and
District: Chandrapur

2. Bhante Gyanjoti Thero,
Aged about 5 years, President of
Tapowan Buddha Vihar
Bhikku Sangha, Ramgiri, Post:
Bothali, Tahsil: Chimur, District:
Chandrapur.

...Non-applicants

Shri K.N.Shukul, Advocate for applicants.
Shri K.L.Dharmadhikari, AGP for respondent no. 1.
Shri A.A.Dhawas, Advocate for respondent no. 2.

CORAM : SMT. M.S. JAWALKAR, J.

RESERVED ON : 13/04/2023

PRONOUNCED ON : 18/04/2023

JUDGMENT

The present Civil Revision Application is filed by the original defendant nos. 2 and 3 in RCS No. 92/2022 (applicant nos. 1 and 2 herein).

2. The original suit was filed by the original plaintiff (non-applicant no. 2 herein) for declaration and permanent injunction. It is the case of the plaintiff that Tapowan Buddha Vihar Bikku Singha, Ramgiri, Post Bothali, Tahsil Chimur, District Chandrapur which is a public trust and he is residing since 1976 in Mouza Nimdhela, Compartment No. 60, area 4.00 H.R. of the Forest Land. It is his contention that, the Ministry of Law and Justice enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short, "Dwellers Act"). The plaintiff put his claim under Section 3(2) of the said Act in 2011 to the Forest Rights Committee, Bothali, Tah. Chimur, District Chandrapur. In the meeting of Sub-Divisional Level Committee, Warora, it

recommended the proposal to the District Level Committee for granting 0.20 R land (in fact 4.00 H.R.) to the Gram Panchayat Bothali for social centre on 07/04/2011. The said claim is still pending. The plaintiff filed a new claim before the Forest Rights Committee, Bothali on 04/05/2022. In spite of informing to defendant nos. 1 to 3 about pending claim, defendant no. 2 issued a letter on 17/05/2022 for action of removal of encroachment, therefore, suit came to be filed.

3. After issuing summons to the defendants, defendants gave their appearances. Defendant nos. 2 and 3 filed an application for rejection of plaint under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 (in short, "C.P.C."). It is submitted by the learned counsel for the defendants that, the plaintiff in his suit has averred that encroachment in question is in Reserve Forest Compartment No. 60 and it is made by them only. As such, in view of Section 26(5) of Indian Forest Act, 1927 (in short, "Forest Act"), the suit is barred. The scheme of Section 26(5) is only to protect the forest from encroachments by trespasser and the same is intended to remove those illegal encroachments. The area in which the encroachment is made by

the plaintiff is on the border of core area of Tadoba Andhari Tiger Reserve and is situated in Buffer zone of Tadoba. If such encroachment is made over the forest land, the same will be frustrating the scheme of Indian Forest Act. The plaintiff filed his reply to the said application.

4. Learned Trial Court after hearing both the parties rejected the application of the defendants. It is vehemently argued by learned counsel for the applicant that vide letter dated 14/08/2015, the claim of the plaintiff came to be rejected. In view thereof, he has no right and if at all, he has a grievance about rejection, there are remedies under Indian Forest Act and not in the Civil Court.

5. As against this, Shri A.A. Dhawas, learned counsel for non-applicant no. 2 vehemently argued that his claim is pending and there are directions of the State Government itself that if the appeal is pending, till decision in the claims of Traditional Forest Dwellers, they should not be removed from their places. Learned counsel for non-applicant no. 2 drawn my attention to the Government Resolution (GR) dated 11/11/2016 wherein it is specifically directed that, till the decision of District

Level Committee on appeal by the dwellers under the “Dwellers Act”, no action of removal of encroachment be executed. Learned counsel for non-applicant no. 2 vehemently argued that no order of rejection of their claim under Section 3(2) of Dwellers Act is intimated to the plaintiff. It is also contended by learned counsel that unless there is any efficacious remedy provided, it cannot be said that jurisdiction of Civil Court is barred. In support of his contention, learned counsel relied on the following citations/authorities:-

- 1) ***Dhulabhai Etc. V/s. State of Madhya Pradesh and anr.[AIR 1969 SC 78]***
- 2) ***Ram Swarup and ors. V/s. Shikar Chand and anr. [AIR 1966 SC 893]***
- 3) ***Bhau Ram V/s. Janak Singh and ors. [(2012) 8 SCC 701]***
- 4) ***State of West Bengal and ors. V/s. R.K.B.K. Limited and anr. [(2015) 10 SCC 369]***
- 5) ***Jalumuru Krushnam Raju V/s. Commissioner of Tribal Welfare Dept., A.P., Hyd. and ors. [2001 SCC OnLine AP 634]***

6. Heard both the parties at length. Perused the impugned order and considered the citations relied on. It is the case of the defendants that the suit is barred in view of Sections

26(1-A)(a) and 26(5) of the Forest Act. The defendants have power to evict the plaintiff and Civil Court has no jurisdiction to entertain any suit against the Forest Officers. They are taking action under Sections 26(1-A)(a) and 26(5) of the Forest Act.

7. The proviso of Sub-Section 26(1-A)(a) is not applicable to the encroachers or forest dwellers. These proposals are pending under Dwellers Act. There is no dispute that Forest Officers are empowered under Section 26(1-A)(a) of the Forest Act to evict the person from reserved forest, however, their powers are subject to the rights conferred under the Dwellers Act in respect of Tribals or Traditional Forest Dwellers. If there is any claim pending in that regard, till decision of the same as per direction of State itself, no eviction can be effected.

8. For the sake of convenience, Sections 26(1-A)(a) and 26(5) of the Forest Act are reproduced below:-

Sections 26(1-A)(a) and 26(5) (Maharashtra Amendment)

“26(1-A)(a) The Forest-officer may evict from a reserved forest or from any land in a reserved forest any person who, in such forest, trespasses or pastures cattle, or permits cattle to trespass, or clears or breaks up such land for cultivation or for any other purpose, and may demolish any building erected or construction made by such person on such land.

(b).....

(c).....

Provided that, nothing in the above sub-section shall adversely affect the forest rights conferred on the forest dwelling Scheduled Tribes and other traditional forest dwellers under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition) of Forest Rights) Act, 2006 (2 of 2007) and the ownership rights of Gram Sabha over the minor forest produce under the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).".
--Maharashtra Act 21 of 2015, S.2

26(5) No civil Court shall have any jurisdiction in any matter provided for by sub-section (1-A)."

9. It is the case of the defendants that the said Act was amended in the year 2015 that was the intention to remove the trespassers from the forest area without intervention of any Court and the Civil Court is barred for trial of dispute in this regard. It is further contention of the defendants/applicants that the case of regularization has been rejected long back and duly communicated to the plaintiff even then the plaintiff is not removed itself from the encroached land. In view thereof, the defendants started eviction proceedings. It is further contentions of the applicants that the plaintiff is relying on Section 26(1-A) (a) of the Forest Act, however, it protects only to the Traditional

Forest Dwellers which are mentioned in the Dwellers Act. The plaintiff is not a Traditional Forest Dweller and has encroached the suit land. As against this, the plaintiff is claiming that he is residing and is in possession of the forest land since 1976. He has also filed his claim as per Section 3(2) of the Dwellers Act. Learned counsel for non-applicant no. 2 has drawn my attention to the orders passed in Writ Petition (Civil) No. 109 of 2008 wherein Hon'ble Apex Court has issued a direction as under:-

“In the facts and circumstances of the case, we direct the Chief Secretaries of various State Governments to file detailed affidavits covering all the aforesaid aspects and also place on record the rejection orders and the details of the procedure followed for settlement of claims and what are the main ground on which the claims have been rejected. It may also be stated that whether the Tribals were given opportunity to adduce evidence and, if yes, to what extent and whether reasoned orders have been passed regarding rejection of the claims.”

10. On perusal of documents on record, it appears that though it is stated that the claim of the plaintiff has rejected under Section 3(2) of the Dwellers Act, however, nothing is placed on record to show that there was any hearing granted to the plaintiff or order of rejection is duly communicated to the plaintiff. The communication of order is necessary. In view of the fact that,

there are remedies provided against rejection of order, of appeal in the said Act itself. If there is no communication to the concerned person whose claims are under Traditional Forest Dwellers Act, he can't agitate his claim before Superior Authorities. In spite of opportunity granted to the applicants herein, nothing is placed on record to show that the plaintiff was informed about rejection of their claim. In ***Dhulabhai Etc.*** (supra) cited by learned counsel for the non-applicant no. 2, the Hon'ble Apex Court has held that,

“The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to

find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3)

(4)

(5)

(6)

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

11. Thus, there has to be express bar of the Civil Court as well as there has to be efficacious remedy provided in the Act for the redressal of grievance which the plaintiff is agitating. Similar is the view taken in the case of **Ram Swarup** (supra). Learned counsel further relied on **Bhau Ram** (supra) in support of his contention that while deciding the application under Order 7, Rule 11 of C.P.C. the Court has to examined the averments in the plaint and the pleas taken by the defendants in the Written Statement would be irrelevant. There is no dispute over these

proposition. Learned counsel also relied on ***Julumuru Krushnam Raju*** (supra) wherein the Division Bench of Andhra Pradesh High Court held that the order which is not communicated to the aggrieved party or to the person concerned in law is not an order at all.” Relying on the judgment in ***Bachhittar Sing V/s. State of Punjab [AIR 1963 SC 395]***, the Andhra Pradesh High Court has held that,

“The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution therefore requires and so did the Rules of Business framed by the Rajpramukh of Pepsu provide that the action must be taken by the authority concerned in the name of Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh.....Which of them can be regarded as the ‘order’ of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned.”

12. Learned counsel also relied on the ***State of West Bengal*** (supra). In the said case, the Hon’ble Apex Court referred the citation in the case of ***Qimat Rai Gupta [SCC p. 319, para 27]*** wherein it is held that the communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is

aggrieved thereby, the order is required to be communicated. On perusal of order passed in ***W.P. No. 109/2008 (Wildlife First and ors. V/s. Union of India and ors.)***, the Hon'ble Apex Court has issued a direction to file affidavits. It appears that it is expected that Tribals have to be given an opportunity to adduce the evidence and reasoned orders to be passed. In view of this legal position, prima facie, there is nothing on record to reject the plaint under Order VII, Rule 11(d) of C.P.C. at least the defendants fail to establish that there is a bar of Civil Court as the Forest Officers were given an ample power to remove the encroachment. However, at the same time, protection was also granted to the Schedule Tribes and other Traditional Forest Dwellers under "Dwellers Act". The defendants may be right in submitting that the plaintiff cannot be treated as a Traditional Forest Dwellers, however, there has to be adjudication on that issue and the same is required to be communicated to the plaintiff so that the plaintiff can take an appropriate steps. In the present matter, prima facie, it appears that, without following due process, the defendants want to evict the plaintiff from the land which is in his possession since long. As such, the order passed by learned Trial Court below Exh. 20 in RCS No. 92/2022

perfectly justified and there is no reason to interfere in the same.

Accordingly, the Civil Revision Application stands rejected.

[SMT. M.S. JAWALKAR, J.]

B.T.Khapekar