

HONOURABLE SRI JUSTICE
A.GOPAL REDDY
AND
HONOURABLE SRI JUSTICE
P.DURGA PRASAD

WRIT APPEAL No.2002 OF 2001

And

W.P.No.21383, 19645 of 2002 and 16719 of 2001

Between:

The District Collector and others

.... Appellants

and

Palacherla Sattiraju and others

.... Respondents

This court made the following:

HONOURABLE SRI JUSTICE
A.GOPAL REDDY
AND
HONOURABLE SRI JUSTICE
P.DURGA PRASAD

WRIT APPEAL No.2002 OF 2001

And

W.P.No.21383, 19645 of 2002 and 16719 of 2001

COMMON JUDGMENT:

(per the Hon'ble Sri Justice A.Gopal Reddy)

Since the issue involved in the writ appeal as well as in the writ petitions is one and the same, they are heard together and disposed of by this common judgment.

W.A.No.2002 of 2001 is directed against the order of the learned Single Judge in allowing W.P.No.4944 of 2001, dated 25.09.2001, directing the appellants not to evict the writ petitioners from the land leased out to them in G.O.Ms.No.537, dated 07.04.1971, and to consider the case of the writ petitioners on an application made by them for assignment of land on their long undisturbed occupation. The learned Single Judge observed that once the Government has taken a decision to lease out the land, it is to be construed that the Government has exercised the power under Section 23 of the Andhra Pradesh Forest Act, 1967 (for short, "the Act") to the extent of the land leased out to the petitioners, which amounts to de-reserving the forest from the reserved area and it cannot continue to be a reserved forest as contemplated under Section 3 of the Act.

Writ Petition No.21383 of 2002, is filed for issuance of a writ of Mandamus declaring the memorandum bearing No.7-16.2002-FC, dated 03.05.2002, issued by the Inspector General of Forests in the Ministry of Environment and Forests, Government of India fixing a time bound programme for eviction of the encroachers from the forest lands and steps suggested, as arbitrary and illegal.

Writ petitioners, who are 158 in number, belonging to Yerukulas, B.C. and S.C. Communities and are eaking out their livelihood by cultivating the forest lands for the last several years. They made an application on 10.05.1969 to the Government to lease out the forestland in Ramayapatnam. The Government referred the said representation to

the Chief Conservative of Forests, who after inspection of the forest land forwarded his report. Taking into account the recommendation made by the Chief Conservative of Forests, the Government issued G.O.Ms.No.537, Food and Agriculture (Forest-I) Department, dated 07.04.1971, directing leasing of

Ac.170-00 to the writ petitioners from Ramayapatnam Reserve Forest of Kavali range for a period of five years initially, renewable every year on condition of the writ petitioners paying fixed amount per acre.

There is no dispute that pursuant to the issuance of the said G.O. the possession was handed over to the writ petitioners, who are cultivating the lands, and they have also paid a sum of Rs.75,000/- towards arrears of lease (according to the petitioners) in the year 1999. The writ petitioners made a representation on 28.02.2001 by forwarding copies to the 2nd and 3rd respondents stating that the officials of the 1st respondent threatened to evict them from the forest land. Complaining that no action has been taken by the respondents on the said representation, the petitioners filed W.P.No.4944 of 2001, contending that though it is true that they could not have sought for issuance of a writ for executing Constitutional goals contained in Part-IV of the Constitution of India, if the Government in furtherance of the said constitutional goals takes a step in a positive direction, it is impermissible for the Government to withdraw rehabilitative steps unless it is established that the terms and conditions have been violated. When the reasons were sought for by the writ petitioners, it was stated that the lease was only for a period of five years and, therefore, they are liable to be evicted, which is wholly untenable. Even assuming that the lease was only for a period of five years, the lease has to be cancelled as early as in the year 1967 itself. Having given them the hope that the land will be available for them for cultivation, the petitioners cannot be evicted on flimsy grounds as long as they are willing to fulfill the liabilities under the lease deed.

A counter affidavit has been filed on behalf of the respondents in W.P.No.4944 of 2001, stating that the petitioners are not existing lessees as on the date of filing of the writ petition; that initially lease was granted for a period of five years and later it was not renewed and they never paid the lease amount subsequent to 1975; that the amount of Rs.75,000/- paid by them will not represent the lease amount, but it is a compounding amount with regard to certain offences committed by them under the Forest Act; and that the lease shall be deemed to have been lapsed for non-renewal. It is further stated that the Forest (Conservation) Act, 1980 (Act 69 of 1980) came into force on 25.10.1980, prohibiting transfer of the property creating encumbrance over the reserved forest either by way of alienation, lease or otherwise or conservation and use of such land into non-forest land and that under Section 2 of the Act 69 of 1980, the petitioners cannot claim any right over the land.

The learned Single Judge after reproducing the portion of G.O.Ms.No.537, dated 07.04.1971, gave a finding that there is no dispute about the nature of the lands that they are reserved forest under the provisions of the Act; that under Section 23 of the Act, the State Government has power to declare any reserved forest shall cease to be reserved. Accepting the contention advanced by the learned counsel across the Bar (without any pleadings to the said effect), that once the Government has de-reserved the forest from the reserved area by issuing G.O.Ms.No.537, dated 07.04.1971, the same can be construed that it has exercised the power under Section 23 of the Act to the extent of the land leased out to the petitioners, the learned Single Judge allowed the writ petition as aforementioned.

Sri A.Satya Prasad, learned Additional Advocate General contends that by any stretch of imagination leasing out the land through G.O.Ms.No.567, cannot be treated as a notification under Section 23 of the Act, which has to be notified by the Government. Further, in view of Central Act, viz., The Scheduled Tribes and other Traditional Forest

Dwellers (Recognition of Forest Right) Act, 2006

(Act 2 of 2007), the right of the petitioners in the forest lands, if any, can be decided as per Section 3 of the Act 2 of 2007 and the recognition of rights vested to them under Section 4 of the Act 2 of 2007. He further contends that the rights of the petitioners can be determined under the Act 2 of 2007 and, therefore, he seeks to set aside the finding of the learned single Judge that issuance of G.O.Ms.No.567 amounts to de-reservation in the reserved forest area and directing the respondents to grant patta.

Sri S.Ramachandra Rao, learned senior Counsel appearing for the respondents supported the order under appeal contending that the procedure contemplated under Section 4 of the Act namely issuance of the notification etc., applies only for declaring any area to be reserved forest and issuance of the notification under Section 4 of the Act is not applicable to the de-notification. Once the Government thought it fit to lease out the land and issued G.O.Ms.no.537, the same shall be construed as the power exercised by the Government under Section 23 of the Act de-reserving the forest. Therefore, the only consideration to be made is for grant of pattas in the light of the directions. In the absence of any procedure prescribed to be followed under section 23 of the Act, the issuance of G.O.Ms.No.537 itself is sufficient to presume that the reserved forest has been implicitly de-notified. Under Act 2 of 2007, the authorities have to regularize long tenure to protect the forest schedule tribes.

In the counter filed by the Government in W.P.No.21838 of 2002, it has agreed to consider the claims of the petitioners and other forest dwellers subject to compliance of the procedure contemplated under Chapter IV of Act 2 of 2007.

The Central Government, who filed a counter, also agreed to implement the Act 2 of 2007 by recognition of the forest rights of the schedule tribes and other traditional forest dwellers.

The learned Standing Counsel appearing for the Central Government also stated that the circular has been superseded by the Act 2 of 2007 as stated in para 9 of the counter. Therefore, the case of the petitioners has to be considered for regularization of the land in their occupation as per the provisions of Act 2 of 2007.

In view of the above submissions, the point that arises for consideration in this writ appeal is whether issuance of G.O.Ms.no.567 amounts to de-reserving the reserved forest area as contended by the learned counsel for the writ petitioners and whether the writ petitioners are entitled to consider their cases under the Act 2 of 2007?

In the entire W.P.No.4944 of 2001, there is no pleading to the effect that on issuing .GO.Ms.No.567, leasing the property to the writ petitioners initially for a period of five years renewable every year, amounts to de-notifying the reserved forest as contemplated under Section 23 of the Act.

Section 23 of the Act gives power to declare reserved forest as no longer reserved, which reads as under:-

“23. Power to declare reserved forest as no longer reserved:-

(1) The Government may, by notification, direct that from a date to be fixed b7y such notification any reserved forest or any portion thereof shall be ceased to be reserved.

(2) From the date so fixed, such forest or portion shall cease to be reserved, but the rights, if any, which have been extinguished therein shall not revi9ve in consequence of such cessation.”

As per Section 2(j) of the Act, Notification means a notification published in the Andhra Pradesh Gazette. There is no dispute that the lands, which were leased out to the writ petitioners, were declared as a reserved forest. On issuing such notification declaring it as a reserved forest, the rights of the parties, if any, can be recognized as

contemplated under Section 11 of the Act. Under sub-Section 2 of Section 11 of the Act, if the claim is admitted to be a right for the beneficial enjoyment of any land or building, the Forest Settlement Officer shall record the designation, position and area of such land and the designation and position of such building. The rights as continued under Section 11 of the Act are inalienable without sanction under Section 18 of the Act. Section 20 of the Act, prescribes penalties for trespass or damage in the reserved forest and acts prohibited in such forests. Sub-section (2) of Section 20 of the Act exempts the acts from the deeming prohibition including the exercise of any rights continued under sub-Section (3) or sub-Section (4) of Section 11 or created by a grant or contract in the manner described in Section 17. Section 17 contemplates that no right of any description shall be acquired by any person in or over any reserved forest, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before the publication of the notification under Section 15 of the Act.

Therefore, grant of lease to the petitioner is only a contract entered by the Government by creating leasehold rights under Section 17 of the Act. By any stretch of imagination, it cannot be presumed that they were declared as ceased to be reserved forest. If it has to be declared to have the effect of de-reservation, the Government shall specify in notification that from a date to be fixed in the notification, a reserved forest or any portion thereof shall cease to be reserved. Only from the date so fixed, such forest or portion thereof shall cease to be reserved. The rights, if any which have been extinguished therein shall not revive in consequence of such cessation, which clearly indicates the lease, which was granted for a period of five years initially, but not in perpetuity and can never be treated as de-reserved. At any time, the right of lease can be suspended, when there is a contravention noticed as mentioned under Section 20 of the Act. The terms and conditions annexed to the G.O. clearly indicate that if there is any contravention of

the terms and conditions, the lease can be terminated. Further, condition No.8 of the G.O. stipulates for termination of lease if the lessee encroaches any forest land not included in the lease apart from taking penal action under the Act. Under Condition No.9 before clearing the area for cultivation, the lessee shall inform the Range Officer of his intention to do so whereupon the Range Officer may ask for handing over of the felled material for sale in which case the lessee shall carefully attach and handover the same to the Range Officer. The lessee cannot fell the trees growth without written permission from the Range Officer. Under condition No.14, the lessee shall at all times comply with the provisions of the A.P.Forest Act, 1967 as amended from time to time and of all rules issued hereunder and for the time being in force, which clearly shows that the government never intended to de-reserve the forest land from the reserved forest area, as contemplated under Section 23 of the Act, but conferred leasehold rights under Section 17 of the Act. If that be the case, the learned Single Judge fell in error in coming to the conclusion that granting lease by issuing G.O.Ms.No.567, amounts to de-reservation of the forest.

In view of the same, the learned Single Judge erred in coming to the conclusion that issuance of G.O.Ms.No.567 amounts to de-reservation of the land in which leasehold rights alone are created from the reserved forest area and directing the respondents to grant patta. The impugned order is, accordingly, set aside and the writ petition filed by the writ petitioners is disposed of directing the respondents to consider the claim of the petitioners as per the provisions of the Act 2 of 2007. Until their claims are considered they shall not be evicted from the land leased out to them.

With the above direction, the Writ Appeal and the consequential W.P.Nos.21383, 19645 of 2002 and 16719 of 2001 stands disposed of. There shall be no order as to costs.

A.GOPAL REDDY, J

P.DURGA PRASAD, J

Dt: 21-01-2011.
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