

I.M.QUDDUSI, ACJ & B.P.RAY,J.

W.P.(C). No.6728 OF 2006 (Decided on 22. 12. 2009.)

BIMAL KANTI GHOSE

-V-

STATE OF ORISSA & ORS.

..... Petitioners

..... Opposite parties

FOREST CONSERVATION ACT, 1980 (ACT NO.69 OF 1980) – SEC.2.

For Petitioner - M/s.R.Nayak & Associates.

For Opp.Parties - Addl.Govt.Advocate

(For O.Ps. 1 to 2)

Mr. C.A.Rao (for O.Ps. 3 to 4)

B.P. RAY J. In this writ petition under Articles 226 & 227 of Constitution of India, the petitioner has challenged the order dated 12.03.2007 passed by opp. party no.3-the Divisional Forest Officer, Satkosia Wild Life Division, Angul and order dated 16.04.2008 passed by the opp. party no.4-Conservator of Forests, Angul Circle, Angul rejecting his application for issue of Timber Transit Permit (in short, "T.T.Permit") for removal of trees standing over his private stitiban recorded lands situated in mouza Purunakote, Plot No.3 of Khata No.109/42 measuring an area of Ac.7.93 decimals under Angul Tahasil in the district of Angul.

2. In the year 1962, the petitioner purchased the aforesaid land and has been recorded in the Record of Rights as stitiban status. The kisam of land is Taila. After reclamation of the land, the petitioner planted 3000 teak stumps in the said plot in the year 1971. In May, 1976, by a notification u/s.18 of the Wild Life (Protection) Act, 1972, the State Govt. declared the area to be a sanctuary to be known as Satakosia Gorge Sanctuary. The petitioner made an application for removal of the trees from the land in question under the Orissa Timber and Other Forest Produce Transit Rules, 1980 (in short, "the Rules") and for issuance of T.T. Permit. In pursuance of the said application, on 9.8.1988 a joint verification was made by the Revenue and Forest Officials for the purpose of issuance of T.T. Permit as required under the Rules and subsequently, after obtaining permission from the appropriate authority, the petitioner removed some teak trees in the year 1989. Again in the year 2001, he applied to opp. party no.3 for grant of permission to fell 309 teak trees from the aforesaid land by way of thinning operation to provide more growing space for the remaining & promising teak trees and to transmit the felled trees. The District Forest Officer by order dated 30.5.2005 rejected the application of the petitioner as the plot looks like a forest and is also in continuation of the forests of the above reserved forest and it satisfied all the conditions of a forest. Thereafter, the petitioner approached this Court in the writ application being aggrieved by the aforesaid order. A Division Bench of this Court by order dated 5.5.2006 in W.P.(C) No.9406 of 2005 directed the petitioner to file an appeal within a period of two weeks from the date of order and the appellate authority was directed to dispose of the said appeal within a period of two months thereafter. The petitioner preferred an appeal before the opp. party no.4-Conservator of Forests, Angul, which was under Rule 7(3) of the aforesaid Rules. The appellate authority after giving an opportunity of hearing to the petitioner by order dated 3rd July, 2006 dismissed the appeal vide Anneuxre-7. The petitioner has filed this writ application challenging the aforesaid order.

3. The appellate authority framed as many as 3 issues, namely;

- i) Whether the plot of the applicant/appellant comes under purview of Forest Conservation Act, 1980 or not ?
- ii) Whether the order of the Supreme Court date 14.2.2000 read with the order dated 28.2.2000 in Writ Petition (Civil) No. 202 of 1995, T.N.Godavarman Thirumulkpad Vrs. Union of India is applicable to the plot of the appellant?
- iii) Whether the appellant has lawful right over the plot in question ?

4. The appellate authority after hearing the parties and after perusing the records while setting aside the order remitted the matter to the Divisional Foreest Officer-opp.party no.3 to examine the relevant revenue record to ascertain the ownership of the appellant over the plot in question. The appellate authority further directed that the D.F.O. should examine whether the plot in question attracts the provisions of Forest Conservation Act or not and the appellant should be allowed for removal of trees from his plot in question in accordance with the provisions of the Orissa Timber and Other Forest Produce Transit Rules, 1980.

5. After the aforesaid, the D.F.O. by order dated 12.3.2007 under Annexure-10 rejected the application of the petitioner on the ground that the removal of trees from the above plot is non-forestry activity and the petitioner shall obtain prior permission from the Government of India under the Forest Conservation Act, 1980. As against the aforesaid order, the petitioner again preferred an appeal before the Conservator of Forest on 7.5.2007 in Annexure-11. As the appellate authority i.e. the Conservator of Forest did not dispose of the appeal, the petitioner approached this Court under Articles 226 & 227 of the Constitution of India in W.P.(C) No. 13822 of 2007. A Division Bench of this Court by order dated 18.3.2008 directed the Conservator of Forests, Angul to dispose of the appeal of the petitioner within a period of one month from the date of communication of the order. Thereafter, by order dated 16.4.2008 in Annexure-14 the Conservator of Forest dismissed the appeal with the following findings :-

“ (1) The plot in question has all the characteristics of forest. This is even evident from the history of the land filed by the Appellant. In the said history of land, the Appellant has himself admitted that that the whole area even has some natural Teack Plots besides the planted crop. In fact , as revealed from the said history, various girth class Teack trees are existing in the plot. Hence, as per the meaning of the forest as defined by the Hon’ble Supreme Court of India in T.N. Godavaran Thirumalpad vrs. Union of India and other (W.P.(C) No. 202/95), the plot in question of the Appellant comes under the category of forest and hence felling of trees being a non-forestry activity attracts the provisions of the Forest Conservation Act. Moreover, the Hon’ble High Court of Orissa in their judgment dtd. 10.7.2002 relating to OJC No. 4819/2001 (Bhagaban Bhoi vrs. State of Orissa and others) have also observed that once the land satisfies description of being a forest land, it has to be taken that the Forest Conservation Act would have its application and no permission to fell the trees can be granted without prior concurrence of the Central Government. In the instant case, no such permission has been given by the Central Government.

(2) The land in question is within Satkosia Gorge sanctuary notified u/s 18 of the Wildlife Protection Act. This position has even been admitted by the Appellant in his appeal under reference. As per Section 18-A of the Wildlife Protection Act, the provisions of Section 29 are equally applicable to the Sanctuary notified under Section 18 of the said Act. The Section 29 prohibits removal of any forest produce except in accordance with the provisions as well as concurrence of the State Wildlife Board; such removal is permitted only for the benefit of the Wildlife. In the instant case, such removal will be detrimental to the Wildlife habitat since

admittedly, the area is frequented by the wild animals as is even seen from the history of the land filed by the appellant as Annexure-9 in W.P.(C) No. 739 of 2005 before the Hon'ble High Court of Orissa. Moreover, the Hon'ble Supreme Court of India vide their order dated 14.2.2000 in Writ Petition Civil (No.202/95) have prohibited any removal of trees from the Sanctuary and National parks. In fact, the Central Empowered Committee (constituted by the Hon'ble Supreme Court of India) in their letter dtd. 2.7.2004 have categorically requested the State to ensure strict compliance of Hon'ble Supreme Court order as above; if for better management of protected area (Sanctuary in the instant case) if any felling of trees is required to be undertaken, prior permission of the Hon'ble Supreme Court is required to be obtained before undertaking such activity. However, no such permission is granted by the Hon'ble Supreme Court in the instant case."

6. Acounter affidavit has been filed on behalf of the opp.parties reiterating the facts stated in the impugned orders.

7. The petitioner has filed a rejoinder affidavit enclosing a letter No.1188, dated 24.7.1998 under Annexure-R/1 written by the Collector, Angul to the Principal Secretary to Govt., Forest and Environment Department, Orissa, Bhubaneswar-opp. party no.1. The said letter was written after making enquiry in exercise of power under Sections 19 to 25 of the Wild Life (Protection) Act, 1972. Even though, the Collector has submitted the aforesaid letter/report, no action has been taken by the State Govt. By order dated 2.9.2008, this Court directed to file an affidavit as to whether the area in question has been notified as reserved forest or forest sanctuary. Pursuant to that, the Divisional Forest Officer, Satkosia, Wild Life Division, Angul filed an affidavit indicating that even though the Collector has submitted a report, final notification under Section 26(A) is not yet done. But in the said affidavit, it has been indicated that basing on the order of this Court dated 8.6.2002 in OJC No.1222/2002 one Smt. Rebati Sahu of Tikarpada within Satkosia Gorge Sanctuary has been permitted to remove the trees from her land.

8. Learned counsel for the petitioner relying upon a decision reported in AIR 2004 SC 5080 (**Sri Ram Saha v. State of West Bengal and others**) stated that the statutory authority by mis-representing and mis-construing the judgment passed by the apex Court has come to the conclusion that even though the land in question is not a forest land, the ratios of the decision are applicable. On perusal of the aforesaid judgment, it would be found that the apex Court has elaborately interpreted the earlier judgment in the case of **T.N. Godavarman Thirumulkpad v. Union of India and others** and held that :-

"The apex Court in the said appeal had the occasion to deal with the provisions of Forest Conservation Act, 1980 and the legislative intent behind

its enactment and interpreting the decision in T.N. Godavarman (supra) in their judgment, quoted the direction given in paragraph 5 which we would profitably extract below some of which we consider relevant for our purpose:-

(i) In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with Section 2 of the Act all ongoing activity within any forest in any State throughout the Country without prior approval of the Central Government must cease forthwith...."

Xx xx xxxx xx xx

(iv) "The ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest."

Learned counsel for the petitioner submitted that the apex Court in the judgment of Sri Ram Saha (supra) in paragraphs 9 & 10 has elaborately interpreted the earlier judgment in T.N. Godavarman (supra) and the effects of the direction given therein and has made it abundantly clear that the direction given by the Court is clearly confined to felling of trees in forest land and the said ban was not extended to non-forest private plantation. Learned counsel took us through the relevant paragraphs of the judgment which are quoted below:-

“9. It is clear from the aforesaid judgment of this Court that the observations made and directions given were in relation to Forest Land. The term of ‘forest land’ occurring in Section 2 of the Conservation Act will not only include ‘forest’ as understood in the dictionary sense but also includes any land recorded as forest in the Government record irrespective of the ownership. It is also stated that the provisions of the Conservation Act for the conservation of Forest and the matters connected therewith must apply clearly to all forests so understood irrespective of ownership or the classification thereof. By the directions given in the said judgment, certain bans are imposed including a ban in respect of felling of trees in forest, irrespective of the nature of the forest, i.e. whether the forest is public forest or private, reserved, protected or otherwise. It is clear from the observations made and directions given in the aforesaid judgment of this Court that though ban was imposed in respect of undesirable activities in the forest irrespective of the nature of the forest and its ownership but such a ban did not affect felling of trees in any private plantation in an area which is not a forest. Thus, it is clear that the direction given by this Court is clearly confined to felling of trees in forest land and the said ban was not extended to non-forest private plantation. It is made clear in the judgment that the directions given are to be implemented notwithstanding any order variance made or which may be made by Government or any authority, tribunal or Court including the High Court.”

The Apex Court in the concluding paragraph held that no permission is required for felling trees in the non-forest private plantation/orchard/bagan. The Apex Court said, “.....at any rate in the guise of positive interpretation courts cannot re-write a statute. A purposive interpretation may permit a reading of the provision consistent with the purposes and object of the Act, but the Courts cannot legislate and enact the provisions either creating or taking away substantial rights by stretching or straining a piece of legislations.”

9. Now that the Apex Court in Sri Ram Saha (supra) after interpreting its judgment in T.N. Godavarman and considering the definition of forest as per the Forest Conservation Act, 1980 has in clear and categorical terms held that the ban imposed in T.N. Godavarman in the matter of felling of trees does not extend to non-forest private plantation/orchard/bagan and admittedly there being no State enactment felling of trees in non-forest private plantation, the authorities cannot refuse T.T. permit to the owner of such forest produce if after due enquiry under Section 7(2) of the Orissa Timber and Other Forest Produce Transit Rules, 1980, he is found entitled to.

10. Before parting, we would like to make it clear that the ban or restriction on felling trees contemplated in Section 2 of the Forest Conservation Act, 1980 shall not apply to any private plantation/orchard/bagan comprising of trees planted in any area which is not a forest. The ban shall also not apply to lease hold land irrespective of date of grant of lease or date of acquisition of title, if the land was not converted from an earlier forest.

11. The writ petition is accordingly allowed. The impugned order dated 12.3.2007 passed by the opp. party no.3-Divisional Forest Officer, Satakosia Wild Life Division, Angul and the dated 16.4.2008 passed by the Conservator of Forest, Angul

Circle under Annexure-14 are quashed .Opp. party no.3 is directed to deal with the application of the petitioner for grant of T.T. Permit in terms of the observations made in the foregoing paragraphs keeping in view the provision if the Rule 7(8) of Rule and pass necessary orders on the same within a period of two months from the date of receipt of a copy of this judgment.

There shall be not order as to cost.

Writ petition allowed.