

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 757 of 2002

With

Cr.M.P. No. 737 of 2002

With

Cr.M.P. No. 756 of 2002

With

Cr.M.P. No. 758 of 2002

With

Cr.M.P. No. 759 of 2002

With

Cr.M.P. No. 760 of 2002

With

Cr.M.P. No. 761 of 2002

Dasrath Modi, son of Dukhi Modi, resident of Village - Arkhango, PS Rajdhanwar, Dist - Giridih, at present resident at Parsabad, PS Markacho, Dist - Koderma Petitioner

(Petitioner in all the cases)

Versus

1. The State of Jharkhand
2. Divisional Forest Officer, Koderma
3. Forest Guard, Bariadih, PS Markacho, Dist - Koderma

... ... Opp. Parties

(Opposite parties in all the cases)

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioner : Mr. Deepak Kumar, Advocate

For the Opp. Party : Mr. Pankaj Kumar, A.P.P.

C.A.V. on 05/02/2015

Pronounced on 30/09/2015

Since common question of laws and facts are involved in all these applications, the same are being disposed of by this common order.

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 237 of 2001 including the order dated 10.11.2001 passed by the learned Chief Judicial Magistrate, Koderma whereby and whereunder cognizance has been taken for the offences punishable under Section 33 of the Indian Forest Act.

Cr.M.P. No. 737 of 2002

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 243 of 2001 including the order dated 08.11.2001 passed by the learned Chief

Judicial Magistrate whereby and whereunder cognizance has been taken for the offences punishable under Sections 33, 41, 42 of the Indian Forest Act.

Cr.M.P. No. 756 of 2002

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 205 of 2001 including the order dated 15.10.2001 passed by the learned Chief Judicial Magistrate, Koderma whereby and whereunder cognizance has been taken for the offences punishable under Sections 33, 41, 42 of the Indian Forest Act.

Cr.M.P. No. 758 of 2002

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 238 of 2001 including the order dated 10.11.2001 passed by the learned Chief Judicial Magistrate, Koderma whereby and whereunder cognizance has been taken for the offences punishable under Sections 33, 41, 42 of the Indian Forest Act.

Cr.M.P. No. 759 of 2002

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 240 of 2001 including the order dated 07.11.2001 passed by the learned Chief Judicial Magistrate, Koderma whereby and whereunder cognizance has been taken for the offences punishable under Sections 33, 41, 42 of the Indian Forest Act.

Cr.M.P. No. 760 of 2002

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 241 of 2001 including the order dated 07.11.2001 passed by the learned Chief Judicial Magistrate, Koderma whereby and whereunder cognizance has been taken for the offences punishable under Sections 33, 41, 42 of the Indian Forest Act.

Cr.M.P. No. 761 of 2002

The petitioner in this application has prayed for quashing the entire criminal proceedings in connection with G. Case No. 242 of 2001 including the order dated 07.11.2001 passed by the learned Chief Judicial Magistrate, Koderma whereby and whereunder cognizance has been taken for the offences punishable under Sections 33, 41, 42 of the Indian Forest Act.

The prosecution story which is common in all these applications except some variance with respect to the date of inspection is that the forest Guard has found the petitioner ploughing the land situated within the protected forest area. On verification made by the opposite party No. 2 it was found that agricultural activities were being carried out by the petitioner in Plot No. 12 within Barsabad Forest which is notified as a protected forest by virtue of notification No. C.P.F. 10181/53-4797 dated 08.12.1953.

On the basis of the separate offence report having been submitted by the informant cognizance was taken by the learned Chief Judicial Magistrate, Koderma on various dates for the offences punishable under Sections 33 of the Indian Forest Act.

Heard Mr. Deepak Kumar, learned counsel for the petitioner and Mr. Pankaj Kumar, learned A.P.P. for the State.

It has been submitted by the learned counsel for the petitioner that the father of the petitioner namely Dukhi Modi had taken settlement of 12.80 acres of land situated in Plot No. 12 in Khata No. 10 of the Village - Parasabad Thana No. 97 on 20.06.1938 from the Ward and Incumbered Estate, Hazaribagh after paying salami etc and transformed the barren land into cultivable land. It has further been submitted that in the year 1953 Plot No. 12 of Parasabad was notified under Section 29 of the Indian Forest Act, for which the father of the petitioner had filed an application before the Forest Settlement Officer in Case No. 41 of 1962-63 and after verification of the nature and character of the land and after examination of the witnesses 12.80 acres of land was released in favour of the father of the petitioner vide order

dated 19.09.1963. It has further been submitted that the order passed by the Forest Settlement Officer on 19.09.1963 was never challenged by the forest department and the same had attained finality and without considering the said aspect the Forest Officials have started disturbing the possession of the petitioner by claiming the same to be a land situated within the protected forest. It has also been submitted that after expiry of thirty years from the date of the notification, the notification ceases to exist and in such circumstance the area denoted in the notification does not bare the tag of a protected forest.

It has also been submitted that plot in question is outside the map demarcating the protected forest. Learned counsel has referred in this context to the judgment in the case of *Jethmal Bhojraj And Anr. vs. State of Bihar* reported in *AIR 1975 Patna 339*.

Mr. Pankaj Kumar, learned A.P.P., on the other hand, has submitted that the document which has been annexed by the petitioner with respect to the order passed by the Forest Settlement Officer, Hazaribagh in Case No. 41/62-63 is itself doubtful as no such record was deposited in the Record Room and this fact has been intimated by the Director, Record Room of Hazaribagh Division. Learned counsel further adds that the disputed plot of land is well within the demarcated various boundary lines as specified by the Forest Settlement Officer on the Map. Learned counsel has also tried to impress upon the fact that the Forest Settlement Officer had the power of a Civil Court as per Section 8 of the Indian Forest act and Section 8 deals with a settlement proceeding with respect to reserve forest and not under the protected forest. Learned counsel also adds that the area declared by virtue of notification dated 18.12.1953 had never been denoted by the State Government and the nature and character of the forest as protected forest cannot change merely by virtue of expiry of thirty years of the period of notification. He has also referred to the case of *Bhuneswar Pandit And Mahadeo Mandel vs. State of Bihar* reported in [1994] 2 PLJR 731.

Section 4 of the Indian Forest Act reads as follows:-

"4. Notification by [State Government]. - (1) whenever it has been decided to constitute any land a reserved forest, the [State Government] shall issue a notification in the [Official Gazette]-

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called "the Forest Settlement officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Section 6 of the Act deals with proclamation by Forest Settlement Officer when a notification has been issued under Section 4. Section 7 deals with enquiry by Forest Settlement Officer with respect to Section 6 of the Act.

Section 8 of the Act deals with the powers of Forest Settlement Officer and the same reads as follows:-

"8. Powers of Forest Settlement-officers. - For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:-

(a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

Therefore, the power to the Forest Settlement Officer percolates when the Government decides to issue a notification to constitute any land as reserved forest. For the purposes of proclamation and enquiry subsequent thereto the powers to the Forest Settlement Officer are delegated to enter upon any land, to survey, to demarcate and make a map of the same. A conjoint reading of Section 4, 6, 7, and 8 of the Act would lead to a conclusion that the same is in no way connected with "protected forest" as it is restricted only to a reserved forest. In such circumstances, therefore, when the land in question had already been declared to be a protected forest by virtue of notification dated 08.12.1953 the question of releasing 12.80 acres of land by the Forest Settlement Officer, Hazaribagh in favour of the father of the petitioner

vide order dated 19.09.1963 itself becomes doubtful. This doubt is fortified by the report of the In-charge District Record Room, Hazaribagh who has clearly stated that the order passed in Case No. 41/62-63 was never deposited in the Record Room.

Mr. Deepak Kumar, learned counsel for the petitioner has referred to the case of *Jethmal Bhojraj And Anr. vs. State of Bihar (Supra)* with respect to the nature of the land as protected forest and the relevant Paragraph is quoted hereinunder:-

"19. Another document although not mentioned in the writ application, is a certified copy of the khatian in respect of the two villages in question, which was produced during the course of the hearing. This record-of-rights was finally published under Section 83(2) of the Chota Nagpur Tenancy Act on the 25th July, 1966, and it shows in the column meant for the name of the tenant "SURAKCHHIT VAN VIBHAG" (meaning thereby 'protected forest'). It has been urged on the behalf of the petitioners that a presumption of correctness attaches to the entries made in this khatian, and, as such, it should be held that in the year 1966 the lands were in possession of the Forest Department as protected forest. In my opinion, it is very difficult to hold that, merely because the lands have been shown as protected forest in the khatian, it has to be taken that the Forest Department had come in possession of the lands in pursuance of an order under Section 17 (1) of the Act. Section 17(1) requires the Collector to take possession, and, as was observed by the Supreme Court in the aforesaid judgment, that formality has to be complied with before vesting takes place and the State Government becomes the owner of the lands acquired under the Act. It has been explained on behalf of the State that the said entry was made, perhaps, under some misconception on the basis of the notifications issued under the Indian Forests Act."

However, the judgment under reference in the facts and circumstances of the present case is not applicable.

In the case of *Bhuneswar Pandit And Mahadeo Mandel vs. State of Bihar (Supra)* the question as to whether the illegality or otherwise of a notification could be raised after a long delay it was held as follows:-

"13. Further, the petitioners cannot be permitted to question any notification which was published in the Gazette as far back as in the year 1952. If the petitioners predecessor-in-interest namely the ex-landlord had any

raiayati interest in the said land, he could have filed the appropriate claim application, before the authorities concerned in terms of the provisions of the Indian Forest Act itself. Such a claim could have been adjudicated upon by the statutory authorities."

A 'protected forest' has been defined at Section 29 of the Act and which reads as follows:-

29. **Protected forests.** - (1) The [State Government] may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-land comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the [State Government] thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the [State Government] thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the [State Government] may, pending such inquiry and record declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities."

A bare reading of Section 29 does not suggest that any notification declaring a forest to be a protected forest would only be in vogue for a period of thirty years. Section 30 of the Act gives power to the State Government to declare by notification any portion of such forest specified in the notification to be closed in such term not exceeding as the State Government thinks fit. Section 30 (b) of the Act cannot be construed to mean that a protected forest loses its significance or character or ceases to be a protected forest after thirty

years. In such circumstance, therefore, the claim of the petitioner that from 1983 the protected forest lost its existence does not hold ground.

Accordingly, in view of what has been discussed above, I find no merit in these applications which are, accordingly, dismissed.

(R. Mukhopadhyaya, J.)

Umesh/-