

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 1646 of 2016

1.Jay Prakash Singh

2.Uchit Mahto

3.Ramlal Oraon @ Bir Bhagat Petitioners

-- Versus --

The State of Jharkhand Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners :- Mr. Abhay Kumar Chaturvedi, Advocate

For the State :- Mrs.Ruby Pandey, Advocate

7/31.01.2024 Heard Mr. Abhay Kumar Chaturvedi, the learned counsel appearing on behalf of the petitioners and Mrs. Ruby Pandey, the learned counsel appearing on behalf of the respondent State.

2. This petition is filed for quashing of the entire criminal proceeding including the order taking cognizance dated 28.03.2014 in connection with U.C. Case No.234 of 2013, pending in the court of learned Chief Judicial Magistrate, Chatra.

3. On the basis of the written report, the offence has been registered alleging therein that the accused persons illegally cut the small trees and bushes in reserve forest and they are illegally erecting boundary wall for Kashturba Gandhi Residential Girls School and photographs of the spot was also taken and also the information was given to the senior officials. It is stated that the accused persons have violated provisions of section 26 of the Indian Forest Act and section 27 and 29 of Wild Life (Protection) Act and section 2 (iv) of Forest (Conservation) Act, 1980.

4. Mr. Chaturvedi, the learned counsel appearing on behalf of the petitioners submits that the petitioner no.1 is contractor of the school

building and petitioner nos.2 and 3 are the employees. He submits that the contract was provided to M/s Pooja Enterprises for construction of the building of Kashturba Gandhi Girls School at Lawalong Block and for this, the work order was also given to start the work. The total value of construction work was Rs.3,10,58,431/- of Sarv Shiksha Abhiyan. He submits that the Deputy Commissioner, Chatra addressed the letter to District Superintendent of Education cum District Programme Officer, Jharkhand Education Programme, Chatra providing no objection by the district administration for transfer of land of Jharkhand Government for construction of Kashturba Gandhi Residential Girls School. He submits that plot number in the offence report is 373 and the Deputy Commissioner by letter contained in running page no.18 has informed that plot was gair majurwa land. He submits that the building has been constructed and in view of that it was also inaugurated. He submits that on this background no case is made out against the petitioners.

5. Learned counsel for the respondent State submits that the said land is forest land and in view of that forest department has also wrote to the Deputy Commissioner, Chatra for stopping the construction work. She submits that the said construction is unauthorized.

6. It is an admitted position that the subject matter of the prosecution report as well as the letter of the Deputy Commissioner is plot no.373. In the letter of Deputy Commissioner, it has been disclosed that the said plot is gair majurwa land meaning thereby it was a government land and by the said letter, the Deputy Commissioner has given clearance for construction of the building of Kashturba Gandhi Residential Girls School. The work order contained in Annexure-2 is there which clearly suggest that the work was allotted to M/s Pooja Enterprises. Further in the counter affidavit it has not been disclosed that the land has been notified in the Gazette. In light of section 29 and 30 of the Indian Forest Act, any notification with regard to

forest land remained in force for 30 years only. Reference may be made to the case of ***Ram Narayan Rai @ R.N. Rai @ R.N. Roy & Ors. Versus State of Jharkhand & Anr.***, reported in ***2015 (4) JBCJ 475 (HC)***. Para-6 and 7 of the said judgment is quoted hereinbelow:-

"6. Having heard learned counsels for both the sides and upon going through the record, I find that from the prosecution report or from the counter affidavit, it is not at all apparent that whether the notification dated 26.8.1955 was issued under Section 29 of the Indian Forest Act or under Section 30 of the Indian Forest Act. If there is no notification under Section 30 of the Indian Forest Act, no offence can be said to be committed under Section 33 of the said Act. If the said notification was issued under Section 30 of the Act, it certainly had lost its life on the expiry of the period of 30 years. There is nothing either in the prosecution report or in the counter affidavit to show that fresh notification was issued or the said notification was revived by the State Government declaring the forest to be the protected forest. The law is well settled in this regard by catena of decisions of this Court, such as, Jagdish Mehta Vs. State of Jharkhand & Ors., reported in 2003 (2) JCR 525 (Jhr), Anup Kumar Vs. State of Jharkhand, reported in 2012 (2) East Cr C 21 (Jhr), Daso Ram & Ors., Vs. State of Jharkhand, reported in 2013 (1) East Cr C 247 (Jhr), wherein it has been held that upon expiry of notification issued under Section 30 of the Indian Forest Act, the land in question cannot be termed to be a protected forest, consequently no offence can be said to be made out under Section 33 of the Indian Forest Act. I also find force in the submission of the learned counsel for the petitioners that Section 2 of the Forest (Conservation) Act is not a penal provision and accordingly, the order taking cognizance under Section 2 of the Forest (Conservation) Act clearly shows complete non-application of the judicial mind.

7. For the aforementioned reasons, I find that the impugned order taking cognizance against the petitioners

cannot be sustained in the eyes of law. Accordingly, the impugned order dated 30.11.2004 passed by the learned SubDivisional Judicial Magistrate, Madhupur at Deoghar, in GOCR Case No.61 of 2004, as also the entire criminal proceeding against the petitioners in the said case, are hereby, quashed. This application is accordingly, allowed.

7. Further what was done it was on the instruction of the government and the construction of the school building was going on and if such a government order is being executed by the petitioners and the said work was going on pursuant to the work order granted by the Government with permission of the Deputy Commissioner, and in view of that, no liability can be fastened upon the petitioners as it was on the direction of the Government.

8. In view above, entire criminal proceeding including the order taking cognizance dated 28.03.2014 in connection with U.C. Case No.234 of 2013, pending in the court of learned Chief Judicial Magistrate, Chatra are quashed.

9. This petition is allowed and disposed of.

10. Pending petition if any also stands disposed of accordingly.

(Sanjay Kumar Dwivedi, J.)

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