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SUSHILA SAW MILL

v.

STATE OF ORISSA AND ORS.

JULY 31, 1995

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[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Orissa Saw Mills & Saw Pits (Control) Act, 1991

C

Section 4(1)—Proviso—Establishment and Operation of Saw mills—Regulation of—Creation of Prohibition Zone—Total prohibition to carry on Saw mill business in reserved forest as well as within 10 kms. from the boundaries of reserved forests—Held valid and not violative of Articles 14, 19(1)(g) and 301.

D

Constitution of India : 1950:

Article 14—Class Legislation—Validity of—Statute—Object to preserve forest wealth and environment—Prohibition to carry on Saw Mill Business—Because of geographical contiguity entire area of one district covered by prohibition zone—Held it was a class legislation and not discriminatory.

E

Article 19(1)(g)—Right to carry on trade and business—Restriction—Held it includes prohibition.

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With a view to regulating the establishment and operation of saw mills and saw pits and the trade of sawing so as to protect and conserve forest and environment the State of Orissa enacted Orissa Saw Mills and Saw Pits (Control) Act, 1991. Section 4 of the Act enjoined that on and after the appointed day no person should establish or operate a saw mill or saw pit or sawing operations except under the authority and subject to the conditions of licences granted under the Act. Further under proviso to Section 4(1) a total embargo was placed on the right to carry on trade and business in saw milling operations or sawing operation within the prohibited area i.e. within a reserved forest, protected forest or any forest area or within 10 k.m. from the boundary of such forest or forest area. The petitioner, which established a saw mill within the prohibited area and was issued a notice to close down its operation with immediate effect, challenged the validity of S.4(1) and the notice issued to it before the High

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court contending that (i) its right to carry on trade and business was violated; (ii) the Act does not contemplate a total ban on the right to carry on the saw mill business; (iii) mills situated within the district covered by the prohibited zone have been discriminated vis-a-vis other districts because geographical contiguity of the district was such that no saw mill could be established within 10 kms. of the forest as envisaged under proviso to Section 4(1) of the Act.

The Division Bench of the High Court dismissed the petition and upheld the validity of the impugned provision. The appellant preferred a special leave petition before this Court.

Dismissing this petition, this Court

HELD : 1. The right to carry on trade or business envisaged under Art. 19(1)(g) and Art. 301 is subject to the statutory regulation. In the public interest restriction under Article 19(1)(g) may in certain rare cases include total prohibition. It is seen that the reserved forest is being denuded or depleted by illicit felling. Thereby denudation of the reserved forest was noticed by the legislature. The preservation of the forest is a matter of great public interest and one of the rare cases that demanded the total ban by the legislature. The Act came to be enacted to impose a total ban in prohibited area for the period during which the ban is in operation, to carry on saw mills business or sawing operation within the prohibited area. It is, therefore, clear that the statute intends to impose a total ban which is found to be in "public interest". The individual interest, therefore, must yield place to the public interest. Accordingly, it is neither arbitrary nor unreasonable. [431-D; G-H; 432-A-B]

Narendra Kumar & Ors. v. Union of India and Ors., AIR (1960) SC 430, relied on.

Lakshmi Narayan Saw Mills & Ors. v. State of Orissa & Ors., (1995) 1 OLR 1 FB, approved.

M/s. Saraswati Saw Mills Etc. Etc. v. State of Orissa and Ors., (1995) 79 C.R.T. P.61, cited.

2. It is true that by geographical contiguity, Keonjhar District appears to have been situated within the prohibited area but that is the legislative mandate that the entire area covered within the prohibited zone

- A is treated as a class as against the other area. Therefore, when the limits of that district are within prohibited zone of the reserved or protected or forest area Etc. or within 10 k.m., it is a legislative scheme to give effect to the legislative object in the public interest to preserve forest wealth and environment and to put end to illicit felling of forest growth. Therefore, it is a class legislation; it is not discriminatory and does not offend Art. 14 or Article 301 of the Constitution. It is a valid law. [432-B-D]
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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 14702 of 1995.

- C From the Judgment and Order dated 16.3.95 of the Orissa High Court in O.J.C. No. 1545 OF 1995.

Kishore Kumar Patel and S.M. Garg for the Petitioners.

The following Order of the Court was delivered :

- D This special leave petition arises from the order of the Division Bench of Orissa High Court dated March 16, 1995 in Civil Writ Petition No. 1545 of 1995. The petitioner has established a Saw mill in the year 1980 in Keonjhar District of Orissa State. The notice under s.4(1) of Orissa Saw Mills & Saw Pits (Control) Act, 1991 (for short 'the Act') was issued to
- E the petitioner to close down its operations with immediate effect. Challenging the validity of s.4(1) of the Act and the notice, he filed the writ petition contending that it violates his fundamental right to carry on trade and business and also created invidious discrimination to the Saw Mills/Saw Pits situated in that district vis-a-vis other districts. It was also contended
- F that the Act did not create any total ban but gave discretion to the licensing authority to grant or refuse the renewal of licence. Without considering their application for renewal, direction to close down the mill is arbitrary. The Division Bench negatived both the contentions relying upon its Full Bench judgment in *Lakshmi Narayan Saw Mills & Ors. v. State of Orissa & Ors.*, (1995) 1 OLR 1 FB. The petitioner placed reliance on a Division Bench judgment of that Court in *M/s. Saraswati Saw Mills Etc. Etc. v. State of Orissa and Ors.*, (1995) 79 C.R.T. p.61. It is contended for the petitioner that the views of the Full Bench and the Division Bench judgment in question are not correct. A reading of the Act does not indicate that the statute imposed total prohibition on the right to carry on the Saw Mill
- G business. Even otherwise, mills situated within the district have been dis-
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criminated as its geographical contiguity of District is such that no Saw Mill can be established or exist within 10 k.m. as envisaged under proviso to s.4(1) of the Act. Therefore, it violates their fundamental rights under Arts.14, 19(1)(g) and 301 of the Constitution. A

The Act came into force on November 20, 1991. The Rules made in exercise of the power under s.23 have come into force on November 18, 1993. The Act was enacted to regulate establishment and operation of Saw Mills and Saw Pits and trade of sawing to protect and conserve forest and environment and for matters incidental thereto or connected therewith. The "forest area" is defined to mean all notified lands as forest under any law and administered as forest whether State-owned or private and whether wooded or maintained as a potential forest land. Section 5 empowers the Government to declare for a specified period reserved forest etc. Section 4 of the Act provides establishment and operation of Saw Mills and Saw Pits. The said section provides as under : B C

"4. Establishment and operation of saw mill and saw pit. D

(1) On and after the appointed day, no person shall establish or operate a saw mill or saw pit except under the authority and subject to the conditions of a licence granted under this Act :

Provided that no person shall establish or operate any saw mill or saw pit within a reserved forest, protected forest or any forest area within ten kilometers from the boundary of any such forest or forest area. E

(2) Notwithstanding anything contained in sub-s.(1) - F

(i) a saw mill or saw pit, established by the Orissa Forest Development Corporation Limited or by any other agency of the Government prior to the appointed day, may continue to be operated by such Corporation or agency, as the case may be, and in such a case, the Corporation or agency, as the case may be, shall be deemed to be licensee for the purposes of the Act; G

(ii) a saw mill or saw pit other than one referred to in clause (i) and establishment prior to the appointed day may continue to be operated and shall be deemed to be a saw mill or saw pit, as the case may be, licensed under this Act. :- H

- A (a) for a period of three months from the appointed day; or
- (b) if an application made in accordance with section 6 for a licence is pending on the expiry of the period specified in clause (a), till the disposal of such application under sub-s.(2) of s.7".
- B The petitioner-Saw Mill is admittedly situated within the reserved forest or protected forest or forest area within 10 k.m. from the boundary of such forest area. Thus, the petitioner's Saw Mill is situated within the prohibited area. The question, therefore, is whether the prohibition contained in statute is valid in law? Section 4 regulates establishment and
- C operation of Saw Mills and Saw Pits under the Act enjoining that on and after the appointed day no person shall establish or *operate* a Saw Mill or Saw Pit or sawing operations except under the authority and subject to the conditions of licences granted under the Act. The proviso which was assailed in this petition puts further embargo that no person shall establish
- D or *operate* any Saw Mill or Saw Pit which is situated in a reserved forest, protected forest or any forest area or within 10 k.m. from the boundary of such forest or forest area. By applying non-obstante clause, sub-s. (2) of s.4 relieves from the operation of proviso of sub-s. (1) of s.4, only a Saw Mill or a Saw Pit established by Orissa Forest Development Corporation Ltd. or any other agency of the Government prior to the appointed day.
- E Their continuance and operation are only saved and they are deemed to be the licensee for the purpose of regulation of the Act. Clause (ii) thereof mandates that the Saw Mill or Saw Pit other than covered by Clause (i) of s.4(2) established prior to the appointed day may continue to be operated and shall be deemed to be Saw Mill or Saw Pit and deemed to have been
- F licensed under the Act but it is only a transitory provision as indicated in sub-clauses (a) & (b) thereof. In other words, the Saw Mill established prior to the Act coming into force, i.e., the appointed day and continuing to operate after the Act has come into force, shall be entitled to carry on its operations for a period of three months from the appointed day or till the application for licence or renewal made under s.6 is pending consideration and is disposed of under sub-s.(2) of s.7. Section 5, given power to the State to declare prohibited area and ss. [2] envisages that during the subsisting period of the prohibited area the consequences have been enumerated under sub-s. (2) of s.4 and proviso to S.4(1), namely, prohibition to grant a licence for establishment of a Saw Mill or Saw Pit, or
- H. operation of the existing saw mill or saw pit was restricted to the period

specified in clauses (a) and (b) of s.4(2)(ii); and prohibition to renew the licences to a Saw Mill situated within the prohibited area during that period. A Saw Mill or a Saw Pit "shall cease to operate and keep its saw operation closed". The only enabling power given to the licensing authority was to see that existing stock may be disposed of and no claim for damages was permitted. For their contravention s.13 gives power to confiscate the property. Section 6 and 7 operate to grant licences in areas other than the prohibited area. Rule 3 of the rules gives effect to the provision of the Act and the grant of the licence will be subject to the conditions enumerated in Clauses (i) to (v) of Rule 6. Section 7 enjoins the Licensing officer to grant or refuse to grant licence in accordance with the provision of the Act and the Rules and for the reasons enumerated thereunder.

It would thus be seen that the Act intended to regulate the operations of the Saw Mill and Saw Pit or Sawing. The right to carry on trade or business envisaged under Art.19(1) (g) and Art. 301 is subject to the statutory regulation. When the statute prescribes total prohibition to continue to operate even the existing Saw Mills situated within the prohibited area, the right to carry on trade or business is subject to the provisions of the Act. Proviso to Section 4(1) puts a total embargo on the right to carry on trade or business in Saw milling operation or Sawing operation within the prohibited area. It is settled law that in the public interest restriction under Art. 19(1)(g) may in certain rare cases include total prohibition. This Court in *Narendra Kumar & Ors. v. Union of India and Ors.*, AIR (1960) SC 430 held that it is reasonable to think that makers of the Constitution considered the word 'restriction' to be sufficiently wide to save laws inconsistent with Art.19(1), or taking away the rights conferred by the Article, provided this inconsistency or taking away was reasonable in the interest of the different matters mentioned in the clause. There can be no doubt, therefore, that they intended the word 'restriction' to include cases of prohibition also in certain rare cases. The contention that a law prohibiting the exercise of a fundamental right is in no case saved cannot, therefore, be accepted. It is seen that the reserved forest is being denuded or depleted by illicit felling. Thereby denudation of the reserved forest was noticed by the legislature. The preservation of the forest is a matter of great public interest and one of the rare cases that demanded the total ban by the legislature. The Act came to be enacted to impose a total ban in prohibited area for the period during which the ban is in operation, to carry on Saw

A Mills business or Sawing operation within the prohibited area. It is, therefore, clear that the statute intends to impose a total ban which is found to be in "public interest". The individual interest, therefore, must yield place to the public interest.

B Accordingly, it is neither arbitrary nor unreasonable. The Full Bench of the High Court upheld the provision as valid and in this case it has rightly declared the law. It is true that by geographical contiguity, Keonjhar District appears to have been situated within the prohibited area but that is the legislative mandate that the entire area covered within the prohibited zone is treated as a class as against the other area. Therefore, when the limits of that district are within prohibited zone of the reserved or protected or forest area etc. or within 10 k.m., it is a legislative scheme to give effect to the legislative object in the public interest to preserve forest wealth and environment and to put end to illicit felling of forest growth. Therefore, it is a class legislation; it is not discriminatory and does not offend Art.14 or Article 301 of the Constitution. It is a valid law. The Special Leave Petition is accordingly dismissed.

T.N.A.

Petition dismissed.