
(2011) 09 RAJ CK 0038

In the Rajasthan High Court

Case No : Special Appeal (W) No. 06511 of 2011

Ajeet Prasad

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Rajasthan Forest Act, 1953 — Section 26A, 29, 29(1), 29(3), 29(4)

Citation : (2012) 2 RLW 1364

Hon'ble Judges : Arun Mishra, C.J.;Bela M. Trivedi, J

Bench : Division Bench

Advocate : R.N. Mathur, with Sandeep Garssa and Bharat Saini, for the Appellant; S.N. Kumawat, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—There is a delay in preferring all these intra court appeals arising out of the common order dated 24th February, 2011 passed by the learned Single Judge in the writ petitions preferred by the present appellants and others (original petitioners). Having regard to the averments made in the respective applications made by the appellants, u/s 5 of the Limitation Act, supported by the affidavits, the delay occurred in preferring the appeals is condoned in the interest of justice and the respective applications are allowed. The office is directed to register all the appeals accordingly. There were 15 writ petitions filed before the learned Single Judge challenging the common order dated 30.11.07 passed by the Board of Revenue in the revision petitions filed by the appellants and others. The said petitions came to be dismissed by the learned Single Judge vide the common order dated 24.2.2011, Being aggrieved by the said common order passed by the learned Single Judge, the petitioners of 11 writ petitions have preferred the present 11 intra court appeals before this court. Since all these appeals involved similar sets of facts and similar questions of law, they were directed to be heard together, and are now being decided by this common judgment.

2. Though the cases have chequered history, the factual matrix that has emerged from the pleadings of the parties and the documents on record is that there existed a forest land known as "Jhunjhunu Beed", which was transferred by the Revenue Department to the Forest Department vide Government order dated 2.5.59. The said land being forest land over which the State Government had proprietary rights, Government of Rajasthan published a notification being No. 7(371)R.V/64 Jaipur dated 9.1.69, declaring the said lands in Khasra Nos. 1268, 1263, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1339, 1340, 1341, 1342, 1343, 1344, 1345 and 1346 as the "protected forest", u/s 29(1) of the Rajasthan Forest Act, 1953 (hereinafter referred to as "the said Act"). In the said notification, the Government had also directed the Forest Settlement Officer/ Assistant Forest Settlement Officer to make enquiry into the existence of the rights of the private persons, if any, in or over the said forest land in view of Section 29(3) of the said Act. It further appears that thereafter a proclamation was published u/s 4 of the said Act in Rajasthan Raj Patra dated 31.7.69 requiring the persons claiming any right in or over the said forest land within three months from the date of the said publication, however, none had made any claim. Accordingly, The declaration made in the Notification dated 9.1.69 for declaring the lands covered under the said notification as the "protected forest" became final.

3. Subsequently during the period 1975-1980 the present appellants and/or their predecessors approached the Assistant Forest Settlement Officer requesting him to exclude the disputed portions of lands from the limits of said "protected forest", on the ground that they were in possession of the said disputed portions of lands and were cultivating the same. The Assistant Forest Settlement Officer by various orders like dated 30.4.75, 7.3.76, 17.5.76, 22.7.76, 29.10.76, 9.1.80, 16.6.80, 17.6.80, 18.6.80, 16.9.80 and 17.9.80 excluded such portions of disputed lands on which appellants and their predecessors had made claims, out of the area declared as the "protected forest" under the guise of exercising powers under Rule 12(3) of the Rajasthan Forest (Settlement) Rules, 1958 (hereinafter referred to as "the said Rules"). The said orders passed by the Assistant Forest Settlement Officer on various dates were challenged by the Department before the Collector, Jhunjhunu by preferring appeals, however, the same were dismissed on the point of limitation vide the order dated 22.9.1990. The Department had preferred the appeals against the said order before the Board of Revenue, however, the same were also dismissed by the Board of Revenue vide order dated 7.8.95. The Department, therefore, had preferred writ petitions before this court challenging the said orders of the Board of Revenue. The said Writ petitions came to be allowed by the learned Single Judge vide order dated 34.11.2001 holding that the issue involved being of public importance, the matters were required to be remanded and decided on merits after considering the facts and circumstances of the cases, and that the said cases should not be dismissed on the ground of being barred by limitation.

4. After the remand of the said cases, the District Collector, Jhunjhunu in view of

the directions given by the learned Single Judge, constituted a committee of senior officers consisting of Addl. Collector, Divisional Forest Officer and Tehsildar. The said committee inspected the site in question and found that there were illegal encroachments made on various lands declared as "protected forest" though the said lands were in possession of the Forest Department. The District Collector thereafter afforded opportunity of hearing to the concerned parties including the present appellants, to produce the documents in support of their claim, however they had failed to do so. The District Collector, therefore, vide order dated 30.5.2002 allowed the appeals of the Department and set aside the various orders passed by the Assistant Forest Settlement Officer, purporting to exercise the powers under Rule 12(3) of the said Rules. Being aggrieved by the said common order dated 30.5.2002 passed by the District Collector, the appellants had preferred various revision applications before the Board of Revenue, which revision applications also came to be dismissed by the Board of Revenue as per the order dated 30th November, 2005. The appellants thereafter again approached the Board of Revenue by filing review petitions, however the same also came to be dismissed by the Board of Revenue as per the order dated 28.2.2006.

5. It further appears that after the dismissal of the revision applications by the Board of Revenue vide order dated 30th November, 2005, some of the appellants like Shri Nand Lal Singh and Others had filed writ petitions being No. 4493/06 and 4494/06, without disclosing the fact that they had also preferred review petitions before the Board of Revenue, The said writ petitions came to be dismissed as withdrawn, by the teamed Single Judge vide order dated 14th March, 07, however a liberty was reserved for the said appellants to file a fresh writ petition if the circumstances so arise. The appellants thereafter again approached this court by preferring fifteen separate writ petitions challenging the orders dated 30th November, 2005 and 28.2.06 passed by the Board of Revenue dismissing their revision petitions and review petitions respectively. The said writ petitions came to be dismissed by the learned Single Judge by the common order dated 24.2.2011. Being aggrieved by the said order passed by the learned Single Judge, the present eleven intra court appeals have been preferred by the appellants.

6. Learned Sr. Advocate, Mr. R.N. Mathur, appearing with learned counsel Mr. Sandeep Garssa and Mr. Bharat Saini for the appellants taking the court to the provisions contained in the Act and the Rules submitted that the Assistant Forest Settlement Officer had rightly considered the claims of the respective appellants over the disputed portions of lands which were in their possession since the time immemorial, and had rightly excluded the said disputed lands from the limits of the forest land declared as "protected forest" in view of the powers conferred to the Assistant Forest Settlement Officer under Rule 12(3) of the said Rules. Mr. Mathur also submitted that the Assistant Forest Settlement Officer had passed the said orders after calling for the Mauka Report of the site in question and after having satisfied himself that the appellants and their predecessors were having

khatedari rights and were as such in possession of the disputed lands, had excluded the said portions of lands from the area of "protected forest". According to Mr. Mathur, the Collector and the Board of Revenue had failed to appreciate the evidence on the record and had set aside the orders passed by the Assistant Forest Settlement Officer, without affording sufficient opportunity of hearing to the appellants. According to him, the learned Single Judge had also misinterpreted the provisions of the Act and Rules and confirmed the said orders passed by the Collector and the Board of Revenue, which order of the learned Single Judge being illegal, all the orders passed by the Collector, Board of Revenue and the learned Single Judge deserve to be set aside and the orders passed by the Assistant Forest Settlement Officer deserve to be restored. Mr. Mathur in the alternative submitted that in case this court came to the conclusion that the Assistant Forest Settlement Officer was not competent to exclude the said lands from the area of "protected forest", an appropriate direction be issued to the State Government to consider the cases of the appellants for denotifying the disputed lands.

7. The learned Addl. Advocate General, Mr. S.N. Kumawat, for the respondents however submitted that the forest land known as "Jhunjhunu Beed" having been declared as the "protected forest" u/s 29(1) of the said Act, the Assistant Forest Settlement Officer had no authority to exclude any portion of land therefrom. The Assistant Forest Settlement Officer was only required to determine the rights of the parties, if any, after making necessary enquiry, however, none of the appellants or their predecessors had come forward to make any such claim. Mr. Kumawat also submitted that after a lapse of about 10-15 years and after having made encroachments over the said disputed portion of "protected forest"; the appellants and their predecessors had approached the Assistant Forest Settlement Officer alleging their possession and khatedari rights. According to Mr. Kumawat, the Assistant Forest Settlement Officer did not have any right or power to exclude any land from the limits of "protected forest" under any of the provisions of the Act or Rules, much less under Rule 12(3) of the said Rules, and hence the District Collector had rightly set aside the said orders passed by the Assistant Forest Settlement Officer. The said order of the District Collector also came to be confirmed by the Board of Revenue and the learned Single Judge. Mr. Kumawat also submitted that their being concurrent findings of facts, this court may not interfere with the just and legal orders passed by the Board of Revenue and the learned Single Judge.

8. Having regard to the submissions made by the learned counsel for the parties and the orders passed by the authorities under the Act and by the learned Single Judge, it appears that the moot question that falls for consideration in the present intra court appeals is, whether the Assistant Forest Settlement Officer was competent to exclude the disputed portion of lands from the limits of the forest land declared as the "protected forest" by the State Government vide notification dated 9.1.69 issued u/s 29(1) of the said Act?

9. In order to appreciate the rival contentions raised by the learned counsel for the parties it would be beneficial to reproduce the provisions contained in Section 29 pertaining to the "Protected Forest", which reads as under:-

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

(2) The forest land and waste lands 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 State 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 State Government, 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.

(4) The State Government may, by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof declared as a protected forest by a notification issued under sub-sec. (1) shall cease to be a protected forest.

(5) From the date so fixed, under sub-sec.(4), such forest or portion thereof shall cease to be a protected forest, but the rights, if any; which have been extinguished therein shall not revive in consequence of such cessation.

10. From the bare reading of the said provisions it clearly transpires that any forest land or waste land over which the State Government had the proprietary rights or which was the property of the Government, could be declared as "protected forest" by issuing a notification, which has been done by the State Government in the instant, case, by issuing notification dated 9.1.69, It further transpires that as such the nature and extent of rights of the State Government and of private persons, if any existed, in or over such forest land are required to be inquired into and recorded at a survey or settlement or in such other manner as the State Government thinks sufficient, however, if such inquiry is likely to take long time, the State Government pending such enquiry and record, could declare such land to be the "protected forest", without abridging or affecting the rights if any existed of individuals or communities. It also transpires from Sub-

sec. (4) of Section 29 of the said Act that it is only the State Government, which could by issuing notification in the Official Gazette direct that any forest or any portion thereof declared as "protected forest" shall cease to be the "protected forest". In other words, no authority or officer other than the State Government has any competence u/s 29(4) to declare or direct whether any forest or any portion thereof shall cease to be the "protected forest" or not. Except the said provision contained in Section 29 (4) of the said Act there is no other provision contained in Chapter IV of the said Act, which would empower any other authority much less the Assistant Forest Settlement Officer to exclude any land from the forest land declared as "protected forest". Under the circumstances, the orders passed by the Assistant Forest Settlement Officer excluding the disputed portions of lands from the said area of "protected forest", were ex facie without any authority of law and illegal, which orders have been rightly set aside by the District Collector and the Board of Revenue.

11. In the instant case the Assistant Forest Settlement Officer taking recourse to Rule 12(3) of the said Rules had passed the said orders in favour of the appellants and their predecessors, excluding the disputed portion of the lands from the area of "protected forest", however it is very much pertinent to note that when the provisions of the Act did not empower any authority except the State Government to exclude any land from the lands of "protected forest", the Rules framed under the said Act could not have travelled beyond the provisions of the said Act, It is significant to note that Chapter II of the said Act pertains to the "Reserved Forests" and Chapter IV thereof pertains to the "Protected Forests", Even if the provisions contained in Chapter II are applied to the cases of "Protected Forests" for the purpose of making inquiry as to the existence, nature and extent of the rights of any parties, then also the Forest Settlement Officer has a very limited power. The conjoint reading of the provisions contained in Section 4, 6, 7 and 8 implies that the Forest Settlement Officer or Assistant Forest Settlement Officer is empowered only to enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over the forest land. Further, the Rules of 1958 have been framed by the State Government in exercise of the powers conferred u/s 26A and 76 of the said Act, to regulate the matters in respect of the "reserved forest" and to prescribe and limit the powers and duties of the Forest Officers appointed under the Act. Now, even if it is presumed that the Forest Settlement Officer had the powers to enquire into and determine the existence, nature and extent of rights of any person in or over the "protected forest", then also by no stretch of imagination could it be said that the Rules framed under the said Act empower the Forest Settlement Officer to exclude any portion of land from the limits of the "protected forest". Even as per Rule 12 of the said Rules, the Forest Settlement Officer, after making necessary enquiry with regard to the rights of the claimants, is required to send the report to the Chief Conservator of Forests and as such is not authorised or competent to exclude any portion of land from the area of the forest land much less "Protected Forest". In that view of the matter

also the orders in question passed by the Assistant Forest Settlement Officer excluding the disputed portions of land from the area of "Protected Forest", were passed without any authority of law and, therefore, illegal.

12. So far as the facts of the present cases are concerned, it was found by the District Collector that the Assistant Forest Settlement Officer had passed the orders in favour of the appellants and their predecessors without issuing notice to the Department. There were no Mauka Reports found in the record though mentioned in the orders passed by the Assistant Forest Settlement Officer. It was also found by the District Collector that there was no documentary evidence whatsoever produced by the appellants in support of their claims as regards the alleged khatedari rights. They had also not produced any evidence to show their possession of the disputed lands. It was also found that no claims were made by any of the parties at the relevant time when the proclamation was issued requiring the persons to submit their claims, if any, existed over the said forest land. It was found that after making illegal encroachments over the forest land, the claims were sought to be made by the appellants before the Assistant Forest Settlement Officer after a lapse of long period of issuance of notification u/s 29(1) of the said Act. The said findings of facts recorded by the District Collector in the order dated 30th May, 2002 were also confirmed by the Board of Revenue in its order dated 30 November 2005 and the learned Single Judge has also not interfered with the said findings of facts recorded by the authorities under the Act while dismissing the writ petitions of the appellants. The said view taken by the learned Single Judge is absolutely just and proper and does not call for any interference of this court.

13. The alternative submission made by the learned counsel Mr. Mathur that the appellants be permitted to approach the State Government also could not be accepted in view of the fact that the appellants having been found to have made encroachments in the protected forest, the necessary actions by issuing notices u/s 72 of the said Act have already been initiated against the appellants. The appellants being the encroachers over the "protected forest" could not be shown any sympathy and granted any equitable relief. In that view of the matter the present appeals being devoid of merits deserve to be dismissed and are accordingly dismissed.