

(1998) 09 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 2239 of 1983

Ankush Keshav Bowledkar

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 1

Forest Act, 1927 — Section 35(3), 38

Maharashtra Private Forests (Acquisition) Act, 1975 — Section 2, 24, 34, 6

Citation : (1999) 1 BomCR 165

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : G.R. Rege, for the Appellant;

Judgement

R.M. Lodha, J.—By this writ petition, the petitioner challenges the order passed by the Maharashtra Revenue Tribunal on 15th April 1983 affirming the order passed by the Deputy Collector, Private Forests, Sawantwadi on 14th January 1982.

2. The petitioner claims to be a contractor dealing in forest material. He took contracts of cutting and supplying timber, fire-wood, charcoal and other forest produce with Shri Yeshwant Govind Gawade and others. The land comprises of Survey Nos. 18, 36/1, 68/1, 29/1, 30/1, 69/1, 70/1 and 71/1 totalling nearly 442.14 hectares. It is the petitioner's case that pursuant to the Agreement dated 5th February 1973, he started cutting trees after obtaining necessary permission from the concerned authorities. The case of the petitioner is that the owners of the land aforesaid received undated notices by ordinary post u/s 35(3) of the Indian Forest Act. Before the said notices were served, on 6th September 1975 the Maharashtra Private Forests (Acquisition) Act, 1975 (for short "Private Forest Act") came into force and sections 34-A, 35, 36-A, 36-B, 36-C and 37 stood repealed. The petitioner and owners accordingly approached the Divisional Forest Officer and the Conservator of Forests that it be declared that

provisions of Private Forests Act are not applicable to the said lands. However, the respondents No. 1 and 2 herein did not accede to the request which necessitated an application u/s 6 of the Private Forests Act by the present petitioner and the owners of the said lands for declaration that the said lands are not private forests and have not vested in respondent Nos. 1 and 2. A writ petition came to be filed earlier by the petitioner and the owners of the lands before this Court which was registered as Special Civil Application No. 1418 of 1977. The said application was dismissed, but the Collector was directed to proceed with the application u/s 6 of the Private Forests Act made by the petitioner and the owners and decide the same in accordance with law. Thereafter, the Deputy Collector, Private Forests by his order dated 14th January 1982 dismissed the application u/s 6. The said order dated 14th January 1982 was challenged in appeal before the Maharashtra Revenue Tribunal unsuccessfully by the petitioner and by an order dated 15th April 1983 the appeal came to be dismissed. The concurrent orders passed by the Maharashtra Revenue Tribunal and the Deputy Collector are under challenge.

3. Mr. Rege, the learned Counsel appearing for the petitioner, contended that the undated notices which were served upon the owners on 6th September 1975 were no notices in the eye of law and on the basis of such notices it cannot be said that notices were issued as contemplated u/s 35(3) of the Indian Forest Act before coming into force of the Private Forests Act. The learned Counsel for the petitioner contended that besides that the notices are undated, these does not bear the seal and are not in conformity with the provisions of Order 5 of C.P.C. and therefore such notice cannot in law be said to have been issued u/s 35(3) of the Indian Forest Act before the appointed date of the Private Forests Act.

4. The Maharashtra Revenue Tribunal in its order dated 15th April 1983 in connection with the notice u/s 35(3) which was received by the petitioner on 6th September 1975 observed thus :

"It is a fact admitted on all scores that the notices u/s 35(3) were received by the Khatedars concerned on 6-9-1975. No doubt from the copies of the notices produced it is seen that they do not bear the date nor the office seal of the conservator of forests who issued the notices. But then, inspite of these lapses or irregularities pointed out, it cannot be denied that the notices were issued under the certificates of posting on 29-8-1975 and they were admittedly served on the land owners concerned, as could be seen from their statement."

5. From the aforesaid observation, certain facts become clear. The notices u/s 35(3) were issued to the owners on 29th August 1975. The said notices did not bear date nor the official seal of the conservator of forests. The said notices were in fact received by the owners on 6th September 1975. The crucial question that calls determination in this writ petition is whether such notices issued under certificate of posting on 29th August, 1975 u/s 35(3) are notices contemplated u/s 35(3) before the appointed date i.e., 30th August 1975 when the Private Forests Act came into force.

6. In order to examine the aforesaid question section 35 of the Indian Forest Act, 1927 (for short "the Forest Act") is relevant.

"35. Protection of forests for special purposes.---(1) The State Government may, by notification in the Official Gazette,

(i) regulate or prohibit in any forest -

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or clearing on the vegetation;

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any trees;

(e) the lopping and pollarding of trees;

(f) the cutting, sawing, conversion and removal of trees and timber; or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest-produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire;

when such regulation or prohibition appears necessary for any of the following purposes :-

(a) for the conservation of trees and forests;

(b) for the preservation and improvement of soil or the reclamation of saline or water logged land, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(c) for the improvement of grazing;

(d) for the maintenance of a water supply in springs, rivers and tanks;

(e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(f) for the maintenance of reservoirs or irrigation works and hydro-electric works;

(g) for protection against storms, winds, rolling stones, floods and drought;

(h) for the protection of roads, bridges, railways and other lines of communication; and

(i) for the preservation of the public health.

(2).....

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling on him to show cause within a reasonable period to be specified in such notice why such notification should not be made or work constructed as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government."

7. The Private Forests Act received the assent of the President on 25th August 1975 and the said assent was first published in Maharashtra Government Gazette on 29th August 1975. It came into force on 30th August 1975 on publication of notification in official gazette of its date of coming into force.

8. Section 2 of Private Forests Act defines various expressions relevant for the purposes of Private Forests Act and Clause (f) of section 2 which defines private forest reads thus :

"2 (f), Private forest means any forest which is not the property of Government and includes,

(i] any land declared before the appointed day to be a forest u/s 34-A of the Forest Act;

(ii) any forest in respect of which any notification issued under sub-section (1) of section 35 of the Forest Act, is in force immediately before the appointed day;

(iii) any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the Collector may specify in this behalf;

(iv) land in respect of which a notification has been issued u/s 38 of the Forest Act;

(v) in-a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(vi) sites of dwelling house constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto."

9. Section 6 deals with settlement of disputes where question arises whether any forest is a private forest and it reads thus :

"6. Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the tribunal in appeal which may be preferred to the tribunal within sixty days from the date of the decision of the

Collector, or the order of the State Government u/s 18, be final."

10. Repeal of sections 34-A, 35, 36, 36-A 36-B, 36-C and 37 of the Private Forests Act was made u/s 24 which reads thus :

"24. (1) On and from the appointed day, sections 34-A, 35, 36, 36-A, 36-B, 36-C and 37 of the Forest Act shall stand repealed."

11. A conjoint reading of the aforesaid sections would show that any forest in respect of which any notice has been issued under sub-section (3) of section 35 of the Forest Act is a private forest. If a notice has been issued u/s 35(3) of the Forest Act in respect of any land prior to the coming into force of the Private Forests Act, such land in respect of which a notice has been issued u/s 35(3) of the Forest act becomes private forest. The crucial and relevant aspect is the issuance of the notice u/s 35(3) of the Forests Act and not its service. If a notice has been issued u/s 35(3) before the appointed day when the Private Forest Act came into force, the land covered by such notice becomes private forest, irrespective of the fact whether such notice has been served upon the addressee or not. It is clearly noticed from the discussion made by the Maharashtra Revenue Tribunal in its order that the notice under sub-section (3) of section 35 of the Forest Act was issued on 29th August 1975. The issuance of the said notice, therefore, is apparently and obviously before the appointed day i.e. 30th August 1975 when the Private Forest Act came into force. Much emphasis was placed by the learned Counsel for the petitioner that such notice which were issued on 29th August 1975, were undated, not sealed and not in accordance with Order 5 of C.P.C. and such notices cannot be said to be notice contemplated under sub-section (3) of section 35 of the Forests Act and, therefore, the issuance of the notice on 29th August 1975 under certificate of posting were not issuance of notice under law. The learned Counsel for the petitioner in this connection extensively referred to the provisions of Order 5 of C.P.C. From the perusal of the provisions contained in Order 5, it would be seen that it deals with issue of summons. Rule (1) of Order 5 provides that when a suit has been instituted, a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified. The rest of the provisions of Order 5, Rule 1 are not relevant for the present purposes. From this provision, it would be seen that it does not provide that such summons should be dated. Sub-rule (3) of Rule 1 of Order 5 provides that such summons shall be signed by the Judge or such officer as he appoints and shall be sealed with the seal of the Court. There is no dispute that the said notices were not signed. The dispute is with regard to the non-sealing of the notice. Even if the said notices were not sealed, that would not render the notices bad in law when the addressee has admittedly received the notices. Moreover, while considering the question whether the notice has been issued or not, service of the notice or mode of service of the notice is not relevant. It is clearly seen that the notices were on their face issued on 29th August 1975 i.e before the coming into force of the Private Forests Act and on the face of the such notices which were issued before the appointed day of

Private Forests Act, the land is private forest within the meaning of section 2(f).

12. I, therefore, have no hesitation that the issuance of the notices under certificate of posting on 29th August 1975 were issuance of notices under sub-section (3) of section 35 of the Forest Act as contemplated and since before coming into force of the Private Forests Act, such notices were issued and therefore the provisions of section 2(f) of the Private Forests Act are clearly attracted.

13. The order passed by the Maharashtra Revenue Tribunal, therefore, cannot be faulted and does not call for any interference by this Court. The writ petition has no merit and is dismissed with no order as to costs.

14. For a period of 4 weeks interim order passed by this Court during the pendency of writ petition shall continue.

15. Certified copy expedited.

16. Petition dismissed.