

(2005) 05 OHC CK 0045

In the Orissa High Court

Case No : Writ Petition (C) No. 13275 of 2004

Bharat Timber Co. and Another

APPELLANT

Vs

Conservator of Forests and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2

Orissa Saw Mills and Saw Pits (Control) Act, 1991 — Section 12, 2, 4(1), 5, 5(1)

Citation : (2005) 05 OHC CK 0045

Hon'ble Judges : P.K. Mohanty, J;J.P. Mishra, J

Bench : Division Bench

Advocate : Bijan Ray, B. Mohanty, S. Mohanty, D. Chhotray, B. Moharana and Vijayshree, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Mishra, J.—The Petitioner-Jayantilal Patel being the managing partner of M/s. Bharat Timber Co. (Petitioner No. 1) a registered firm has called in question the Annexure-13 and 14 wherein his prayer for renewal of the licence was refused.

2. It is the case of the Petitioners that M/s. Bharat Timber Co., a saw mill, was established in the year 1962 in the municipal area of Balasore Municipality. It continued its saw mill business having license No. 21 according to the existing rule, i.e., the Orissa Saw Mill and Saw Pit (Control) Rules, 1980 till 30.4.1993. Subsequently, the Petitioners were granted saw mill license bearing No. 9/94 according to the enactment in the Orissa Saw Mill and Saw Pits (Control) Act, 1991 (hereinafter referred to as "the Act, 1991") which was valid up to 4.5.2004. The license granted to the Petitioners was continuously renewed form 1962 to 2004. Previously, the Balasore Municipality area was under the Divisional Forest Officer, Baripada Division and the same was bifurcated, for which the Petitioners' mill came under the jurisdiction of the Divisional Forest Officer (W.L., Balasore Division) as per Annexure-6 dated 27.11.2003. Thereafter the Petitioners applied

in Form-B (Annexure-7) on 30.3.2004 seeking renewal of the license which was due to expire on 4.5.2004. On receipt of the application, the opp. party No. 2 sent a query (Annexure-8) to the Tahasildar, Balasore for providing situation and location of the saw mill vide letter dated 1.7.2004. In the meantime, the State of Orissa had already filed an affidavit under Annexure-1 before the Apex Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , that the Petitioners' saw mill is beyond the radius of 10 kms form the forest area, to be more specific, 20 kms. away as per Annexure-1 at Sl. No. 84. The reply (Annexure-9) received by opp. party No. 2 form the Tahasildar specifying the location of the saw mill to beyond 10 Kms radius form the forest area as defined in Section 2(b) of the Act. The opp. party No. 2 again threw a further query (Annexure-10) to which reply (Annexure-11) was received form the Tahasildar mentioning therein that the Petitioners' saw mill is located beyond 10 kms form any forest land/area as per the sketch map and it does not find place in the DLC list along with the map. Thereafter on 9.9.2004, the Petitioners apprised under Annexure-12 to the licensing authority (O.P.2) regarding his case, but the same was turned down refusing renewal on the ground that the mill is located within 10 kms radius form the village forest in villages Begunia, Kasimila, Balia and Samalpur. While doing so, the opp. party No. 2 directed to stop further activities of the said mill. An appeal was carried to the appellate authority u/s 12 of the Act and the same was remanded to the opp. party No. 2 vide Annexure-14 to find out the distance of 10 kms radius form the boundary of the Reserve Forest, protected forest or any forest area by adopting a standard methodology. Thereafter the Petitioners have approached this Court seeking direction for quashing Annexures-13 and 14.

3. During pendency of the writ application the Petitioners deposited the required fee with the Survey of India and obtained their opinion regarding the approximate distance of M/s. Bharat Timber Co. at mouza-Baga Brundaban located near the Court premises of Balasore town to Chandipur R.F. is 13 Kms and filed with further affidavit annexed as Annexure-17 to 17/3. It is further averred by the Petitioners that as the mill is as way form the required distance form any forest area and they have already executed Government works, the licensing authority arbitrarily refused renewal requiring indulgence of the Court.

4. The opp. party No. 2 appeared and averred branding Annexure-11, i.e., letter dated 8.9.2004 of the Tahasildar, Balasore, to be erroneous one. The stand taken by opp. party No. 2 is that in Annexure-7 (Annexure-7 = Annexure A/2) the Petitioners have shown the location of the saw mill at Mouza-Srikanthapur under Khata No. 217, plot Nos. 573, 574 and 575 seeking renewal. But in the report (Annexure-11), the location of the saw mill as shown by the Tahasildar to be at village Baga Brundaban on plot No. 5, khata No. 683/487/38 is a different village and plot. Therefore, the plea of distance of the mill beyond 10 kms form any forest is erroneous one. It has been specifically averred that the Petitioners' mill is located within 4 kms radius form village forest of Balia, Samalpur, etc. as per Annexure-B/2 (according to the standard methodology adopted by opp. party

No. 2 vide Annexure-E/2) and the mill is only at a distance of 9.5 kms form Chandipur reserve forest, Balasore. The opp. party No. 2 has also relied on the map under Annexure-C/2 (same as the map under Annexure-11). With the above averments, the opp. party No. 2 has prayed to dismiss the writ application.

5. Admittedly, the Petitioners were carrying on business of saw mill having a valid license up to 4.5.2004. Therefore, the sole question falls for determination is as to whether the Petitioners are entitled for renewal of their license and will continue the activities for its location beyond 10 kms form the boundary of any such forest or forest area.

6. The first contention raised by the learned Counsel for the Petitioners is that both Baga Brundaban and Srikanthapur are the same mouza. In order to substantiate his submission he has taken us through the documents under Annexure-18 series. According to him, the said mouza was known as Srikanthapur but, subsequently, it was nomenclated as Baga Brundaban in Major-Settlement.

7. In Annexure-7, i.e. Form-B of the Petitioners, it has been mentioned that the location of the mill to be in mouza - Srikanthapur in khata No. 217, plot Nos. 573, 574 and 575 Stitiban land. Annexure-18 filed by the Petitioners reveals the same plot and khata numbers against the village Srikanthapur on which M/s. Bharat Timber Co., Balasore is located and the same corresponds to mouza-Baga Brundaban, plot No. 5, khata No. 633/487/38 measuring an area Ac.506 decimals. The occupants of the said land are M/s. Bharat Timber Co.- the Managing Partner, Shri Jayantilal Patel. The same reflection appears in Annexure-18/2 in respect of plot No. 573 of mouza-Srikanthapur corresponding to mouza-Baga Brundaban. Further, the location of the saw mill in the Municipality area of Balasore Municipality at Vivekananda Marg functioning since 1962 with the license granted by the Balasore Municipality u/s 290 of the Municipality Act has not been challenged. On the whole, therefore, our considered opinion is that the mouza-Baga Brundaban and Srikanthapur are the same place where the saw mill of the Petitioners was functioning.

8. It is next contended by the learned Counsel for the Petitioners placing reliance on the affidavit filed in the Apex Court pursuant to the direction in T.N. Godavarman Thirumulkpad Vs. Union of India and others, that since the Petitioners' mill is away at a distance of 20 kms form the forest, the opp. party No. 2 should not have arbitrarily refused granting renewal of license. According to him, "prohibited area" has to be notified by the State Government in accordance with Section 5 of the Orissa Saw Mill and Saw Pits (Control) Act, 1991 and, in absence of any declaring any area to be a prohibited area, the authority should not have refused renewal of the license and the Gramya jungle appearing in the revenue records (Annexure-B/2) cannot stand on the way granting/renewing saw mill license to the Petitioners. On the other hand, learned Government Advocate contends that forest includes Gramya jungle mentioned in the records of rights and he has taken us to Exts. B/2 and E/2, which depict the

distance of Gramya jungle of Balia, Samalpur, Kasimela and Begunia to be 2.5 kms. 3.3 kms, 1.0 km and 1.5 kms respectively from M/s Bharat Timber and Co and, therefore, within the purview of Section 4(1) of the Orissa Saw Mill and Saw Pits (Control) Act, 1991. He also contends referring to the decision of T.N. Godavarman's case (supra) wherein restrictions were imposed direction the State Government to obtain permission for any deforestation activities for "non-forest" purpose and the functioning of the saw mills including veneer or ply wood mills are within the meaning of "non-forest" purpose. Learned Government Advocate has taken us to the direction issued by the Apex Court in T.N. Godavarman's case (supra) and contends to dismiss the writ application for the existing "Gramya Jungle" at a distance of 3 to 5 kms from the saw mill.

9. Learned Counsel for the Petitioners has also placed reliance on *Saraswati Saw Mill and Others Vs. State of Orissa and Others*, wherein Sub-section (1) of Section 4 of the Act, 1991 was challenged as ultra vires. The plea taken therein by the Petitioners was that they were continuing as licensee of the saw mill prior to the appointed date i.e., 23.3.1992. While deciding the controversy in the aforesaid case, this Court came to a conclusion with the opinion that Sub-section (1) of Section 4 of the Act, 1991 to be valid and intra vires. While quashing the orders, this Court directed the licensing authority to consider the application of the Petitioners on its own merit and dispose of the same in accordance with law. It was further observed in paragraph-8 that a combined reading of all the relevant provisions that though ordinarily establishment or continuance of a saw mill or saw pit in the specified area is not to be permitted, a discretion is given to the State Government to grant license for establishing or continuing sawing operation even within that area (within 10 kms radius from the forest), if it so thinks fit. It can reject an application for establishing a saw mill or saw pit in the said area or even for continuing its operation therein. There is no quarrel over the position of law laid down by this Court in that decision that Sub-clause (1) of Section 4 of the Act, 1991 is not ultra vires. In the present case, it is to be found out whether the discretion granted to the State for granting or renewing license exercised in an arbitrary fashion in view of the further development of the situation and monitoring by the Apex Court in T.N. Godavarman's case (supra) in the year 1997.

10. According to Sub-Section 2(b) of the Act, 1991, forest area includes all lands notified as forest under any law or administered as forest, whether State owned or private and whether wooded or maintained as a potential forest land. In the definition, "forest" has not been restricted only to the notified forest by the Government. It also includes administered as "forest" may be owned by the State or private and wooded or maintained as potential forest land. Therefore, excluding the notified forest other categories of forests are also within the fold of Section 2(b) of the Act, 1991. Learned Counsel for the Petitioners has contended that specific notification of a prescribed area is required as per Section 5 of the Act, 1991 in respect of Gramya jungle of village Balia, Samalpur, Kasimela and Begunia and, in absence of such a notification, refusal to renew the license is

bad. Section 5 of the Act, 1991 reads as follows:

5. Declaration of Prohibited Area- (1) Notwithstanding anything contained in this Act, the State Government may, by Notification, for reasons to be specified therein, declare any area to be a prohibited area for such period, as may be specified in such Notification.

(2) During the period any area is declared to be a prohibited area under Sub-section (1) the following consequences shall ensue, namely:

(a) no license shall be granted for establishment of a saw mill or saw pit in that area;

(b) no licence shall be renewed in relation to the area during that period;

(c) a saw mill or saw pit situated in that area shall cease to operate and keep its sawing operations closed:

Provided that the Licensing Officer may permit sawing of wood in deposit in the saw mill or a saw pit subject to such conditions and restrictions as it may deem fit to impose; and

(d) so claim on account for damages because of a closure shall be entertained nor any damages shall be payable.

The aforesaid Section begins with a non obstante clause and the power flows to the State Government independently to the provisions made in the Act in other Sections. In our view, with the said of Section 5 the State Government is empowered to declare any area as prohibited area for a particular period according to the demanding circumstance requiring prevention of ecological imbalance due to deforestation and, therefore, it does not apply to the forest/ Gramya jungle existing in the revenue records. In other words, Gramya Jungle recorded in revenue records are maintained potential forest as per the definition of Section 2(b) of the Act, 1991. We shall deal with the Grama jungle in the latter part of the judgment.

11. Much prior to the enactment of the Orissa Saw Mill and Saw Pits (Control) Act, 1991, the Forest (Conservation) Act, 1980 (hereinafter referred to as "the Act, 1980") was enforced since the 25th day of October, 1980 (except Jammu and Kashmir). The sole intention of the legislature in the Forest (Conservation) Act, 1980 as well as the Orissa Saw Mill and Saw Pits (Control) Act, 1991 is to prevent ecological problem due to deforestation. It has been mentioned in the explanation of Clause (iv) to Section 2 of the Orissa (Conservation) Act, 1980 regarding the "non-forest purpose" which reads as follows:

Section 2(iv) [Explanation- For the purpose of this Section "Non-Forest purpose" means the breaking up or clearing of any forest land or portion thereof for:

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medical plants;

(b) any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check posts fire lines, wireless communications and construction of fencing bridges and culverts, dams, water holes, trench marks, boundary marks, pipe lines or other like purposes]

In the meantime, the litigation came up before the Apex Court in T.N. Godavarman's case (supra) and the Apex Court directed saying that the activities of the saw mill, veneer or ply wood mills to be "non-forest purposes" which is as follows:

In view of the meaning of the word "forest in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State through out the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including venner or ply wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation all such activities forthwith. (para 5.1)

In the same year 1997, in Samatha Vs. State of A.P. and Others, , the controversy for lands between the lessee and the State was resolved and while discussing the matter in controversy the Apex Court observed in paragraph-122 and the relevant portion is quoted below:

It would thus be seen that "forest" bears extended meaning of a tract of land covered with trees. Shrubs, vegetation and undergrowth intermingled with trees with pastures, be it of natural growth or man-made forestation. The FC Act as amended by 1988 Act was enacted to check deforestation and conservation of forest. Sub-section (2) with a non obstante clause on deforestation of forest or use of forest land for non-forest purposes; regulates the forest and provides that notwithstanding any other law for the time being in force in the State, no State Government or other authority shall make, except with prior approval of the Central Government, (i) any order directing that any reserved forest or any portion thereof shall cease to be a reserved forest, (ii) that any forest land or portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion there may be assigned, by way of lease or otherwise, to any private person or to any authority or corporation, agency or any other organization, not owned, managed or controlled by the Government, (iv) that any forest land or any portion thereof may be cleared or trees which have grown natural in the land or portion for the purpose of using it for reforestation. Clause (iii) and (iv) were added by Amendment Act 69 of 1988 w.e.f. December, 19, 1988. The explanation thereto of non-forest purpose was defined to mean the breaking up or clearing up any forest land or portion thereof for the cultivation of

but does not include any work relating to ancillary to conservation development and management of forest and wild life, namely, establishment of check post, fire lines..... or other like purposes. Section 2, therefore, prohibits de-reservation of the forest or use of any forest land for and non-forest purpose or assignment by way of lease or otherwise of any portion of land to any private person other than Government controlled or owned, organized or managed by the State Government agency; it prohibits clearance of trees or natural growth in the forest land or any portion thereof to use it for reforestation, except for preservation. Breaking of or clearance of forest land or a portion thereof is amplified to be non-forest purpose. (non-forest purpose for majority view)

In paragraph-233 of the said decision, the Apex Court also held that restrictive meaning to the expression "forest land" used in Section 2 of the Act, 1980 cannot be given. On the other hand, the expression "forest land" should be given an extended meaning to cover a track of land covered with trees, shrubs, vegetation and under growth under mingled with trees with pastures, be it of natural growth or man made forestation. So, keeping view of the judicial pronouncement and the intention of the legislature to protect forest the words "non-forest" purpose" can also be utilized while granting/refusing/renewing license for a saw mill (wood, veneer and ply wood).

12. In the present case, the opp. party No. 2 has admitted the location of the Reserve Forest at Chandipur to be 13 kms away form the Petitioner's saw mill as per the report of the Survey of India under Annexure-17/3, but the State has refused grant of renewal of license for the location of Gramya jungle in between 2 to 3 kms form the Petitioners" saw mill. We also accept the same. It is pertinent to quote paragraph-4 of the decision in T.N. Godavarman's case (supra) which read thus:

The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forest and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

13. So the wider meaning as enumerated above brings all forests mentioned in the Government records irrespective of their ownership. Here, we may advert to the affidavit filed in the Apex Court under Annexure-1. It is stated by the learned Counsel for the Petitioner that in the said affidavit, M/s. Bharat Timber Co. has been shown to be 20 kms away form the nearest forest. We are not inclined to discuss the affidavit since the matter is before Hon"ble the Supreme Court, but

as it appears that Annexure-1 was filed in the Apex Court pursuant to the order in Godavarman's case (supra). It seems that all the Revenue records of the village Balia, Samalpur, Kasimela and Begunia were not placed before the committee.

14. Pursuant to the order of the Conservator under Annexure-14, the Divisional Forest Officer (D.F.O.) constituted a committee consisting of Range Officer, Forest Officer and Assistant Conservator of Forest who reported under Annexure-E/2 showing M/s. Bharat Timber Co. (Petitioners' mill) to be at a distance of 2.5 kms. 3.3kms, 1.0kms and 1.5 kms from villages Balia, Samalpur, Kasimela and Begunia respectively. Since we have held the Grama jungle or village forest to be within the meaning of Section 2(b) of the Act, 1991 coupled with the intention of the legislation, we would advert to the R.O. Rs. filed by the opp. party No. 2 under Annexure-B/2 series. Gramaya jungle/village forest are available in plot No. 74 (Ac.1.50 dec.) and plot No. 179 (Ac. 0.80 dec.) at village Samalpur and other plots shown to have already been converted to other kissam by forcible occupation. Similarly, in village Balia, in plot Nos. 191 (Ac.0.080 dec.). 236 (Ac. 0.050 dec.), 254 (Ac.0.030, 257 (Ac. 0.030 dec.) are recorded as village forest in revenue records. Therefore, due to existence of village forest within 2.5 kms. and 3.3 kms from the Petitioners' saw mill, the authority has rightly refused renewal of the license for continuing the saw mill operation.

In the result, the writ application is dismissed being devoid of merit.

P.K. Mohanty, J.

15. I agree.