
(2016) 12 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 21806, 40939, 40997 and 40998 of 2016

D. Sekhar

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-12-2016

Acts Referred:

Citation : (2017) 2 ALT 254 : (2017) 2 AndhLD 460

Hon'ble Judges : Sri P. Naveen Rao, J.

Bench : Single Bench

Advocate : Smt. N. Shobha, Advocate, for the Petitioners in all writ petition; Govt. Pleader for Mines & Geology (AP), for the Respondents Nos. 2, 7 & 8; G.P. for Forests (AP), for the Respondent Nos. 1, 5 and 6; G.P. for Revenue (AP), for the Respondent Nos. 4 and

Final Decision : Disposed Off

Judgement

Sri P. Naveen Rao, J. - Heard Smt. N.Shobha, learned counsel for petitioners in all the writ petitions, learned Government Pleader for Mines & Geology (AP) for respondents 2, 7 & 8, learned Government Pleader for Forests (AP), for respondents 1, 5 and 6, and learned Government Pleader for Revenue (AP) for respondents 3, 4 and 9 in all writ petitions.

2. Petitioners were granted quarry lease for road metal in Sy.No.143 of Loya Village, G.Konduru Mandal, Krishna District with various extents to the respective petitioners. The lease granted to them is in force. While so, by show cause notice dated 20.04.2016, they were called to give explanation as to why action to cancel the lease granted to them should not be initiated. The show cause notice refers to letter of the Divisional Forest Officer (DFO), Krishna Division, Vijayawada addressed to the Assistant Director of Mines and Geology dated 18.03.2016, where under the Divisional Forest Officer informed the Assistant Director of Mines and Geology that the land on which lease for quarrying operations were granted is part of reserved forest and suggested to initiate action for cancellation of the mining leases granted. These writ petitions are filed

challenging the letter of the Divisional Forest Officer dated 18.03.2016 and show cause of Deputy Director of Mines & Geology, dated 20.04.2016.

3. This Court by order dated 25.11.2016 granted interim suspension of the letter of the Divisional Forest Officer dated 18.03.2016 and consequential notice of the Deputy Director of Mines and Geology, Kakinada dated 20.04.2016, which order is extended from time to time.

4. Praying to vacate the said interim order, Divisional Forest Officer filed counter affidavit and vacate petitions.

5. With the consent of learned counsels, the writ petitions are taken up for final disposal. As subject matter of the writ petitions is one and the same, all the writ petitions are disposed of by this common order.

6.1. Learned counsel for petitioners submitted that the petitioners were granted lease of quarrying operations after following due process. The RSR of Loya village describes the land in Sy.No.143 as "unreserved forest" and, therefore, the conclusion of the Divisional Forest Officer that it is classified as reserved forest is without any basis. He could not have taken unilateral decision affecting the right of the petitioners to undertake quarrying operations during the subsistence of their licences. She would further submit that there is no forest growth in this area and, therefore, the question of treating it as part of reserved forest is erroneous. As long back as in 1942, the then District Administration treated it as un reserved forest and, therefore, it is clear that by then itself there was no forest existing in this area and it is a Government poramboke land and, therefore, the lease was validly granted to the petitioners.

6.2. By placing reliance on the decision of this Court in the case of A. Narendraraja and others v. Government of Andhra Pradesh, Department of Mines and Geology, rep.by the Secretary, Industries and Commerce (Mines-II) Department, and others 2008 (4) ALT 805, she submitted that merely because the land is described as unreserved forest, it cannot become part of reserved forest and, therefore, question of treating the subject land as part of reserved forest is erroneous.

6.3. She would further submit that though the Deputy Director called for explanation by issuing show cause notice as to why action should not be initiated, from the reading of the said show cause notice, it is clear that it is based on the letter addressed by the Divisional Forest Officer to the Assistant Director of Mines and Geology, on 18.03.2016, where under the Assistant Director was directed to cancel mining leases issued in Sy.No.143 and, therefore, the process initiated by the Deputy Director of Mines and Geology is only an empty formality as issue is a foregone conclusion.

6.4. She would further submit that neither Divisional Forest Officer nor the Assistant Director of Mines & Geology could have taken such course of action affecting the right of petitioners to undertake quarrying operations without

following due process. Whenever a decision taken by an authority would impact the right of a person, due process is required to be followed. The Revenue as well as Forest authorities did not observe due process before changing the classification of the land from that of unreserved forest to reserved forest.

7.1. Learned Government Pleader for Forests submitted that a person, by name, T. Rajavardhan submitted application to the Sub Collector, Vijayawada, requesting for grant of No Objection Certificate to obtain lease of quarrying operations in Sy.No.143 of Loya village. The Sub-Collector, Vijayawada vide his letter dated 09.09.2015 ordered to conduct joint inspection with Divisional Forest Officer and to furnish a report. The Divisional Forest Officer, Krishna Division, Vijayawada, Tahsildar and Mandal Surveyor of G. Konduru Mandal conducted joint inspection on 09.03.2016. During the joint inspection, it was seen that Loya village is falling on the western side boarder for Kondapally reserve forest. It was noticed that in the village map, Sy. No. 143 is not shown. Similarly, in the Field Measurement Book of the village, there was no Sy.No.143 mentioned. In the RSR, Sy.No.143 is written with ink pen showing Acs. 216. 25 cents as extent of the survey number describing it as unreserved forest. According to the learned Government Pleader, as per the location shown by the Mining Department staff, this piece of land is adjacent to Kadimpothavaram village, which is part of Kondapalli reserve forest. On thorough verification of revenue record and physical features, it was found that land in Sy. No.143 is not simple poramboke land and is wrongly shown as part of Loya village in RSR. He would, therefore, submit that there was a wrong classification showing the land as unreserved forest and illegally quarrying operations were permitted in an area, which is classified as forest without due compliance of the requirements of Forest (Conservation) Act, 1980 (for short, "Act, 1980").

7.2. According to the learned Government Pleader, non-forest activity cannot be carried out in forest area without prior consent of the Central Government and for these quarry operations no such consent was obtained.

7.3. By placing reliance on the decision of the Supreme Court in T.N. Godavarman Thirumulkapad etc., v. Union of India AIR 1997 SC 1228, he would submit that the Act, 1980 is applicable to all forests irrespective of its classification. Even according to RSR entry and adangal/pahanies, Sy.No.143 is classified as unreserved forest implying thereby that it is a forest and, therefore, in accordance with the principle laid down by the Supreme Court in the above decision, the Act, 1980 is attracted. He would, therefore, submit that admittedly without following due procedure, illegally quarrying operations were granted.

8. Learned Government Pleader for Industries submitted that the documents on record would disclose that erroneously quarrying operations were granted and in view of the letter of the Divisional Forest Officer, it is clear that the subject land is classified as forest land, whereas due verification was not made before granting quarrying operations. She would further submit that according to Rule 31 (xviii) of A.P.Minor Mineral Concession Rules, 1966, it is permissible to cancel

the quarrying lease in public interest and the present action is in public interest. She further submitted that what is challenged is only show cause notice calling for explanation as to why action should not be initiated to cancel the lease for quarrying operations and petitioners ought to have submitted their explanations without knocking the doors of this Court.

9. The controversy is in a very narrow compass. Petitioners were granted quarrying operations for road metal in Sy. No. 143 of Loya village. At the time of granting lease, the subject land was shown as unreserved forest in the RSR and in pahanies/adangals. Petitioners only claim is that the Divisional Forest Officer's communication dated 18.03.2016 for the first time classifies the subject land as part of Kondapally reserved forest and when the classification of the land is sought to be changed by the Revenue authorities, as accepted by the Forest Department from the status of "unreserved forest" to that of "reserved forest", petitioners ought to have been put on notice as it would affect the petitioners right to undertake quarrying operations as per the leases validly granted to them. The alleged survey, which was the basis for the Divisional Forest Officer informing the Assistant Director that the land in Sy.No.143 of Loya village is "reserved forest", ought to have been conducted in their presence.

10. The facts on record would demonstrate that Kondapalli reserved forest was notified under Section 16 of Madras Forest Act, 1882, which Act is now called as A.P. (Andhra Area) Forest Act. Loya village is adjacent to Kondapalli reserved forest. The village map of Loya village would show that land is organized by assigning individual survey numbers in seriatum. Survey numbers start from the border of Mongapad village and go down till the end in orderly manner. Survey number No.142 is on the opposite side of Kondapalli reserved forest. As per the village map, Sy.Nos.18, 19, 20, 22, 23, 24, 25 and 26 are abutting Kondapalli reserved forest. It is not in dispute that by hand writing, Sy.No.143 is added in RSR. It is now shown as abutting Sy.No.26. If it was forming part of Loya village, probably this land would have been shown as part of Sy.No.26 or may be continuation number would have been assigned. No reasons are forthcoming and the same requires detailed consideration and investigation as to how a new survey number was added to RSR to the land which is shown as adjacent to Sy.No.26, but assigned Sy.No.143. More particularly, when in the village map and field measurement book, the said survey number is not shown. It is also necessary to ascertain when such interpolation was made. In fact, if we look at the RSR, it is seen that survey numbers ended at 142 and total extent of the village was shown as Ac.1086.53 cents. By adding the survey no.143, the total extent of the village land is increased to Ac.1282.78 cents. It is not shown how and in what manner, the extent of this village is increased.

11. Even according to the description of status of the land in the RSR, it is shown as unreserved forest. In other words, it is still forest land. When the description of the land even in RSR or pahanies/adangals, shown as unreserved forest, this should have alerted the Revenue, Forest and Mining & Industries Department

authorities to look into the issue carefully before granting quarrying operations. Strangely no explanation is forthcoming as to why no objection was granted by the Forest Department for quarrying operations. In the larger public interest, this also requires deeper consideration by the Government.

12. It is an accepted fact that there is huge amount of deflation of the forest cover in the country and Andhra Pradesh is no exception. We are experiencing consequences of deflation forest cover. Several laws are made to protect the forest and forest products and though the Acts provide several safeguards, they are followed more in breach. Important enactment made is the Forest (Conservation) Act, 1980.

13. It appears from the material on record and the stand of the 5th respondent, forest land was illegally earmarked for quarrying operations of road metal. The Act, 1980, mandates that non-forestry activity cannot be permitted in forest area nor an area can be derecognized from reserved forest/forest unless prior consent of the Central Government is obtained. Admittedly, no such prior consent of the Central Government was obtained in this case even though the RSR also shows the subject land as forest land.

14. Though learned counsel for petitioners sought to contend that as change is brought out in the classification of the land, before undertaking such change, due procedure ought to have been followed, it appears from the material on record, there is no change in classification of land brought out for the first time, but a mistake is now rectified. It is not in dispute that Kondapalli forest was notified as reserved forest as early as on 24.06.1882. Even though Sy.No.143 is carved out, from nowhere, it is still described as forest land. Ordinarily, if land, described as forest, is abutting reserved forest area, it would have been included as part of the reserved forest area or there must have been some specific reason for treating it as not part of reserved forest area and as noticed above, Sy.No.143 could not have been made as adjacent to Sy.No.26. Thus, it cannot be said that there is change in the classification as sought to be projected, but it is only reflection of correct fact. Be that as it may, even without changing the classification from unreserved forest to reserved forest, the grant of quarrying lease is not permissible without following due process as required by Act, 1980.

15. At this stage, it is useful to notice Section 2 (ii) & (iii) of the Act, 1980. It reads as under :

Section 2. Restriction on the dereservation of forests or use of forest land for non-forest purpose:- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

(i) xxxx

(ii) that any forest land or any portion thereof may be used for any non-forest

purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government; "

16. In T.N. Godavarman Thirumulkapad, having regard to the importance of the issue, Supreme Court passed orders on 12.12.1996. Paragraph 4 of the order reads as under:

"4. 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 forests 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 recognised 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. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat* (1987) 1 SCC 213), *Rural Litigation and Entitlement Kendra v. State of U.P.* 1989 Supp (1) SCC 504 and recently in the order dated 29-11- 1996 *Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority WP (C) No 749 of 1995* decided on 29-11-1996). The earlier decision of this Court in *State of Bihar v. Bansi Ram Modi* (1985) 3 SCC 643 has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

(emphasis supplied)

17. As per the directions of the Supreme Court, though the mechanism was set in place to undertake review of identifying the forest land, no serious efforts were made. Even though the Chief Secretary to the Government of A.P., addressed a letter on 29.09.2014 to the Principal Chief Conservator Forests reiterating earlier

orders to comply with the directions of the Supreme Court dated 12.12.1996, it appears no progress was made. Though such exercise was required much earlier and licences could not have been granted in the year 2007 if exercise was undertaken as directed by Supreme Court, this exercise was taken in response to a fresh application only in the year 2015-16.

18. The present exercise undertaken by the Divisional Forest Officer and his decision is also traceable to the directions issued by the Supreme Court in T.N.Godavarman Thirumulkapad. Thus, this Court is not inclined to interfere with the said decision as it would amount to violating the directions of the Supreme Court.

19. The decision of this Court in A. Narendraraja do not come to the aid of the petitioners. On a reading of facts of said case, it appears that the Forest Range Officer, Kuppam has reported that the proposed area is in Sy.No.104 of Muddanapalle village and is away by 12 KMs from reserved forest line of Kangudi reserved forest and 5 KMs away from B.M.Konda and there is no tree growth in the above said area and is covered with full of rocks and boulders. It was classified as Adavi poramboke and belongs to revenue Department. This Court considering the fact that the reserved forest is away by 12/5 KMs and photographs filed by the petitioner would disclose that the area was full of rocks and boulders and mining was already undertaken, held that the principle laid down by the Supreme Court against exploitation of the land classified as forest for non- forest purposes is not attracted. It thus appears that in the peculiar facts of the case and having regard to the specific stand of the forest department that it is not the forest area, the directions were issued in the said case. In the instant case, the records itself disclose that the land is classified as forest and, therefore, provisions of the Act, 1980 are attracted.

20. The dicta of Supreme Court in T.N. Godavarman Thirumulkapad, makes it clear that irrespective of nature of the classification of the land, once land is described as forest, the Act, 1980, applies. Admittedly, in the instant case land in Sy.No.143 is classified as "unreserved forest" and there is no prior consent of the Central Government. Therefore, the licences granted to petitioners were void ab initio.

21.1. At this stage, it is appropriate to note that Section 19 of Mines & Minerals (Development and Regulation) Act, 1957 (Act, 1957) holds that if lease is granted without complying the provisions of the Act, it is a void lease. If there is no prior approval of Central Government also such lease is void ab initio.

21.2. Section 19 of the Act, 1957 reads as under:

"Section 19. Prospecting licences and mining leases to be void if in contravention of Act:- reconnaissance permit, prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect."

22. On true construction of provision in Section 19, in *Muneer Enterprises v. Ramgad Minerals and Mining Limited and others* (2015) 5 SCC 366, Supreme Court held as under:

"104. Thus, Section 19 makes the position clear that any mining lease granted originally or renewed subsequently in contravention of the provisions of the MMDR Act or any rules or any order made thereunder to be void and of no effect. The expression used in Section 19 is mandatory and therefore if any contravention of the provisions of the MMDR Act or Rules or orders found in respect of a mining lease originally granted or subsequently renewed such mining lease should be treated to be void and inoperative for operating the said mining lease. It must also be kept in mind that carrying on any non-forest activity in a forest land can only be with the prior approval of the Central Government under Section 2 of the Forest Act, 1980. Therefore, for a mining lease to remain valid, twin requirements of the approval of the Central Government under the proviso to Section 5(1) of the MMDR Act and Section 2 of the Forest Act, 1980 have to be fulfilled. Therefore, a lessee cannot be heard to contend that such statutory requirements are to be thrown overboard and permitted to seek for such approvals after the expiry of the lease at its own sweet will and pleasure and the time to be fixed on its own and that the operation of the mining lease should be allowed ignoring such mandatory prescription."

(emphasis supplied)

23. It is appropriate to note that natural resources, be it forest wealth or minerals, vest in the State. State is the custodian of the natural resources on behalf of its citizens. The natural resources are to be preserved. Exploitation of natural resources is an exception to general norm. A limited exploitation is permissible if such exploitation, such as road metal in the instant writ petitions, is required for larger public use. When exception is required to be made, it has to be in strict compliance of statutory provisions. Admittedly, even assuming Sy. No.143 is validly carved out and is part of Loya village, it is classified as "forest". Whether reserved or unreserved, once particular land is classified as forest, any commercial exploitation of such land, particularly for non-forest purposes, has to be in strict compliance of statutory mandate and only in larger public interest. Such exploitation can be only with prior approval of Central Government.

24. Road metal is not a scarce mineral. It is freely available. Thus, it is not necessary for exploiting the road metal in the forest area. Greater care and caution ought to have been observed by all authorities while granting permission to use land in Sy.No.143 for quarrying operations when it was classified as "unreserved forest" and is abutting the "reserved forest" even if this survey number is not part of reserved forest. Petitioners cannot take advantage of illegalities committed by authorities.

25. In the cases on hand, quarry leases were granted on forest land without prior

consent of Central Government. It is thus clear that initial licences granted to the petitioners were void ab initio. Therefore, no rights flow out of such void licences and petitioners are not entitled to carry on quarry operations.

26. It was the forcible submission of learned counsel for petitioners that proceedings of Divisional Forest Officer are liable to be set aside on the ground of violation of principle of natural justice. Even assuming there is merit in the contention of learned counsel that there is breach in observing principles of natural justice while affecting petitioners right to carry on quarry operations and that prior notice and opportunity ought to have been given to petitioners before altering the status of land from unreserved to reserved forest, I am not inclined to set aside the proceedings of Divisional Forest Officer dated 18.03.2016 on that ground as it would amount to restoring a void order. It is appropriate to note at this stage that the show cause notice under challenge is in pursuant to said proceedings of Divisional Forest Officer and if his proceedings are nullified, the consequential exercise also gets nullified and petitioners would be entitled to continue quarrying operations. Such course is not in public interest. Public interest far out weighs individual grievance. Further, on admitted facts, only conclusion is, quarrying leases were granted in forest land without prior consent of Central Government.

27. Writ remedy is an equity remedy and discretion is vested in the writ Court to refuse to grant relief in a case where justice and larger public interest require denial of such relief as compared to a grievance of an individual, even assuming there is breach of natural justice and writ Court do not issue futile writs. At this stage, it is appropriate to notice decisions of Supreme Court in *S.L. Kapoor v. Jagmohan* (1980) 4 SCC 379 and *M.C. Mehta v. Union of India* (1999) 6 SCC 237.

28. In *S.L. Kapoor*, principal contention was that the order of supersession of New Delhi Municipal Corporation of Delhi made by Lt. Governor was in complete violation of principle of natural justice and total disregard of fair play. No notice to show cause was issued and no opportunity was afforded on the allegations made for such supersession. Supersession resulted in premature termination of tenure of members of the Committee. Supreme Court held opportunity need to be given before superseding Committee and that the Municipal Corporation was not put on notice before exercising power to supersede the committee and held such action as illegal. Having come to such conclusion, Supreme Court held,

"24. ??.. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

29. In *M.C. Mehta*, on review of precedent decisions including the decision in *S.L. Kapoor*, Supreme Court held,

"17. ?.. The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.

21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.

22. ?.. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma* (1996) 3 SCC 364 : 1996 SCC (L&S) 717, *Rajendra Singh v. State of M.P.* (1996) 5 SCC 460 that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived."

(emphasis supplied)

30. It is permissible for the competent authority to cancel the licence granted if such cancellation is in larger public interest. Rule 31(xviii) of A.P. Minor Mineral Concession Rules, 1966, vests power in the competent authority to cancel the licence in public interest. It cannot be said that preserving and protecting the forest is not in public interest. Thus, in order to preserve and protect the forest the licences can be cancelled and the same action cannot be faulted.

31. Learned counsel for petitioners contended that there is no forest growth in this area and the land is full of rock formation. This may be a good ground for granting exception/relaxation in exercise of power under Act, 1980, but admittedly such power is not exercised.

32. In the ordinary course, petitioners ought to have replied to the show cause notices and invited a decision by the Deputy Director. When this was specifically pointed out, learned counsel for petitioners contended that since the notices issued by the Deputy Director were based on the decision of the Divisional Forest Officer dated 18.03.2016, which decision is also challenged, it is only an empty formality and prayed for consideration of the issue on merits. Having regard to this submission, the issue was considered on merits with reference to the validity of the finding recorded by the Divisional Forest Officer in his proceedings dated 18.03.2016 and the consequential show cause notices. Having regard to the reasons assigned in earlier paragraphs, this Court upholds the decision of the Divisional Forest Officer as reflected in proceedings dated 18.03.2016 impugned in these writ petitions, and the consequential notices issued by the Deputy Director. However, it is for the petitioners to file their objections, if so advised, to the show cause notices issued by the Deputy Director of Mines and Geology and

in case petitioners file their objections, the same may be considered objectively and appropriate decision be taken. However, since this Court is of the opinion that the area in which the quarry leases were granted is classified as forest, earlier as unreserved forest and now as reserved forest, this Court is not inclined to permit the petitioners to continue quarry operations till the decision is taken by the Deputy Director on the objections that may be filed by the petitioners and the Deputy Director is directed to ensure that no quarry operations take place in Sy.No.143 of Loya village till final decision is made by him.

33. Writ petitions are accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.