
(2002) 01 AP CK 0096
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 82 of 1998

Divisional Forest Officer, Eluru	Vs	APPELLANT
District Judge, West Godavari Dist. and others		RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 4

Citation : AIR 2002 AP 224

Hon'ble Judges : S.R. Nayak, J;R.K. Prasad, J

Bench : Division Bench

Advocate : G.P, for the Appellant; Ramesh K., for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The Divisional Forest Officer, Eluru, West Godavari District, being aggrieved by the order of the learned single Judge dated 4-12-1995 made in W.P. No. 12394 of 1989 has filed this writ appeal. By the order under appeal, the learned Judge has dismissed the writ petition filed by the Divisional Forest Officer, Eluru.

2. The background facts leading to the filing of the writ petition be noted briefly as under:

Bhogalu Forest Estate admeasuring 4900 acres was taken over by the State Government consequent on the abolition of the estate. The Forest Department was entrusted with that estate for the purpose of its management on 1-10-1952. Subsequently, the area of 4900 acres taken over by the Government and entrusted to the Forest Department was notified under S. 26 of the Madras Forest Act, 1882 and the notification was published in the West Godavari Gazette on 6th July, 1953. Thereafter, the Forest Department caused survey of the land by a survey party of the Forest Department in March, 1959 after excluding the patta land and the land required for the communal needs. An area of 4100 acres out of 4900 acres was proposed for reservation under S. 4 of the Andhra Pradesh

Forest Act, 1967, for short "the Act" and that proposal was approved by the Government in G.O.Ms. No. 3, dated 3-1-1970. The notification was published in the A.P. Gazette on 29-1-1970 and also in West Godavari District on 7-8-1996. The Government of Andhra Pradesh while publishing the notification under S. 4 of the Act, appointed the Forest Settlement Officer, Nellore, to enquire into the claims of persons, if any. The Forest Settlement Officer published a notification inviting claims, if any, on 6-5-1977 from the interested persons. M/s. Inuganti Ramakrishna Ranga Rao and Inuganti Paparao filed their claim petitions in response to the notification before the Forest Settlement Officer, Nellore for exclusion of patta lands in Bogalu Forest block from forest area. The Forest Settlement Officer, after making necessary enquiry, wrote a letter No. C.A. 1/871/72-B, dated 18-12-1984 to the Secretary, Forest and Agriculture Department, Government of Andhra Pradesh, Hyderabad, in which he has stated that the claimants established their claims over the land and their claims are genuine and they have to be allowed. However, the Forest Settlement Officer opining that since the area in question attracts the provision of the Forest Conservation Act. 1980, prior orders of the Government of India have to be obtained for eliminating the land from the proposed block, recommended to the State Government to obtain permission from the Government of India. The relevant portion of the letter dated 18-12-1984 written by the Forest Settlement Officer, Nellore to the Secretary, Forest and Agriculture Department, Government of Andhra Pradesh where he has recorded findings reads :

In view of the facts mentioned above and in view of the documentary evidence produced by the petitioners during the enquiry and after perusal of concerned revenue records, in the Taluk Office, Chintalapudi, it is found clear that the claimants have established their claim over the land beyond doubt with the result the claim of the petitioners is genuine and it has to be allowed. As this area in question attracts the provision of the Forest Conservation Act, 1980 of Government of India prior orders of the Central Government have to be obtained for eliminating any land from the proposed block. Since the land in question which got sub-divided as per the entries in the land register maintained early in the year 1969 (i.e. 1-1-1969) and that too prior to the notification of this block under S. 4 of the A.P. Forest Act and since the claim of the petitioners is established beyond doubt during the enquiry conducted by the Forest Settlement Officer, Nellore necessary orders of the Central Government may be obtained and communicated for eliminating the patta lands over an extent of 342.50 acs., or 138.60 hec., from the forest block by way of an award as shown in the sketch enclosed.

3. The Divisional Forest Officer, Eluru. being aggrieved by the above letter of the Forest Settlement Officer, preferred an appeal under S. 13 of the Act to the District Judge. West Godavari District at Eluru. While assailing the validity of the order of the Forest Settlement Officer, on behalf of the Divisional Forest Officer, it was contended that the Forest Settlement Officer, Nellore. did not give any opportunity to the District Forest Officer to put forward his claim regarding the

disputed lands and, therefore, the matter had to be remanded to the Forest Settlement Officer, Nellore for fresh enquiry. It was also contended on behalf of the Divisional Forest Officer, that the findings recorded by the Forest Settlement Officer in his letter are not substantiated. The learned District Judge rejected both the contentions advanced on behalf of the Divisional Forest Officer as devoid of any merit and consequently dismissed the appeal by his judgment and order dated 17-10-1988. The validity of the said order was assailed in W.P.No. 12394 of 1989 by the Divisional Forest Officer. Before the learned single Judge, the main argument on behalf of the Divisional Forest Officer, Eluru was that the letter of the Forest Settlement Officer, dated 18-12-1984 written to the Secretary, Forest and Agriculture Department is not an award or order passed by the Forest Settlement Officer within the meaning of that term and, therefore, the learned District Judge had no jurisdiction to entertain the appeal under S. 13 of the Act against such letter and, therefore, the entertainment of the appeal and dismissal of the appeal are without jurisdiction and competence. Although, the learned single Judge has not recorded any specific finding on the question whether the letter of the Forest Settlement Officer dated 18-12-1984 is an award or order against which an appeal could be preferred to the District Judge under S. 13 of the Act, but pointing out that that plea was not taken before the learned District Judge and the finding recorded by the Forest Settlement Officer and the learned District Judge on the claims of Inuganti Ramakrishna Ranga Rao and Inuganti Paparao are well founded, dismissed the writ petition. Hence this Writ Appeal by the Divisional Forest Officer, Eluru.

4. The main argument of the learned Government Pleader for Forests while assailing the order of the learned single Judge is that the learned Judge has failed to appreciate that the letter dated 18-12-1984 written by the Forest Settlement Officer, Nellore. the 2nd respondent herein to the Secretary, Forest and Agriculture. Hyderabad is not an order and, therefore, no appeal lies against that letter to the District Court under S. 13 of the Act. In other words, the learned Government Pleader for Forests would maintain that the above letter is only a letter recommending to the State Government to seek necessary prior orders from the Government of India for exclusion of the lands claimed by the claimants having regard to the provisions of the Forest Conservation Act, 1980 and that letter does not determine rights and liabilities of any person. The learned Government Pleader for Forests would also contend that even according to the Forest Settlement Officer, Nellore, as reflected in his Lr. Re. No. 871/72-B, dated 16-10-1989 addressed to the Registrar of this Court, he did not pass any final order by way of an award and. therefore, his letter dated 18-12-1984 cannot be treated as an order or award and consequently no appeal could lie to the District Judge under S. 13 of the Act.

5. Therefore, the only question that arises for our consideration and decision is whether the letter written by the Forest Settlement Officer dated 18-12-1984 to the Secretary, Forest and Agriculture Department is an "order" within the meaning of that term and whether an appeal lies to the District Judge under S.

13 of the Act.

6. An appeal lies under S. 13 of the Act to the District Judge against the order of the Settlement Officer rejecting the claim or admitting the claim of any claimant under Ss. 10 and 11 of the Act wholly or in part. Sub-sections (1) and (2) of S. 13 of the Act read :

13. Appeals from the orders of Forest Settlement Officer :- (1) Where a claim is rejected wholly or in part, the claimant may, within ninety days from the date of the order under sub-section (1) of S. 10 and within sixty days from the date of the order under sub-section (1) of S. 11, prefer an appeal to the District Court having jurisdiction in respect of such rejection only.

(2) Where a claim is admitted under S. 10 or S. 11 in the first instance wholly or in part and where such claim does not relate to the acquisition of any land under the Land Acquisition Act, 1894, a like appeal, subject to the same period of limitation and subject to the same conditions, may be preferred to the District Court having jurisdiction on behalf of the Government by the Forest Officer or other person, generally or specially empowered by the Government in this behalf.

7. An appeal lies under sub-section (1) by the claimants whereas an appeal lies under sub-section (2) on behalf of the Government by the Forest Officer or other person, generally or specially empowered by the Government in that behalf. In the instant case, the appeal was preferred by the Divisional Forest Officer under sub-section (2) of S. 13 of the Act. It is true that only against an order, an appeal lies under S. 13 of the Act. whether such appeal is filed by the claimant or by the State Government, as the case may be. Before dealing with the question whether the letter of the Forest Settlement Officer dated 18-12-1984 is an order or not. It is necessary to know how the term "order" is understood in legal parlance. The term "order" occurring in S. 13 of the Act is comprehensive enough to include every decision, award or order, made under Ss. 10 and 11 of the Act. The term "order" is not a term of art. It has no fixed legal meaning. The term "order" has not been defined in the Andhra Pradesh Forest Act like the CPC which gives it a special meaning in order to distinguish from a decree. Therefore, it becomes necessary how the term "order" is understood in ordinary legal parlance. The term "order" in legal parlance, would always indicate some expression of opinion which is to be carried out or enforced. In other words, an "order" is a conclusion of a Court or an Authority or a Tribunal upon any motion. The term "order," "decision" and "judgment" are commonly used interchangeably. In Black's Law Dictionary, 5th Edition, in the definition of the term "judgment," it is stated :

Conclusion of law upon facts found or admitted by the parties or upon their default in the course of the suit. Decision or sentence of the law, given by a Court of justice or other competent Tribunal, as the result of proceedings instituted therein. *Allegheny County v. Maryland Casualty Co.*, C.C.A. Pa., 132 F 2d 894, 897; *State v. Siglea*. 196 Wash 283. 82 P 2d 583. 584. Decision or

sentence of the law pronounced by the Court and entered upon its docket, minutes or record. Determination of a Court of competent jurisdiction upon matters submitted to it. State ex rel. Curran v. Brookes, 142 Ohio St 107, 50 NE 2d 995. 998. Determination or sentence of the law propounded by a competent Judge or Court, as the result of an action or proceeding instituted In such Court, affirming that, upon the matters submitted for its decision, a legal duty or liability does or does not exist.

Term "Judgment" under rules (of) practice includes "decree." Fed R Civ P 54 (a). Terms "decision" and "Judgment" are commonly used interchangeably."

8. In the premise of the meaning of the terms "order, judgment and decision," noticed above, what has to be seen for the purpose of this case is whether in the letter of the Forest Settlement Officer, dated 18-12-1984, there is any determination of the claims put forth by M/s. Inuganti Ramakrishna Ranga Rao and Inuganti Papa Rao for exclusion of their patta lands from the proposed forest block. The observations of the Forest Settlement Officer, Nellore in his letter dated 18-12-1984, extracted above, clearly go to show that after necessary adjudication and appreciation of the evidence placed before him, he has recorded the finding that the claims of the claimants are well founded, established and that those claims are required to be admitted and allowed and the patta lands have to be excluded from the proposed forest block. It cannot be gainsaid that under Ss. 10 and 11 of the Act, the competent authority to determine the claims of the claimants is no other than the Forest Settlement Officer himself. For all practical purposes, the Forest Settlement Officer completed the enquiry, appreciated the evidence on record, and also recorded the finding in his letter addressed to the Secretary, Forest and Agriculture Department, Government of Andhra Pradesh. Further, the Forest Settlement Officer, the competent authority, has clearly held that the claims of the claimants have to be admitted and allowed. In other words, the Forest Settlement Officer has decided the claims of the claimants, but he did not pass the final order because he rightly thought that the land sought to be excluded from the proposed forest block attracts the provisions of the Conservation of Forest Act and. therefore. prior permission of the Government of India is necessary in terms of that Act and that is why he has requested the Government of Andhra Pradesh to secure the prior permission of the Government of India, before passing the final order. It needs to be emphasised that the Forest Settlement Officer did not pass final order, only for the above noticed statutory formality and except that, in all other respects, adjudication envisaged under Ss. 10 and 11 of the Act is completed and decision is also taken. Therefore, it cannot be said that the letter of the Forest Settlement Officer, dated 18-12-1984 written to the Secretary, Forest and Agriculture Department. Government of Andhra Pradesh, is not an "order" for the purpose of S. 13 of the Act and that it is merely a letter addressed by the Forest Settlement Officer to the Secretary to the Government. Forest and Agriculture Department, Andhra Pradesh, requesting the latter to secure prior permission of the Government of India before the determination of the claims of the claimants for

excluding the patta lands from the proposed forest block. Be that as it may, the Divisional Forest Officer himself understood the letter as an adverse order against the Government and preferred appeal to the District Judge under S. 13 of the Act and having lost the appeal before the learned District Judge, it is not permissible for him to now contend that though the appeal was filed before the District Judge by himself, the District Judge, ought to have declined to entertain the appeal and dismissed the appeal in limine as not maintainable. In fact, such a plea was not raised before the learned District Judge even at the stage of argument. The appellant cannot be permitted to approbate and reprobate to suit his and his master's convenience and advantage.

9. There is also no merit in the contention of the learned Government Pleader for Forests that since the Forest Settlement Officer himself has stated in his letter dated 16-10-1989 written to the Registrar of this Court that he did not pass any final order by way of an award, treating his letter dated 18-12-1984 addressed to the Secretary, Forest and Agriculture Department, Andhra Pradesh, as an "order" would not arise. This contention of the learned Government Pleader for Forests is required to be noticed only to be rejected. The Forest Settlement Officer has simply stated that he has not passed any final order. From this sentence, it cannot be said that he has not decided the claims of the claimants under Ss. 10 and 11 of the Act. As noticed above, the Forest Settlement Officer after conducting enquiry envisaged under the Act and on appreciation of the evidence on record, recorded the finding that the claims of the claimants are well founded and they deserve to be admitted and allowed and the patta lands of the claimants have to be excluded from the proposed forest block. Secondly, the personal opinion of the Forest Settlement Officer, as reflected in his correspondence with the Registrar of this Court in a pending writ petition, which practice should be condemned as totally illegal and improper, cannot be a legally permissible aid for the Court in construing and interpreting a term in the statute or for that matter, even for the construction of the letter of the Forest Settlement Officer dated 16-10-1989.

10. In the result, and for the foregoing reasons, we do not find any merit in this writ appeal and it is accordingly dismissed with no order as to costs.