

**(2005) 11 UK CK 0003**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 1301 of 2005 (M/B)**

Doon Housing Co. Pvt. Ltd. and Another

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

---

**Date of Decision : 23-11-2005**

**Acts Referred:**

Forest Act, 1927 — Section 11, 20, 26, 4, 5

**Citation : AIR 2006 Utt 11 : (2006) 2 UC 758 : (2006) 1 UD 6**

**Hon'ble Judges : Cyriac Joseph, C.J; Prafulla C. Pant, J**

**Bench : Division Bench**

**Advocate : R.D. Khare, for the Appellant;**

**Final Decision : Dismissed**

---

## **Judgement**

Cyriac Joseph, C.J.—The petitioners are aggrieved by an order dated 27-6-2005 stated to have been passed by the Forest Settlement Officer, Dehradun (respondent No. 6) restraining any construction or excavation activities and sale/purchase transaction in respect of the lands mentioned in the said order. According to the petitioners, they are absolute owners in possession of the lands in question. It is contended that the action of the sixth respondent is illegal, unauthorised and without jurisdiction.

2. Though the petitioners have prayed for a writ of certiorari for quashing the impugned order dated 27-6-2005, a copy of the said order was not produced along with the writ petition. Though a document is produced as Annexure 14, it is not copy of any order and it is not possible to make out what the document is, as it has neither head nor tail. Hence, the petitioners were given time to place on record a copy of the order impugned in the writ petition. Thereupon, the petitioners filed a supplementary affidavit producing a copy of the order dated 27-6-2005 as Annexure SA1 to the supplementary affidavit. From the said order, it is seen that the Government had issued a notification u/s 4 of the Indian Forest Act, 1927 in respect of the lands in question and that proceedings for declaring the lands as reserved forest are pending. It was brought to the notice

of the authorities that in spite of the notification u/s 4 of the Indian Forest Act, 1927, some persons are indulging in construction and excavation operations in the lands and also sale/purchase transactions in respect of the lands. In view of the above information, the sixth respondent has passed the impugned order making it clear that such construction and excavation operations and sale/purchase transactions are illegal and amount to an offence u/s 26 of the Indian Forest Act, 1927. In the impugned order, the sixth respondent has directed all concerned that such illegal construction and excavation operations shall not be carried out and sale/purchase transactions cannot be made. The sixth respondent has also directed the Sub-Registrar, Dehradun to take appropriate action in the matter.

3. It is not disputed by the petitioners that a notification u/s 4 of the Indian Forest Act, 1927 was issued by the Government on 13-10-1970 and the said notification was notified on 7-11-1970 as stated in the impugned order passed by the sixth respondent. In its application to the State of Uttar Pradesh, Section 5 of the Indian Forest Act, 1927 has been substituted as follows w.e.f. 23-11-1965 as per U.P. Act 23 of 1965:

5. Bar of accrual of forest rights.-- After the issue of notification u/s 4 no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or a contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest-produce removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf.

The above provision is admittedly applicable to the State of Uttaranchal. It is also not disputed that no notification u/s 20 of the Indian Forest Act, 1927, declaring the lands as reserved forest, has been issued so far.

4. In the above background, the impugned order passed by the sixth respondent is strictly in accordance with Section 5 of the Indian Forest Act, 1927, as applicable to the State of Uttaranchal. Therefore, the challenge against the order dated 27-6-2005 passed by the sixth respondent is bound to fail. The prayer for quashing the said order is rejected.

5. Learned Counsel for the petitioners submits that Section 4 notification was issued as early as on 13-10-1970 and even after 35 years, a notification u/s 20 has not been issued and therefore, Section 4 notification cannot be stated to be operative. On that basis, learned Counsel submits that the impugned order is illegal and arbitrary. However, learned Counsel for the petitioners could not point out any provision in the Indian Forest Act, 1927 or the Rules made thereunder prescribing a time limit for completing the proceedings initiated u/s 4 by issuing a notification u/s 20. In the absence of any such statutory limit for completing

the proceedings initiated u/s 4, the contention of the learned Counsel for the petitioners, that Section 4 notification has become inoperative, cannot be accepted. There could be several reasons for the delay in completing the proceedings, including litigations by interested parties and time taken for considering and disposing of the claims and objections filed by interested persons under Sections 6 and 11 of the Indian Forest Act, 1927.

6. If the petitioners had any objection to the proposal to notify the lands as reserved forest or if they wanted to assert any right over the lands, they could have filed claims and objections under Sections 6 and 11 of the Act. The authorities are bound to consider such claims and objections before issuing a notification u/s 20. There is nothing to indicate that the petitioners filed any claims or objections u/s 6 or Section 11. There is also no prayer in the writ petition for quashing the notification u/s 4 or to declare that the said notification is illegal or unenforceable. In such circumstances, the delay in completing the proceedings initiated by Section 4 notification and in issuing a notification u/s 20 cannot affect the right and power of the sixth respondent to enforce the provisions of Section 5 of the Indian Forest Act, 1927 and to restrain people from carrying out any construction and excavation operations or making any sale/purchase transaction in respect of the lands in question.

7. For the reasons stated above, the writ petition is dismissed without prejudice to the right of the petitioners to resort to the statutory provisions for raising claims or objections, if any, before the appropriate statutory authority.