

(1979) 07 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 275 and 277 of 1978

Forest Department

APPELLANT

Vs

N. Indiramma and others

RESPONDENT

Date of Decision : 02-07-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 3, Order 22 Rule 9, 141
Constitution of India, 1950 — Article 225, 226

Citation : (1979) 07 AP CK 0019

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Advocate : Syed Shah Mohd. Quadri for Respondents 1, 5, to 7 and Mr. A. Suryanarayana Murthy for Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Chennakesav Reddy

1. The State Government by its notification issued u/s 4 of the Andhra Pradesh Forest Act (hereinafter referred to as the Act) in G O. Ms. No 782 dated 18-4-71 declared that it was proposed to constitute Wanparthy Forest Block with an area of 14 733.06 acres in Wanparthy Taluk, and appointed the Forest Settlement Officer, Hyderabad, to be the Settlement Officer with regard to the said land to consider the objections, if any, and to enquire into and determine the existing nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within the said area. The Settlement Officer issued proclamation order Sec. 6 of the Act, calling for objections from any person interested against the declaration made under Sec. 4 of the Act, and the said proclamation was published in the Mahabubnagar District Gazette dated 16-12-1971.

2. The Wanparthy Forest Block was previously declared as protected forest under Sec. 29 of the Hyderabad Forest Act in Gazette No. 64 dated 21-12-50, On 29th May 1954, a notification was issued under Sec. 30 of the Hyderabad Forest Act,

1355 F, declaring that the said forest shall be closed for a period of 30 years and the rights of private persons over the said forest shall be suspended for the said period, and further declaring that all classes of trees in the said forest shall be reserved.

3. In the notification published under Sec 4 of the Act on 12-8-1971, 451.00 acres in S. No 809/1 and 96808 acres in S. No. 858/1 were included in proposed reserved forest S. No. 809/1 was shown as "poramboke" land and S. No. 858/1 as "gairan" land.

4. Respondents 5, 6, and 7 herein and another late Srinivasa Chari, through their Power of Attorney claimed that the Raja of Wanparthy through his sanad dated 7 6-1859 granted as Arazi Makta of the land in S. Nos. 809/1 and 858/1 and that the said grant was confirmed through Muntakab No. 5111 dated 15-11-56 in the respondents' name and that the consideration for the grant was charity and that, therefore, they are Maktadars entitled to compensation. The Forest Department represented by the Divisional Forest Officer resisted the claim stating that the claimants had lost their title to the land under the Hyderabad Inams Act and that since the Muntakab was granted long after the declaration of the Forest Block under Sec. 29 of the Hyderabad Forest Act and without considering the claims of the Forest Department, the respondents derived no right to claim compensation as against the Forest Department. Ultimately, however, the Forest Department stated that it had no objection for the exclusion of the land from the proposed reserved forest.

5. The Forest Settlement Officer, after considering all the claims accepted Muntakab No. 5111 dated 15-11-56 issued under the authority of Nazim-e-Atiyat in favour of respondents 5 to 7 and late Srinivasa Chari and held that in the Muntakab the land in question is shown as "gairani" (Charity) and that the said four claimants are the Muktadars of the lards is S. Nos. 809/8 and 858/1. However, since there was no forest growth and as the Forest Department was agreeable to the exclusion of the said land from the reserved forest, he ordered the exclusion of the land from the notification u/s 4 He however, recognised the rights of the claimants to the forest produce and of pasture and granted compensation at Rs. 40/- per acre for the period during which the land was in occupation of the Forest Department on the ground that the Forest Department had certainly derived income from the said land. The Forest Settlement Officer granted a total compensation of Rs. 54.298/- under Sec. 10 (2) and 11 of the Act. However, he refused to grant solatium and interest.

6. Against the said order of the Forest Settlement Officer the Divisional Forest Officer filed C.M.A. 7/74 and the claimants riled C.M.A. 6/74 before the District Judge, Mahabubnagar, seeking enhanced compensation. On behalf of the State, was contended that the Settlement Officer, while directing the exclusion of the land from the limits of the proposed reserved forest under Sec. 10 of the Act, had no jurisdiction to award compensation again for the loss of the tree growth under Sec. 10 or Sec. 11 of the Act. The learned District Judge by his judgment

dated 7-8-76 dismissed C.M.A. 7/74 holding that the appeal was not maintainable as it was not filed by any officer generally or specially authorised by the Government to file an appeal under Sec. 13 (2). He partly allowed the appeal filed by the claimants and granted solatium at 15% and interest at 4% per annum from 21-12-1950 till the date of original award.

7. Srinivasa Chari, one of the claimants, died on 13-9-1976. Tift Forest Department filed writ Petition No. 3486 of 1976 against C.M.A. No. 6 of 1974 and W.P. No. 3821 of 1976 against C.M.A. No. 7/1974 on 25-10-1976 and 10-11-1976 respectively. To both the Writ Petitions, Srinivasa Chari was impleaded as respondent No. 1 and respondents 5 to 7 herein, as respondents 2 to 4. This Court dismissed the two writ petitions as against R-1 on 5-4-1977 and 22-7-1977 respectively. When the writ petitions came up for final hearing on 1-11-1977, the learned Government Pleader then took time to take steps to bring the Legal Representatives of the 1st respondent on records. However, on 2-12-1977, the writ petitions were allowed to be withdrawn with permission to file fresh writ petitions. Then, these two writ petitions were filed on 16-12-1977 against C.M.A. No. 6 and 7 of 1974 impleading the legal representatives of the first respondent and the other respondents in the said writ petitions.

8. The learned Government Pleader firstly submits that the Forest Settlement Officer had no jurisdiction to award compensation after having ordered exclusion of the land from the limits of the reserved forest u/s 10 (2) (a) of the Andhra Pradesh Forest Act, 1967 (hereinafter referred to as "the Act"). He submits that under, section 11 (2) of the Act, the Forest Settlement Officer is empowered to grant compensation only when the land is not possible to be excluded. He also submits that the learned District Judge was in error in holding that C.M.A. No. 6 of 1974 was not maintainable u/s 13 (2) of the Act. On the other hand, the learned Counsel for the respondents contends that the writ petitioners are not maintainable against the Legal Representatives of the First respondent since the earlier Writ Petition Nos. 3486 and 3821 of 1976 were dismissed as against the first respondent and that, since the interest in the award is a joint one, the writ petitions are liable to be dismissed as against the other respondents also.

9. Before proceeding to consider the contentions of the learned counsel for the petitioner, it is but appropriate to examine the sustainability of the contention of the learned Counsel for the respondents relating to the maintainability of the writ petitions. It is common ground that the writ petition Nos. 3486 and 3821 of 1976, preferred against C.M.A. Nos. 6 and 7 of 1974 respectively, were dismissed by this court as against Srinivasa Chary--R-1. The said orders of dismissal have become final. No Fresh suit can be brought on the same cause of action when a suit abates or is dismissed, under order 22. Rule 9. Against the other respondents, the writ petitions were allowed to be withdrawn by this court on 2-12-1977 with permission to file fresh writ petitions. The withdrawal of the writ petitions as against other respondents. Viz., respondents 5 to 7, will not affect the order of dismissal of the writ petitions as against R-1, Srinivasa Chary.

No steps were taken to bring on record the legal Representatives of Srinivasa Chary in those writ petitions under Order 21 Rule 3 of Code of Civil Procedure. Therefore, the cause of action abated. In *Gade Seskamma vs. Venkatasuryana* AIR 1914 Mad 170 (92) a Division Bench of the Madras High Court held that.

When a suit has abated against a particular defendant by reason of his legal representatives not having been brought on the record within the time limited by law, and when the plaintiff there upon withdraws his suit with permission to bring a fresh suit, such a permission can only empower him to bring the fresh suit against those defendants who were on the record on the date of the withdrawal and not against a defendant who had ceased to be on the record or against the legal representatives of a defendant who was dead at the time of the withdrawal and whose said representatives had either not been brought on the record or had been removed from the record by an appellate order which set aside the order of the first Court bringing them on record.

10. To the same effect is the decision of the Allahabad High Court in *Janki Misir Vs. Beni Singh and Others*

11. Undoubtedly, the respondents 1 to 4 in these writ petitions were not parties to the writ petition Nos. 3486 and 3821 of 1976. They are the Legal Representatives of the Late Srinivasa Chary. These two Writ petitions were dismissed as against Srinivasa Chary and permission to withdraw the writ petitions as against the other respondents was granted. The petitioner was granted permission to withdraw the said writ petitions and file fresh writ petitions as against the other respondents on 2-12-1977. Therefore, these writ petitions against the Legal Representatives of Srinivasa Chary, the first, respondent in Writ petition Nos. 3486 and 3821 of 1976, are not maintainable and they are liable to be dismissed as against respondents 1 to 4. But then the question is whether the Writ petitions can be proceeded with as against respondents 5 to 7. It is contended by the learned Counsel for the respondents that the interest in the award is joint and indivisible and therefore, the writ petitions as against the other respondents also are liable to be dismissed. Great support is sought to be garnered from the decision of the Supreme Court in *The State of Punjab Vs. Nathu Ram*, In that case, certain land belonging to two brothers L and N jointly was acquired for military purposes and on their refusal to accept the compensation offered by the Collector, the State Government referred the matter for inquiry to an arbitrator under rule 10 of the Punjab Land Acquisition (Defence of India) Rules, 1943. The arbitrator passed a joint award granting a higher compensation and also certain sum on account of income tax. The State Government appealed against the award to the High Court. During the pendency of appeal, L died And his legal representatives were not brought on record. Therefore, the appeal abates against him. It was contended that the appeal as against N could not be proceeded with as it was not properly constituted. The Supreme Court held that the appeal against N alone cannot be held to properly constituted when the appeal against L had abated. To get rid of the joint decree,

it was essential for the appellant, the State of Punjab, to implead both the joint decree-holders in the appeal, in the absence of one joint decree-holder, the appeal is not properly framed. It follows that the State appeal against N alone cannot proceed. It was also held that the mere record of specific shares of L and N in the revenue records was no guarantee of their correctness and the appellate Court would have to determine the share of N and that of L in absence of L's legal representatives which was not permissible in law. This principle was approved and echoed again by the Supreme Court in *R.R. Gupta vs. Murli Prasad* 1962 (1) A.L.T. 306. In this case, as in the case of *State of Punjab vs. Natha Ram* A.I.R 1972 (S.C)-118 the issue is what is the correct amount of compensation to be awarded for the loss of forest produce to the claimants. The claim itself was jointly made by all the respondents and there is absolutely nothing on record to show that any of the claimants was in separate enjoyment of any parcel of land. In fact, the compensation itself was not determined on that basis. Therefore, it must be held that these writ petitions cannot be proceeded with as against respondents 5 to 7 also.

12. The learned Government Pleader, placing reliance on the decision of the Calcutta High Court in *State of West Bengal Vs. Manisha Maity and Others*, submits that writ petition Nos. 3486 and 3821 of 1976 were filed against respondent-1 therein, a dead person and therefore, they were not writ petitions in the eye of law. In that case State preferred a Second Appeal against any appellate decree by the Additional District Judge. The sole respondent in the Appeal was one S.K. Maity Alias Sachindra Kumar Maity, who was, as it was later transpired, dead at the time of filing of the appeal. After coming to know of the death, the State filed an application to set aside the abatement of the appeal and bring the heirs of the deceased-respondent on record. On behalf of the respondent, it was argued that the appeal having been preferred against a dead person the application for setting aside abatement of the appeal and for bringing the heirs of the deceased respondent on record was not maintainable. It was held that if an application for substitution of the heirs of a respondent, who died during the pendency of the appeal, be not made within the time allowed by law the appeal : bates but rule 9 of order 22 of the CPC provides for a procedure for setting aside abatement. But if an appeal be preferred against a dead respondent, the appeal itself is still-born and is no appeal in the eye of law. Nothing in order 22 of CPC will revive the appeal, when the death of the respondent comes to light. But in that case, the second Appeal was preferred against a sole respondent. There was no other respondent on a record and it was later discovered that the sole respondent was dead on the date of filing of the Appeal the learned Judges therefore, held that the appeal itself was still-born and therefore, there was no Appeal in the eye of law. But in this case, there were three other respondents on record and therefore, it is possible to hold that there was no writ petition presented in the eye of law, and in fact, the writ petitions were withdrawn by the petitioner as against the other respondents. It was then contended that the provisions of the CPC are not applicable to proceedings under

Article 226 of the Constitution and that explanation to Section 141 inserted by Amendment Act, 1976 in the CPC does not make the provisions of the CPC applicable to the writ proceedings. The explanation inserted by the amendment came into force only on 1-2-1977. The writ Petition were filed in 1976 and this court in *A. Adinarayana Vs. State of Andhra Pradesh* AIR 1958 A.P. p. 16 held that an application under Article 226 of the Constitution on India is a proceeding in a court of civil jurisdiction. Section 141 of CPC is therefore, directly attracted. Subsequently under the writ proceedings Rules, 1977 framed by this court under Article 225 of Constitution of India, the provisions of the CPC are made applicable to the Writ Petitions and Writ Appeals. Therefore, the contention of the learned Government Pleader that the provisions of the CPC are not applicable to the writ proceeding must also fail.

13. Now let me turn to the question whether the Forest Settlement Officer has jurisdiction to order payment of compensation for loss of forest produce or right or pasture to the land under Sections 10 or 11 of the Act having excluded the said land from the limits of the proposed reserved forest u/s 10 (2) (ii) of the Act. It is necessary to read the relevant provisions of the Act.

10 (1):-Where the claim relates to a right in or over any land other than the following rights;--

- (a) right of way;
- (b) a right to water course, or to use of water;
- (c) a right of pasture; or
- (d) a right to forest produce.

The Forest Settlement Officer shall, after considering the particulars of such claim and the objections of the Forest Officer, if any, pass an order, admitting or rejecting the same wholly or in part after recording the reasons therefor.

(2) (a) If any claim is admitted wholly or in part under subsection (1), the Forest Settlement Officer may--(i) accept the voluntary surrender of the right by the claimant or determine the amount of compensation payable for the surrender of the right of the claimant, as the case may be; or

(ii) Direct the exclusion of the land from the limits of the proposed forest; or

(iii) acquire such lands in the manner provided by the Land Acquisition Act, 1894 (here--after in this sub-section referred to as the said Act):

(b) for the purpose of acquiring such land--

(i) the acquisition shall be deemed to be for a public purpose and the notification u/s 4 shall be deemed to be a notification under sub-section (1) of section 4 of the said Act;

(ii) the Forest Settlement Officer shall be deemed to be a Collector under the

said Act, and the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given u/s 9 of the said Act;

(iii) the provisions of section 5-A, 6, 7 and 8 of the said Act shall not be applicable: and

(iv).....

Section 11 (1):-- where the claim relates to any of the rights specified in clauses (a) to (d) of sub-section (1) of section 10, the Forest Settlement Officer shall, after considering the particulars of such claim so far as may be necessary to define the nature, incidents and extent of the rights claimed, and the objections of the forest officer, if any, pass an order, admitting or rejecting such claim wholly or in part, after recording the reasons therefor.

11. (4):--Where the claim admitted relates to a right of pasture or to forest produce, the Forest Settlement Officer shall either accept the voluntary surrender of such right or pass an order, providing for the exercise of such right, if any, subject to such conditions or restrictions as he may impose, or directing the exclusion of the land of sufficient extent, of a suitable kind and in a locality reasonably convenient to the claimant, by altering the limits of the proposed reserved forest.

Section 12:--Where the Forest Settlement Officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement u/s 11 as shall ensure continued exercise of the said rights to the extent so admitted he shall direct the Forest Department to pay compensation as determined on the basis of the value of such right on the date of notification u/s 4, in accordance with the provisions of the Land Acquisition Act, 1894 in so far as such provisions are applicable.

14. A reading of Section 10 clearly shows that a claim relating to a right of pasture or a right to forest produce cannot be decided u/s 10, Sub-section (4) of section 11 deals with such a claim. It categorically lays down that when the claim admitted relates to a right of pasture or to forest produce, the Forest Settlement Officer shall either accept the voluntary surrender of such right or direct the exclusion of the land of sufficient extent, of a suitable kind and in a locality reasonably convenient to the claimant, by altering the limits of the proposed reserved forest. It is only where the Forest Settlement Officer finds it impossible to make settlement u/s 11 he shall direct the Forest Department to pay compensation as determined on the basis of the value of such right on the date of notification u/s 4, in accordance with the provisions of the Land Acquisition Act, 1894. But this is a clear case where the Forest Department itself agreed for the exclusion of land from the limits of the proposed reserved forest. Therefore, it is not possible to hold that it was impossible for the Settlement Officer to make a settlement u/s 11 of the Act to entitle him to award compensation u/s 12 of the Act. Indeed, the Forest Settlement Officer ordered exclusion of the land of the respondents from the proposed reserved forest. Therefore, having so held, the

Forest Settlement Officer had no jurisdiction to award any compensation in respect of a right of pasture or a right to the forest produce either u/s 10 or section 11.

15. Then there still remains the last contention of the learned Counsel for the petitioners, viz., that the learned District Judge was in error in holding that the Divisional Forest Officer had no authority to prefer the C.M.A. No. 6 of 1974 and was therefore not maintainable. This finding of the Court below is founded on the provisions of Section 13 (2) of the Act. The question therefore is whether the Divisional Forest Officer is one generally empowered u/s 13 (2) to file an appeal. The Divisional Forest Officer represented the Forest Department during the enquiry before the Forest Settlement Officer u/s 8 of the Act, Section 4 (3) specifically authorises any Forest Officer to represent the Forest Departmental the enquiry Conducted u/s 8 of the Act. "Forest Officer" has been defined u/s 2 (f) of the Act as any person appointed by the government or by any officer empowered by the Government in this behalf to be the Chief conservator, Deputy Chief Conservator, Conservator, Deputy Conservator, Assistant Conservator, Divisional Forest Officer, Ranger, Deputy Ranger, Forest Guard, Forest, Watcher, Thanadar, Checking Officer or Plantation Watcher. In this case, the Divisional Forest Officer represented the Forest Department in the enquiry u/s 8 of the Act. Thus a combined reading of Section 4 (3) and 2 (f) drives one to the positive conclusion that the Divisional Forest Officer, who represented the Forest Department, a person generally empowered by the Government to file the Appeal within the meaning of Section 13 (2) of the Act. Therefore, the learned District Judge was in error in holding that the Appeal (C.M.A. 6 of 1974) filed by the Divisional Forest Officer was not maintainable. However, in view of my conclusion that the writ petitions cannot be proceeded with as they are not properly constituted, these writ petitions are liable to be dismissed and they are accordingly dismissed. No costs.