
(2002) 04 MP CK 0096
In the Madhya Pradesh High Court
Case No : Writ Petition No. 972 of 2002

Gopal Das Mittal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 18, 19, 20, 21, 22

Citation : (2002) ILR (MP) 428 : (2002) 5 MPHT 116 : (2003) 1 MPLJ 112

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; V. Awasthy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This is the second round of the writ petition before this Court. Petitioner was granted quarry lease for construction of bricks-kiln. Initially the lease was granted for a period of three years vide order dated 16-1-1998. The quarry lease granted to the petitioner was cancelled on the ground that land falls within the prohibited area of Ratapani Sanctuary. Petitioner preferred a revision on the ground that land in question Sy. No. 12/2 situate in Village Goutampur, District Raisen is not covered under the provisions of The Wild Life Protection Act, 1972 (for short, "the Act"). The Collector had refused the renewal application on 13-6-2000 as per order Annexure P-3. Revision was preferred. In revision an order was passed on 19-10-2000 for renewal of the lease, but still the Collector did not renew the lease as such the petitioner filed a writ petition W.P No. 2500/2001 which was decided by this Court on 20th November, 2001 as per order Annexure P-7. This Court directed that Secretary of Department of Forest as well as Department of Mining should hear the petitioner as well as the representative of the forest department and arrive at a conclusion whether the land in question is a private land or it falls within the ambit of the Act and,

therefore, mining cannot be allowed in favour of any mining lease holder. Opportunity of hearing was directed to be afforded. After hearing the parties, order Annexure P-10 has been passed on January 14th, 2002 and it has been held that no mining operation can be allowed in the area in question as Survey No. 12/2 in area 0.688 hectare is covered by a notification issued u/s 18 of the Act constituting Ratapani Sanctuary. It has been further held that since notification u/s 18 was issued prior to 1991, hence it was not necessary to issue notification u/s 26A of the Act as mentioned in circular issued by Govt. of India Department of Environmental & Forest, dated May 17th, 1999.

Learned Counsel for the petitioner submits that no final notification has been issued u/s 26A of the Act which is mandatory which ought to have been issued. Second submission is that it is the private land owned by the petitioner as such provisions of the Act are not attracted. Only a sub-committee has taken the decision to include the land, there is no notification issued with respect to the area in question under the Act.

Section 18 of the Act deals with the declaration of sanctuary areas. u/s 19, Collector has to inquire into, and determine, the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the sanctuary u/s 18. Section 20 of the Act provides bar of accrual of rights when a notification has been issued u/s 18. It provides that no rights shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate. Sections 21, 22 and 23 deals with the " power of Collector to issue proclamation, holding of inquiry and the power to enter in or upon any land. Section 27 provides restriction on activities in the area covered by notification u/s 18 of the Act.

Section 26A of the Act was inserted by the Act No. 44 of 1991. This provision requires issuance of the notification by the State Govt. as to an area intended to be declared as a sanctuary. This provision was inserted in the year 1991 and cannot be made applicable with retrospective effect. Declarations already made prior to it u/s 18 is enough to constitute such a sanctuary. The Govt. of India in its circular dated 17-5-1999 has also clarified the position that in the cases in which notification u/s 18 was issued prior to 1991 before inserting Section 26A notification under the provisions of Section 26A is not required to be issued.

There is finding of fact given that Survey No. 12/2 is covered in the notification issued u/s 18. The Wild Life Protection Act, 1972 is having its own object of preservation of wild life which cannot be allowed to be defeated by allowing activity of the kind which petitioner wants to carry on. Such activity can not be allowed even on private land in view of the provisions of Wild Life (Protection) Act, 1972.

I do not find any merit in the writ petition. It is dismissed.