
(1972) 03 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3011 of 1970

Hardayal

APPELLANT

Vs

District Judge, Jhansi and Others

RESPONDENT

Date of Decision : 24-03-1972

Acts Referred:

Forest Act, 1927 — Section 6

Citation : AIR 1972 All 471 : (1972) 42 AWR 530 : (1973) RD 362

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : R.B. Mehrotra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—A notification u/s 4 of the Indian Forest Act, for constituting certain land lying in village Dhaman, Tehsil Kalpi as reserved forest was issued in September 1954. Petitioner, Hardayal, claims that he is Sirdar of certain plots covered by the notification. According to him no proclamation as required by Section 6 of the act was published in the village. Accordingly, he and other tenure holders of the village were not aware of the proceedings taken under Indian Forest Act. They came to know about these proceedings towards the end of June, 1962, when some employees of the Forest Department began fixing pillars and demarcating land. The petitioner and other tenure-holders then filed objections, before the Forest Settlement Officer, claiming interest in various plots, on 9th of July, 1962, before issue of a notification u/s 20 of the Indian Forest Act. The Forest Settlement Officer accepted the claim made by the petitioner and directed that his sirdari plots be excluded from the reserved forest.

2. The Divisional Forest Officer went up in appeal before the Commissioner Jhansi Division. After hearing the parties, the Commissioner came to the conclusion that the petitioner failed to substantiate his claim. If at all, it was the Bhudan Samiti, which is said to have leased out the plots to the petitioner, which

could make a claim u/s 4/6 of the Indian Forest Act. He also held that as the petitioner did not file his claim within three months, the limit prescribed u/s 6 of the Act, the claim was barred by time. In the result he allowed the appeal and rejected the claim made by the petitioner.

3. Being aggrieved by the appellate order, the petitioner went up in revision before the State Government. Eventually the papers were transferred to the District Judge, Jhansi, who dismissed the revision application. It appears that during the course of hearing of the revision application, there was substantial controversy between the parties on the question whether proclamation as required by Section 6 of the Indian Forest Act had been published in the village. After hearing the parties and considering the circumstances of the case, learned District Judge came to the conclusion that the proclamation as required by Section 6 of the Act had been published in the village in May 1960 and that the provisions of that Section had been substantially complied with. However, he dismissed the revision without going into the merits of petitioner's claim as in his opinion the claim was barred by time and no prayer for condoning the delay in lodging it with the Forest Settlement Officer had been made.

4. By this petition under Article 228 of the Constitution the petitioner questions the validity of the order made by the District Judge, dismissing his claim on the ground of limitation. Learned Counsel for the petitioner contends that the learned District Judge was labouring under a misapprehension that Section 6 of the Indian Forest Act prescribes a period of limitation within which a claim under that section can be filed, and that this period cannot be extended unless an application containing a specific prayer for condoning the delay is moved and granted. He points out that while the proceedings were pending before the Forest Settlement Officer, no objection was taken by the Divisional Forest Officer that petitioner's claim was time barred. In the circumstances, it should be taken that the Forest Settlement Officer was satisfied that the petitioner had sufficient cause for not preferring his claim within the time mentioned in the proclamation. After the Forest Settlement Officer had entertained the claim and decided it on merits, it was not open to the Divisional Forest Officer to raise this objection for the first time before the appellate Authority. The learned District Judge also erred in dismissing the petitioner's revision application on the ground that the claim was barred by time.

5. Section 6 of the Forest Act nowhere lays down a period of limitation for making a claim in respect of land included in a notification issued u/s 4 of the Act. Section 6(c) merely requires that while issuing this proclamation, the Forest Settlement Officer shall fix in a period of not less than three months from the date of such proclamation, requiring every person claiming any right, to present to the Forest Settlement Officer a written notice specifying or to appear before him stating the nature of his rights. According to this section the period within which a written notice of a claim or an oral claim is to be made, it to be fixed by the Forest Settlement Officer and that this period cannot be less than three

months from the date of the proclamation. There is nothing on the record of this petition to show what period was indicated by the Forest Settlement Officer in the proclamation issued by him. It is apparent that the period for making a claim fixed in a proclamation issued u/s 6 cannot be equated with the period of limitation fixed under the Limitation Act.

6. Section 7 of the Act, casts a duty on the Forest Settlement Officer to investigate, enquire into, and find out the claims of every person as far as possible whether or not he has filed a claim within the period fixed in the proclamation issued u/s 6. This indicates that it is open to the Forest Settlement Officer to accept the claim to a right in the land whether or not the person concerned has preferred it within the period fixed in the proclamation. According to Section 9 of the Act, rights in respect of which no claim has been preferred u/s 6 and of the existence of which no knowledge has been acquired by the Enquiry Officer u/s 7, shall be extinguished unless before the notification u/s 20 is published, the person claiming them satisfies the Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed u/s 6. This section clearly indicates that the Forest Settlement Officer retains the jurisdiction to enquire into and accept a claim to any right in the land sought to be included in the proposed reserved forest, right upto the time a notification u/s 20 is published. A claimant who could not approach the Forest Settlement Officer within the period fixed in the proclamation u/s 6 can still persuade him to look into their claims after satisfying him that he had sufficient cause for not preferring it within that period. Law nowhere requires that this satisfaction has to be recorded or that the claimant should explain his inability to prefer the claim earlier by means of a formal application praying for condonation of delay.

7. It is significant to note that the claim mentioned in Section 6 can be made either by way of a notice in writing or orally. Section 9 merely provides that if a claim is made beyond the period mentioned in the proclamation issued u/s 6 it can be entertained by the Forest Settlement Officer provided he is satisfied that there was sufficient cause for not preferring it within the period fixed in Section 6. There is no reason to think that the claim at the stage of Section 9 can also not be made in either of the two ways. If the Settlement Officer can proceed to enquire into an oral claim, there is no reason to think that the Legislature contemplated that the explanation offered by the claimant for not preferring the claim within the period fixed u/s 6 should be given by means of a formal application for condoning the delay in preferring it. Provisions of Section 9 would be fully complied with if the claimant orally explains the reason for his not preferring the claim earlier and the Forest Settlement Officer entertains the claim after, being satisfied by that explanation. The law does not require that this satisfaction must be recorded in writing. Although it would be much better if in such cases, the Forest Settlement Officer makes some sort of record to indicate that he was so satisfied, but if no such record is made it would not necessarily mean that the claim has been entertained without the Forest Settlement Officer being satisfied that there was sufficient cause for not preferring it within the time

fixed in the proclamation issued u/s 6 of the Act. Normally, in a case where such a claim has been entertained it should be presumed that an explanation for the delay was given by the claimant and the same was accepted by the Forest Settlement Officer.

8. A perusal of the order made by the learned District Judge indicates that his conclusion that the petitioner did not pray for condoning the delay in preferring the claim is based on the fact that there is no formal application for condoning the delay on the record. As mentioned above this is not the correct way of dealing with a case of this type. All that it requires is that the Forest Settlement Officer should be satisfied that there was sufficient cause for the petitioner for not preferring the claim within the period fixed u/s 6.

9. Question whether the Forest Settlement Officer was so satisfied or not is a question of fact. As stated earlier, normally in such cases it should be presumed that the Forest Settlement Officer entertained the claim after being so satisfied. As there was no dispute before the Forest Settlement Officer that in fact there was no sufficient reason for the petitioner for not preferring the claim earlier he did not consider it necessary to make a record of that satisfaction. In case the Divisional Forest Officer had raised this question the Forest Settlement Officer might have indicated the reason for his satisfaction in the order. Moreover, if this objection had been taken by the Divisional Forest Officer before the Forest Settlement Officer, the claimant could have offered an explanation if the same had not already been offered. In the circumstances, I agree with the learned counsel for the petitioner that the learned Commissioner and the District Judge should not have thrown out the petitioner's claim on the ground that he did not make a prayer for condoning the delay in preferring the claim.

10. In my opinion in this case, before disposing of the revision application, learned District Judge should have gone into the merits of petitioner's claim.

11. In the result the petition is allowed. Order of the District Judge dated 20th March, 1970 is quashed. He is directed to deal with the petitioner's revision on merits. In the circumstances of the case I direct the parties to bear their own costs.