

(2001) 12 AHC CK 0051

In the Allahabad High Court

Case No : C.M.W.P. No's. 37860, 37863, 37866, 37868, 41227 and 41319 of 2001

Harish Chandra Singh and Others

APPELLANT

Vs

Deputy Director of Consolidation, Bareilly and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 372

Forest Act, 1927 — Section 20, 4, 6

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2002) 1 AWC 562

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : N.B. Nigam and Shyam Krishna, for the Appellant; C.S.C. and L.K. Dave, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These six writ petitions have been filed challenging the same order dated 25.6.2001 passed by the Deputy Director of Consolidation, Bareilly Camp at Shahjahanpur u/s 48 of the U. P. Consolidation of Holdings Act and the order dated 15.1.2000 passed by the Settlement Officer of Consolidation and the order dated 25.1.1973 passed by the Consolidation Officer.

2. The facts and dispute in these six writ petitions raise common questions hence they are being decided by this common judgment.

3. Writ Petition No. 37860 of 2001 (which is being treated as leading case) gives the facts in detail. The facts as stated in the aforesaid writ petition are that the proceedings under provisions of the U. P. Consolidation of Holdings Act. 1953 (hereinafter referred as "1953 Act") started in village Gahlulya, District Shahjahanpur. In basic year khatauni. Plot No. 2 was recorded as reserved forest in Khata No. 262. An objection was filed by the petitioner Harish Chand Singh u/s 9A (2) of "1953 Act" that the petitioners have taken lease of the aforesaid plot

area 50,00 acres from Zamindar before abolition of Zamindari. It was stated that area in the name of forest has wrongly been recorded in Khata Nos. 262 and 263 and the said area be scored out from the khata of reserved forest. Forest Department also filed an objection that land recorded in the name of Forest Department is correct and the various area of same plots is wrongly recorded in the name of different tenure holders which is liable to be scored of. It was submitted by the Forest Department that Plot Nos. 2, 45 and 41 are reserved forest. Notification under Sections 4, 6 and 20 under the Indian Forest Act, 1927, (hereinafter to be referred as the "1927 Act"), has been issued with regard to land recorded as forest hence there is no right of any tenure holder in the aforesaid land. It was stated that the notification u/s 4 of "1927 Act" was issued on 16th March. 1954 and published in the U. P. Gazette. The proclamation u/s 6 of the U. P. Act was issued on 20.6.1963 and ultimately the notification u/s 20 of Forest Act was issued on 3.8.1966. Apart from petitioners where as several other tenure holders filed objections claiming different area either on the basis of sale deeds from different persons or lease from the Gaon Sabha or erstwhile Zamindar. Similar dispute was raised u/s 9A (2) where tenure holders from which other writ petitions being Writ Petition Nos. 37863 of 2001, 37866 of 2001, 37868 of 2001, 41227 of 2001 and 41319 of 2001 have arisen.

4. In Writ Petition No. 37863. Sarwan Singh and Ors. v. Deputy Director of Consolidation, Bareilly, Camp at Shahjahanpur and others objection was filed by the petitioner Nos. 1 and 2 and Nirmal Singh the father of the petitioner Nos. 3, 4 and 5 that they are sirdars of Plot No. 41 of Khata No. 208 area 16.50 acres which was recorded in the name of the State. The State objected to the aforesaid claim and stated that the aforesaid plot is reserved forest; that Plot No. 41 was recorded in various khatas with different areas. Plot No. 41 area 66.69 acres was recorded as reserved forest in Khata No. 263 and Plot No. 41 area 4.29 acres was recorded in Khata No. 263 as Jangal Koran.

5. In Writ Petition No. 37868 of 2001, Vikkar Singh and Ors. v. Deputy Director of Consolidation, Bareilly, Camp at Shahjahanpur and others, objection was filed by Vikkar Singh and Tarsen Singh u/s 9A (2) of the "1953 Act" that Gaon Sabha, Gahlulya granted a lease of Plot No. 41 of 9.00 acres to the petitioner No. 1 in the year 1964 and the petitioners are sirdar and bhumidhars of the land in dispute. Forest Department has filed objection claiming 66.69 acres area of Plot No. 41 as reserved forest in Khata No. 262.

6. In Writ Petition No. 37866 of 2001, Vikkar Singh and Ors.v. Deputy Director of Consolidation, Bareilly. Camp at Shahjahanpur and others, objection u/s 9A (2) of the "1953 Act" was filed by the father of the petitioners with regard to Plot No. 2 area 28.95 acres that Ex-Zamindar has granted lease of Plot No. 2 area 50.00 acres before abolition of Zamindar in favour of Nagina Singh and Nirmal Singh and they had become bhumidhar of area 28.95 acres after depositing ten times rent. The Forest Department claimed the said Plot No. 2 to be reserved forest. The Gaon Sabha had also claimed that the said plot is Gaon Sabha property.

7. In Writ Petition No. 41227 of 2001. Chandan Singh v. Deputy Director of Consolidation. Bareilly, Camp at Shahjahanpur and others, Chandan Singh has filed objection claiming Plot Nos. 2 and 41 area 86.20 acres.

8. In Writ Petition No. 41319 of 2001. Didar Singh and Ors.v. Deputy Director of Consolidation, Bareilly. Camp at Shahjahanpur and others, dispute has been raised with regard to Plot No. 41 of which area 6.25 acres was recorded in the name of the petitioners and 66.00 acres was recorded in Khata No. 262 as reserved forest and various areas of Plot No. 41 were shown in Khata of different tenure holders. Area 66.69 acres was recorded in Khata No. 262 as reserved forest.

9. In all the aforesaid writ petitions, the Forest Department had claimed the land to be reserved forest and has relied on the notifications issued under Sections 4, 6 and 20 of the Indian Forest Act, 1927. It was claimed by the Forest Department that various areas of the aforesaid plots have wrongly been recorded in the names of the tenure holders. They have no right in the aforesaid land since it has already been declared reserved forest. It was stated on behalf of the State that neither the Gaon Sabha had any authority to execute any lease of the plots in question nor any tenure holder has right to execute the sale deed. The claim of objectors was contested by the State. The Consolidation Officer framed thirteen issues and vide order dated 25.1.1973 expunged the names of the tenure holders from Plot Nos. 4 and 41 and held the aforesaid plots to be reserved forest. The area recorded of the aforesaid plots in various khatas of tenure holders, was expunged. The Consolidation Officer held that after issuing the notification u/s 20 of the Forest Act, no person has any right in the aforesaid land and the said land is a forest land. It was directed that 86.20 acres area of Plot No. 41 recorded as excess area of aforesaid plots be expunged from other Khatas and area of 63.99 acres be continued to be recorded as reserved forest in Khata No. 262 of reserved forest. Certain other orders were passed with regard to other dispute. Several appeals were filed before the Settlement Officer of Consolidation u/s 11 (1) of the "1953 Act" which appeals were dismissed by the order dated 15.1.2000. The Settlement Officer of Consolidation held that in view of the notification issued u/s 20 of the Forest Act the land in dispute is reserved forest and objectors cannot claim any right regarding the aforesaid reserved forest. All the appeals were dismissed. Several revisions were filed by the petitioners which were dismissed by the common order dated 25.6.2001. The present writ petitions have been filed challenging the aforesaid three orders passed by the Consolidation Officer, Settlement Officer of Consolidation, and the Deputy Director of Consolidation. In Civil Misc. Writ Petition Nos. 37860 of 2001, 37866 of 2001, 37868 of 2001 and 37863 of 2001 apart from challenging the aforesaid orders passed by the consolidation authorities, a prayer has also been made for quashing of the notification dated 16.3.1954 (issued u/s 4 of the Forest Act), notification dated 3.8.1966 (issued u/s 20 of the Forest Act) and the proclamation dated 29.3.1963 issued u/s 6 of the Forest Act.

10. It will be relevant to note here that against the same orders passed by the Deputy Director of Consolidation dated 25.6.2001, Settlement Officer of Consolidation dated 15.1.2000 and the Consolidation Officer dated 25.1.1973 the Writ Petition No. 35386 of 2001, Jogendra Singh and Ors. v. Deputy Director of Consolidation, Bareilly. Camp at Shahjahanpur and others was filed in this Court which has been dismissed by the judgment dated 7.11.2001. The aforesaid writ petition was filed challenging the orders of the Deputy Director of Consolidation passed in Revision Nos. 99, 108 and 109 which were also decided by the same Judgment dated 25.6.2001 passed by the Deputy Director of Consolidation.

11. Sri N.B. Nigam counsel appearing in leading case, i.e., the Civil Misc. Writ Petition No. 37860 of 2001, has made following submissions :

(1) The notification u/s 4 of the Indian Forest Act, 1927, was issued without there being any final decision of the State Government for constituting the reserved forest. The notification mentions that it is proposed to constitute the land as reserved forest. Counsel submitted that there being no final decision of the State Government as contemplated u/s 4 of the Forest Act, the whole proceedings beginning from Section 4 notification is vitiated.

(2) The notification issued u/s 4 does not give proper description of situation and limits of 200 acres of land proposed to be reserved forest. The boundaries given in the notification do not tally with the boundaries of plots proposed to be included as reserved forest. The Forest Settlement Officer, while issuing notification u/s 6 has mentioned the plot numbers in the proclamation which is not within the jurisdiction of the Forest Settlement Officer. The proclamation issued u/s 6 was contrary to Section 6 of the Forest Act.

(3) Under Article 372(1) of the Constitution of India the Forest Act, the law in force is continued and is subject to modification by a competent Legislature. The Legislature of Uttar Pradesh amended Section 3 of the Forest Act so as to exclude from the provisions of the Forest Act and land held by the tenure holders as their holdings. The State Legislature has enacted the U. P. Consolidation of Holdings Act, under entry 18 of State land with regard to holding of a tenure holder. The U. P. Consolidation of Holdings Act. provides for filing of objection regarding rights and decisions of such consolidation court who have exclusive Jurisdiction in such matters. Counsel of the petitioners further submitted that in view of the aforesaid Legislative power and enactment of U. P. Zamindari Abolition and Land Reforms Act and U. P. Consolidation of Holdings Act the provisions of the Indian Forest Act, 1927, cannot have any effect with regard to tenure holders and the land held and occupied by the tenure holders. The Forest Act can have no application to the subject-matter of entries 18 of List 2 of the VII Schedule of the Constitution of India.

12. I have heard counsel for the petitioners, namely. Sri N. B. Nigam and Sri Shyam Krishan holding brief of Sri L.K. Dave and have perused the writ petitions.

13. In Writ Petition No. 35386 of 2001, Jogendra Singh and Ors. v. Deputy

Director of Consolidation, Bareilly, Camp at Shahjahanpur and Ors. this Court by its judgment dated 7.11.2001 has considered the scheme of Forest Act, 1927 and various arguments challenging the judgments of the consolidation authorities which have been challenged in these writ petitions also. Following the Apex Court's judgment in State of Uttar Pradesh v. Deputy Director of Consolidation and Ors. 1996 ALJ 1393, this Court has held that with regard to land notified as reserved forest u/s 20, no objection can be raised in consolidation proceedings. It was held by this Court in the aforesaid Judgment:

"The Apex Court had occasion to consider the aforesaid controversy in State of U. P. v. Deputy Director of Consolidation and Ors. 1996 ALJ 1393 (SC). In the aforesaid case before the Apex Court also the land in dispute was notified as reserved forest u/s 20 of the Forest Act. Before the consolidation courts the claimants claim sirdari right and asserted that the land was illegally subjected to be proceeding under the Forest Act and the notification declaring the land as reserved forest was illegal. The consolidation courts accepted objection of the claimants and allowed their objections. The writ petition was dismissed by the High Court against which an appeal was filed before the Apex Court. After examining the nature of proceedings under the Forest Act the Apex Court laid down in paragraph 10 :

"10. It is thus obvious that the Forest Settlement Officer has the powers of a civil court and his order is subject to appeal and finally revision before the State Government. The Act is a complete Code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification u/s 20 of the Act declaring a land as reserved forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of the civil court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Settlement Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification u/s 20 of the Act, the respondents could not have raised any objection qua the said notification before the consolidation authorities. The Consolidation Authorities were bound by the notification which had achieved finality."

The Apex Court in the aforesaid case has held that the respondents could not have raised any objection qua the notification u/s 20 before the consolidation authorities."

14. Again after discussing several cases of this Court, it was held by this Court in the aforesaid judgment :

The Apex Court in the State of U. P. v. Deputy Director of Consolidation (supra) laid down that Forest Settlement Officer having the power of the civil courts and his orders being subject to appeal and revision are final and, once notification u/s 20 of the Forest Act has been issued declaring the land as reserved forest it is

not open to raise objection before the consolidation authorities qua the said notification. Apex Court having laid down in 1996 ALJ 1393 (paragraph 10) as quoted above that the consolidation authorities were bound by the notification issued u/s 20 of Forest Act which have achieved finality, the decisions of the learned single Judge in Ratan Singh's case and Jang Bahadur's case, (supra) cannot be followed. Adjudication by Forest Settlement Officer regarding the rights of a claimant are final and cannot be reopened by consolidation authorities otherwise there may be two conflicting judgments on the same issue which has never been the intention of the law. The decision by the Forest Settlement Officer cannot be said to be judgment co"ram nonju "dice" nor it can be said that the judgment of the Forest Settlement Officer are nullity nor it can be said that the said authority had no Jurisdiction to determine about the nature of land included in the notification.

In view of the above discussion with regard to question No. 1 it is held that the consolidation courts cannot entertain a claim with regard to land which is covered by notification u/s 20 of Forest Act, 1927 and with regard to question No. 2 it is held that the Section 27A of the Forest Act creates express bar for adjudication of claim regarding reserved forest in any subsequent proceedings."

15. Although the Writ Petition No. 35386 of 2001, Jogendra Singh and Ors. v. Deputy Director of Consolidation, Bareilly Camp at Shahjahanpur and others, was dismissed by this Court in its judgment dated 7.11.2001 holding that the consolidation courts had rightly held that after notification u/s 20 of the Forest Act the rights, if any of any tenure holder came to an end and the objection raised before the consolidation authorities were rightly rejected but the counsel for the petitioners has submitted that the submission raised in these writ petitions as quoted above, needs to be considered since those submissions were not made in Jogendra Singh's case. In view of the above, the submissions raised by the counsel for the petitioners needs to be considered in the present writ petitions.

16. Before considering the various submissions raised by the counsel for the petitioners, it is to be noted that in the present writ petitions, the petitioners apart from challenging the judgment of the consolidation authorities dated 25.6.2001. 15.1.2000 and 25.1.1973 has also challenged the notification dated 16.3.1954 u/s 4 of the Forest Act, proclamation issued u/s 6, dated 29.3.1963 and notification dated 3.8.1966 issued u/s 20 of the Forest Act. The petitioners did not raise any objection in the proceedings before the Forest Act. The Forest Act, 1927, provides complete forum for adjudication of right of any person claiming rights in the land proposed to be declared as reserved forest. It was held in Jogendra Singh's case, (supra) :

?The scheme of the Forest Act as is evident from the various provisions as referred above clearly provide that in the proceeding beginning by notification u/s 4 all claims regarding land included in the notification are adjudicated by an authorised officers. All claims to the land can be made and adjudicated. Section 8

gives all powers of the civil courts to the Forest Settlement Officer available in trial of the suits. There is appeal provided u/s 17 to higher forum. The notification u/s 4 is published in Official Gazette appointing Forest Settlement Officer to inquire and determine any right in or over any land. Forest Settlement Officer also issues a proclamation in every town and village in the neighbourhood to make the proceedings known to all concerned. The adjudication of all claims to the land is by a special court with right of appeal. The enquiry regarding claims is for the purposes of finding out as to whether the land in question can be declared as reserved forest or it cannot be declared reserved forest due to the rights or claim of claimants and the provision further contemplates that even if right or claim of claimants has been established there is procedure for coming to agreement with the owner for surrender of his right or to acquire such land in the manner provided by the Land Acquisition Act. The provision of the Act contemplate extinction of all rights regarding land included in the reserved forest.

Section 27A has been added giving finality to the orders passed in proceedings under the Indian Forest Act and Section creates express bar by saying that the order made or certificate issued in exercise of -powers conferred in Chapter II shall not be called in question in any Court. While considering the question of exclusion of jurisdiction of the civil court Constitution Bench of the Apex Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , has laid down principle for determination regarding exclusion of jurisdiction. It was laid down in paragraph 32 (1) at page 89 as under :

"Where the statute gives a finality to the orders of the special tribunals the civil court's Jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cause where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

U. P. Consolidation of Holdings Act, 1953. has been enacted to provide for the consolidation of agricultural holdings in Uttar Pradesh for the development of the agriculture. Section 9 Sub-section (1) provides for issue of notice for inviting objection and Section 9 (2) contemplates filing of objection. Section 9A refers to disposal of case relating to claim to land and partition of Joint holdings. There is provision of appeal and revision. While deciding objections u/s 9A (2) the consolidation courts cannot disregard a binding decree of the competent court deciding title to the land. The scheme of the Act also reveals that in Consolidation Act also the claims of the parties are decided which claim also bars any subsequent adjudication as per provisions of Section 49. The dispute under the Forest Act is dispute of claims of land qua declaration of area as reserved forest, the declaration under Forest Act declaring an area as reserved forest will exclude jurisdiction of any subsequent Court to re-examine the matter by virtue of provision of Section 27A."

17. Thus, the petitioners having not raised any objection under the Forest Act, It

is not open to them to challenge the notification issued under the Forest Act dated 16.3.1954, 29.3.1963 and 3.8.1966 in the present writ petitions. Notification u/s 20 of the Forest Act was issued as early as on 3.8.1966. Petitioners cannot be allowed to challenge the said notification after lapse of 35 years. The writ petitions of the petitioners praying for quashing of the aforesaid notifications issued under the Forest Act more than 35 years ago cannot be entertained. The challenge of the aforesaid notifications by the petitioners in the present writ petitions is barred by laches.

18. The first submission of the counsel for the petitioners pertains to challenge of the petitioners to notification issued u/s 4. The notification u/s 4 of the Forest Act was issued on 16.3.1954 and published in U. P. Gazette on 27.3.1954 thus after 47 years of issuance of the said notification, the petitioners cannot be allowed to challenge said notification. The first submission of the petitioners needs no consideration.

19. The second submission of the counsel for the petitioners to the effect that there is no correct and complete description of the boundaries of the land which was proposed to be declared as reserved forest, needs to be considered. This submission again relates to challenge to the notifications under Sections 4, 6 and 20 of the Forest Act but the counsel for the petitioners since has proceeded to contend that the land in dispute is not covered by the aforesaid notification, hence it is necessary to consider his submission for the purpose as to whether the land in question was notified u/s 20 of the Forest Act or not. At the out-set it is relevant to note that before none of the consolidation courts, the petitioners raised any objection to the effect that the land in dispute has never been notified under the Forest Act. It was not submitted before the courts below that the land in dispute is not covered by the notifications under Sections 4, 6 and 20 of the Forest Act. The judgment of all the three Courts reveals that no such argument was made before courts below. The Consolidation Officer has framed as many as 13 issues but none of the issues was to the effect that the land in dispute is not covered by the notifications under Sections 4, 6 and 20 of the Forest Act. Petitioners having not raised the above submission before the three courts below, it is clearly proved that it was never challenged that the land in dispute is not covered by the notification issued under the Forest Act. Section 4 of the Forest Act provides that the State Government has issued notification in the official Gazette "specifying, as nearly as possible, the situation and limits of such land". Thus, no particular mode of description is mentioned. The notification u/s 4 which is on record, mentions the boundaries, the name of the village and approximate area of the proposed reserved forest. The petitioner himself has stated in paragraph 29 of the writ petition that the settlement of the village record of village Gahluiya took place in the year 1958-59 (1366 F.). Thus, when the proclamation was issued u/s 6 of the Forest Act dated 29.3.1963, the number of plots are mentioned in the proclamation. Further, the number of plots again came to be mentioned in notification u/s 20 of the Forest Act published in the Gazette dated 2.8.1966. All the plots in dispute are included in the

notification u/s 20 of the Forest Act. Thus, the second submission of the counsel for the petitioners does not have substance. Counsel for the petitioners has placed reliance on the Judgment of this Court in State of U.P. Vs. Assistant Director of Consolidation, Bareilly and others, In the aforesaid judgment this Court held that the notification under the Forest Act including the notification u/s 20 did not cover the land regarding which objections were allowed by the consolidation authorities in that case. The writ petition which was filed by the State challenging the orders of the consolidation authorities was dismissed by this Court. In that case, the consolidation authorities had recorded categorical finding that the land in dispute was never declared as Forest Act. On the aforesaid basis, the writ petition was dismissed. It was held in paragraph 18 of that writ petition :

"The authorities below have also recorded concurrent findings to the same effect and it has been held that on the basis of the aforesaid notification it cannot be held that the land in dispute was ever declared as reserved forest. The authorities below even if they could not disregard the said notification but were legally justified to see as to whether the said notifications cover the land in dispute or not, in as much as, the petitioner itself filed objections for expunction of the names of contesting respondents from the revenue papers. The expunction of names of contesting respondents was not possible unless it was found that the land in dispute was actually declared as reserved forest."

20. The third submission of the counsel for the petitioners on which much emphasis has been laid by him needs to be considered. The Indian Forest Act, 1927, is a pre-Constitution Law. Article 372 of the Constitution is quoted as below :

"372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India Immediately before the commencement of this Constitution shall continue in force therein, until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modifications shall not be questioned in any court of law.

(3) Nothing in Clause (2) shall be deemed.....

(a) to empower the President to make any adaptation or modification of any law after the expiration of (three years) from the commencement of this Constitution ; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause,"

21. Counsel for the petitioners has referred to entry 18 of List 2 (State List). Entry 18 runs as follows :

"List II State List

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents ; transfer and alienation of agricultural land; land improvement and agricultural loans ; colonization.?

22. Entry regarding forest is contained in list 3 (current list). The counsel for the petitioners has submitted that after enforcement of U. P. Zamindari Abolition and Land Reforms Act, 1950 and U. P. Consolidation of Holdings Act, 1953, the rights of tenure holders are governed by the aforesaid Acts and the Forest Act can have no application with regard to the rights of the tenure holders. Counsel for the petitioners submitted that Forest Act will have no application and the rights have to be determined in accordance with the aforesaid two Acts and the consolidation courts will have full jurisdiction to adjudicate the rights.

23. Reliance was further placed on provisions of Article 246(3) of the Constitution of India, for the submission that the State has exclusive power to make laws with respect to any of the matter enumerated in list 2. The counsel submitted that the rights acquired under the U. P. Zamindari Abolition and Land Reforms Act, 1950, will not be extinguished under any provisions of the Forest Act otherwise there will be conflict in the U. P. Zamindari Abolition and Land Reforms Act and Forest Act. He has submitted that interpretation has to be done and the Legislative entry has to be interpreted in such a manner that it does not take away the right of the petitioner under U. P. Zamindari Abolition and Land Reforms Act. Article 372 provides that all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. There is no denying to the proposition that all law in force in the territory shall continue until altered or repealed or amended by the competent Legislature or other competent authority. The issue arises as to whether by enactment of U. P. Zamindari Abolition and Land Reforms Act, 1950 and U. P. Consolidation of Holdings Act, 1953, there will be any alteration, repeal or amendment in the Forest Act. The Forest Act, 1927, was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. Entry in forest being in concurrent list both Parliament and State Legislature are competent to legislate. Several State Amendments have been made by the State legislature in the Indian Forest Act, 1927, including the amendment made in Section 3 by U. P. Act No. XXIII of 1965. By virtue of U. P. amendment in the Indian Forest Act, the law applicable in the State of Uttar Pradesh is amended for U. P. The U. P. Act XXIII of 1965 by which

Section 3 has been substituted, has been considered in Jogendra Singh's case (supra), by this Court and it has been held that even the land included in holding of a tenure holder can be proposed as reserved forest if it is a forest or waste land. It was held in the aforesaid case:

"The third question which arises on the submission of the counsel for the petitioner that the land included in holding of a tenure holder cannot be declared as the reserved forest and the notifications under the Forest Act are without jurisdiction, has next to be considered. As noted above, the Section gives power to the State Government to constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary right as the reserved forest. Section 4 contemplates issue of notification with regard to land which is to be declared as reserved forest. Emphasis has been laid with regard to amended provision of Section 3 as substituted by the U. P. Act No. XXIII of 1965, on the basis of the amended definition It has been submitted that the land which is comprised in any holding or grove or in any village abadi cannot be declared as reserved forest. The Division Bench of this Court in Om Singh and Ors. v. State of U. P. and Ors. 1980 (78) ALJ 56, summary of cases (77), had considered the provisions of Forest Act, 1927, including amended Section 3 of Forest Act. The Division Bench in the aforesaid case has held that even according to the amended definition the third category of land namely "or any other land not being land for the time being comprised in any holding or any village abadi" does not control the first two categories namely forest land or waste land, Section 3 covers forest land and waste land irrespective of whether the same comprise in a holding or not. The forest land or waste land if it is comprised in a holding can always be declared as reserved forest exercising the powers u/s 3. The provision of Section 3 of the Forest Act cannot be read to the effect that a forest land or waste land included in any holding cannot be declared reserved forest. The said interpretation will run contrary to the object of Forest Act. A tenure holder may have a forest land or waste land in his holding but if the said holding is to be excluded from declaration of reserved forest, the same will become beyond the power of the State to declare it reserved forest. The provision of Section 11 of Forest Act which contemplated that the land included u/s 4 even if it belongs to a claimant it can be acquired under Land Acquisition Act, clearly contemplates that the forest land or waste land included in the holding of a tenure holder can also be included in reserved forest."

24. The Apex Court had occasion to consider as to whether the provisions of the Forest Act will be applicable on a land which is tenure of a bhumidhar or sfrdar according to the U. P. Zamindari Abolition and Land Reforms Act in the case of Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, The Apex Court in the aforesaid judgment has held that Chapter II of the Indian Forest Act will be fully applicable even to a bhumidhar. It was held in paragraph 29 at page 1034:

"It is clear therefore, that though bhumidhars have higher rights than sirdars and asarnis, they are still mere tenure holders under the State which is the proprietor

of all lands in the area to which the Abolition Act applies. The petitioner therefore, even if he is presumed to be a bhumidhar cannot claim to be a proprietor to whom Chapter II of the Forest Act, does not apply, and therefore. Chapter V-A, as originally enacted, would not apply : (see in this connection, *Mst. Govindi Vs. The State of Uttar Pradesh*, . As we have already pointed out Sections 4 and 11 gives power for determination of all rights subordinate to those of a proprietor, and as the rights of the bhumidhar is that of a tenure holder, subordinate to the State, which is the proprietor of the land in dispute, it will be open to the Forest Settlement Officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a bhumidhar. This is in addition to the provision of Section 229B of the Abolition Act. The petitioner, therefore, even if he is a bhumidhar cannot claim that the land in dispute is out of the provisions of Chapter II and therefore, Chapter V-A, even if it is ancillary to Chapter II. would not apply. We must, therefore, uphold the constitutionality of Chapter V-A, as originally enacted, in the view we have taken of its being supplementary to Chapter II, and we further hold that Chapter II and Chapter V-A will apply to the land in dispute, even if the petitioner is assumed to be the bhumidhar, of that land."

25. The provisions of U. P. Zamindari Abolition and Land Reforms Act, in no manner alter, amend or repeal the provisions of Indian Forest Act, 1927. The U. P. Zamindari Abolition and Land Reforms Act was enacted to provide for the abolition of the Zamindari System which involves intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights, title and interest, and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provision for other matters connected therewith.

26. The said enactment is referable to entry 18 of State List II whereas the Forest Act is under concurrent list. There is no repugnancy in the two Acts both operative in different fields and have been enacted for different objects. The Apex Court in *Mahendra Lal Jainl (supra)* has laid down that bhumidhars are only tenure holders and are not proprietor and proprietary rights in the land vests in the State. Under the Indian Forest Act, forest land or waste land or any other land (not being land for the time being comprised in any holding or grove or in any village abadi) in which the State has proprietary rights can be declared as reserved forest. Thus, the provisions of the Indian Forest Act, 1927 and U. P. Zamindari Abolition and Land Reforms Act do not override. The Full Bench of Kerala High Court, while considering the provisions of Forest (Conservation) Act. 1980 and Kerala Private Forest (Vesting and Assignment) Act, 1971 (old) in the case of *State of Kerala and Another etc. Vs. K.C. Moosa Haji and Others etc.,* , held in paragraph 22 : "22. Mr. P. N. K. Achan, learned counsel for one of the parties in M.F.A. No. 337/78 attempted to put forward an argument that the Forest (Conservation) Act, 1980 (Central Act. 69/80) has practically repealed the Vesting Act and that consequently the Custodian cannot take possession of any part of the private forests on the footing that such part has vested in the State.

It was argued, with reference to the Preambles of the two enactments and Article 254 of the Constitution, that while the Central Act provides for the conservation of forests, the Vesting Act provides for their destruction with a view to put them to agricultural use, and that in the light of the subsequent Central enactment on a concurrent subject, the earlier State enactment should be deemed to have been repealed. Repugnancy, which is the subject-matter of Article 254, does not ordinarily arise from apparent inconsistency between preambles and object clauses alone : it arises when the provisions of one enactment say something totally opposed to the provisions of the other and simultaneous compliance with both becomes impossible. An implied repeal may also be possible when a Central enactment covers the entire field earlier occupied by a State enactment. But, while the Vesting Act provides both for vesting and the distribution of forests among certain classes of people, the Central Act does not in terms, effect the vesting at all. Even as regards deforestation, there is no prohibition in the Central Act : all that it says is that before passing an order permitting use of forest land for non-forest purposes, the State Government should get the prior approval of the Centre. Then Central Act is thus not designed to ban all deforestation but only to permit it in an orderly manner with such control as the Central Government may seek to enforce. There is prima facie no repugnancy or repeal, either in a loose sense or in the strict constitutional and legal sense. We say "prima facie" because in the absence of specific pleadings and the raising of grounds with notice to the State. We were not inclined to call upon the Advocate General even to answer this "point".

27. In view of the above, the submissions made by the counsel for the petitioners, have no substance. There is no error in the judgment of the consolidation authorities holding that in view of the notification issued u/s 20 of the Indian Forest Act, 1927, the land is reserved forest and objectors cannot claim any right in the aforesaid land. The consolidation authorities had also noticed that none of the objectors have raised any objection in the proceedings under the Indian Forest Act, 1927.

28. In view of the above discussions and for the reasons given in the judgment of this Court dated 7.11.2001 in Writ Petition No. 35386 of 2001, Jogendra Singh and Ors. v. Deputy Director of Consolidation, Bareilly and Ors. the petitioners are not entitled to any relief in the present writ petitions. The writ petitions lacks merit and are dismissed.