
(2007) 07 MP CK 0075
In the Madhya Pradesh High Court

Kashi Ram Dehalwar and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-07-2007

Acts Referred:

Forest (Conservation) Act, 1980 — Section 1, 2

Citation : (2007) 3 MPHT 429

Hon'ble Judges : A.K. Patnaik, C.J.;Rajendra Menon, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.—Petitioner No. 1 is a National Secretary of All India Kushwah Maha Sabha and the petitioner No. 2 is a social worker. They have filed this writ petition as a Public Interest Litigation. They have alleged in the writ petition that the Collector, Gwalior has transferred reserved forest land in Survey Nos. 1420 to 1435, 1452 to 1456 and 1558 to 1572 measuring 466 Bighas to the organiser, Jan Vikas Nyas. They have further alleged that land in Survey Nos. 476,478 and 480 and other survey numbers adjoining to Jinsi Block of forest area have been encroached by the encroachers by forged and fabricated documents with the consent of the revenue authorities. The petitioners have stated in the writ petition that by order dated 12th December, 1996 in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , the Supreme Court has ordered that all on-going non-forest activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. In view of the said orders passed by the Supreme Court, the petitioners have prayed that a Mandamus be issued directing the respondents to stop illegal activities for non-forest purposes being carried out in forest areas in the city of Gwalior.

2. In the return filed by the respondent Nos. 2 to 4, it is stated on behalf of the State of Madhya Pradesh that the allotment of land in respect of which writ petition has been filed by the petitioners was made in favour of Jan Vikas Nyas by order dated 28th August, 1972 and possession of the land was handed over to

the Jan Vikas Nyas on 19th September, 1972 by the State Government much before the enactment of the Forest Conservation Act, 1980 under which prior approval of the Central Government is provided use of forest land for non-forest activities. In the said return of the respondent Nos. 2 to 4, it is also stated on behalf of the State of Madhya Pradesh that the land was allotted to Jan Vikas Nyas for establishing a Hospital and Research Centre to cater to the medical facilities to the residents of Gwalior district and its neighbouring districts. With regard to the allegation that the forest land in Survey Nos. 476, 478 and 480 are encroached, the respondent Nos. 2 to 4 have denied the said allegation saying that the same are misconceived.

3. Return has also been filed on behalf of respondent No. 5, namely; Jan Vikas Nyas saying that Jan Vikas Nyas is a public charitable trust registered on 18th September, 1971 and the trust was formed in accordance with the provisions of the Madhya Pradesh Public Trust Act, 1951 to undertake the establishment of Cancer Hospital with the help of public at large and the Government of Madhya Pradesh, and accordingly, Government of Madhya Pradesh was moved in the year 1971 for allotment of land in Village Mahalgaon situated near Mandre-Ki-Mata. Ultimately, the Government of Madhya Pradesh allotted an area of 466 Bighas 17 Biswas of land in Survey No. 1427 to 1431, 1455, 1456, 1459, 1471, 1476 to 1478, 1501 to 1503, 1516 to 1524, 1560 to 1565 for construction of Cancer Hospital and General Hospital. In the said return, the respondent No. 5 has further stated that the allotment of land was made and possession of the land was taken before the Forest (Conservation) Act, 1980 came into force with effect from 25th October, 1980. It is further stated in the return that out of the land allotted by the State Government, a Cancer Hospital has already been established on a part of the land and has invested huge amount planting more than 3600 trees and also raising well maintained eleven gardens of large dimensions and one such garden is spread over an area of 274 x 200 feet. All this was done to maintain the ecological balance of the environment in the area.

4. Mr. J.D. Suryavanshi, learned Counsel for the petitioners vehemently submitted that the Supreme Court has passed orders from time to time in the case of T.N. Godavarman Thirumulkpad (*supra*), that all on-going non-forest activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. He further submitted that the Forest Department has filed three affidavits of the Divisional Forest Officer, Conservator of Forest and the Secretary of the Forest Department of the State Government saying that the land which has been allotted to respondent No. 5 belongs to reserved forest. He submitted that since the land allotted to respondent No. 5 is a forest land, respondent No. 5 should be restrained from carrying out the on-going non-forest activities in the land in question as no permission has been taken from the Central Government for such non-forest activity.

5. Mr. S.B. Mishra, learned Additional Advocate General on behalf of the State of

Madhya Pradesh and Mr. R.D. Jain, learned Senior Counsel appearing for the respondent No. 5 on the other hand submitted that the allotment of land was made in favour of respondent No. 5 in the year 1972 and possession of the entire land was delivered to the respondent No. 5 by 1979 much before the Forest (Conservation) Act, 1980 came into operation. He submitted that the order passed by the Supreme Court in the case of T.N. Godavarman Thirumulkpad (supra) was based on the provisions of Forest (Conservation) Act, 1980, and therefore, will not apply to any land in which non-forest activities have been permitted prior to coming into operation of the Forest Conservation Act, 1980 with effect from 25th October, 1980.

6. Mr. Mishra, learned Additional Advocate General and Mr. Jain, learned Senior Counsel further submitted that in any case by order dated 12th December, 1996 in the case of T.N. Godavarman Thirumulkpad (supra), the Supreme Court had directed each State to constitute an expert committee to identify the areas which are forests for the purpose of ensuring that non-forest activities are not carried out in such forests and in pursuance of the said order, the State of Madhya Pradesh constituted an expert committee which identified the areas which are forest areas within the State of Madhya Pradesh and filed affidavits before the Supreme Court indicating therein the areas which have been identified as forest in the State of Madhya Pradesh and in such affidavits filed before the Supreme Court, the land which has been allotted in favour of the respondent No. 5 for the purpose of constructing the Cancer Hospital, etc., has not been identified as forest land.

7. We find that in Paragraph 3 of the order dated 12th December, 1996 in the case of T.N. Godavarman Thirumulkpad (supra), the Supreme Court has referred to the Forest (Conservation) Act, 1980 and in particular the provisions of Section 2 thereof requiring prior approval of the Central Government in respect of certain activities in the forest area. In Paragraph 5 of the order, the Supreme Court has further held that in accordance with Section 2 of the Act, all on-going non-forest activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith as such activity prima facie is in violation of the provisions of the said Act and every State Government must promptly ensure total cessation of all such activities forthwith. Thus, the basis of the order dated 12th December, 1996 passed by the Supreme Court in the case of T.N. Godavarman Thirumulkpad (supra), is the law enacted in Section 2 of the Forest (Conservation) Act, 1980.

8. But the Forest (Conservation) Act, 1980 is deemed to have come into force on the 25th day of October, 1980 and hence restriction on the use of the forest land for non-forest purpose in Section 2 of the Act of 1980, cannot operate before 25th October, 1980. This will be clear from the provisions of Sections 1(3) and 2 of the Forest (Conservation) Act, 1980, which are quoted below:

1. Short title, extent and commencement.-- (1) This Act may be called the Forest (Conservation) Act, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 25th day of October, 1980.

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.-- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government; (sic)