
(2016) 02 BOM CK 0099
In the Bombay High Court
Case No : Writ Petition No. 738 of 2016

Kashinath and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2, Section 3, Section 4, Section 4(3), Section 4(5), Section 4(6), Section 6

Citation : (2016) 6 BCR 86 : (2016) 6 FLT 698 : (2016) 4 MhLJ 363

Hon'ble Judges : B.R. Gavai and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : S.S. Dhengale, Advocate, , for the Appellant; Bharti Dangre, G.P., for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—1. Rule returnable forthwith. Heard finally with the consent of the learned Counsel for the respective parties.

2. The petitioners have approached this Court seeking a direction to respondent nos. 1 and 2 to decide their representations and to take a policy decision of relaxation of any of the conditions which would come in the way of granting any right, title or interest in respect of forest lands occupied by them.

3. The petitioners have further approached for a direction to respondent nos. 1 and 2 to grant right and title and "patta" in respect of forest lands occupied by the petitioners and others on the line of the "patta" granted to the agriculturists in the adjacent districts of Bhandra and Gadchiroli as per the provisions under Sections 4(3), 4(5) and 4(6) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "the said Act").

4. It is the contention of the petitioners that, in view of the provisions of sub-section 3 of Section 4 and clause (g) of Section 3 of the said Act, such of the persons who are in possession of forest land on or before 13th day of December, 2005 are entitled to protection of their rights. It is the contention of the petitioners that they are in possession of the lands encroached by them from 1962 onwards and the said lands are in their possession since two generations and therefore, the State Government should relax the condition of possession being of three generations and grant "patta" in favour of the petitioners.

5. Perusal of the impugned order rejecting the cases of the petitioners would reveal that the cases of the petitioners have been rejected on the ground that the documents in their possession do not show that they were in possession of the lands for three generations.

6. It is vehemently contended by Mr.S.S. Dhengale, learned Counsel for the petitioners that the State Government has power to relax the condition of requirement of possession of three generations and therefore, it is necessary in the interest of justice that this Court should direct the State Government to frame the policy thereby relaxing the said condition.

7. The Statement of Objects and Reasons of the said Act would reveal that the said Act was enacted since it was noticed that the reservation processes for creating wilderness and forest areas for production forestry somehow ignored the bona fide interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabit. The Statement of Objects and Reasons would further make it clear that it was noticed that the simplicity of tribals and their general ignorance of modern regulatory framework precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The Statement of Objects and Reasons would further reveal that it was recently that forest management regimes have initiated action to recognize the occupation and other right of the forest dwellers and have in their policy processes realised that tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. The Statement of Objects and Reasons further states that there is a recognition of the fact that forest have the best chance to survive if communities participate in the conservation and regeneration measures. It is further stated that insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forest and forest lands. It further states that this historical injustice now needs correction, before it is too late to save our forests from becoming abode of undesirable elements.

8. The Statement of Objects and Reasons further states that it was proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. The Act, therefore, has been enacted for the purpose of laying down a simple procedure for recognition and vesting of forest

right in the forest dwelling Scheduled Tribes and it provides for adequate safeguards to avoid any further encroachment on forest. It is stated in the Statement of Objects and Reasons that the Act addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

9. It could thus be seen that the Act is basically enacted so as to strike out a balance between conservation of forest and the rights of tribals who were traditionally residing in the forest areas. The Act is enacted with an intention that conservation of forest exists with recognition of rights of the tribals who were traditionally residing in the forest areas. The Statement of Objects and Reasons does not refer to other traditional forest dwellers. However, it appears that the Parliament in its wisdom has also decided to recognize rights of the other traditional forest dwellers who were residing in forest areas for generations together.

10. It would be relevant to refer to clause (c) of Section 2 of the said Act so also clause (o) of Section 2 of the said Act, which read thus :

"2(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;

"2(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

Explanation : - For the purpose of this clause, "generation" means a period comprising of twenty-five years."

11. It could be thus seen that insofar as "forest dwelling Scheduled Tribes" are concerned, the said term would mean the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities. Whereas, insofar as "other traditional forest dwellers" are concerned, the said term would mean any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. The explanation to clause (o) of Section 2 removes the ambiguity and states that the clause "generation" means a period comprising of twenty-five years.

12. No doubt that Mr.S.S. Dhengale, learned Counsel for the petitioner is justified in relying on the provisions of sub-section (3) of Section 4 of the said Act.

13. For considering the submissions of Mr.S.S. Dhengale, learned Counsel for the petitioner, it will be relevant to refer to the entire Scheme of Section 4 of the said Act which reads thus :-

"4. Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers :-

(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in -

(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;

(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest right holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely :-

(a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;

(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

(c) the State Government has concluded that other reasonable options, such as, co-existence are not available;

(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;

(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package.

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

(6) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the "net present value" and "compensatory afforestation" for diversion of forest land, except those specified in this Act.

(8) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition"

14. Clause (1) of Section 4 of the said Act would reveal that notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government recognizes and vests forest rights in the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in Section 3. Sub-section (2) of Section 4 permits the forest rights recognised under this Act in critical wildlife habitats of National Parks and Sanctuaries to be subsequently modified or resettled. However, the proviso thereof provides that no forest right holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the conditions are satisfied. These conditions are : (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration; (b) it has been established by the concerned

agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 (53 of 1972) that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat; (c) the State Government has concluded that other reasonable options, such as, co-existence are not available; (d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government; (e) that the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing; (f) that no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package.

Proviso thereto provides that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses.

15. Sub-section (3) of Section 4 of the said Act on which Mr.S.S. Dhengale, learned Counsel for the petitioner heavily relies provides that the recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005. Sub-section (4) of Section 4 makes the right conferred by sub-section (1) heritable but not alienable or transferable. It further provides that it shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin. Sub-section (5) thereof provides that save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete. Sub-section (6) provides that where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares. Sub-section (7) provides that the forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the "net present value" and "compensatory afforestation" for diversion of forest land, except those specified in this Act. Sub-section (8) thereof enables the persons who are not actually in occupation of the land in question on the date of commencement of the Act to get benefit of

provision of the said Act if they establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

16. It could thus be seen that though the cut-off date for determination of occupation of forest land is 13th day of December, 2005, the criteria for such determination under the said Act are different for the "forest dwelling Scheduled Tribes" as compared with "other traditional forest dwellers". The Act itself provides that insofar as "forest dwelling Scheduled Tribes" are concerned, it is sufficient for the claimants to show that they are in occupation of the land on 13th day of December, 2005 and depending on the forest lands for bona fide livelihood needs. However, insofar as "other traditional forest dwellers" are concerned, the Act itself requires that they should be in possession of the land and should depend on the said forest or forest land for bona fide livelihood for three generations. The explanation to clause (o) further makes it clear that one generation would mean 25 years. The harmonious construction of the said two conditions, therefore, would lead to the conclusion that insofar as the "other traditional forest dwellers" are concerned, they would be entitled to benefit of the Act only in the event that they establish that for a period of 75 years prior to 13th December, 2005 they are in occupation of the forest or forest land and bona fide depending on the same for their livelihood.

17. Undisputedly, the petitioners have not even claimed that they are in possession of the forest land occupied by them for a period of 75 years prior to 13th December, 2015 which is a cut-off date. In that view of the matter, we find that the contention of the petitioners is without substance.

18. Insofar as the prayer by the petitioners for a direction to the State Government to take a policy decision of relaxation of the condition which would come in the way of granting any right, title or interest in respect of the forest lands occupied by the petitioners is concerned, we find that there are two hurdles in the way of the petitioners. The first is the policy to be framed is exclusively within the domain of the State Government and the Courts cannot issue specific direction to frame a policy in a particular manner. Secondly, when the Act itself provides the relevant criteria, a direction to the State Government to frame a policy contrary to the statutory provisions, in our considered view, would be much beyond our jurisdiction under Article 226 of the Constitution of India.

19. In that view of the matter, we find that there is no merit in the petition.

20. However, while we examine the issue in the present petition, one more aspect needs to be taken into consideration. Time and again we have observed that the ecology and forest are necessarily to be preserved for the future generations. No doubt that the Act has been enacted with a noble purpose to protect the rights of the forest dwellers who are dependent on the forest for

generations together. However, at the same time, the Act has also taken care to see to it that the rights of the forest dwellers in "critical wild habitats" can be modified or resettled subject to stringent conditions regarding rehabilitation of said dwellers. We find that an exercise is required to be undertaken by the State Government under sub-section (2) of Section 4 of the said Act, which is necessary in order to ensure that the wild life is effectively protected and there is no danger to the wild life in the critical wild life habitat.

21. We, therefore, direct the Central Government, through the Ministry of Environment and Forest to complete the procedure for recognizing the "critical wild habitat of National Parks and Sanctuaries" as expeditiously as possible and in any case, within a period of six months so that necessary steps for protection of wild life is taken. No doubt that while doing so the State Government will have to comply with the condition as required under sub-section (2) of Section 4 of the said Act so that the rights of "forest dwellers Scheduled Tribes" or "other traditional forest dwellers" are duly taken care of.

The petition is, therefore, rejected with the above observations.

No order as to costs.

The Registrar (Judicial) of this Court is directed to forward a copy of this Judgment and Order to the Secretary, Ministry of Environment and Forest so as to take necessary action in pursuance to the directions aforesaid. The learned Government Pleader is requested to forward a copy of this Judgment and Order to the Secretary (Revenue and Forest Department), Mantralaya, Mumbai so that he can pursue the matter with the Central Government for ensuring compliance of the aforesaid directions.