
(2014) 09 OHC CK 0100
In the Orissa High Court
Case No : W.P. (C). No. 20091 of 2013

Keshab Behera

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Citation : (2014) 09 OHC CK 0100

Hon'ble Judges : Amitava Roy, C.J;B.R. Sarangi, J

Bench : Division Bench

Judgement

Amitava Roy, C.J.—The present proceeding filed as public interest litigation seeks to invoke the writ the jurisdiction of this Court to direct an enquiry into the alleged encroachment and allotment of land inside Chakagujia reserve forest (hereinafter referred to as "Forest") and to reclaim the said area.

2. We have heard Mr. Satpathy, learned counsel for the petitioner and Mr. Mohapatra, learned Government Advocate for the opposite party.

3. Bare facts indispensable for the present adjudication are that the petitioners claim themselves to be the permanent residents of different places in the district of Bolangir. They have stated that the Forest which is located in the said district comprises of 1200 hectares and comes under Jamkhunta Beat within the territorial jurisdiction of four Gram Panchayats, Jamkhunta, Gandhavla, Khasmahal and Mahali. There is a perennial stream named Kundanala which caters to the needs of the villagers within the jurisdiction of these four Gram Panchayats. The petitioners have alleged that during the year 2003, some persons tried to encroach upon the Forest whereupon the villagers of Jamkhunta and Jamapada in a meeting held on 30.3.2003 constituted a Samiti namely, "Bana Surakhya Samiti" for protecting the same. According to them, Samiti was allotted some funds by the Forest Department during year 2008-09 for block plantation. The Samiti thereafter in association with villagers of Jamakhunta and Khasbala Gram Panchayat in its meeting held on 1.10.2007 resolved to move the appropriate authority to take steps against the persons who were trying to

encroach upon the Forest. In this regard, Hon"ble Chief Minister of the State was also moved for necessary action. The petitioners have imputed that the Forest has been encroached by Mafias and that those groups have managed to allot different areas in favour of various persons taking advantage of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the "Act") which provides for settlement of Forest land to persons who are in possession thereof prior to 13.12.2005 for three generations. The petitioners have stated that 65 such persons of village Barkani Jamapada have been illegally favoured with such settlement. According to them, those families were not in occupation of forest land prior to 13.12.2005 and they are also not landless persons and in fact possess land in mouza Barkani as well as Jamapada. According to the petitioners, settlement has been awarded to those families without proper verification with the Mafias. That they have also resorted to forcible occupation of vast area in the Forest has been mentioned. The petitioners have asserted that in spite of repeated endeavours made by them, no meaningful and effective action has been taken by the concerned authorities to the great detriment of Forest and its use. They have thus come to this Court for intervention.

4. The opposite party no. 1, 3 and 4 in their counter affirmed by the Divisional Forest Officer, Bolangir Forest Division, Bolangir in essence have pleaded that 65 families referred to in the writ petition have been conferred the rights under the Act as they have been in possession of Forest land prior to 13.12.2005 and as per the recommendation of the Forest Rights Committee and due consideration of the Sub-Divisional Level Committee, Titilagarh and jurisdictional District Level Committee. Vis-?-vis the allegation of illegal encroachment and illicit felling of trees in the Forest, the opposite party have stated that 96 Forest Cases have been registered in Bangomunda Range from 2004-05 till 2013-14 and that further encroachment in such area have since been stopped. Detailing the process culminating in the conferment of rights under the Act, the opposite party have asserted that on the recommendation of the Gram Sabha and Forest Rights Committee, Barkani and Jampada, SDLC, Titilagarh had scrutinized and verified the applications of the persons concerned and thereafter had submitted the same to the District Level Committee which on exhaustive consideration of the facts had issued necessary orders to that effect. The opposite party have asserted that all statutory requirements have been scrupulously fulfilled before grant of forest rights. They have also referred to the numbers of forest cases registered against the encroachers. They have stated in particular that on receipt of the complaint from the villagers, the Asst. Conservator of Forests, Bolangir Division had conducted a survey and submitted a report on 9.12.2013. According to the opposite party, all necessary steps to protect the forest from encroachment have been taken and that the allegation to the contrary was unfounded.

5. In their rejoinder, the petitioners have reiterated that 65 persons/families settled with the forest land are ineligible as they were never in possession of the land in their occupation for three generation prior to 13.12.2005. They have

alleged as well that these 65 persons after obtaining the settlement had encroached upon vast area of forest land and had destroyed forest produce by felling valuable trees. They have alleged that the report submitted by Asst. Conservator of Forest, Bolangir is a misleading one and that the purported enquiry had been made without issuing any public notice or intimation to them. They have pleaded that if a fresh enquiry is made by the Collector, Bolangir or any other independent authority, the correct state of affairs would come out. They have stated as well that though the particulars of some cases of encroachment instituted during the year 2004-2005, have been mentioned final result thereof has not been disclosed.

6. Mr. Satpathy, learned counsel for the petitioners has emphatically argued that the settlement of forest land in favour of 65 persons/families is patently in violation of the Act as they have not been in occupation of the land for three generations prior to 13.12.2005 and that the authorities concerned have failed to discharge their public duties to protect forest in spite of repeated requests and appeals made by the petitioners.

7. Learned counsel for the opposite party referring in particular to the report of the Asst. Conservator of Forest, Bolangir Forest Division, Bolangir has submitted that the allegations leveled are baseless and that the instant proceeding has been instituted not to espouse any public cause but to protect individual interest. Learned counsel for the opposite party has refuted the allegation of inaction on the part of the Departmental Authorities.

8. We have carefully considered the pleaded facts and documents on record. We have perused closely the report dated 9.12.2013 laid by the Asst. Conservator of Forest, Bolangir Forest Division, Bolangir (Annexure C/3 to the counter of opposite party).

9. The Act defines "forest dwelling Scheduled Tribes" and "other traditional forest dweller" u/s 2(c) and 2(o) respectively which being of formidable significance are extracted below:-

"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 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."

10. Under the Act, provisions for vesting of forest rights in Forest dwelling Scheduled Tribes and other traditional forest dweller and procedure has been made. Noticeably for any member or community to be within the ambit of "other traditional forest dwellers" he/it has to be resident of or dependant on forests or

forest lands for bona fide livelihood for a period of three generation prior to 13.12.2005, for a member of community to be included within the scope of "forest dwelling Scheduled Tribes" tenure of such duration is not a condition precedent and it would be enough if he/it is a member of or belong to Scheduled Tribes primarily residing in or dependant on forest or forests land for bona fide livelihood needs.

11. A plain perusal of the report of the Asst. Conservator of Forests, Bolangir Forest Division reveals that 65 persons/families who have been settled with forest land belongs to Scheduled Tribe and are totally dependant on the forest to maintain their day to day livelihood, the enquiry conducted by the Asst. Conservator of Forests on 6.12.2013 has been made in presence of Range Officer (T), Bangomunda Range, Forester, Sindhekela, Forest Guard, Sindhekela Beat, In-charge of Jamkhunta Beat and the villagers, has been mentioned therein. The plea that this enquiry was conducted without public notice or intimation to the petitioners, thus, does not weigh with us to dismiss the veracity of the findings recorded in the report. The steps that were taken prior to conferment of right under the Act to 65 persons/families as set out in the report, inter alia, indicate the approval of the Gram Sabha, Jampada with all its relevant authorities present in the said meeting. The findings with regard to this exercise are wholly consistent with the averments made with regard thereto in the counter of the opposite party. The enquiry report discloses as well the details of encroachment in course of the field verification and registration of cases against encroachers during the relevant period. The Enquiry Officer did mention as well that the forest staff are regularly patrolling around the forest area and that in the meanwhile, they have taken steps to seize the fire wood and that in all 96 cases have been registered in Sindghekela Section with regard to various offences. The enquiry report further discloses that the perennial stream is not obstructed and that the water carried by it still caters to the needs of the villagers of Barkani, Jamkhunta, Jampada and Kalkut. It has been recorded in categorical terms that except the reserved forest land, no other encroachment has been found inside the forest. The Forest Department has also taken steps to stop encroachment and smuggling of timber and fire wood and that no stone quarry operation has been noticed.

12. On a conjoint consideration of the pleaded facts and the disclosures made in the enquiry report, in particular, we are not persuaded to sustain the allegation of inaction on the part of the departmental authorities in the matter of protection of the Forest and steps required in law against the encroachers thereon. In view of the findings recorded in the report that 65 persons/families are members of Scheduled Tribe in occupation of forest land, we are of the considered opinion that requirement of possession of land in occupation for three generations prior to 13.12.2005 is not a condition precedent prescribed by the Act for them to be conferred with forests rights thereunder. There is no reason for this Court to doubt the correctness of the pleaded averments and the finding in the enquiry report that exercise as required under the Act had been undertaken for awarding

forest rights to the 65 persons/families under the Act. With regard to the allegation of encroachment, we find that number of cases has been registered against the violators and the statement that the forest personnel are regularly patrolling the forest area and that no further encroachment has been noticed cannot also be discarded.

13. In the above view of the matter, we are not inclined to issue any order for fresh enquiry as prayed for by the petitioners. The petition is thus closed.

14. We, however, part with the observation that the departmental authorities would maintain constant vigil in order to sustain and protect the Forest as required in law and also take necessary follow up steps to conclude the pending proceedings qua encroachers with due expedition so much so that this Court does not encounter any similar complaint in future.