

(2004) 09 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 2479 of 1998

Kondu Dhunda Wakdikar and Another

APPELLANT

Vs

Deputy Conservator of Forest and Others

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2

Citation : AIR 2005 Bom 244

Hon'ble Judges : S.U. Kamdar, J;A.P. Shah, J

Bench : Division Bench

Advocate : Rajiv Patil and Seema Sarnaik, for the Appellant; V.P. Malvankar, AGP, for the Respondent

Judgement

A.P. Shah, J.—Heard learned Counsel for the parties.

2. The petitioners are conducting food stalls in Karnala Bird Sanctuary. The 1st petitioner was permitted to start the snacks stall sometime in 1972. The 2nd petitioner was granted permission to carry a similar stall in the year 1974. The petitioners were respectively granted the area of 20" x 20" in Karnala Bird Sanctuary. The stalls of the petitioners are located inside the reserved forest.

3. Sometime in April, 1998 the 1st respondent issued notices to the petitioners, inter alia, objecting to the continuation of the stalls on the ground that conducting of the food stall in the reserved forest is contrary to the order of the Supreme Court in Writ Petition (Civil) No. 202 of 1995 in the case of T.N. Godavaraman Thirumulkpad v. Union of India decided on 12th December, 1998 AIR 1997 SC 1228. The petitioners filed their replies before the 1st respondent. It appears that the petitioners also gave undertaking that they would vacate by 8th June, 1998. According to the petitioners, however, the undertaking was given under duress as there was eminent threat of demolition of stalls.

4. In T. N. Godavaraman's case the Supreme Court defined the scope of the Forest Conservation Act, 1980 and the meaning of the word "forest" used

therein. The Court held that the Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and, therefore, the provisions made therein for the conservation of forests and for" matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The Court held that the term "forest land" occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. In view of the meaning of the word "forest" in the Act, the Court held that prior approval of the Central Government is required for any non-forest activity. The Court therefore directed that all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith.

5. It was not seriously disputed before us that the running of Snacks Bar or Snacks Stall cannot be called as forest activity. It is obviously a non-forest activity which cannot be carried in the forest without the prior permission of the Central Government. In view of the judgment in T.N. Godavarman Thirumulkpad Vs. Union of India and others, it is not possible to entertain the present petition for quashing the notices issued by the Authorities. We, therefore, dismiss this petition. However, having regard to the fact that the petitioners are doing their business for the last more than 30 years, we grant 8 (eight) weeks time to the petitioners to remove stalls from the reserved forest, subject to payment of unpaid amount of the monthly charges within four weeks from today. If the petitioners fail to remove the stalls within the prescribed period, the respondent No. 1 will be free to take appropriate steps for removal and/or demolition of the stalls of the petitioners.

Issuance of certified copy expedited.