
(1995) 09 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 7076 of 1994

Mahabir Prasad Chirania

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:

Citation : (1995) 09 PAT CK 0002

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The Petitioner claims to have a stone quarrying lease granted in his favour by the State Government in respect of certain plots of land situated in villages Kalyani and Motijham under Taljhari Police Station in the district of Santhal Pargana. In this writ petition he seeks to challenge a notification, dated 26.05.93 (copy at Annexure-7), issued u/s 20 of the Indian Forest Act, 1927, declaring 21 thousand and odd acres of land, including the pieces of land covered by the Petitioner's lease, as reserved forest. He also seeks to challenge notices, dated July 23 and 26, 1995 (copy at Annexure-8 series), issued by the Divisional Forest Officer, Social Forestry Division, Sahebganj. By these notices the Petitioner has been asked to stop his quarrying operation on the lands in question forthwith and to submit applications in the prescribed form seeking permission of the Central Government for the settlement of the lands in his favour. The notice further states that in case he wished to make applications for the permission of the Central Government he should also deposit the sums as indicated in the impugned notices by way of the net present value of the lands and for compensatory afforestation and as damages for the destruction of the trees on the plots in respect of which the settlement was sought.

2. It is undeniable that a large area of land, including the pieces covered by the lease, was notified u/s 4 of the Indian Forest Act, for constituting that area of land as reserved forest vide Government notification, dated February, 25, 1946 (copy at Annexure-E to the counter affidavit). After following all the requirements under the Indian Forest Act, the final notification u/s 20 was made on May 26,

1993. No legal infirmity has been pointed out in that notification and hence any challenge to it has to be dismissed summarily.

3. Now coming to the notice contained in Annexure-8 series, it may be noted that according to the Petitioner a stone quarrying lease in respect of the lands in question was granted in his favour by the State Government. The original lease, executed on 16.05.71, was for a period of five years. Later on this lease was split up into three separate leases relating to different plots of land. These leases were renewed from time to time and the final renewal was made on 21.09.91 for a period of ten years. At present the Petitioner claims his rights on the basis of the leases renewed on 21.10.91. It is an admitted position that the grant and the renewals of the leases were made by the State Government without obtaining any prior permission of the Central Government and there was no permission of the Central Government in terms of Section 2 of the Forest (Conservation) Act, 1980 even when the leases were last renewed on 21.10.91.

4. At this stage it may be noted that the Supreme Court by order, dated 20.11.86, passed in *Bansi Sewa Ashram v. The State of Uttar Pradesh* (writ petition (Civil) No. 1061 of 1982; copy of the order at Annexure-5 to the counter affidavit) held that the restriction of Section 2 of the Forest (Conservation) Act would apply even to lands which were subject to the notification u/s 4 of the Forest Act. The relevant passage in the Supreme Court order is as follows:

We are of the view that the lands which are subject to the notification u/s 4 of the Forest Act would also come within the purview of Section 2 of the Forest (Conservation) Act, 1980, and it would, therefore, be necessary for the N.T.P.C. to obtain appropriate clearance under the Act from the appropriate authority.

5. It has been noted above that Section 4 of the notification, in respect of the lands in question, was made as far back as in 1946. However, in 1971 when the lease was originally granted to the Petitioner. Forest (Conservation) Act had not come into being and, hence, at that stage no prior permission of the Central Government was required and the lease granted to the Petitioner in 1971 could, therefore, be to be legally valid. However, once the Forest (Conservation) Act, 1980, came into force it was no longer open to the State Government to renew the leases without the prior clearance from the Central Government and it is, therefore, quite clear that the renewal of the leases on 21.01.91 was contrary to the provision contained in Section 2 of the Forest (Conservation) Act and the leases purported to be renewed on 21.01.91 were quite illegal and invalid and did not confer any right on the Petitioner.

6. At this stage it may be noted that Mr. Braj Kishore Prasad, learned Counsel appearing on behalf of the Petitioner, relied upon a Supreme Court decision in the *State of Bihar Vs. Banshi Ram Modi and Others*, The facts of that case were entirely different and that decision, therefore, does not apply to the present case. In that case the lease in question had been executed before coming into force of the Forest (Conservation) Act and the Petitioner was carrying on the

mining activities on the basis of a legally, valid and subsisting lease. That lease was originally for extracting mica but the State Government incorporated an Amendment in the clause of the lease permitting the lease-holder to also extract felspar and quartz in addition to mica. The Supreme Court held that as the land was broken up and digging operations were being carried on the basis of a legally valid and subsisting lease it was quite reasonable for the State Government to allow the extraction of some other minerals also in addition to mica for which the lease was originally granted and under that circumstance a prior permission of the Central Government was not required for incorporating the amended clauses in the subsisting lease. In the present case as shown above the position is entirely different. There is no legally valid and subsisting lease in favour of the Petitioner as the purported renewal on 21.01.91 was wholly illegal and no legally valid lease came into being on the basis of that renewal. Hence, the aforesaid Supreme Court decision has no application to the facts of this case.

7. Mr. Prasad, then, made a grievance that the Petitioner was asked to pay different amounts without any notice or an opportunity of hearing afforded to him. It has been made clear that the Petitioner is required to deposit the sums mentioned in the notices only in case he wished to obtain the permission of the Central Government for getting a settlement of the lands in question. In case he does not wish to get the settlement of the lands, he is not required to make any payments, as admitted by the departmental official present in Court. In case, however, he wished to make the application for the necessary permission the Petitioner will have to make the deposits as required in the notices and in accordance with law.

8. For the reasons stated above, I see no merit in this application and it is, accordingly, dismissed.