
(2014) 01 P&H CK 0198
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18290 of 2013

Maninder Singh	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Forest Act, 1927 — Section 35

Citation : (2014) 2 RCR(Civil) 291

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : S.S. Dinarpur, for the Appellant; Shubhra Singh, D.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of the present writ petition as well as three other connected writ petitions bearing CWP Nos. 18295 of 2013; 21265 of 2013 & 22109 of 2013. However, for facility of reference the facts are being taken up from the present writ petition, wherein challenge is to an order dated 20.11.2012 (Annexure P-13) passed by the Committee constituted in terms of an order passed by the Division Bench of this Court on 16.03.2012 in a bunch of writ petitions (CWP No. 663 of 2010 titled "Rakam Singh & others Vs. State of Haryana & others") to consider the claim of the petitioners for exclusion of their land from the purview of forest land. The land of the petitioners has been treated vide the aforesaid order as a forest land and as a consequence thereof "non-forest activities" are prohibited. The brief facts leading to the present writ petition and other connected writ petitions are that the State Government issued a notification on 12.06.1970 u/s 5 of the Punjab Land Preservation Act, 1900 (for short "the Act") in view of the fact that the land in question was notified u/s 3 of the said Act vide notification dated 05.02.1951. The aforesaid notification prohibited the cutting of trees or timber or brushwood and the lopping of trees for any purpose and the collection or removal of grass for any purpose. The said

notification reads as under:

HARYANA GOVERNMENT Forest and Animal Husbandry Department, ORDER The 12th June, 1970

No. S.O. 186/P.A. 2/1900/S. 5/70 - Whereas certain areas mentioned in the Schedule annexed here to are comprised within the limits of the local area notified u/s 3 to the Punjab Land Preservation Act, 1900 with erstwhile Punjab Government Notification No. 387-D-51/459 dated 5th February, 1951; whereas in respect of the said areas the Governor of Haryana is satisfied after due inquiry that the regulation, restriction and prohibition hereinafter specified are necessary for the purpose of giving effect to the provisions of the said Act.

Now, therefore, in exercise of the powers conferred by Section 5 of the said Act, the Governor of Haryana hereby prohibits the following acts for a period of 25 years with effect from the date of this order in those areas.

1. The cutting of trees or timber or brushwood and the lopping of trees for any purpose; provided that the Divisional Forest Officer, Ambala Forest Division may permits:-

(a) The cutting of trees for house building and agricultural implements and of dry wood for fuel and for marriage by persons shown in the settlement record as entitled to do so on:

(b) The lopping of branches for lac and sale of Chal-leaves to leather workers:

Provided further that for the cutting of dry wood for the death ceremonies by the persons shown in the settlement records as entitled to do so, the permission of the Divisional Forest Officer shall not be required and that for the purpose a simple information to the Forest Guard concerned within a fortnight of felling shall do.

2. The collection or removal of grass for any purpose provided that the Divisional Forest Officer, Ambala Forest Division may permit:-

(a) the cutting or sale of ripe grass after the rainy season; and

(b) the cutting or sale of green grass during the rainy season from such portions of the notified area in which grass may have sufficiently itself.

The pasturing of any cattle other than goat, sheep and camels.

Provided that in such area where the forest crop is well established and in case of emergency such as abnormal drought or floods, the Divisional Forest Officer, Ambala Forest Division may throw open so such area for grazing of the cattle of the landowners on such conditions as may be appropriate in each case.

2. Though the aforesaid notification was operative for a period of 25 years, but the restriction contained in the notification continues to be applicable in terms of the judgment of Supreme Court reported as M.C. Mehta Vs. Union of India (UOI)

and Others, . The effect of notification under Sections 4 & 5 of the Act has been considered by the Supreme Court in various orders passed in T.N. Godavarman Thirumulkpad Vs. Union of India & others and in M.C. Mehta's case (supra). It is the said orders, which have been made basis by the Committee to reject the representation of the petitioners herein.

3. Learned counsel for the petitioners has vehemently argued that a Division Bench of this Court examined the notification issued under Sections 3 & 5 of the Act in respect of an area comprising in Kalka, Panchkula Tehsils (District Panchkula), Naraingarh, Brara Tehsils of District Ambala and Jagadhari, Chachhrauli Tehsils of District Yamuna Nagar for the "conservation of ground water and to prevent land erosion in these areas" in an order dated 15.05.2009 rendered in CWP No. 20134 of 2004 titled "Vijay Bansal & others Vs. State of Haryana & others". The Bench has considered the purpose of the Act and observed that the directions against cutting of trees or timber etc. are for the purpose of "conservation of subsoil water" or "prevention of erosion". Therefore, an area covered by the notifications under the Act cannot be used for "non forest purposes" save as permitted by the Central Government. The relevant observations read as under:

(37). Suffice it to state here that the powers of the State Govt. to impose restrictions or issue directions under Sections 3, 4 and 5 of the PLPA are supplementary and complimentary to its somewhat similar powers u/s 35 of the Indian Forest Act, 1927 (in short the 1927 Act). The only inescapable conclusion would be that if directions against cutting of trees or timber etc. have been issued u/s 4 in respect of an area or a part thereof notified for the purpose of "conservation of subsoil water" or "prevention of erosion" u/s 3 of the PLPA, such an area being "forest land" for the purposes of 1927 and 1980 Acts, cannot be used for "non forest purposes" save as permitted by the Central Govt. We, however, hasten to add that the afore-stated prohibition against use for "non forest purposes" does not ipso-facto apply to the entire area forming part of the notification u/s 3 of the PLPA.

4. On the basis of such observation, the relevant direction issued reads as under:

(57). To sum up, both these petitions are disposed of with the following consolidated directions:-

(i) the lands/areas forming part of the notification u/s 3 of the Punjab Land Preservation Act, 1900 and in respect of which restrictions have been imposed u/s 4 of the said Act are declared to be "forest lands" for the purposes of the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980. It is, accordingly, directed that these areas shall not be used for "non forest purposes" including the mining of "major" or "minor" minerals;

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5. Subsequently, in C.M. No. 12170 of 2009 in CWP No. 20134 of 2004 filed by

the Principal Chief Conservator of Forest, Haryana, the Division Bench has noticed that in M.C. Mehta's case (supra), the question; as to whether or not the areas regulated by different restrictions imposed u/s 4(c) & (d) and Section 5(c) & (d) of the Act also constitute "forest land", was neither deliberated upon nor responded to by the Supreme Court. It also noticed that the earlier order passed by the Bench has declared the entire area notified under Sections 4 & 5 of the Act as an "forest land" irrespective of the nature of restrictions imposed vide said notification. It was noticed that such error come into existence, as the complete notification was not produced on record. The Court observed as under:

(12). In the absence of both sets of notifications, namely, one which prohibits clearing, breaking up or cultivation of the land and the other which simply restricts the cutting of trees and timber etc., we had no occasion, while passing our order dated 15th May, 2009, to draw any distinction in respect to their legal implications or the nature of land covered by these notifications.

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(15). We, therefore, allow this application and modify our order dated 15th May, 2009 qua Issue No. 1 read with direction No. [i] contained in Paragraph 57 thereof, and clarify that only those lands/areas forming part of the notification issued u/s 3 of the PLPA, 1900 in respect of which restrictions against clearing, breaking up or cultivation have been imposed under Sections 4[a] or 5[a] of the said Act, are declared as "forest lands" for the purposes of the Indian Forest Act and the Forest [Conservation] Act, 1980 and the said areas shall not be used for "non-forest purposes" including the mining of major or minor minerals. This shall, however, not preclude the State Government from imposing such restrictions in respect of the remaining area[s] notified u/s 3 of the Act, if so required to be done in public interest.

6. In the light of the aforesaid notification and the orders, it is sought to be argued that this Court has restricted the use of land comprising in clause (a) of Section 5 of the Act for "non forest purposes" alone. Therefore, the land, which has a restricted use falling in either of Section 5(b)(c) & (d), can be used for "non forest purposes". It is, thus, contended that the orders of the Supreme Court in T.N. Godavarman Thirumulkpad's case (supra) and M.C. Mehta's case (supra) does not relate to the land in respect of which the restrictions u/s 5(c) of the Act have been imposed. Therefore, the impugned decision of the Committee is not sustainable in law.

7. On the other hand, learned counsel for the respondents has argued that the restriction in the notification u/s 5 of the Act is of cutting of trees or timber or brushwood and the lopping of trees for any purpose and the collection or removal of grass for any purpose. Such restriction would continue to apply in terms of the order passed by the Supreme Court in M.C. Mehta's case (supra), which reads as under:-

79. The controversy is in respect of certain leases where area under the lease is

covered under notification issued under Sections 4 and/or 5 of the Punjab Land Preservation Act, 1900. The question is whether such area is "forest" of any kind.

80. u/s 3 of the aforesaid Act, whenever it appears to the State Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly. u/s 4(b), the State Government has power to regulate, restrict or prohibit the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification u/s 3. u/s 5(b) in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified u/s 3, the State Government may, by special order, temporarily regulate, restrict or prohibit the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification u/s 3. In respect of some mining areas notifications have been issued u/s 4 and in respect of some, notifications have been issued both under Sections 4 and 5. The submission is that invoking of Sections 3, 4 and 5 is only to conserve subsoil water and prevention of the area from erosion of land and is not to create any forest. It has been pointed out that in cases where the notifications have been issued, only felling of trees had been prohibited and not quarrying of stone.

81. It cannot be disputed that the State Forest Department has been treating and showing the aforesaid areas as "forest". The contention urged on behalf of the State Government is that it was on account of erroneous viewpoint of the Forest Department. In fact and law, such area is not "forest" and mining is not prohibited and, therefore the question of seeking permission u/s 2 of the FC Act does not arise.

82. In the instant case, it is not necessary to decide the legal effect of issue of the notification under Sections 4 and/or 5 of the Act. Not only in their record has the area been shown as forest but affidavits have been filed in this Court stating the area to be "forest". In T.N. Godavarman Thirumulkpad Vs. Union of India and others, , this Court held that the term "forest" is to be understood in the dictionary sense and also that any area regarded as a forest in government records, irrespective of ownership, would be a forest. The State of Haryana, besides having filed affidavits in the forest matters treating such areas as forest for the purposes of the FC Act has been seeking prior approval from the Central Government for diversion of such land for non-forestry purpose. Reference in this connection may also be made to the affidavit dated 8-12-1996 filed by Banarsi Das, Principal Chief Conservator of Forests, Chandigarh, Haryana in Environmental Awareness Forum v. State of J & K (Civil Writ No. 171 of 1996). Our attention has also been drawn to letter dated 26-11-2002 addressed by the Divisional Forest Officer, Faridabad to the Mining Officer, Faridabad forwarding to him a list of blocked forest areas of Faridabad district and requesting him to ensure that the said forest areas are not affected by any mining operations as

also to a letter dated 17.09.2001 sent by the Principal Chief Conservator of Forests, Haryana (Panchkula) to the Director of Environment, Haryana stating therein that no mining activity can be permitted in the area. On the facts and circumstances of the case, we cannot permit the State Government to take a complete somersault in these proceedings and contend that the earlier stand that the area is forest was under some erroneous impressions. In the present case, for the purposes of the FC Act, these areas shall be treated as forest and for use of it for non-forestry purpose, it would be necessary to comply with the provisions of the FC Act.

8. The relevant provisions of the Act read as under:

3. Notification of areas - Whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification may a direction accordingly.

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters - In respect of areas notified u/s 3 generally or the whole or any part of any such area, the State Government may by general or special order temporarily regulate, restrict or prohibit ?

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification u/s 3;

(b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification u/s 3;

(c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing-process, otherwise than as described in clause (b) of this sub-section of any forest produce other than grass, save for bona fide domestic or agricultural purposes of right-holder in such area;

(d) the setting on fire of trees, timber or forest produce;

(e) the admission, herding, pasturing or retention of sheep, goats or camels;

(f) the examination of forest produce passing out of any such area; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use therefrom or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. Power in certain cases, to regulate, restrict or prohibit, by special order, within notified areas, certain further matters - In respect of any specified village or villages, or part or parts thereof comprised within the limits of any area notified u/s 3, the State Government may, by special order, temporarily regulate, restrict

or prohibit -

(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification u/s 3;

(b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification u/s 3;

(c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section, of any forest produce for any purposes; and

(d) the admission, herding, pasturing or retention of cattle generally other than goats and camels, or of any class or description of such cattle.

9. The Act is enacted for conservation of sub-soil water and prevention of erosion. The Forests play an important role to achieve the said objective. A perusal of Section 3 of the Act empowers the Government to issue a direction for conservation of sub-soil water or the prevention of erosion. Such directions are necessary to exercise jurisdiction either u/s 4 or 5 of the Act. But after such direction is issued, the restrictions are imposed either in Section 4 or Section 5 of the Act. Section 5 of the Act comes into picture, where the land has been in use for cultivation, quarrying of any stone, cutting of trees or timber and when the State Government considers it appropriate to regulate, restrict or prohibit the cultivation, quarrying of stone or cutting of trees or timber. Whereas, Section 4 comes into picture if there is no cultivating of land, quarrying of stone or the cutting of trees or timber prior to the publication of notification u/s 3 of the Act. The purpose of both the Sections i.e. 4 & 5 of the Act is the same to conservation of sub-soil water or prevention of erosion.

10. In Vijay Bansal's case (supra), the notification, which was subject matter of consideration was published u/s 4 of the Act on 28.11.1997, whereby "the cutting of trees or timber except eucalyptus or poplar or the collection or removal or subjection to any manufacturing process, of any forest produce other than flower, fruit and honey..." was prohibited. Such prohibition is *pari materia* with the prohibition in question in terms of clause (c) of Section 5 of the Act. Considering the said notification, this Court has held that the land which is subject matter of notification cannot be subjected to "non forest purposes". Therefore, the directions of this Court, as contained in the order dated 15.05.2009 and clarified on 23.07.2009 are *pari materia* applicable to the notification in question.

11. In T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, the Supreme Court held as under:

21. For the present, no mining will be permitted in the areas for which notification under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 has been issued for regulating the breaking up of the land, etc. and such lands

are or were recorded as "forest" in government records even if the notification period has expired, unless there is approval under the FC Act.

12. Section 2 of the Forest (Conservation) Act, 1980 starts with a non obstante clause i.e. 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 for use of any forest land for any "non forest purpose". Since there was a restriction on use of land for "non forest purpose", the same restriction will continue to apply in terms of Section 2 of the Forest (Conservation) Act, 1980 as well. The State Government cannot issue any order directing any reserve Forest or a Forest land to be used for any "non forest purpose" without the approval of the Central Government.

13. In view of the above, we do not find any illegality in the order passed by the Committee, which may warrant any interference in extra ordinary writ jurisdiction of this Court. Consequently, the present writ petition is dismissed.