
(2013) 04 AHC CK 0236

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 7980 of 2007 and 14519 of 2008

M/s. Purvanchal Sewa Samiti

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Constitution of India, 1950 — Article 141
Forest Act, 1927 — Section 17, 2, 20, 4, 5
Uttar Pradesh Land Revenue Act, 1901 — Section 54
Constitution of India, 1950 — Article 141
Forest Act, 1927 — Section 17, 2, 20, 4, 5
Uttar Pradesh Land Revenue Act, 1901 — Section 54

Citation : (2013) 6 ADJ 78 : (2013) 4 ALJ 686 : (2013) 3 EFLT 511

Hon'ble Judges : Ashok Bhushan, J;Abhinava Upadhyya, J

Bench : Division Bench

Advocate : Madan Lal Srivastava, Ratnesh Kumar Srivastava and Shashi Nandan, for the Appellant; R.K. Singh, V.K. Singh, S. Tripathi, S. Trivedi, Samir Sharma and Vivek Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These two writ petitions filed by the same petitioners relating to mining lease granted to the petitioners have been heard together and are being disposed of by this common judgment. Writ Petition No. 7980/2007, hereinafter referred to as the "First Writ Petition" has been filed by the petitioner challenging the order dated 23.1.2007, passed by the Mining Officer, Sonebhadra, prohibiting the petitioner from carrying on any mining operation on Plot No. 7618 area 2.50 acres. Two counter-affidavits have been filed in the writ petition, one sworn by Shri O.N. Kesarwani, on behalf of the Forest Department of the State dated 30.3.2007, and another has been sworn by Shri B.P. Yadav, Mining Officer dated 13.4.2007. Rejoinder-affidavits have been filed by the petitioners to both the counter-affidavits. A supplementary affidavit dated 11.3.2013, has also been filed by the petitioner which has been taken on record.

2. Detail facts prior to grant of mining lease to the petitioner as well as subsequent to grant of mining lease to the petitioner dated 30.12.2006, has been brought on record by both the parties. The petitioner has been prohibited from carrying on mining operation by the Mines Officer on the ground that the position of no objection certificate issued by the Forest Department regarding the land in question is not clear in view of the order passed by the Additional District Judge dated 31.5.2003, reviewing its earlier order.

3. For appreciating the issue raised between the parties, it is necessary to recapitulate the entire facts in the chronological order. The relevant facts of the case are as follows: The State Government issued a notification dated 17.1.1970, u/s 4 of the Forest Act, 1927 (hereinafter referred to as the "Act, 1927") for constituting a reserved forest in various villages situate in Tehsil Robertsganj and Tehsil Dudhi of District Mirzapur. Village Billi Markundi of Tehsil Robertsganj was one of the village in which reserved forest was proposed to be constituted. Plot No. 7618 area 2.50 acres (formed out of Old Plot No. 3564) was also one of the plot included in the notification issued u/s 4 of the Act, 1927. The State Government had already declared part of land situated in both the Tehsils as a reserved forest by issuing notification u/s 20 of the Act 1927, and with regard to other areas notification u/s 4 of the Act 1927, was issued which included Plot No. 7618 situate in Village Billi Markundi Tehsil Robertsganj. A letter petition was filed in the Apex Court by Banwasi Seva Ashram espousing the cause of several adivasis living in the District Mirzapur who were using the forest land as their habitats. The letter petition was entertained by the Apex Court and various directions were issued to the State Government to find out the mechanism to recognise their rights and to regularise their possession of part of the forest land. The Apex Court passed a detailed order on 20.11.1986, in Banwasi Seva Ashram Vs. State of U.P. and Others, , permitting objections to be filed against the proposed notification issued u/s 4 of the Forest Act, 1927. The Forest Settlement Officer was to examine the objections, claims and findings of the Forest Settlement Officer were required to be placed before the Additional District Judge of the area, even though no appeal is filed and the Additional District Judge was directed to scrutinise the findings as if an appeal is filed and decide the claim. The Forest Settlement Officer passed orders separating various plots including the plot in dispute from the proposed reserved forest which orders were also approved by the Additional District Judge vide order dated 30.9.1993 and 30.9.1994 in Appeal Nos. 588 and 34/93.

4. Consequent to the order of the Forest Settlement Officer, the aforesaid plot and other plots were recorded in the name of the State Government as "Hill". An application was submitted by Mohd. Ishtiyak Khan for grant of mining lease on Plot No. 7618, area 2.50 acre, on which application a no objection certificate dated 16.9.2002, was issued by the Divisional Forest Officer, Obra, Sonbhadra. On the application of Mohd. Ishtiyak Khan again an inquiry was made and a letter dated 9.4.2003, was written by the Divisional Forest Officer addressed to the Collector, Sonbhadra affirming the no objection certificate dated 16.9.2002.

5. Review Applications were filed by the Forest Department before the Additional District Judge on the ground that the land included in the notification issued u/s 4 of the Act, 1927 has wrongly been separated from the reserved forest. The Additional District Judge vide order dated 31.5.2003, allowed the Review Application Nos. 158/97 and 93/2002, in all 136 Review Applications were allowed and the earlier orders passed by the Additional District Judge were reviewed and it was held that the plots were wrongly separated from the reserved forest. In view of the order dated 31.5.2003, passed by the Additional District Judge an order dated 7.6.2003, was passed by the Divisional Forest Officer, Sonbhadra addressed to the District Magistrate, Sonbhadra, cancelling the no objection certificates earlier granted by the Forest Department with regard to different plots. At Item No. 2 of the letter dated 7.6.2003, the name of Mohd. Ishtiyak Khan and Plot No. 7618, New No. (Old Plot No. 3564) as well as the no objection certificate dated 9.4.2003, were mentioned. The letter further stated that no mining lease be sanctioned, and if any mining lease has been sanctioned, the same may be cancelled so that there is no violation of Forest Conservation Act, 1980 and the orders passed by the Apex Court.

6. On 11.12.2006, the petitioner submitted an application for grant of mining lease of Plot No. 7618 area 2.50 acres. An order was passed by the District Magistrate on 30.12.2006, sanctioning the mining lease. Mining lease was executed on 11.1.2007, in favour of the petitioner for an area 2.50 acres, Plot No. 7618 for a period of 10 years. Within fifteen days from execution of the lease, an order was passed on 23.1.2007, by the Mining Officer prohibiting the petitioner from carrying on any mining operation on Plot No. 7618 area 2.50 acre. The basis for passing the order was mentioned the order dated 31.5.2003, passed by the Additional District Judge. It was mentioned that in view of the said order the position of no objection certificate dated 16.9.2002, issued by the Forest Department is not clear. It was further stated that till the position of no objection certificate by the Forest Department is not clear no mining operation be carried on by the petitioner. The petitioner challenging the order dated 23.1.2007 has filed the present writ petition for the following reliefs:

(i) Issue a writ, order or direction in the nature of Certiorari calling for record and quashing the impugned notice/order dated 23.1.2007 passed by the Mining Officer Sonbhadra, contained in Annexure-1 to the Writ Petition.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the respondents not to interfere with the mining operation of the petitioner in respect of the land in dispute and transporting minerals and providing transit facility in any manner whatsoever till the period of mining lease exists.

(iii) Issue any other suitable writ, order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) An award costs of this petition in favour of the petitioner.

7. Writ Petition No. 14519/2008, "hereinafter referred to as the "Second writ

petition" has been filed by the petitioner praying for quashing the order dated 19.2.2008, issued by the State Government by which the District Magistrate has been directed to take steps for cancellation of the petitioner's mining lease on the basis of the enquiry report as mentioned in the letter. Consequent to the order of the State Government, District Magistrate has issued show-cause notice dated 4.3.2008, to the petitioner asking the petitioner to show-cause as to why the lease of the petitioner be not cancelled on the basis of the Joint Inspection Report in which it was stated that the road constructed by the Khanij Vikas Nidhi is being damaged as well as the high tension line which is going from the area. The State Government has issued an order dated 19.2.2008, referring to a complaint submitted by the respondent No. 6, Ram Lotan Singh, Ex-M.L.A. a joint inspection was made in which report it was stated that due to carrying on mining operation over Plot No. 7618, the road as well as the high tension line shall be damaged.

8. In the second writ petition, the petitioner has prayed for following reliefs:

(a) issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 19.2.2008 and 4.3.2008 passed by respondent Nos. 2 and 4 respectively (Annexures 1 and 2 to the writ petition).

(b) issue a writ, order or direction in the nature of Mandamus restraining the respondents from interfering in peaceful functioning of petitioner over her mining lease area granted at Arajai No. 7618 measuring area 2.25 acres situated at village Billi Markundi, Tehsil Robertsganj, District Sonbhadra.

(c) issue any other writ, order or direction which this Hon''ble Court may deem fit and proper under the circumstances of the case.

(d) award the cost of petition.

9. Shri Shashi Nandan, learned Senior Counsel appearing for the petitioner in support of the first writ petition submitted that the no objection certificate was already granted to the petitioner by the Divisional Forest Officer on 9.4.2003, hence there was no illegality in the grant of mining lease to the petitioner. He submits that the order dated 31.5.2003, passed in the Review Application by the Additional District Judge had no affect on the Plot No. 7618, which fact is verified and communicated by the District Magistrate, Sonbhadra dated 25.11.2003, (Annexure-5 to the supplementary affidavit), hence the basis for stopping the mining operation of the petitioner was non-existent. It is further submitted that against the order dated 31.5.2003, passed by the Additional District Judge allowing the review applications, a Writ Petition No. 29546/2003, Ved Prakash Garg and others v. Additional District Judge, Sonbhadra and others, was filed which was allowed on 14.2.2006, on the basis of a statement made by the Additional Advocate General that the Additional District Judge, had no power to review its own order. It is submitted that subsequently the no objection certificate has again been inquired and a letter dated 16.10.2012, has been issued by the Divisional Forest Officer (Annexure-6 to the supplementary

affidavit), and the issuance of the no objection certificate granted on 9.4.2003, was confirmed by the said letter. It was lastly submitted that had the District Magistrate any doubt regarding the no objection certificate earlier issued by the Divisional Forest Officer, he could have inquired the matter after verification of all relevant facts and there was no occasion for stopping the mining operation of the petitioner.

10. The learned Standing Counsel refuting the submissions of the learned counsel for the petitioner contended that the no objection certificate which has been relied on by the learned counsel for the petitioner dated 9.4.2003, had already been cancelled on 7.6.2003, which order has been brought by the petitioner himself on record as Annexure-4 to the supplementary affidavit. The basis for grant of mining lease to the petitioner was knocked out. It is submitted that the no objection certificate dated 9.4.2003, having already been cancelled on 7.6.2003, there was no basis for grant of mining lease to the petitioner. It is submitted that in the order dated 31.5.2003, passed by the Additional District Judge, Plot No. 7618 was very much included, which plot has been mentioned in the order dated 7.6.2003. It is submitted that the lease was granted to the petitioner on 11.1.2007, on the basis of an application submitted by the petitioner on 11.12.2006, and before grant of mining lease to the petitioner no objection certificate from the Divisional Forest Officer was never obtained and the earlier no objection certificate dated 9.4.2003, which was obtained on an application of one Mohd. Ishtiyak Khan could not have been relied on since it was already set-aside on 7.6.2003. It is submitted that the judgment of this Court in Writ Petition No. 29546/2003, Ved Prakash Garg and others (supra) was a judgment which shall confine to the land which was subject-matter of the aforesaid writ petition in which rights were claimed by Ved Prakash Garg and others. It was submitted that a Division Bench of this Court earlier in Smt. Pyari Devi Vs. State of U.P. and Others, , had already held that the Additional District Judge had jurisdiction to review its own order.

11. The Division Bench Judgment in the case of Smt. Pyari Devi (supra) was not noticed by the learned Single Judge while delivering the judgment in Ved Prakash Garg's case (supra). It is submitted that the judgment in Ved Prakash Garg's case (supra) is per incuriam having not noted a binding Division Bench judgment. It is submitted that the papers brought on the record by means of the supplementary affidavit do not indicate that a no objection certificate was granted in favour of the petitioner with regard to the lease which was granted to the petitioner on 11.1.2007.

12 . Shri Shashi Nandan, learned Senior Counsel appearing for the petitioner in support of the second writ petition contended that the State Government has issued direction on 19.2.2008, to the District Magistrate to cancel the lease of the petitioner without giving any notice or opportunity to the petitioner. He submits that the District Magistrate is obliged to comply the order of the State Government and the show-cause notice issued to the petitioner by the District

Magistrate on 4.3.2008, is only an empty formality. He submits that the Inquiry Report which has been referred to in the order of the State Government does not make out any case for cancellation of the lease of the petitioner. It is submitted that the high tension line runs over the extreme corner of the plot. It is further submitted that the report of the Commissioner dated 20.2.2008, does not substantiate any of the allegation mentioned in the show-cause notice.

13. Shri Sheshadri Trivedi appearing on behalf of the respondent Nos. 5 and 6 in second writ petition has filed counter-affidavit. It is submitted that the grant of mining lease to the petitioner was illegal since the no objection certificate granted on 9.4.2003, was already cancelled on 7.6.2003. Lease was granted to the petitioner on 11.1.2007, without obtaining any no objection certificate from the Forest Department. It is submitted that on a complaint, an inquiry was made and it was found that an order dated 23.1.2007, was issued by the Mines Officer prohibiting the petitioner from carrying on any mining operation. It was submitted that the judgment of the learned Single Judge in Ved Prakash Gary's case (supra) does not lay down the correct law by holding that the Additional District Judge has no power to review its own order. It is submitted that the Division Bench judgment in Smt. Pyari Devi's case (supra) which was earlier in point of time has already settled the issue and held that the Additional District Judge has power to review its own order which judgment was not noticed by the learned Single Judge in Ved Prakash Garg's case (supra). It is submitted that in any view of the matter the judgment in Ved Prakash Garg's case (supra) shall confine to the land which was claimed by the petitioners of that case and the said judgment shall not give any benefit to the petitioner.

14. We have considered the submissions of the learned counsel for the parties and have perused the record.

15. The Apex Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , has issued directions to all the states prohibiting from the mining activity in the forest land. The Apex Court had taken into consideration the provisions of the Forest (Conservation) Act, 1980, which provides that no State Government or other authority shall except with the prior approval of the Central Government use any forest land for any non-forest purpose. Section 2 of the Forest (Conservation) Act, 1980 is quoted below:

2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.--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 directing--

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

(iii) 1[that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

2[Explanation.--For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for--

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipeline or other like purposes]

16. The Apex Court in T.N. Godavarman's case (supra) issued appropriate directions. Paragraphs 4 and 5(1) which are relevant in the present case are quoted below:

4. 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 fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. 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. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 , *Rural Litigation and Entitlement Kendra Vs. State of U. P.* , and recently in the order dated 29th November, 1996 in *W.P. (C) No. 749/95 (Supreme Court Monitoring Committee v. Mussorie Dehradun Development Authority and others)*. The earlier decision of this Court in *State of Bihar Vs. Banshi Ram Modi and Others*, has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled

position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

5. We further direct as under:

I. General:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

17. The State Government has come up with a specific case in its counter-affidavit that Plot No. 3564 (from which Plot No. 7618 has been carved out) and other plots have been notified u/s 4 of the Act, 1921 vide notification dated 17.1.1970.

18. The Forest Settlement Officer vide order dated 30.9.1993, has separated the Plot No. 7618 and other plots from the reserved forest which orders were also confirmed by the Additional District Judge on 30.9.1994. In view of the aforesaid order, the Divisional Forest Officer had issued the no objection certificate for grant of mining lease by letter dated 16.9.2002 and 9.4.2003. The said no objection certificate was given on a application submitted by Mohd. Ishtiyak Khan. After the grant of aforesaid no objection certificate, review order dated 31.5.2003 was passed by the Additional District Judge reviewing its earlier order. Consequently, Plot No. 7618 and other plots were again treated to be included in the reserved forest area. The Divisional Forest Officer acting on the order dated 31.5.2003, immediately cancelled the no objection certificate on 9.4.2003 vide its order dated 7.6.2003. Copy of the order dated 7.6.2003, has been brought on record as Annexure-4 to the Supplementary Affidavit. The petitioner's mining lease having been granted on 11.1.2007, the no objection certificate issued by the Divisional Forest Officer with regard to petitioner's application dated 20.11.2006, for grant of mining lease in Plot No. 7618 has not been brought on the record. Petitioner, on the other hand is claiming reliance on the same no

objection certificate dated 9.4.2003, which was granted in favour of Mohd. Ishtiyak Khan with regard to plot in question. Petitioner, on the basis of the letter dated 16.10.2012, Annexure-6 to the supplementary affidavit contends that the earlier no objection certificate dated 9.4.2003, has been verified and reaffirmed by the Divisional Forest Officer. A perusal of Annexure-6, indicates that in the said letter the Divisional Forest Officer has communicated earlier letters which were issued by the Divisional Forest Officer and with regard to Plot No. 7618, the no objection certificate dated 9.4.2003 has been referred to at Item No. 28. There is no dispute that the no objection certificate dated 9.4.2003 was earlier issued. The no objection certificate dated 9.4.2003, having been subsequently cancelled on 7.6.2003, the no objection certificate dated 9.4.2003, has lost its efficacy and was no longer relevant for grant of any mining lease.

19. Learned counsel for the petitioner has placed much reliance on the letter dated 25.11.2003, filed as Annexure-5 to the Supplementary Affidavit, in which the District Magistrate has written to the Divisional Forest Officer mentioning Review Application No. 158/97 and 93/2002, that plot in question is not covered by the review order. The letter dated 25.11.2003, is purported to be written in reply to the letter dated 7.6.2003. A reading of the letter dated 7.6.2003, indicates that while referring the order of the Additional District Judge dated 31.5.2003, the Divisional Forest Officer has referred to Case No. 158/1997, Forest Department v. Sukhambar Upadhyaya and Case No. 93/2002, Forest Department v. Krishanand and other cases.

20. As noted above, in the counter-affidavit filed by the Forest Department in paragraph 5, it has been specifically stated that by order dated 31.5.2003, in all 136 review applications were consolidated and allowed including the land in reserved forest. The letter dated 7.6.2003, although specifically referred to only two cases firstly Case No. 158/1997, Forest Department v. Sukhambar Upadhyaya and secondly Case No. 93/2002, Forest Department v. Krishanand and others, but has also mentioned other cases on the basis of which 14 no objection certificates were cancelled.

21. Letter dated 25.11.2003, has been relied by the petitioner in which referring to two cases firstly 158/1997 and secondly 93/2002, it mentions that the land covered by the no objection certificate dated 9.4.2003 in favour of Mohd. Ishtiyak Khan is not the subject-matter of review. Letter dated 25.11.2003, does not consider the entire facts nor it examined 136 review applications and the said letter cannot be relied on. More so, when the State Government in its counter-affidavit has specifically come up with the case that by order dated 31.5.2003, Plot No. 7618 has been held to be in reserved forest, the said allegations having been specifically mentioned in counter-affidavit of the Forest Department in paragraph 11 thus, the submission raised by the petitioner that the order dated 31.5.2003, passed in the Review Application, Plot No. 7618 is not covered cannot be accepted.

22. Much emphasis has been placed by the learned counsel for the petitioner on

the judgment of this Court in Ved Prakash Garg's case (supra). In Ved Prakash Garg's case (supra) on the basis of the stand taken by the Additional Advocate General that the Additional District Judge has no power to review its own order, the said judgment was delivered on 14.2.2006.

23. A Division Bench of this Court in which one of us (Ashok Bhushan, J) in Smt. Pyari Devi's case (supra) had occasion to consider the same issue as to whether the Additional District Judge had jurisdiction to review its order passed in appeal arising out of Forest Act, 1927. As noted above, the Additional District Judge had decided the appeals arising out the orders of Forest Settlement Officer in pursuance of the directions issued in Banwasi Seva Ashram's case (supra). The Apex Court by specific orders has permitted the Forest Department and other aggrieved parties to file a review application before the Additional District Judge. It is useful to quote paragraphs 32, 33 and 35 of Smt. Pyari Devi's case (supra).

32. In the same case, the Apex Court passed order dated 18th July, 1994 in which the Apex Court specifically directed the Government to implement the decisions given by various Additional District Judges in various appeals and reviews decided by the learned Judges. Last two paragraphs of the said judgment is extracted below:

It has been stated by Justice Loomba in his 14th Report that an area of about 26947 acres in about 12 villages, covered by Notification u/s 4 of the Indian Forests Act, has in fact been dealt with u/s 54 of the U.P. Land Revenue Act. We direct the Revenue Secretary, Government of Uttar Pradesh, to set up special Officers to deal with this area in terms of our order dated November 20, 1986. We further direct the Revenue Secretary to implement the decisions given by various Additional District Judges in various appeals and reviews decided by the learned Judges.

We close the proceedings in this case. We, however, give liberty to the parties to approach this Court as and then it becomes necessary to do so for obtaining necessary directions.

From the above directions of the Apex Court, it is clear that Apex Court directed the State Government to implement the decisions given by various Additional District Judges in various apparels and reviews decided by learned Judges. The aforesaid direction clearly directs that judgment of the review has also to be implemented. The Apex Court itself having directed implementation of the reviews decided by the Additional District Judges, the submission of Counsel for the appellant that order of Additional District Judge passed in review is without jurisdiction cannot be accepted. In fact, the Divisional Forest Officer brought this fact before the Apex Court that several errors have been committed by the Additional District Judge while deciding the appeal and he be permitted to review and review be directed. The aforesaid fact has been noted by the Apex Court in its order dated 4th October, 1993. Relevant extract of the order of the Apex Court dated 4th October, 1993 is quoted below:

Mrs. Abhay Kumar Singh, the Divisional Forest Officer, District Sonbhadra has filed an affidavit wherein it is stated that during the physical verification made by the forest department, certain cases have come to light where wrong orders have been passed. We seek directions from this Court for the review of those cases. The Forest Department may bring those cases to the notice of the Additional District Judges who shall consider these cases in accordance with law.

From the aforesaid, it is clear that Apex Court permitted the applications and ultimately directed implementation of judgment passed by Additional District Judge in review which clearly means that Apex Court has accepted filing of review and implementation of the said order. The argument of Counsel for the appellant is in the teeth of the aforesaid direction and cannot be accepted. The judgments of the Apex Court are binding for all Courts under Article 141 of the Constitution of India.

33. One more aspect of the matter also needs to be considered. As noted above, the Apex Court vide its judgment dated 20th November, 1986 directed that findings of Forest Settlement Officer be placed before the Additional District Judge even though no appeal is filed and the same was directed to be scrutinised by the Additional District Judge as if an appeal has been taken from the facts brought on the record, it is clear that in notification issued u/s 4 of Forest Act Plot No. 246/1 area 453 bighas and 17 biswas was included. Only objection which was filed was of Mahendra Singh and Rajendra Singh that too with regard to an area of 26 bighas and 8 biswas. No objection was filed with regard to rest of area of Plot No. 246/1. Under the scheme of the Forest Act, the Forest Settlement Officer was to hold an enquiry u/s 7 regarding all claims duly preferred u/s 6 and the existence of any rights mentioned in Section 4 or Section 5 and not claimed u/s 6 so far as the same may be ascertainable from the records. Section 7 of Forest Act is quoted below:

7. Inquiry by Forest Settlement Officer.--The Forest Settlement-officer shall take, down in writing all statements made u/s 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in Section 4 or Section 5 and not claimed u/s 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

35. In view of the above, the Additional District Judge had inherent power to correct the mistake which was apparent in the order dated 27th February, 1992. In view of this, in the present case it is not necessary to consider the question and decide as to whether the statute has specifically or by necessary implication has conferred the power of review on the Additional District Judge exercising the appellate jurisdiction u/s 17 of the Forest Act.

24. Judgment of Ved Prakash Garg's case (supra) was also subsequently considered in another case namely; Ravindra Kumar Singh and others v. Additional District & Sessions Judge, Anpara and others, 2007 (9) ADJ 251. The

same submission was raised in the aforesaid case that the Additional District Judge has no power to review its own order and reliance was placed on Ved Prakash Garg's case (supra). Referring to its earlier judgment of Smt. Pyari Devi's case (supra) it was held that the Ved Prakash Garg's case (supra) cannot be treated to be a good precedent. Following was laid down in paragraphs 14 and 15:

14. Much emphasis has been laid by learned Counsel for the petitioners on the subsequent judgment of the learned Single Judge in Ved Prakash Garg's case (supra) in which the learned Single Judge in view of the stand taken by the State quashed the order of review as being without jurisdiction. The judgment in the said case cannot help the petitioners in the present case due to following two reasons:

(a) The attention of the learned Single Judge in Ved Prakash Garg's case (supra) was not invited to the earlier Division Bench in Smt. Pyari Devi's case (supra), which categorically laid down that Additional District Judge has power of review. It is relevant to note that judgment in Pyari Devi's case was with regard to same notification under Sections 4 of the Forest Act in which notification the land on which petitioners claimed right of mining lease was also included. The Division Bench judgment having held that Additional District Judge had power of review was a binding precedent and the judgment given by learned Single Judge without noticing the said judgment cannot be followed as good precedent.

(b) Learned Single Judge in Ved Prakash Garg's case (supra) has decided the case on the basis of concession made by the learned Advocate General at the bar that the Additional District Judge has no power to review its own order. The judgment was thus, in fact, based on concession given by the learned Advocate General to the effect that Additional District Judge has no power to review. The decision is based only on the said statement and does not lay down any ratio to be followed that Additional District Judge has no power of review. It is well-settled that decision given on the basis of a concession by any party cannot be said to be laying down any ratio or precedent to be followed.

15. One more contention of learned Counsel for the petitioners needs to be considered. Learned Counsel for the petitioners submitted that order dated 31st May, 2003 passed by Additional District Judge allowing the review application having been set-aside by this Court in Writ Petition No. 29546 of 2003 (Ved Prakash Garg and others v. Additional District & Sessions Judge, Anpara and others), the order dated 31st May, 2003 impugned in this writ petition be also treated to have been set-aside. The order dated 31st May, 2003 was passed by the Additional District & Sessions Judge in 134 cases including the review application filed in Ved Prakash Garg and others' case, which is mentioned at Serial No. 61 of the order dated 31st May, 2003 (Annexure-1 to the writ petition). The number of review application in Ved Prakash Garg and others' case was 183 of 1997 and the number of the appeal giving rise to the review application was 1203 of 1993, which is mentioned at Serial No. 61 in the order. It

is true that the order dated 31st May, 2003, which was challenged by Ved Prakash Garg and others, in Writ Petition No. 29556 of 2003, has been set-aside and that order is final qua Ved Prakash Garg and others and the Forest Department. Ved Prakash Garg and others filed the writ petition challenging the order dated 31st May, 2003, of the Additional District & Sessions Judges and their writ petition was confined to the order passed in the case of Ved Prakash Garg and others. By setting aside the review order dated 31st May, 2003, on the writ petition filed by Ved Prakash and others, it cannot be said that the order passed by Additional District & Sessions Judge in all the cases stood set-aside. In case the above was the consequence in Ved Prakash Garg's case, there was no occasion for the petitioners praying for quashing the order dated 31st May, 2003 in the present writ petition. The petitioners being well aware that allowing the writ petition of Ved Prakash Garg and others against the order dated 31st May, 2003 was confined to their cases, have filed writ petition praying for setting aside the order dated 31st May, 2003. The petitioners were not party to the writ petition of Ved Prakash Garg and others and they at best can rely on the judgment of this Court in Ved Prakash Garg and others case as a precedent. Thus the submission of the petitioners' Counsel that in view of the judgment of this Court in writ petition filed by Ved Prakash Garg and others the order passed by Additional District & Sessions Judge in cases of the petitioners also stood quashed by this Court cannot be accepted.

25. In any view of the matter, the judgment in Ved Prakash Garg's case (supra) shall enure to the benefit of the petitioners of that case and shall be applicable to the land which was claimed by the petitioners of that case. In this writ petition, the State Government has come up with the specific stand that in Writ Petition No. 29546/2003, the order passed in Review Application No. 144/97, was not a subject-matter, hence the benefit of judgment of Ved Prakash Garg's case (supra) cannot be claimed by the petitioners. Specific stand has been taken to the effect in para 11 of the counter-affidavit of the Forest Department. Paragraph 11 of the counter-affidavit has not been specifically denied in para 28 of the Rejoinder-affidavit filed by the petitioner. In para 28 of the Rejoinder-affidavit following was stated:

28. That the contents of para 11 of the Counter-affidavit as stated is not correct hence denied, matter is argumentative nature, suitable reply will be given at the time of arguments before this Hon'ble Court, and further stated herein that the paragraph Nos. 15 to 20 of the Writ Petition as stated is reaffirmed.

26. In view of the foregoing discussions, we are of the view that no error has been committed by the Mining Officer in issuing the order dated 23.1.2007, prohibiting the petitioner from carrying out any mining operation. We have examined the pleading of the parties pertaining to the no objection certificate issued by the Divisional Forest Officer dated 9.4.2003. The said certificate having already been cancelled on 7.6.2003, and there is no other No objection certificate issued in favour of the petitioner on the record, the petitioner has

rightly been prohibited from carrying out any mining operation. The prayer of the petitioner for quashing the order dated 23.1.2007, is thus refused. However, the order dated 23.1.2007, being not a final order, we are of the view that it shall be open for the District Magistrate to consider the question as to whether any No objection certificate was granted to the petitioner before granting a mining lease on 11.1.2007. The District Magistrate shall also consider the effect of order dated 31.5.2003, passed by the Additional District Judge in different review applications including the Review Application No. 144/97. We, however, make it clear that in event the District Magistrate decides to take any steps for cancellation of mining lease granted to the petitioner, appropriate show-cause notice be issued to the petitioner.

Subject to above, the Writ Petition No. 7980/2007, is dismissed.

27. Now, coming to Writ Petition No. 14519/2008, it is relevant to note that the State Government by order dated 19.2.2008, has directed the District Magistrate to take steps for cancellation of the mining lease of the petitioner on the basis of Joint Inspection Report of the Directorate undertaken on the complaint of the respondent No. 5. The District Magistrate in obedience of the order of the State Government issued the show-cause notice dated 4.3.2008, to the petitioner treating the order dated 19.2.2008, as a direction of the State Government. Although, the learned counsel for the petitioner submitted that there was no sufficient ground even in the Joint Inspection Report to cancel the mining lease of the petitioner, but we are of the view that before issuing any direction by the State Government, petitioner was entitled to be given a notice or opportunity of hearing. The order dated 19.2.2008, having been issued without giving any notice to the petitioner deserves to be set-aside. Consequently, the notice dated 4.3.2008, is set-aside. We however, make it clear that it shall be open to the District Magistrate to take such action against the mining lease of the petitioner as permissible under law after considering all relevant material facts and the reports on the record. The Writ Petition No. 14519/2008, is thus partly allowed quashing the orders dated 19.2.2008 and 4.3.2008. The other reliefs claimed in the second writ petition are refused.

28. Both the writ petitions are decided accordingly. Parties shall bear their own costs.