

(1999) 08 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12137 of 1999

N. Rajagopal Reddy

APPELLANT

Vs

District Collector, Chittoor and others

RESPONDENT

Date of Decision : 24-08-1999

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 10, 11, 12, 13, 14
Forest (Conservation) Act, 1980 — Section 2(2)

Citation : (1999) 5 ALD 586

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. N.V. Ranganadham, for the Appellant; Government Pleader for Forests, for the Respondent

Judgement

1. The petitioner filed this writ petition seeking a writ of Mandamus directing the respondents to implement the orders of the Forest Settlement Officer in RC NO.B117/64.B dated 28-9-1971 as amended by order dated 20-11-1971 as per the directions of this Court dated 20-12-1984 in WP No.7791 of 1984 and to pass any order that may deem fit and proper in the circumstances of the case.
2. This writ petition is opposed by the Government on the ground that unless the Government of India grants permission for diversion of the land under the Forest Conservation Act, 1980 the State Government cannot delete the land in question from the Mittoor Forest Block.
3. The facts which are not in dispute in this case are: Under the provisions of A.P. Forest Act, 1967 (for short "the act") the Government is empowered to constitute reserve forest as per Chapter II of the said Act. The procedure for constituting a reserve forest is indicated from Sections 4 to 15 of the Act.
4. In exercise of the said power the Government seemed to have issued a preliminary notification on 20-7-1961 constituting Mittoor Forest Block in Chittoor District. Thereafter, the Government appointed a Forest Settlement Officer by

issuing proclamation u/s 6 of the Act to decide the claims of the people over the land included in the said forest block. It is also not in dispute that the petitioner filed an application before the Forest Settlement Officer for exclusion of 147 acres situated in Paimaish numbers 171, 172, 174 and 175 claiming the same to be patta lands. The Forest Settlement Officer by his order dated 28-9-1971 as corrected by his subsequent order dated 20-11-1971 passed orders for exclusion of the lands in question. It is useful to extract the order of the Forest Settlement Officer.

"One witness has been examined and he is Sri K.R Natesapillai, Karnam of Nalagampalli village. He said that the petitioners have got pattas given by the erstwhile Zamindar of Bangarupalli and they paid land revenue on these lands from Faslis 1353 to 1360 and that afterwards they did not pay the land revenue as the Forest Department formed the Forest Block. He also says that there were cultivations here and there and in the land prior to the putting up of the Forest Block line and that shrub jungle growth has come up in the lands as they were not cultivated subsequently. A perusal of the village account No.4 concerned (Ex.17) also shows that the names of petitioners Nos.8 and 9 are noted as pattadars of the lands claimed by them.

The Joint Inspection made on 7-4-1971 has also revealed that the lands are on plain ground with hilly area here and there and that the lands are fit for cultivation. S. Nos.494, 495 and 496 which are adjoining these lands in East and South were also excluded by the then Forest Settlement Officers from the Forest Block on claims by some petitioners as they are provided to be patta lands. The lands now claimed by the 9 petitioners are on par with S. Nos.494, 495 and 496 and there is no objection to exclude these lands also from the Forest Block.

From the evidence adduced before this Court through Exhibits P1 to P17 and from the deposition of Sri K.R Nateshpillai, Karanam of Nalagampalli, I am inclined to believe the pattas given by the Zamindars of Bangarupalem and the Land Revenue receipts produced by the petitioners and come to a conclusion that these lands are proved to be the lands of the petitioners.

In the end I accept the evidence produced by the petitioners and hereby order that the portions of lands claimed by the petitioners are excluded from the proposed Forest Block of Mittoor as noted in the location sketch enclosed.

The District Forest Officer, Chittoor West Division, Chittoor will re-assign the boundary of the Forest Block as per the location sketch..."

5. From this it is seen that the Forest Settlement Officer excluded the land not only on the ground that they are patta lands but also on the ground that the lands similarly placed in Sy. Nos.494, 495 and 496 are excluded from the Forest Block which are adjoining to the lands in question and also on the basis of a joint inspection made on 7-4-1971 recording a finding that the lands in question are fit for cultivation. When the orders of the Forest Settlement Officer are not implemented, the petitioners seemed to have filed WP No.7791 of 1984 and the

same was disposed of by an order dated 20-12-1984 directing the Government to delete the lands in question from the notification. Secondly, it came to light that initially the District Collector filed an appeal against the order of the Settlement Officer and the same was dismissed on 9-1-1976 as he is not the competent person to prefer an appeal against the orders of the Settlement Officer. Thereafter, the District Forest Officer seemed to have filed an appeal and the same was also dismissed on 26-9-1980. Even after dismissal of the appeals preferred by the Government and also the orders of this Court dated 20-12-1984 the authorities concerned did not take any action to delete the lands in question from the Forest Block. Hence, the present writ petition.

6. The learned Government Pleader for Forests placed reliance on Forest (Conservation) Act, 1980 Central Act 69 of 1980 which came into force on 20-12-1980 preceded by an Ordinance promulgated on 20-10-1980 and contended that without prior approval of the Central Government the State Government cannot exclude the lands. Hence, the orders of this Court dated 20-12-1984 could not be complied with. It is true that u/s 2(1) of the Central Act no reserve forest or portion of the forest shall be deleted by the State Government without prior approval of the Central Government. Under clause (2) of Section 2 any forest land or any portion of the land cannot be used for any non-forest purposes. In other words, without obtaining the prior permission of the Central Government the State Government cannot put the forest land to non forest purposes. The Government Pleader places much reliance on this clause and contends that the land in question being forest land it cannot be used for non-forest purposes. She also relied upon the judgment of the Supreme Court in *Samatha Vs. State of A.P. and Others*, . It is true in that Judgment Their Lordships held that the Central Act applies not only to the reserve forest but also to forest lands and the forest lands cannot be put to any non-forest use without prior approval of the Central Government.

7. The question that arises for consideration in this writ petition is altogether different and the said judgment has no application to the facts of the present case. In this case the Government by following the procedure constituted the reserve forest. The said procedure was set in motion by issuing a notification and proclamation by inviting objections and, in fact, the Forest Settlement Officer considered the objections and passed orders in favour of the petitioner for deletion of the land from the reserve forest recording a finding that they are agricultural lands and they are patta lands. Hence, the Government Pleader cannot rely upon the above judgment of the Supreme Court and defeat the claims of the petitioner. Clause (2) of Section 2 of the Central Act comes into play when the land is used for non-forest purposes. Non-forest purposes were enumerated in the explanation to Section 2 of the Central Act. Admittedly, agricultural operations were declared as non-forest purposes under this Act. The finding of the Forest Settlement Officer is that the land in question is not a forest land and the question of applying the provisions of the Central Act to the land does not arise. It is not the case of the Government Pleader that the orders of

the Settlement Officer is subject-matter in further appeal after disposal of the first appeal by the District Judge. When once the findings recorded by the Settlement Officer became final, whether the land in question is an agricultural land or not cannot be reagitated in this writ petition. Accordingly, the objection of the Government Pleader is rejected.

8. Nextly, even according to the learned Government Pleader the appeal filed by the District Forest Officer was dismissed on 26-9-1980 and an Ordinance was promulgated one month thereafter. Hence, on this ground the provisions of the Central Act cannot be pressed into service. For all these reasons, the contention of the learned Government Pleader is rejected. A direction is given to the respondents to delete 147 acres of land situate in Paimash Nos.171, 172, 174 and 175 of Chittoor District.

With the above direction, the Writ Petition is disposed of. No costs.

9. After disposal of the writ petition the learned Government Pleader brought to my notice that the Government had sent proposal to the Central Government for exclusion of the land in question from the forest block. In the light of the view taken by me that no prior approval of the Central Government is required for exclusion of the land, the State Government is directed to exclude the land in question forthwith from the Mittoor Forest Block within 8 weeks positively, failing which a serious view will be taken in the matter.