

(2019) 07 CAL CK 0012

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 20576 (W) Of 2018, Civil Application (CAN)
No. 3341 Of 2019

Rabi Besra & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights)
Act, 2006 — Section 2(g), 3, 3(2)
Constitution Of India, 1950 — Article 12

Citation : (2019) 07 CAL CK 0012

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Amber Majumder, Santanu Chakraborty, Saptangsu Basu, Debansu Bera, S. S. Koley, N. L. Singhania, Sankar Sarkar

Final Decision : Disposed Off

Judgement

Debangsu Basak, J

CAN 3341 of 2019 and WP No.20576(W) of 2018 are taken up together for hearing pursuant to the order dated April 17, 2019.

The petitioners assail the grant of "in-principle" forest clearance permission and felling of trees in an area which according to the petitioners is a

tribal area and a forest land.

Learned Advocate appearing for the petitioners submits that, the petitioners are tribals. They are located in an area which is a tribal and a forest area.

The petitioner are entitled to the protection under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest

Rights) Act, 2006. He submits that, the respondent authorities have undertaken a hydel power project in an area which comes within the purview of

the Act of 2006. According to him, requisite permission under the Act of 2006 were not obtained by the authorities. The District Magistrate

concerned, manufactured documents so as to give it a colour of legality. He draws attention of the Court to the writings of the District Magistrate and

the steps taken by the Central Government. He submits that, every step taken by every authority, is contrary to the provisions of the Act of 2006 and

at least in non-compliance thereof. Non-compliance are so glaring, that immediate intervention of the Court is required. He submits that, all rights

recognised and granted under the Act of 2006 to a tribal is sought to be negated by the actions taken. He seeks appropriate directions from the Court.

Learned senior Advocate appearing for the respondent nos. 8 and 9 submits that, the provisions of the Act of 2006 requires permission of the Gram

Sabha and that, resolutions of at least two Gram Sabhas are available on record. It is not the case of the petitioners that, the Gram Sabhas did not

grant permissions. His clients are implementing the project. His clients have taken steps pursuant to the project and made over a sizeable portion of

the property to Forest Department for afforestation. He relies upon (2009) 2 Calcutta High Court Notes 379 (Calcutta Swimming Club Versus Lalit

Singh and Ors.) and submits that, the petitioners have no cause of action to espouse. The petitioners cannot champion the causes of the others. The

petitioners are located in an area which will not be affected by the project. Two petitioners have residential houses in such area. Therefore, at least at

the instance of the petitioners, the writ Court need not intervene.

Learned Advocate appearing for the Central Government submits that, the Central Government granted â??in-principleâ?? approval to the project

subject to the compliance of the conditions laid down in the letter granting impugned â??in-principleâ?? approval.

None appears for the State despite notice. The State was represented on April 17, 2019 when it was made clear that, the writ petition and the

application will be taken up for hearing. The matters appeared yesterday in the cause list when the State did not appear. A request was made to the

learned Advocate for the parties to inform the learned counsel for the State about the matter. The Court is informed that, such communication was

made by the learned Advocate for the writ petitioners to the learned counsel appearing for the State.

The respondent no.8 is undertaking a hydel power project in an area which admittedly is governed under the Act of 2006. The Act of 2006 recognises

the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers. Nothing is on record to suggest that, none of the petitioners

before me are not persons who are covered under the Act of 2006. They reside in an area in which the Act of 2006 applies.

The Act of 2006 after recognising forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers in Section 3 allows diversion of

forest land involving felling of trees. The projects are specified in sub-Section (2) of Section 3 of the Act of 2006 where, felling of trees are

permissible. Felling trees for a non-conventional source of energy is permissible under the Act of 2006. The project spoken of, contemplated and

sought to be implemented by the respondent no.8 can be construed to be a non-conventional source of energy and therefore, coming within the

purview of Section 3(2) of the Act of 2006. Section 3 Sub-Section (2) of the Act of 2006 have two provisos. The second proviso require the clearance

of the development project which is subject to the condition that the same is recommended by the Gram Sabha. Gram Sabha is defined in Section 2(g)

of the Act of 2006. It is as follows:-

[2(g). "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats,

Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women.]

The definition of the Gram Sabha as appearing in the Act of 2006 requires attendance of adult members of the village in a meeting for the purpose of

considering a development project as enumerated under Section 3(2) of the Act of 2006. Admittedly, the project area covers numerous Gram Sabhas.

Resolutions of only two Gram Sabhas are on record. The Court is informed that, apart from two Gram Sabhas, there are at least 15 others in the

locality. State is not present today. It did not file any affidavit in the writ petition as also in the application for extension of interim order despite

directions being given. Central Government also did not file any affidavit. The other respondents have filed their affidavits. Therefore, there is nothing

on record to suggest that, resolutions were taken by each and every Gram Sabha affected by the project in terms of Section 3(2) of the Act of 2006

for the authorities to proceed further. The Act of 2006 is such that, a project can only be implemented, if, the procedure laid down under the Act of

2006 is followed. The starting point of the implementation of the project in an area governed by the Act of 2006 is a requisite resolution of the Gram

Sabha affected by such project. In the present case, even assuming at the highest, although, the facts are otherwise, that, the two resolutions of the

two Gram Sabhas satisfy the tests laid down under Section 3(2) read with Section 2(g) of the Act of 2006, then also, all the Gram Sabhas affected did

not take the appropriate resolution under the Act of 2006.

So far as the resolutions of the two Gram Sabhas which are on record are concerned, none of them, satisfies the tests laid down under the Act of

2006. One of the resolutions is unsigned by any villager. The other resolution shows an attendance and does not discuss the number of adults available

in the village for the Gram Sabha convened. Requisite notice for convening the Gram Sabha are absent on record. It cannot be said that, the other

resolution of the Gram Sabha which bears the signatures of the villagers were held in accordance with law. In absence of the requisite materials being

produced by the State despite opportunities given to the State to do so, the irresistible inference is that, appropriate procedure laid down under the Act

of 2006 was not followed for the purpose of convening any meeting of any Gram Sabha of any village affected by the project and that, there does not

exist appropriate resolution of the Gram Sabha permitting the implementation of the project on the area coming within the purview of the Act of 2006.

The ‘‘in-principle’’ approval by the Central Government falls in view of the absence of requisite resolution of the Gram Sabha. It is astonishing

that, the Central Government approved the project ‘‘in-principle’’ without being satisfied as to whether requisite formalities under the Act of 2006

have been complied with or not. As the State Government, the Central Government also did not file any affidavit. However, the Central Government

is fortunate to be represented before this Court in course of hearing. The queries raised by the Court towards the Central Government remains

unsatisfied. There is no answer to the query as to what documents did the officer granting the ‘‘in-principle’’ approval consider and whether such

officer took into account the provisions of Section 3(2) of the Act of 2006 read with Section 2(g) of the Act of 2006 or not.

A hydel project of the nature contemplated to be implemented is in public interest. However, implementation of such a project in public interest is required to be done, in accordance with law. The law in the present case will involve the provisions of the Act of 2006. On the materials made available to the Court, the only inference that is possible is that, the provisions of the Act of 2006 were not complied with, in either seeking permission for the project or trying to implement the same.

Calcutta Swimming Club (*supra*) is of the view that, a plaintiff cannot file a suit alleging that, by the action of the defendant, although none of his rights is infringed will, somebody else's right is going to be affected and such right of the third party should be protected. With respect, in the facts of the present case, the rights of the petitioners will stand affected if, the project is allowed to be implemented in the manner as it is sought to be done now.

As tribals living in an area covered under the Act of 2006, the petitioners are entitled to ensure compliance of the provisions of the Act of 2006. It is the contention of the respondent nos.8 and 9 that, the land which the petitioners occupy will not be affected by the project. Again with respect, such a contention cannot be accepted. The petitioners are admittedly residents of an area which will be affected, if not the surroundings, by implementation of the project. Again, in my view, that is no defence to the authorities in not complying with the provisions of the Act of 2006. Any citizen of India is entitled to approach the writ Court to highlight any infraction of law at the instance of an authority within the meaning of Article 12 of the Constitution of India and seek appropriate redress with regard thereto. The petitioners cannot be non-suited on the ground as contended on behalf of the respondent nos.8 and 9. In such circumstances, the ratio laid down in Calcutta Swimming Club (*supra*) is not attracted to the facts scenario of the present case.

There exists an interim order granted while admitting the writ petition. Since, the writ petition is heard on merits finally, it would be appropriate to quash the decision "in-principle" approval granted by the Central Government. It is also appropriate to quash the so-called resolutions of the Gram Sabhas and permissions granted by the State Government in implementing the project. This order, however, will not prevent the authorities from taking recourse to the provisions of the Act of 2006 and acting in accordance

with law in implementing the project contemplated.

Learned Advocate appearing for the petitioners submits that, the District Magistrate granting such a false certificate should be visited with appropriate

punishment in the nature of costs. In the facts of the present case, I am not minded to enter into that arena.

CAN 3341 of 2019 and WP No.20576(W) of 2018 are disposed of.

No order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.