

(1961) 05 AHC CK 0002
In the Allahabad High Court
Case No : Writ Petition No. 223 of 1958

Raghunath Singh and another	Vs	APPELLANT
The State of Uttar Pradesh and another		RESPONDENT

Date of Decision : 12-05-1961

Acts Referred:

Forest Act, 1927 — Section 18(4), 3
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 8

Citation : (1961) 05 AHC CK 0002

Hon'ble Judges : Tandon, J; Misra, J

Bench : Division Bench

Advocate : B.K. Dhaon and Saraswati Pd, for the Appellant;

Final Decision : Allowed

Judgement

Tandon, J.—The above petition and five others, i.e. Writ Petitions Nos. 224 to 227 of 1958 and 271 of 1958 possess similar facts, though differing in minor details; nevertheless the questions arising for decision are the same. They have, therefore, been heard together and shall be disposed of by the present judgment.

2. The following facts will be necessary to appreciate the points at issue. One Sardar Sahdeo Singh used to be the Lambardar and co-sharer of Grant Sahebganj Pargana Atwa Piparia District Kheri until zamindaris were abolished in this State in July, 1952, upon the enforcement of the UPZA and LR Act. A couple of years prior to 1950 the District Magistrate of the district where the said Grant is situate sent notices to the proprietors thereof asking them to have the waste lands and other lands on which trees were standing to be placed under cultivation, but if they failed legal action would be taken against them. The Petitioners point out that in pursuance of the said notice Sardar Sahdeo Singh, Lambardar and co-sharer gave leases to several persons including the Petitioners for the cultivation of waste lands etc. In this manner leases for specific areas happened to be made in favour of the Petitioners on March 20, 1951. The amount of rent was also fixed in them. And in due course the lessees' names

were also entered in the Khataunis of 1359 Fasli as tenants of the areas leased out to them-these leases undisputably were for purposes of cultivation. After the abolition of the zamindaris under the UPZA and LR Act, the lessees were entered as sirdars of the lands held by them. The above entries continue to exist in their favour even to this date.

3. S. 3 of the Indian Forest Act, 1927, empowers the State Government to constitute any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest. Section 4 and the following sections have prescribed the manner in which this can be done. They are thus:

4(1) Whenever it has been decided to constitute any land a reserved forest the State Government shall issue a notification in the local official Gazette:

(a) declaring that it has been decided to constitute such land a reserved forest:

(b) specifying, as nearly as possible, the situation and limits of such land, and

(c) appointing an officer (hereinafter called the "Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this chapter....

6. When a notification has been issued u/s 4, the Forest Settlement Officer shall publish in the local language of the State in every town and village in the neighbourhood of the land comprised therein a proclamation:

(a)....

(b)....

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. 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.

8. For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, that is to say:

(a) power to enter, by himself or any officer authorised by him for the purpose, upon any land and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

10 (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement Officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the state Government may make an order permitting or prohibiting the practice wholly or in part

(3) If such practice is permitted wholly or in part, the Forest Settlement Officer may arrange for its exercise:

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind and in a locality reasonably convenient for the purposes of the claimants, or

(b) by causing certain portions of the land under settlement to be separately demarcated, and giving permissions to the claimants to practice shifting cultivation therein under such condition as he may prescribe.

(4) All arrangements made under Sub-Section 3 shall be subject to the previous sanction of the State Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the State Government.

11.(1) In the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest produce or a water course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement Officer shall either:

(i) exclude such land from the limits of the proposed forest; or

(ii) come to an agreement with the owner thereof for the surrender of his rights; or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.

(3)....

12. In the case of a claim to rights of pasture or to forest produce, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole

or in part.

14. If the Forest Settlement Officer admits in whole or in part any claim u/s 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest produce obtained by the exercise of the rights claimed may be sold or bartered.

15(1) After making such record the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forests in respect of which the claim is made, pass such orders as will ensure the continued exercise of the right so admitted.

(2) For this purpose the Forest Settlement Officer may:

(a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest produce (as the case may be) to the extent so admitted; or

(b) so alter the limits of the proposed forest as to exclude forest land of sufficient extent and in a locality reasonably convenient, for the purposes of the claimants; or

(c) record an order, continuing to such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest and under such rules, as may be made in this behalf by the State Government.

17. Any person who has made a claim under this Act, or any forest officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement Officer u/s 11, Section 12, Section 15 or Section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the state Government may, by notification in the local official Gazette, appoint to hear appeal from such orders;

Provided that the state Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the state Government, and, when the Forest Court has been so established all such appeals shall be presented to it.

18.(1) Every appeal u/s 17 shall be made by petition in writing, and may be delivered to the Forest Settlement Officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed u/s 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals, in matters relating to land revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall subject only to revision by the Government, be final.

22. The State Government may, within five years from the publication of any notification u/s 20, revise any arrangement made u/s 15 or Section 18, and may for this purpose rescind or modify any order made u/s 15 or Section 18, and direct that any one of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings, or that the rights admitted u/s 12 be commuted u/s 16.

4. Now the facts may be mentioned thus. The State Government on April 3, 1954, issued a notification purporting to be u/s 4 of the Indian Forest Act in respect of the lands in controversy in these petitions. The Petitioners thereafter preferred objections u/s 6 of the Act before the Forest Settlement Officer on the 20th Oct. 1954 claiming that by virtue of the leases effected in their favour they were entitled as sirdars to those lands and that a notification u/s 4 was not legally possible. Alternatively, they asked compensation to be paid to them. After an interval of nearly two years the State Government in filing its reply on the above claims disputed that the leases were valid or were able to confer any rights on them. They relied on Section 8 of the ZA and LR Act which is thus:

8. Any contract for grazing or gathering of produce from land or the collection of forest produce or fish from any forest or fisheries entered into after the eighth day of August, 1946, between an intermediary and any other person in respect of any private forest, fisheries, or land lying in such estate shall become void with effect from the date of vesting.

5. The Forest Settlement Officer who heard the claims and the objection accepted the Petitioners claim as per his order dated the 7th September, 1956. He held that the leases were valid, he therefore excluded the leased area from the proposed reserved forest. The State Government later appealed against the said order to the Deputy Commissioner, Kheri, u/s 17 of the Indian Forest Act, but the latter dismissed the appeal on 10th January 1957, holding that the order passed by the Forest Settlement Officer was a correct order.

6. While the above proceedings were taking place the State Government purporting to act this time u/s 38B issued another order on 3rd December, 1955, prohibiting the breaking up and clearing of these lands for the purpose of

cultivation. As, however, this order was later withdrawn by the State Government, it may not be necessary to refer to it further. But the following detail which is admitted is material. On December 19, 1956, the State Government by GO No. 5380/XIV/333/1952, instructed the Chief Conservator of Forests that all lands leased out before July 1, 1952 for reclaiming the same by the owners of private forests shall be released in favour of the lessees who shall be at liberty to use it subject however to the provisions of the UPZA and LA Act. The order also required the Chief Conservator of Forests to give effect to the above decision immediately and where any such land has been included in any notifications issued u/s 4 of the Indian Forest Act it shall be excluded from it. On 23rd February, 1957, the Government issued a further order No. 5380/XIV-333/1952 to the Chief Conservator of Forests reiterating the intention of the Government Order of the 19th December, 1956, explaining at the same time reclamation leases spoken of in the earlier Government Order referred to those leases only which were genuine while had been executed before the ZA and LR. Act came into force and were valid otherwise under the existing law. Even in this order the Government affirmed that reclamation leases will be valid.

7. The Petitioners claim that the leases in question were really leases for reclamation of land for purposes of cultivation while they otherwise fully satisfied the conditions laid down in the above mentioned Government Orders. It is admitted that a substantial portion of the area covered by the leases was under trees and shrubs etc. but they contend that the fact that removal from the land of the trees to make it cultivable left intact their true nature which was for purposes of cultivation. Having regard to the purpose and the subject matter granted thereby these leases could not correctly be said to be leases or contracts for the collection etc. of the forest produce.

8. The next fact to be mentioned is that though the State Government had by the above mentioned Government Orders excluded reclamation leases from the operation of the notification u/s 4 of the Indian Forest Act, it nevertheless preferred separately a revision also purporting to be u/s 18 of that Act against the order of Dy. Commr. Kheri, dated the 10th January, 1957. The Petitioners upon getting information about the revision wrote to the Dy. Secretary to Government in the Forest Department asking that they should be afforded an opportunity of placing their contentions etc against the revision before the Government. In reply they were told to appear before the Dy. Legal Remembrancer on the 22nd and 23rd January, 1958, when the revision would be considered. On these dates the Petitioners appeared before the said officer but the hearing was postponed to February 14th and 15th, 1958. However, before these dates could be reached they were informed by a letter dated the 10th February, 1958. that the hearing had been postponed till further notice.

9. The allegation next is that despite the promise that the hearing had been postponed and further notice would be given to them they were never allowed any hearing; on the contrary they were merely informed that the Government

had held the leases in their favour to be invalid. Moreover, the Govt. did so by deciding the revision which they had themselves preferred. A fact also not disputed is that despite the State Govt. earlier intimating the Petitioner that their objections against the revision application would be heard after notice to them no notice was given this time and the decision was taken at their back. It was only when they were served the notice by the State Government that the timber of the trees cut etc. by the Petitioners shall be sold by public auction that they became aware of the decision. They then filed the present petitions impugning the said action of the State Government. Since they had not been supplied the original or a copy of the order allowing the revision application they made this grievance too in the petition.

10. The relief asked accordingly is that the State Government be directed to produce the said order, which may also be quashed. There is further prayer to restrain the Respondents from selling or disposing of the timber etc. lying collected on the plots.

11. The grounds, urged in Support are these:

(1) That the State Government is not the proprietor of the lands comprised in the leases nor are those lands the property of the State Government, no notification to declare the same as reserved forest is thus legally possible.

(2) That sub S. (4) of Section 18 of the Indian Forest Act does not confer any revisional powers on the State Government and even if it does, it is discriminatory and also offended against articles 14, 19 and 31 of the Constitution.

(3) That the decision of the State. Government holding the leases to be invalid is arbitrary and capricious, it also offended against the principles of natural justice, having been made at the back of the Petitioners and without giving them an opportunity to defend,

(4) That the action of the State Govt. in detaining the timber of the felled trees amounted to confiscation of property, therefore infringed the Petitioners" right of property guaranteed under Arts. 19 and 31 of the Constitution.

(5) That the effect of the Government order dated the 10th December, 1956, was that the notification u/s 4 of the Forest Act as respects the leased lands was rescinded, it was no longer open to the State Government to treat thereafter the land to form part of any reserved forest.

(6) That the leases having been made for purposes of agriculture, Section 8 of the ZA and LR Act was inapplicable.

12. A careful examination of the provisions of the Indian Forest Act would show that the power of the State Government to constitute any land as a reserved forest is circumscribed by three conditions as laid down in Section 3. Firstly, it can constitute such forest land or waste land to be a reserved forest as is the

property of Government. Secondly it can do so if the proprietary rights in the land vest in the Government, or thirdly where it (the Government) is entitled to the whole or any part of the forest produce of any land. The sections of the Act after Section 3 prescribe the manner in which any land can be constituted a reserved forest.

13. In order, therefore, that the action of the State Government in constituting the leased lands as reserved forest can be upheld in the instant case one of the three conditions must be proved to exist. The first two conditions imply that the land is either the property of the Government has proprietary rights in or over it. The third condition contemplates that the Government is entitled to the whole or any part of the forest produce of the land. It is not disputed that before the abolition of zamindaris, i.e. prior to July 1, 1952, the lands demised under the several leases belonged as proprietor to the ex-intermediary Sardar Sahdeo Singh and that upon acquisition effected under the said Act, the claim of the Government is that they not only became the proprietor of these lands but in future they became the property of the Government. The contention also is that Section 8 of the ZA and LR Act entitled the State Government to the whole of the forest produce from the leased lands, hence, too, it was open to it to constitute it as a reserved forest. A fact which cannot be overlooked is that the Petitioners are not claiming the lands either as successors of the ex intermediary or as something which has descended upon them from such intermediary. They no doubt, admit that the ex-intermediary executed leases in their favour for using the land for agricultural purposes, but they further claim that at first they possessed the status of hereditary tenants and later on the enactment of the ZA and LR Act that of a sirdar, the lands having been settled with them by the State in terms of Section 19 of that Act. As sirdars they claim that these lands are their property and the State Government cannot claim to possess the same as their property nor can it say that it has proprietary rights over them.

14. Everyone is too well aware that Section 4 of the UPZA and LR Act, 1950, made provision for the vesting of all estates situate in U.P. The expression "estate" which is defined in Cl. (8) of Section 3 of that Act means the area included under one entry in any of the registers described in Cls. (a), (b), (c) or (d) of Section 32 of the UP Land Revenue Act. In the case of permanent tenure holders it also includes area described in Cl. (e) of that section but that particular portion of it is not attracted here. Cls. (a) to (d) refer to persons owning proprietary rights or under-proprietary rights in land. Section 6 also of the ZA and LR Act in describing the consequences of vesting u/s 4 has said that all the rights, title and interest of all the intermediaries in every estate, i.e. estates acquired shall cease and be vested in the State of Uttar Pradesh free from all encumbrances. "Intermediary" as defined in the Act means as respects any estate a proprietor, under-proprietor, sub-proprietor, Thekadar, permanent lessee in Avadh and permanent tenure holder of such estate or part thereof. An aspect of these provisions prominently embedded is that the acquisition effected under the provisions of the said Act was indeed of the rights, title and interest of the

intermediaries who in their turn were proprietors or under proprietors etc. of the estates. Tenants or other inferior tenure holders existing on those lands were not affected by the acquisition except as provided in the succeeding sections. The right, title and interest of the Petitioners who were tenants from the proprietors had not been acquired though they had been modified or had improved otherwise in certain respects and even enlarged in other directions as a result of the land reforms enforced by the Act.

15. The wording of Ss. 18, 19, 20 and 21 also are very meaningful in this respect. These sections while maintaining the right of the persons who were in possession of or who held lands as sir, khudkasht, grove or as tenant of one or the other category, further declared them either as bhumidhar, sirdar or asami or Adhivasi. Indeed, the lands held or possessed by them were settled with them by the State Government to hold them in future in one or the other capacity. The learned Standing Counsel has contended that having regard to the fact that acquisition effected u/s 4 was of the area comprised in any estate, which area equally included the areas held by the tenure-holders, all the property in that area became the property of the Government and also passed into the proprietorship of the State Government, and notwithstanding that the possession of these persons continued over their holdings every inch of it became land in respect of which a declaration as reserved forest was possible. The effect of Section 4 and of Section 6 of the ZA and LR Act clearly was that the right, title and interest of the intermediaries ceased. But the right, title and interest of persons other than the intermediaries did not cease thereby nor did they pass into the proprietorship of the estate. Indeed, the land was nationalised but the tenure holders in occupation of their holdings were not disturbed. They were declared either as bhumidhars, sirdars, asamis or adhivasis. Further the bhumidhars and so the sirdars also were declared to be entitled to exclusive possession of all lands belonging to them as such. A bhumidhar has the right also to use the land belonging to him as such for any purpose whatsoever. See Section 142 of the ZA and LR. Act. Again, Section 143 authorised him to obtain a declaration to the effect that any land held by him as bhumidhar was no longer used for the purpose connected with agriculture, horticulture, animal husbandry or pisciculture. As a result of this declaration the land ceased to be governed in the matter of devolution by the law laid down in the ZA and LR Act and instead became subject in future to the personal law of the bhumidhar concerned. A sirdar may not initially be entitled to transfer or use his land to the same extent as a bhumidhar can but Section 134 of the Act conferred on him the right to acquire bhumidnari by depositing to the credit of the State Government an amount computed as therein prescribed. In the ultimate analysis, therefore, there is not much material difference in the true nature of the rights held by the two classes of tenure holders. Essentially they have not only the right to exclusive possession of their lands but also to deal with them in any manner desired by them subject in the case of sirdars to the condition that he availed of the option given to him u/s 134.

16. Bhumidhars possess the right also to transfer by sale or otherwise lands held by them as such. There are, no doubt, restrictions on this power in certain directions still the basic fact remained that they can deal with the lands held by them as their property. The right of disposal also belonged to them. This right assured to them u/s 152 of the ZA and LR Act will entitle a bhumidhar to affect alienations. As a matter of fact, Section 161 allows to the bhumidhars and sirdars to effect exchange of lands held by them. A bhumidhar can make a mortgage also so long as he does not part with possession. In certain conditions a bhumidhar and sirdar also can transfer lands by way of lease. It is true that the law has not recognised any restricted right to transfer in favour of these persons but the limitations on that power do not dislodge the conclusion that the plots are really their property. The State Government may in view of the abolition of the right, title and interest of the intermediary and the vesting of the same in the State claims superior rights in the lands but for the purpose of Section 3 of the Forest Act a bhumidhar and similarly a sirdar must in our opinion be held to possess the lands as their property. They should further be deemed to possess proprietary rights also in them. These tenure holders are for all practical purposes entitled to the plots is their property while the right to exclusive possession and the right of disposal essential incidents proprietary rights also belonged to them.

17. Next it may be considered whether the State Government would be entitled to proceed against these lands u/s 3 of the Forest Act on the ground that it is entitled to the whole or part of the forest produce. In this connection the Respondents referred to Section 8 of the ZA and LR Act which declared void any contract for grazing or gathering of produce from land or he collection of forest produce etc. entered into after the eighth day of August, 1926. The leases with which we are concerned were, indeed, made after aforesaid date. The lands leased out to the Petitioners were admittedly covered by trees and other things which will be included in the description of "forest produce". Another fact about which there is no controversy is that under the terms of the leases the lessees were entitled to reclaim the land by removing trees etc. growing over it. Under their terms any produce so gathered belonged to the lessees. The contention which has to be judged is whether these leases can be held to be contracts for collection of forest produce and therefore they came within the mischief of Section 8,

18. In our opinion Section 8 is not attracted in the case of leases of land where the purposes of the leases is to use the land for the purpose of agriculture, horticulture, pisciculture etc. It is some-times unavoidable that in the process of using the land for these purposes reclamation also is done and what is known as forest produce is collected or removed in the process. Land must be cleared of unwanted growth to turn it usefully to agriculture etc The mere fact that these operations are necessarily involved in making the land agriculture worthy will not take away from the transaction their true nature as leases of land. A contract for the collection of forest produce must in order that it may be such a transaction

be contract essentially for the collection etc. of the produce. It will not be such a contract if the removal etc. of the forest has to be done to make the land agriculture worthy- the object and purpose of the lease. In the instant case, admittedly the leases were for using the land for purpose of agriculture and horticulture etc. As a matter of fact the lessees were also entered as hereditary tenants of the lands and later after the abolition of zamindaris as sirdars. They have been paying the land revenue also assessed on them to the Government. It is not possible in these circumstances to hold that the leases were contracts for the collection of forest produce. The contract referred to in Section 8 does not contemplate the conferment on the promises any right in or over land, it, on the other hand, merely refers to the right to collect forest produce or to perform certain acts over the land. A lease of land for the purpose of cultivation which confers on the lessee not merely a right in the land but also the right to exclusive possession of the land and to turn it to cultivation, is not a transaction covered by Section 8. It is not possible under the circumstances to accept that the leases in favour of the Petitioners were void u/3.8 of the UPZA and LR Act. Being leases for agricultural purposes the lessees acquired, at first the status of hereditary tenants and later when the ZA and LR Act was enforced of Sirdars of the lands therein transferred.

19. It is not possible to hold either that the State Government ever became entitled to the trees etc. existing over the leased lands. The Respondents have not been able to show that the leases which granted the lands to the Petitioners were invalid otherwise in law. On the contrary, what is proved is that they were given effect to in the revenue papers by recognising the lessees (the Petitioners) as hereditary tenants etc. Further by reason of Cl. (a)(i) of Section 6 of the ZA and LR Act and also R. 6 framed thereunder the tenure holder concerned has been held to be the owner of the trees in his holding. They never vested in the State nor ceased to be the property of the persons owning them. If, therefore, the trees etc. which may be described as the forest produce in the case of the leases in question never belonged to the State, it cannot claim to be entitled to the whole or part of that produce to attract the provisions of Section 3 of the Forest Act. For this reason too, the lands in question are not capable of being declared as reserved forest.

20. Since a copy of the order by which the aforesaid leases have been held to be invalid by the State Government has not been furnished we asked the Standing Counsel to produce for our information the record of the case in which the particular order had been passed. We discovered from the said record that the State Government held the leases to be invalid because they were supposed to be covered by Section 8 of the UPZA and LR Act. We were also pointed out the advice which the law Department tendered to the State Government on the question and we consented to look at it as the order no where recorded the reasons on which it was founded but merely adopted it. We are constrained to say that the conclusion, viz. that Section 8 applied even to leases of land was completely erroneous and also failed to take into account the true language and

effect of its provisions. Curiously enough even the advice tendered by the law advisers failed to give any reason, much, less a reason which might have merited our consideration. And speaking for ourselves we have carefully studied the section and we are perfectly clear in our minds that the view held by the State Government namely that the leases were invalid u/s 8 was the result of an erroneous and fundamentally wrong view of Section 8. It will be interesting to note that the Forest Settlement Officer and also the Deputy Commissioner while dealing with the Petitioners objections u/s 6 of the Forest Act were not prepared to hold that the leases were invalid under that section. The State Government too were not prepared to take a different view as will be evident by their order dated 19-12-56 and the notification dated 23-2-57. By these documents, all leases for agricultural purposes, even though reclamation of lands by lessees by removal of trees etc. was necessary, were specifically saved from the effect of the notification u/s 4 of the Forest Act. It, in our opinion, showed firstly that the Government also did not consider such leases to be invalid, secondly that such lands shall be excluded from the notification of reserved forest.

21. It was clear therefore from the foregoing discussion that the lands in question were not such as could be proceeded against u/s 3 of the Forest Act:

22. We may next examine how far the State Government was authorised to revise the orders passed on appeal by the Deputy Commissioner u/s 17 of the Forest Act. According to the Respondents the State Government has power to revise any order passed on appeal, whether by an officer or court, u/s 17. They rely in support on the provision in sub S. (4) of S 18 which lays down that an order passed in appeal shall be final subject only to revision by the Government. The expression "subject only to revision by the Government" will according to the Respondents' contention, mean that the Government has been conferred revisional jurisdiction to revise all those orders. The Petitioners claim, on the contrary, that sub S. (4) far from conferring revisional jurisdiction on the Government has simply laid down the effect which an order passed in appeal shall possess, the revisional powers do not belong to the Govt. by virtue of this Sub-section and must be found elsewhere.

23. S. 22, as might have been noticed, gives power to the State Government, to revise arrangements made u/s 15 or Section 18. Since the Respondents too do not claim that the impugned order by the State Government was made in exercise of the power belonging to it u/s 22, our inquiry is narrowed down to the short question of how far sub S. (4) of Section 18 can be held to confer revisional jurisdiction on the State Government. Unless, therefore, the order can be justified under this provision it will be an order without jurisdiction.

24. The scheme of Chapter II of the Forest Act in dealing with the declaration etc. of reserved forest provides, firstly that only such lands as satisfy the conditions in Section 3 can be done so. This aspect of its provisions has already been discussed earlier. Section 5 is not very material since it is concerned with the accrual of forest rights in future i.e. after the issue of the notification u/s 4.

Section 6 requires the Forest Settlement Officer whenever any land has been decided to be constituted into a reserved forest to issue a proclamation specifying its limits and requiring every person claiming any right mentioned in Section 4 or 5 to appear before him and state the nature of such right and the amount of compensation etc., if any, claimed by him in respect thereof. Section 7 lays down the duty on the Forest Settlement Officer to inquire into those claims. And Section 8 declares that the Forest Settlement Officer, for the purposes of the inquiry, shall have power of a civil court in the trial of suits. Section 9 makes provision for the extinction of rights, if no claim u/s 6 is preferred. Section 10 refers to claims relating to the practice of shifting cultivation; u/s ub S. (1) the Forest settlement Officer is required to prepare a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated. He has also to submit the statement to the State Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part. Sub S. (2) provides that upon he receipt of the statement and the opinion as aforesaid the State Government can make an order permitting or prohibiting the practice wholly or in part. The order permitting or prohibiting the practice has thus to be make by the State Government and not by the Forest Settlement Officer who merely puts up to the State Government the relevant documents with his opinion on them. Sub S. (3) authorises the Settlement Officer, if the practice is permitted in whole or in part, to work out details for its exercise in future. The details which have been described as arrangements are subject to the previous sanction of the State Government and u/s ub S. (5) the practice has been declared to be a privilege subject to control, restriction or abolition by the State Government. Section 11 deals with claims to a right in or over any land other than a right of way or right of pasture, or a right to forest produce or a watercourse. Because rights in or over land are dealt with under this section the Legislature has made provision in appropriate cases for acquisition also of those rights by recourse to the Land Acquisition Act, 1894. Section 12 deals with cases of rights of pasture and to forest produce. And the next two sections require the Forest Settlement Officer to prepare a record of the persons etc. whose claims are admitted and the extent to which they have been admitted and so on. Section 15 gives him power to make such orders as will ensure the continued exercise of the rights of persons so admitted by him. Section 16 is not directly relevant and Section 17 makes provision for appeal.

25. Two important facts emerge from the above provisions. The first is that persons claiming rights in or over a reserved forest have under pain of extinction of those rights to establish them before the Forest Settlement Officer through a claim preferred within the prescribed period. The second is that the Forest Settlement Officer is bound to inquire into any claim preferred before him and in doing so he acts judicially and exercises powers of a civil court in the trial of suits. The appeal allowed u/s 17 is again a judicial proceeding, it provides for constitution of Forest Courts also and where such courts are constituted the

appeal will lie to those courts instead of to the Collector. Thus the proceedings both before the Forest Settlement Officer and the appellate authority are judicial in nature. Indeed, they have to be conducted like suits in the civil courts.

26. S. 18 in laying down the procedure for hearing of an appeal has in sub S. (4) further provided that the order passed on appeal by the Collector or the Court shall be final. The finality given to it by the sub. section is qualified by such order as the Government might pass in revision. The Sub-section does not, as the Respondents would interpret it to mean, make provision conferring revisional jurisdiction on the State Government. The State Government's powers in that behalf must be found elsewhere, i.e. u/s 22. The principle is well settled that where any jurisdiction is created by a statute its extent and the manner in which it shall be exercised must itself be governed by that statute. The revisional jurisdiction of the State Government referred to in sub S. (4) of Section 18 must, therefore, be ascertained from the Forest Act itself. Section 22 is the only provision under which the State Government has been conferred revisional jurisdiction. But according to it the same is exercisable in the case of arrangements made u/s 15 or Section 18. The provision in sub S. (4) does not confer revisional jurisdiction. By laying down that finality will attach to an appellate order subject only to revision by the State Government the legislature has only laid down the occasion and the circumstances in which finality shall attach. The reference to Section 18 in Section 22, as otherwise would have been unnecessary, made this intention further clear. Since the impugned order is not an order referred to in Section 22 while the revisional jurisdiction conferred on the State Government is in respect of arrangements u/s 15 and Section 18-the impugned order is admittedly not an order of that class-the State Government had no jurisdiction to revise it. The revisional order is thus an order made without jurisdiction.

27. The above order cannot in our opinion be sustained for the following reasons as well. The proceedings relating to claims were judicial in nature. They affected the property rights of persons. The procedure of a suit in a civil court was applicable to those proceedings. Despite these facts what happened in the instant case was that the State Government considering that they had authority to revise orders passed in appeal at first initiated proceedings in that behalf and issued a notice also to the Petitioners to show cause why the order passed in appeal be not set aside. The Petitioners thereupon appear in response to the notice and enter their objection also. They are then asked to appear before the Deputy Legal Rememberancer to support their objection but the case is not taken up on the appointed date; instead they are informed that fresh information will be sent to them when the case is taken up. When the case is actually taken up no notice is given to them and it is decided at their back setting aside the order of the Deputy Commissioner passed on appeal

28. Apart therefore from other grounds, the failure on the part of the State Government to allow an opportunity to the Petitioners to support their objection

ought In itself render the proceedings bad in law. The same must be said about the order also passed by it. For the above reason too, therefore, the impugned order cannot be permitted to stand.

29. In view of the above finding, viz. that the impugned order is an order without jurisdiction, and is invalid for the reason also just given above, it is unnecessary for disposing of these petitions to enter into other questions urged against the constitutionality of some of the provisions of the Forest Act. On the above finding alone the impugned order deserved to be quashed.

30. Accordingly we allow these petitions and quash the order of the State Government passed in the purported exercise of the powers u/s 18(4) of the Forest Act. The costs of these petitions shall be on the Respondents.