
(2007) 12 UK CK 0032
In the Uttarakhand High Court

Sattar	Vs	APPELLANT
State of Uttarakhand and Another		RESPONDENT

Date of Decision : 04-12-2007

Acts Referred:

General Clauses Act, 1897 — Section 5

Citation : AIR 2008 Utt 18 : (2007) 4 UC 141 : (2008) 1 UD 103

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard

2. By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the order dated 17-11-2007, passed by respondent No. 2.

3. Brief facts of the case are that various writ petitions No. 275 of 2006 (M/B), 393 of 2007 (M/B) (New No. 1446 (M/S) of 2007), 395 of 2007 (M/B) (New No. 1445 (M/S) of 2007), 391 of 2007 (M/B) (New No. 1442 (M/S) of 2007), 394 of 2007 (M/B) (New No. 1444 (M/S) of 2007), 396 of 2007, (M/B) (New No. 1443 (M/S) of 2007), 392 of 2007 (M/B) (New No. 1446 (M/S) of 2006), were filed In this Court, which were disposed of by this Court in which directions were issued to consider the representations of the petitioners in the light of the provisions of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The petitioners in said case and the present petitioner have sought rehabilitation in the forest land as they allegedly belong to community of Ban Gujars, who used to live in the forest land. It is further prayed by the petitioner in the present case that he may not be dispossessed. In the aforesaid writ petitions other petitioners of said cases, made similar prayer. It appears that in compliance of order dated 20-6-2007, passed in writ petition No. 275 of 2006 (M/B), which was filed by one Gujar Kalyan Samiti, the representation of the members of said Society and the other petitioners of aforesaid writ petitions,

who claimed similar rights were considered and respondent No. 2 rejected the representations on the ground that the Scheduled Tribe and Other Traditional Dwellers (Recognition of Forest Rights) Act, 2006, has yet not Come into force. And no right can be given under said Act to the petitioners.

4. Learned Counsel for the petitioner relied on the principle of law laid down in Pt. Rishikesh v. Salma Begum 1995 (2) A C 224 :AIR 1995 SCW 2476 and argued that it is not necessary to issue a notification in the official gazette before an Act can be said to have come into force.

5. Pandit Rishikesh case (Supra) is on the point as to from which date, State amendment made in the Code of Civil Procedure, 1908, could be said to be inconsistent to the amendment made in the Central Code. In the above mentioned case, the Apex Court has clearly held that there is distinction between making of law and its commencement. A Bill passed by the Parliament can be said to have become law from the date when President gives his assent. But the date of commencement of the Act does not necessarily be the date when assent was given by the President.

6. In the present case, it is pertinent to mention here Section 1 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No. 2 of 2007) to which the President gave its assent on 29-12-2006, which reads as under:

1. Short title and commencement.-- (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(2) it extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

7. Learned Counsel for the petitioner failed to show the notification in the Official Gazette in which the date of commencement of aforesaid Act is specified. Since requirement of Sub-section (3) of Section 1 of the aforesaid Act requires Central Government to appoint a date by issuing notification, required to be published in the Official Gazette, unless the same is shown it is not open for the petitioner to say that the Act has come into force and his representation is wrongly rejected by the authorities, made under the aforesaid Act. Learned Counsel for the petitioner argued that under the provision of General Clauses Act, in view of the above mentioned case law, even if no date is specified in the notification, the Act has come into force.

8. I do not see force in the contention for the reason that provisions of General Clauses Act, would be helpful only where the Act is silent as to its commencement. Where it has been specifically provided in the Act itself that it will come into force from the appointed day mentioned in the notification, it cannot be said that the Act has come into force prior to such date, as such, the

petitioner cannot say that he had a right to get his rights determined in the light of the provisions of the Act so made.

9. For the reasons, as discussed above, the writ petition is dismissed.