
(2003) 10 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. Nos. 5351 of 2002

Shailendra Kumar Singh and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Citation : (2003) 10 PAT CK 0010

Final Decision : Dismissed

Judgement

Shashank Kr. Singh, J.—All the four writ applications have been preferred by different persons who claim to be mining lease holders and are Carrying on mining operations in different plots of land near the Pretshilla Hills in the district of Gaya and are aggrieved by similar orders, by which they have been directed to remove their crushing machines from the aforesaid plots as the same has been declared as reserved/preserved/protected/Archaeological spot/place. As all the Petitioners are aggrieved by orders passed pursuant to the same notification, as such, with the consent of the parties all these four writ applications were heard together at length and are being disposed of by a common order.

2. Though initially a stand had been taken by the Petitioners that there has not been any publication of a notification in the official gazette as required u/s 3(3) of the Bihar Ancient Monuments and Archaeological Sites Remains and Art Treasures Act, 1976, (hereinafter to be referred as "the Act") as such before the said publication during pendency of disposal of objections filed by the writ Petitioners, they cannot be and should not be restrained from operating their crushers in the mining area for which they had been granted valid lease, which persists. However, subsequently, by filing a supplementary affidavit a copy of the aforesaid notification dated 21.2.2002 issued u/s 3(3) of the Act as published in the official gazette dated 16.8.2002 has also been brought on record and challenged.

3. Another objection raised on behalf of the Petitioners is that aforesaid gazette notification has been brought without taking into account the objections raised

by the Petitioners that two plots in dispute namely plot No. 1156 (khata No. 62) and 94 (khata No. 67) were situate much beyond half kilo metre from the foot hills of Pretsheela Hills. Contention on behalf of the Petitioners that the report showing spot inspection would also go to show that the aforesaid plots were situate at a distance of 1 km from Pretsheela Hills. In view of the same, Petitioners had requested for excluding these two plots from the final notification proposed to be issued under Sub-Section 3 of Section 3 of the Act. However, without deciding the aforesaid objection the gazette notification as mentioned above was published including those two plots of lands, also. This appears to be the main contention of the writ Petitioners that the plot in question which has been included within the protected area in the gazette notification issued under the Act were at a distance of more than 1 km, as such, the State be directed to release the same and allow the Petitioners to carry on their mining business on those plots.

4. Mr. Sanjay Singh, learned Counsel appearing on behalf of the State on the other hand, has contended that "protected monuments" and "protected area" are two distinct things. A protected monument may relate to a smaller area. The same may be a temple or otherwise but the "protected area" in an around may have a much larger para meter as has already been decided by the Supreme Court in one of its orders arising from this controversy itself and according to the learned Counsel for the State, the scheme that no stone crushing operation may be carried out within a distance of half a kilo metre from the area so declared and as the area came within the protected area has been endorsed by the Supreme Court. As such, he has defended the notification under the aforesaid Act, by which mining operation in these plots have been stopped and direction has been issued for removal of the crushing machines and other materials from the said area.

5. The dispute regarding crushing, stones in an around the protected area has already been agitated and adjudicated before this Court since last more than two decades. Before proceeding with the matter further some factual aspects are required to be looked into.

6. The site in question which is known as Pretsheela hills was declared as archaeological monument vide notification dated 21.1.1981. Pretsheela hill is situated on plot Nos. 272 and 273 and khata Nos. 22 and 23 respectively in revenue village Chenna. The aforesaid notification is already on record as Annexure-2 in C.W.J.C. No. 5351 of 2002. By notification published in Bihar Gazette on 1.3.1985 objections were invited for the purpose of bringing certain plots of land within the protected area for the protection of the monuments- Brahmyoni, Ramshila and Pretsheela hills and Vishnupad temple. The plot which is subject matter of the present writ applications i.e. plot Nos. 1156 and 94 of khata Nos. 62 and 67 in village Kewali is concerned the same was also proposed to be declared as a protected area for the protection of monument Pretshila Prabat. A copy of the aforesaid notification dated 1.3.1985 is also appended as

Annexure-3 in C.W.J.C. No. 5351 of 2002. However, final notification dated 14.8.1986 was published for the protected area of pretshila hills and Brahmyoni hills. However, the aforesaid notification did not contain these two plots. The said notification dated 14.8.1986 has also been brought on record vide Annexure-4 to C.W.J.C. 5351 of 2002. This led to several litigations before this Court and several contempt applications were filed by the interested persons who still wish to continue with the mining in the aforesaid area. The aforesaid cases were numbered as M.J.C. No. 435 of 1989 (Muneshwar Kumar Singh v. The State of Bihar and Ors.). The order of this Court is dated 14.5.1990. I.A. Nos. 1 and 2 of 1990 in SLP (Civil) No. 1075 of 1990 (Surendra Kumar Singh and Ors. v. The State of Bihar and Ors.) The order is dated 7.1.1991. Another case being M.J.C. No. 845 of 1995 (Rana Avinash Kumar Singh and Ors. v. The State of Bihar and Ors.) The order of the Court is dated 25.8.1995. Another case is C.W.J. C. 5682 of 1986 (Avinash Kumar Singh and Ors. v. The State of Bihar and Ors.) The judgment and order of this Court is dated 7.4.1998. Another case being M.J.C. No. 2267 of 1999 (Rana Avinash Kumar Singh and Ors. v. The State of Bihar and Ors.) The order of this Court is dated 27.8.2001 and M.J.C. No. 2267 of 1999 (Rana Avinash Kumar Singh and Ors. v. The State of Bihar and Ors.). The order of this Court is dated 5.4.2002. Counsel for the State has relied on all these orders of this Court which have been brought on record as Annexure-A to the counter affidavit filed on behalf of Respondents 1 and 2 dated 8.8.2001. The aforesaid orders would go to show that the Court after taking into consideration the illegal mining going on in a protected area, had directed the District Magistrate, Gaya to take all steps including posting of police pickets and the District Magistrate was directed to submit a report regarding all steps taken by him in this regard and completion of each phase of work regarding Ramashila hills including fencing of the hill as stated in the scheme to the District Judge within 15 days of the completion of each phase of the scheme. The District Judge, Gaya was directed to verify the reports submitted by the District Magistrate, if necessary, after holding inspection and send his report along with a copy of the report of the District Magistrate to this Court. It was further directed that the District Magistrate and the District Judge shall thus go on performing their part of duties on the completion of each phase within the time schedule aforementioned and such report shall be placed for orders before the appropriate Bench. The proceedings which had been initiated were directed to be closed only after completion of the scheme so that illegal mining was stopped once for ever. The order of the Supreme Court in I.A. No. 1-2 of 1990 has been relied to show that the Supreme Court has also taken note of the fact that Ramshila, Pretshila has Brahmyoni have been declared protected monuments and no stone crushing industry should be allowed to be located within half kilo metre from the area as declared and any stone crushing industry located within such half kilo metre area should be shifted. Thus directions of the High Court were challenged by filing I.A. which was pending before the Supreme Court. The Supreme Court on the undertakings of the Petitioners that they were ready to shift their mining machineries away from the protected area to the area being allotted by the State

Government provided electrical connection and other facilities were provided to them, directed the State Government and the Bihar Electricity Board to provide them the aforesaid facility. Regarding removal from near the protected area, the same was not interfered with. SLP with regard to only those two Petitioners 8 and 10 in view of aforesaid submission was disposed of with a direction to the Respondents regarding providing of the facilities. SLP so far other 11 Petitioners were concerned, was dismissed with a liberty to them to approach the High Court.

7. C.W.J.C. No. 5682 of 1986 had been filed for issuance of a writ of mandamus to the State of Bihar to publish the final notification u/s 3(3) of the Act. It was further stated that in the notification, the area of three hills namely Ramshila hill, Pretshila hill and Brahmayoni hill and Vishnupad temple at Gaya have been prescribed.

8. The contention raised in the aforesaid writ petition was that the town of Gaya is well known place of pilgrimage for persons professing Hindu religion and as such, the same was commonly known as Gayadham. The aforesaid hills known as Ramshila hill, Pretshila hill and Brahmayoni hill were places having religious sanctity. It has further been contended that though in the proposed notification inviting objections, greater areas have been shown to have been notified to be declared as "protected areas" but factually in respect of Brahmayoni hill an area of 485.99 acres of land was required to be notified. Ramshila hill, an area of 91.68 acres of land was required to be notified and Pretshila hill, an area of 267.57 acres of land was required to be notified but only a truncated portion have been notified in respect of Brahmayoni hill reducing the same to 178.45 acres of land in place of 485.99 acres of land. Similarly in respect of Pretshila hill, 163.17 acres of land have been notified when actually 267.57 acres of land was required to be notified and in respect of Ramshila hill, the area in terms of notification u/s 3(1) of the said Act was 91.68 acres only which was maintained in the final notification.

9. By filing a counter affidavit in the aforesaid writ application, reference was made to various proceeding which was initiated in respect of the said hills. It was also stated that title suit was filed being T.S. No. 108 of 1997 and the said title suit was actually filed for determination of the area of those hills. Said title suit was initially decreed and upon appeal being filed, the said appeal was allowed and the judgment and decree was remitted to the trial court and during the pendency of the suit on remission the same was dismissed for default.

10. After perusing the writ petition and the counter affidavit, the writ Court in the aforesaid order quoted and order of the Division Bench in C.W.J.C. No. 1932 of 1986. In the aforesaid order, the Division Bench had held that there is no dispute on the question that the said hills are sacred hills and they need protection but the dispute is about the area of the hills in question. In the aforesaid judgment it was held that if the writ Petitioner of the aforesaid case wanted any declaration about the area of the said hills, the same should be decided on the basis of the title suit where evidence can be gone into and the matter has to be decided in

the facts and materials which are available in the suit. This Court further found that a dispute relating to the area of said hills cannot be determined in the writ jurisdiction. Relying on the aforesaid judgment of the Division Bench in the writ it was also held that the Court was not in a position to decide the dispute about the area of the hills in question but the question is as to whether the State Government can reduce the area which was fixed u/s 3(1) of the said Act. A fact which has been argued by Mr. Sanjay Singh, learned S.C. 9 that objection which was invited u/s 3(1) of the Act though no serious objection had been raised at that stage except by the Mines department who vide its letter No. 453 dated 22.1.1986 raised objection regarding area of the monument and pointed out that in the draft notification those areas have also been included which do not require any protection. Perhaps it was this objection which led to the authorities in passing the order u/s 3(3) of the Act vide notification dated 7.5.1987 as it has been stated that no objection was received from the public. The Court in view of aforesaid fact had found that actually without receiving any objection by the public at large the area as given in the notification u/s 3(1) of the Act has been reduced in the final notification u/s 3(3) of the Act.

11. Learned writ Court taking all these aspects into consideration specially the fact that a public notification u/s 3(3) of the Act, recites in so many words that there is no objection that reduction of the area cannot be supported on the basis of material disclosed in the affidavit. The Court relied on the judgment of the Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, reiterated in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, quashed the aforesaid notification and directed the State Government to issue a fresh notification u/s 3(3) of the Act considering the objections, if any, received against notification u/s 3(1) of the said Act. Such notification was directed to be issued by the State Government within a period of two months from the date of production of a copy of the aforesaid order. The Court while disposing of the writ application also passed an interim order that till the aforesaid notification u/s 3(3) of the Act was published, the land notified u/s 3(1) of the Act must continue to "remain protected" area. Another contempt application was filed being M.J.C. No. 2267 of 1999. A division Bench of this Court on 27.8.2001 further directed the State Government to issue notification u/s 3(1) of the said Act fixing three weeks" time for inviting objection and thereafter, to take a final decision in the matter within three weeks. In the meantime, it was made clear that no mining lease was to be granted nor fresh construction to be done on the land originally notified u/s 3(1) of the Act. The said contempt application was finally disposed of quoting the earlier direction of this Court that the concerned authorities have already been directed to preserve the aforesaid areas mentioned in the notification so that those areas are not unauthorisedly occupied by any person and no mining operation is allowed. The District Magistrate, Gaya was directed to take further step to see that no further encroachment would take place on the notified areas and also establish police check post so that the said areas are preserved. Further direction was that if any

encroachment proceeding is pending, then the District Magistrate to see that those proceedings are disposed of within three months.

12. All these orders and judgments as quoted above, have been relied to show that the area which has been notified has been within "protected area" from the very beginning. Vested interest have been trying to create a dispute since last more than two decades inspite of several. Orders/judgments of this Court and the Supreme Court. It has further been contended that penalty has to be imposed and the area which is within the protected area has to be defined so that the same can be protected by fencing it by wire and posting of police outpost so that illegal mining operation is not done and the ancient monument having religious sentiment can be protected.

13. Mr. Ram Balak Mahto, learned senior counsel appearing on behalf of the Petitioners also does not contest the aforesaid proposition. It is his contention also that actually what is required to be decided is as to whether two plots of land from which the crusher etc. has been directed to be removed fall within the "protected area" or are beyond the protected area. He has relied on the map which has been prepared pursuant to a direction of this Court to show that the areas on which the mining work is going on is virtually one kilometre away from the monument. He has further drawn the attention of the Court towards certain plots of land to show that though they were nearer to the monument but they have not been declared as "protected area" or brought within the "protected area". According to him, if lands which are close to the monument are not required to be brought within the "protected area" then where was the question of stopping the Petitioners from mining in the area which was much beyond those areas. He has further contended that essence of the judgment as discussed above was only to the extent that no mining should be allowed within a radius of half kilo metre beyond the "protected area" but as according to him, two plots of land are nearly one kilo metre away from the aforesaid monument the same has wrongly been brought in the notification u/s 3(3) of the Act. As such, they should be directed to be deleted from the gazette notification already made.

14. Mr. Mahto further contends that between the protected monument and the lands in question there are certain plots which had not been included in the notification declaring the "protected area".

15. The State counsel, on the other hand, has submitted that there is dispute, that mining was going on the two plots in question for which exemption has been prayed for, but, as far as the plots in between which has been left out were basically agriculture in nature and that no mining operation was going on the same and there was a proposal for including the same within the protected area also, for which a notification was likely to be issued very soon.

16. The real question is whether the two plots in question can be excluded from the protected area? From the discussions made above it is clear that the mining

operations could take place only on the lands situated half a kilometre from the "protected area" and in this view of the matter, no mining operation could be allowed on the two plots of lands in question. These two plots may be nearly one kilometre from the monument, but were within half kilometre of the protected area.

17. In view of discussions made above, I find no merit in the matter and accordingly, these writ applications are dismissed.