

(1994) 09 SC CK 0112

In the Supreme Court Of India

Case No : Civil Appeal No"s. 3702 to 3707/84 (With S.L.P. (c) No. 1457 of 1986)

State of A.P. and Others

APPELLANT

Vs

Anupama Minerals and Others

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2

Citation : (1994) 6 JT 577 : (1994) 4 SCALE 514 : (1995) 2 SCC 117 Supp :
(1994) 3 SCR 214 Supp

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : allowed

Judgement

1. Leave granted in SLP No. 1457 of 1986.

2. The respondents were granted mining leases under Rule 31 of the A.P. Mining Rules, 1986. The Forest Conservation Act, 1980 (for short 'the Central Act' O had come into force on October 25, 1980. Subsequently in terms of the grant of the lease the respondents applied for renewal. The State Government refused to grant renewal in view of the prohibition contained in Section 2 of the Act. The respondents filed the writ petitions in the High Court and the Division Bench in the impugned Judgment dated June 9, 1982 directed to consider the renewal of the respondents and seek approval of the Central Government u/s 2 of the Act. Calling in question of the legality of the directions issued by the High Court these appeals by Special Leave have been filed. In some of the cases the application for renewal has been filed after the Act had come into force but on the question of law it does not make much difference. The point raised is no longer res-integra. This Court in Ambalal Manibhai Patel Vs. State of Gujarat, held that the public authority is vested with the power the expression 'may' has been construed as 'shall' because if the conditions for the exercise of the power are fulfilled, it is coupled with the duty. When the grant of renewal was sought to be made then the authority has been invested with the duty to grant of renewal. On

the facts and circumstances in these cases specially in view of the prohibition contained in the Act renewal cannot be granted since the Act had come into force. So any grant of renewal should be consistent with the provisions contained in the Act. The purpose of the Act is Conservation of the Forest and to prevent the depletion of the forest. In other words the Act intended not only to protect the existing forest but also conserve forest and protection of the existing forest in accordance of the provisions of the Act. In view of the prohibition for grant of lease in the reserved forest area, grant of renewal in the face of the prohibited area will be in violation of law. Therefore, the authorities though has the power, but had duty while conserving the forest to refuse to grant renewal. In that view the Government's refusal to grant renewal, therefore, cannot be said to be illegal. If they consider that renewal could be granted, even then the prior approval of the Central Government is mandatory u/s 2 of the Act. The renewal cannot be granted in view of the prohibition contained in the Act. Therefore, the direction issued by the High Court is clearly in violation of the Statute and no mandamus or direction could be issued to violate the mandatory provisions of the Act. The direction accordingly is illegal. The appeals are allowed the order of the Division Bench of the High Court is set aside but in the circumstances without costs.