
(2015) 03 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Second Appeal Nos. 209/2003, 66 and 77/2005

State of Rajasthan and Others

APPELLANT

Vs

Dinesh Chandra and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Rajasthan Forest Act, 1953 — Section 4

Citation : (2015) 03 RAJ CK 0144

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : P.R. Singh, AAG, for the Appellant; Vineet Dave, Varun Singhvi and Nupur Bhati, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—The appellant- State and the Forest Department, have filed the present second appeal under Section 100 of Code of Civil Procedure, 1908, before this Court aggrieved by the concurrent decree of injunction given by the two courts below in respect of mining leases issued in favour of plaintiffs/respondents not to interfere with their mining operations.

2. The facts are illustratively taken from S.B.C.S.A. No. 77/2005- State of Rajasthan and Anr. v. Basantilal and Anr. The plaintiff/respondent filed suit (Suit No. 72/1996- Basantilal v. State of Rajasthan and Ors.) was decreed by the learned trial court of Additional Chief Judicial Magistrate (Sr. Division) No. 3, Udaipur, on 13.05.1998 with the following findings in favour of plaintiff that the mining lease of the plaintiff was in Aaraji No. 3385 (Old Aaraji No. 1589) and the same was not notified as "reserved forest" by the State Government and, therefore, the Forest Department could not interfere with the mining operations of the plaintiff, which was being carried out in accordance with the mining lease given in their favour with the environmental clearances obtained by them. The relevant findings of the learned trial court about the land not falling in the forest

area are quoted herein below:--

3. The defendant State (Forest Department) filed first appeal before the learned Additional District Judge No. 1, Udaipur, which Appeal No. 31/1999- State of Rajasthan v. Basantilal, also came to be dismissed by the learned first appellate court on 22.07.2003 affirming the findings of the learned trial court in the following manner:--

4. Being aggrieved by the same, the State and Forest Department have filed the present second appeal in this Court on 20.10.2003 and the matter is pending for admission for last 12 years.

5. Mr. P.R. Singh, learned Additional Advocate General, submitted that the said Khasra No. 3385 (Old No. 1589) of Village Undithal, measuring 39.360 hectares of land, in which Mining Lease No. 11/88 was issued in favour of plaintiff on 12.09.1988 actually fell within the reserved forest area notified by the State Government in accordance with provisions of Rajasthan Forest Act, 1953 (Act of 1953) and the preliminary notification was issued under Section 4 of the said Act of 1953 on 01.02.1975, in which for the said Village-Undithal, Tehsil: Gogunda, District: Udaipur, (mentioned at Serial No. 9) only Khasra No. 1468 Min., 1557 Min. and 1600 Min. were intended to be included in the category of protected forest area. After issuance of said preliminary notification on 01.02.1975, published in the Gazette on 03.01.1976, a copy of which Gazette notification has been filed by the learned AAG in this Court on 18.03.2015 after an opportunity was given in this regard, however, in this Gazette notification the original Khasra No. 1589 Min. has not been included. Learned Additional Advocate General further submitted that an enquiry was held by the Assistant Forest Settlement Officer ("AFSO", for short), and he came to the conclusion that said old Khasra No. 1589 was also of Village Undithal, Tehsil- Gogunda, District: Udaipur, and that was also included in the said reserved forest category.

6. The final notification published after the said enquiry on 09.12.1980, in which notification was published in the Gazette on 18.08.2003, after about three years and a copy whereof is filed as Annex. C/3 with said compilation filed by the learned AAG on 18.03.2015 in this Court. Learned Counsel for the appellant-State submits that Khasra No. 1589 (New Khasra No. 3385) was not specifically notified in the reserved forest category. Still missing link between the notified Khasra/s and Khasra No. 1589 (New 3385) in which questioned mining operations are being carried out, learned AAG tried to rely upon the revenue entry records and drew the attention of the Court towards Annex. C/5, a "Jamabandi" of the "Samvat-Year" 2054, in which in the entries in favour of Forest Division, Udaipur along with three other forest areas are included and in that Khasra No. 3385 measuring 39.360 hectare is apparently included in the revenue record as entered in the "Khatedari" of Forest Division, Udaipur and three other forest areas viz. Surajgarh, Paleva Ghati and Chittoriya. Relying upon the judgment of Hon"ble Supreme Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, by interim order dated

12.12.1996, Mr. P.R. Singh, learned AAG submitted that if the said Khasra No. 3385 is entered in the revenue record as forest land, thus the courts below were not justified in giving an injunction against the Forest Department not to interfere with the mining operations of the plaintiff.

7. On the other hand, learned counsel appearing on behalf of respective plaintiffs, Dr. Nupur Bhati, Mr. Vineet Dave, and Mr. Varun Singhvi, vehemently opposed these submissions and urged that the findings of facts recorded by the courts below are very clear and the mining operations have been carried out after due compliance of other relevant provisions of law like environmental clearances, mining lease issued in favour of plaintiff(s) by the Mining Department etc., therefore, such mining operations cannot be stopped or interfered with by the Forest Department on the pretext that mining leases were issued on the land covered in the reserved forest category though there was no clear evidence led by Forest Department in this respect. They have submitted that mere entry in the revenue record as submitted by learned Additional Advocate General of said Khasra No. 3385 recorded in the name of Forest division of Village Undithal, along-with three other forest areas, named above, it does not amount to the mining leases being covered in the said reserved forest category of land and the order passed by the AFSO, who has no jurisdiction or authority to include any additional land in the reserved forest category in the absence of the said area specifically notified in the preliminary notification issued by the State Government under Section 4 of the Rajasthan Forest Act, 1953 on 01.02.1975 and, therefore, the State Government has not been able to dislodge the findings of facts arrived at by the court below that mining leases were issued in favour of plaintiff(s) on the land other than the reserved forest land and this being not a suit for declaration but merely a suit for injunction on the basis of their possession under the validly issued Mining Leases by the Mining Department, cannot be upset in the present second appeal filed by the State and Forest Department under Section 100 of CPC, 1908, which has a limited scope to be entertained only on the substantial questions of law, which according to learned counsel for the respondents/plaintiffs, do not arise in the present appeals as the appellant-State has failed to make out any case of substantial question of law arising in the present case before this Court.

8. They also pointed out that in a joint inspection report prepared on 07.04.2006 made by the authorities of the Forest Department and the Mining Department, which was constituted under the orders passed by the Collector, Udaipur, in which they have clearly noted in para 7 thereof that Khasra No. 1589 of Village Undithal, was never notified as forest area in the Gazette.

9. Having heard the learned counsel for the parties and having gone through the record, this Court is satisfied that no substantial question of law arises in the present second appeals filed by the appellant- State and Forest Department, who lost the legal battle concurrently before the two courts below. In view of this findings of facts recorded by the courts below that the referred land in question

on which mining leases have been issued in favour of plaintiffs is not covered by the forest area, reserved for protection of forest, the injunction given by the learned courts below in favour of plaintiffs/respondents appears to be justified and the present second appeals of the appellants have no force and deserve dismissal. Khasra No. 1589 (New Khasra No. 3385) never clearly was notified to be a reserved or protected forest area and mere entry in the revenue record viz. "Jamabandi" is not enough to upset these findings of facts of the courts below.

10. Accordingly, the second appeals filed by the State/Forest Department are dismissed with no orders as to costs. A copy of this order be sent to the concerned parties and the courts below forthwith.