

(2010) 07 RAJ CK 0096
In the Rajasthan High Court
Case No : Civil Writ Petition No. 978 of 1999

State of Rajasthan

APPELLANT

Vs

Nawab Ali and Others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2

Forest (Conservation) Rules, 2003 — Rule 6, 6(3), 7, 8

Citation : AIR 2010 Raj 178

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prem Shanker Asopa, J.—By this writ petition, the Petitioner-Defendants Nos. 1 and 2 in joint capacity have challenged the order dated 7-8-1998 (Anx. 3) passed by the Rajasthan Wakf Tribunal, Jaipur whereby the suit filed by Nawab Ali, Plaintiff-Respondent No. 1, had been decreed against them with the further direction to identify 5 Bighas of land out of Khasra No. 213 for being used as burial ground by the Kayamkhani Muslims and also declared that the Plaintiff is also entitled to raise construction of the boundary wall around the burial ground, which would be identified by the Defendants Nos. 1 and 2.

2. There is no dispute between the parties that vide Notification dated 13-4-1964, the land falling in Khasra No. 213 consisting of 225.625 Acres = 0.352 Square Miles in Village Rajas, Tehsil Laxmangarh, Distt. Sikar, had been declared "reserved forest", out of which 5 Bighas land has been allowed to be used as burial ground by the Kayamkhani Muslims.

3. The only dispute is of construction of the boundary wall by the Respondent No. 1-Plaintiff for protection of the dead bodies after being buried.

4. Counsel for the Petitioner submits that the construction of boundary wall around the burial ground, by a private person is a "non-forest activity" and as

per Section 2 of The Forest (Conservation) Act, 1980, (in short "the Act of 1980") the same cannot be permitted, for which the Respondent No. 1-Plaintiff has to seek approval of the Central Government under Rule 6 of The Forest (Conservation) Rules, 2003 (in short "the Rules of 2003").

5. Counsel for the Respondent No. 1-plain-tiff submits that once a particular land is allowed to be used as the burial ground, then it becomes necessary to protect the buried dead bodies from the wild animals and birds and construction of the boundary wall, after identification of the land, would not amount to non-forest activity. Therefore, the Wakf Board has not committed any kind of error in allowing the Respondent No. 1-Plaintiff to construct the boundary wall.

6. I have gone through record of the, writ petition and further considered rival submission of counsel for the parties.

7. Before proceeding further, I would like to quote Section 2 of the Act of 1980 as also Rules 6, 7 and 8 of the Rules of 2003 which are as under:

Section 2 of the Forest (Conservation) Act. 1980

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.-- Notwithstanding anything contained in any other law for the time being in force in a State no State Government or other authority shall make, except with the prior approval of the Central Government any order directing.

(Emphasis supplied)

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation.-- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

(a) the cultivation of tea, coffee, spice, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation. but does not include any work relating or ancillary to the conservation, development and management of forests and wild life. namely the establishment of check posts, fire lines, wireless

communications and construction of fending, bridges and culverts, dams waterholes. trench marks, boundary marks, pipelines or other like purposes.

(Emphasis supplied)

Rules 6, 7 and 8 of

The Forest (Conservation) Rules of 2003

6. Submission of the proposals seeking approval of the Central Government u/s 2 of the Act.-- (1) Every user agency, who wants to use any forest land for non-forest purposes shall make his proposal in the appropriate Form appended to these rules, i.e. Form A for proposal seeking first time approval under the Act and Form B for proposals seeking renewal of leases where approval of the Central Government under the Act had already been obtained earlier, to the concerned Nodal Officers authorised in this behalf by the State Government, along with requisite information and documents, complete in all respects, well in advance of taking up any non-forest activity on the forest land.

(2) Every State Government or other authority, after having received the proposal under Sub-rule (1) and after being satisfied that the proposal requires prior approval u/s 2 of the Act, shall send the proposal to the Central Government in the appropriate forms, within ninety days of the receipt of the proposal from the user agency for proposals seeking first time approval under the Act and within sixty days for proposal seeking renewal of leases where approval of the Central Government under the Act had already been obtained earlier.

Provided that all proposals involving clearing naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall be sent in the form of Working Plan or Management Plan.

(3) The proposal referred to in Sub-rule (2) above, involving forest land of more than forty hectare shall be sent by the State Government to the Secretary to the Government of India, Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex Lodhi Road, New Delhi 110 003, with a copy of the proposal (with complete enclosures) to the concerned Regional Office.

(4) The proposal referred to in Sub-rule (2) above, involving forest land up to forty hectare shall be sent to the Chief Conservator of Forests or Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.

(5) The proposal referred to in Sub-rule (2) above, involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall be sent to the Chief Conservator of Forests or Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.

7. Committee to advise on proposals received by the Central Government.-- (1)

The Central Government shall refer every proposal, complete in all respects, received by it under Sub-rule (3) of Rule 6 including site inspection report, wherever required, to the Committee for its advice thereon.

(2) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under Sub-rule (1), namely:

(a) whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park wild life sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

(b) whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

(c) whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

(d) whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.

(3) While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose, which in its opinion, would minimize adverse environmental impact.

(8) Action of the Central Government on the advice of the Committee.-- The Central Government shall, after considering the advice of the Committee tendered under Rule 7 and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same within sixty days of its receipt.

8. A perusal of the Explanation below Section 2 of the Act of 1980 would reveal that "non forest purpose" does not include the work relating or ancillary to the conservation, development and management of forest and wild life, namely the establishment of check posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams waterholes, trench marks, boundary marks, pipelines or other like purposes. Since the construction of the boundary wall around the burial ground by a private person will not amount to conservation, development and management of forests and wild life, therefore, the same is a "non forest activity" for which prior permission of the Central Government is necessary.

9. I am of the view that the construction of boundary wall by a private person for protection of dead bodies buried in the burial ground will amount to using the

land for "non forest purpose".

10. In view of the above, the judgment and decree dated 7-8-1998 (Anx.3) passed by the Rajasthan Wakf Tribunal is modified to the extent that the construction of boundary wall by the Respondent No. 1-Plaintiff, around the burial ground, would be subject to the prior permission of the Central Government under The Forest (Conservation) Act,. 1980 and The Forest (Conservation) Rules, 2003. The Respondent No. 1-Plaintiff would be at liberty to apply to the appropriate authority under Rule 6 of the The Forest (Conservation) Rules, 2003 seeking approval to use "forest land" for "non-forest purpose" of construction of boundary wall around 5 Bighas identified burial ground and in case the Respondent No. 1-Plaintiff submits any such application., then the same will be decided by the concerned authority within a period of three months from the date of receipt of the application along with a copy of this order.

11. The writ petition is disposed of as indicated above.