

(1984) 07 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 11743, 14944 and 15492 of 1981

State of Uttar Pradesh

APPELLANT

Vs

The IInd Additional District and Sessions Judge and Others

RESPONDENT

Date of Decision : 18-07-1984

Acts Referred:

Evidence Act, 1872 — Section 13

Forest Act, 1927 — Section 3, 4, 4(1), 5, 6

Citation : (1984) AWC 417 Supp

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Judgement

B.D. Agarwal, J.—These connected petitions are being decided by common judgment.

2. On September 24, 1954, the State Government issued a notification u/s 4(1) of the Indian Forest Act, 1927 declaring a vast area of land in Tehsil Chakiya, district Varanasi, as reserved forest. The notification was published in the gazetta dated October 2, 1954 and proclamation was made as required u/s 6 of the Act. Budhoo, respondent No. 3 in writ petition No. 11743 of 1981 filed objection with respect to plot No. 1/21 (3 bighas) situate in village Bojh. The objection filed was after nearly twenty one years subsequent to the notification aforesaid. On August 11, 1978, the Forest Settlement Officer rejected the objection finding that the objector had failed to establish that the land was held by him under his cultivation at the relevant period. In appeal filed by respondent No. 3 against this order, the Second Additional District Judge, Varanasi came to the finding on May 7, 1981 that the notification dated 24th September 1954 was vague and hence No. right could be founded upon the same. The order made by the Forest Settlement Officer dated 11th August, 1978 was quashed on this basis. Aggrieved the State of U.P. has approached this Court.

3. In Writ Petition No. 14944 of 1981 the petitioner Bachau filed objection u/s

6/9, Forest Act on November 26, 1974 writ respect to plot Nos. 255 (3 bighas 10 dhurs) and 250 (4 bighas) situate in village Bojh, contending that he had been in cultivatory possession and had has such user as that of a kachcha house and few trees. The objection was dismissed by the Forest Settlement Officer on May 5, 1979, taking the view that the petitioner had not established that the land was held by him for cultivation or residential purpose during the relevant period. In appeal filed by the petitioner this order was upheld on September 5, 1981, by the III Addl. District Judge, Varanasi. The writ petition is directed against this decision.

4. In Writ Petition 15492 of 1981, the petitioner Achaiber likewise laid claim to plot No. 1/6 (6 bighas) of village Bojh and filed objection u/s 6/9 of the Forest Act dated 31st August, 1974. The forest Settlement Officer dismissed the objection on May 5, 1979 finding that the petitioner was unable to make out as alleged, cultivatory possession at the relevant time and this order has been upheld in appeal by the III Additional District Judge, Varanasi on September 5, 1981 thereby giving rise to this petition.

5. Sri Shitla Prasad, learned Counsel for the petitioners in Writ Petition Nos. 14944 of 1981 and 15492 of 1981, submitted that the impugned notification dated September 24, 1981 was vague and consequently there may be No. effect given to the same. In support of his contention he has sought to place reliance upon the decision of the Second Additional District Judge dated May 7, 1981 which is the subject matter being under challenge in Writ Petition No. 11743 of 1981 filed by the State. It was further argued that the petitioners should have been held to be in cultivatory possession over the respective land claimed by them. Having given careful consideration to the contentions raised by the learned Counsel I am of the view that these are devoid of merit.

6. Section 3 of the Forest Act (as amended in U.P.) empowers the State Government to constitute any forest-land or waste-land or any other land (not being land for the time being comprised in any holding or grove or in any village abadi) which is the property of the Government or over which the Government has proprietary right, a reserve forest in the manner specified

Section 4 of this Act (as amended in this State), in so far as relevant, reads:

4. Notification By State Government (1) Whenever it has been decided to constitute any land, a reserved forest the State Government shall issue a notification in the Official Gazette-

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called "the Forest Settlement Officer) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this

Chapter.

Explanation--For the purpose of Clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

7. Upon perusal of the context of the notification dated 24th September, 1954 impugned in these petitions it would be observed that the declaration made was in respect of huge area. The notification specifies that the land is comprised in Chakya Block. Tehsil Chakiya. district Varanasi. In column 4 the area of the land declared thereunder is specified and the boundaries are given as well The specification made of the boundaries with reference to pillars the particulars whereof were indicated. In the column of remarks a significant note is found to the effect:

cultivated and inhabited areas of revenue villages within the block are to be excluded from reserve forest.

From the above, it is manifest that the specification given is of the area in acres and also the boundaries The notification being with respect to huge land it was practically impossible, to have specified the numerous plot numbers Nor is there any such requirement under the statute. Indeed, the Explanation to Section 4(1) of the Forest Act (reproduced above) significantly annexed says that it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries. There is No. pro-forma meant for the notification to be issued. In the boundaries given in the notification we find reference also to the natural boundaries with the specific mention of rivers etc This means in other words, that all land covered within these boundaries/areas are included in the notification unless the same be shown to be cultivated or inhabited The exclusion of cultivated or inhabited land is in keeping with the requirement of Section 3 of the Act. It does not appear that the description given as this may not serve the purpose or that this may create any confusion so far as the objections are concerned. In case the land is under cultivation or habitation, the objector is supposed to have personal knowledge and this shall evidently stand excluded from the purview of the notification. It is not without significance moreover that neither Bachau nor Achaibar, the petitioners in these petitions, have asserted that they were unable to ascertain whether their land is or is not covered under the notification. No. ambiguity or confusion was claimed by them to arise on such account. The learned III Additional District Judge has, in my opinion, taken a reasonable view in finding as he did on September 5, 1981 that the notification does not suffer from vagueness.

8. Sri Shitla Prasad the learned Counsel relied strongly, as I mentioned above, upon the decision recorded by the Second Additional District Judge, dated May 7, 1981, in reference to the same notification. It does not appear that judgment may be availed of by these petitioners. These petitioners were not parties to those cases nor are they parties to Writ Petition No. 11743 of 1981 where that

judgment is impugned by the State. That decision is not in reference to any right, title or interest claimed by the petitioners Bachau and Achaibar in the other petitions. There is No. question of that decision operating as *res judicata* in favour of any of those two petitioners. Reference was made by the learned Counsel to Section 13 of the Evidence Act. It may not be overlooked that the decision is not final being the subject matter of the petition filed by the State and for these reasons too the other petitioners do not derive benefit out of the same.

9. Learned Counsel next contended that these petitioners had been in cultivatory possession over the land involved in these two writ petitions. The finding on the subject is against these petitioners and the same is based upon reasonable consideration of all relevant evidence placed on the record. Achaibar, the petitioner, relied on extracts of *khasras* of 1363 and 1380 *faslis*. The latter did not relate to any of the two plots in controversy. The entry appearing in the *khasra* of 1363 *fasli* was not given credence by the appellate authority for valid reasons taking into consideration the rest of the evidence before it. In case the petitioner had been in cultivatory possession for 35 years or so as contended by him, it does not appear that he will not have, in the ordinary course, found place in the regular course in the concerned revenue papers the oral evidence was also taken into and discussed. In writ jurisdiction the Court does not sit in appeal, nor is there reassessment made of the relevant evidence duly considered by the lower courts. The position is similar in the petition brought by Bachau. The petitioner himself did not enter into the witness box before the Forest Settlement Officer. The extract of *khasra* of 1363 *fasli* filed by him did not relate to any of the plots in dispute. No. other extract from the revenue paper could be brought to the notice of the lower authorities in support of the claim that he had been cultivating the land for over 30 years. Upon local inspection made by the Forest Settlement Officer on April 6, 1979, he found a *kachcha* house existing over a portion and certain crops standing but then it was not made out that this was the position also in or about the year 1954 when the impugned notification was made. The appellate authority found and rightly in my view that the petitioner cannot get the advantage of construction subsequently raised in view of Section 5 of the Forest Act which expressly states that after the issue of the notification u/s 4, No. right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract with the Government.

10. In so far as the Writ Petition No. 11743 of 1981 filed by the State is concerned, the contention of the learned Standing Counsel appearing for the petitioner is that the decision arrived at by the appellate authority dated 7th May, 1981 to the effect that the impugned notification dated 24th September, 1954 was vague is unsupportable. As I have discussed above, there is No. *pro-forma* laid in the Forest Act or the rules framed thereunder. The Explanation to Section 4(1) amplifies the manner and widens the scope in which the land covered under the notification may be described the notification made with reference to the area and the boundaries sufficiently specifies the land involved. The map

pertaining to the notification was also brought to the notice of the authorities concerned. The exclusion referred to in the column of remarks serves further to elucidate the extent or the nature of the land covered thereunder. The Appellate Authority in this case cannot be said to be right in having laid the burden upon the State to prove in positive terms by adducing direct evidence that the pillars referred to in the notification were in actual existence at the relevant time. The normal presumption attaching to the official acts could not be lost sight of nor can it reasonably be said that the same has been rebutted. In this case as well Budhoo, the concerned respondent No. 3, did not aver at any stage that he was under some kind of mistake because of any vagueness existing in the said notification. The notification could not have been, therefore, invalidated on assumed vagueness by the appellate authority.

11. The other question arising in this writ petition filed by the State is whether the land involved therein, namely, plot No. 1/21 (3 bighas) was under cultivation or held as abadi by respondent No. 3 in or about the relevant year 1954. It was incumbent upon the authorities below to have given a decision on this aspect for the reason that, in case the land was cultivatory or held for habitation by the said respondent No. 3 during the relevant period that would on its own force stand excluded from the purview of the declaration. The order of the Forest Settlement Officer and the decision of the appellate authority do not indicate any specific finding recorded on this score. Ram Surat Tewari on whose statement the State counsel sought to rely does not appear to have referred to the relevant plot No. 1/21. Reference to this plot is also not to be found in the inspection reports which are Annexures "7" and "8" to this writ petition. In order that the claim of the State that this land stands duly declared as reserved forest may be decided or the contention of respondent No. 3 that this belongs to him as cultivatory land is adjudicated, it is incumbent that there be required to be a specific finding recorded on this aspect.

12. Having regard to the discussion made in the above, the Writ Petition Nos. 14944 of 1981 and 15492 of 1981 fail and are dismissed accordingly. Writ Petition No. 11745 of 1981 is allowed in part. The decision recorded by the Second Additional District Judge, Varanasi (respondent No. 1) dated 7th May, 1981 is set aside and the respondent No. 1 is directed to re-decide the appeal preferred by respondent No. 3, namely, Budhoo on merit according to law and in the light of the observations contained therein.

13. There will be No. order as to costs.