
(2001) 05 MP CK 0005
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3327 of 2000

Tahir Ali

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 07-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Wild Life (Protection) Act, 1972 — Section 18, 18(1), 19, 2(26), 20

Citation : (2001) 3 MPLJ 325

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : J.P. Sanghi, for the Appellant; Sanjay K. Agarwal, Panel Lawyer, for the Respondent

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed issue of a writ of certiorari for quashment of the order of seizure contained in Annexure P.6 of the crusher and 30 H.P. Electric Motor belonging to the petitioner and to command the respondents to allow the operation of the crusher on land in question and further to direct the respondents to release the crusher and electric motor and refrain them from confiscating the same and to pass such order/orders as may be deemed fit and proper in the facts and circumstances of the case.

The facts as have been unfurled are that the petitioner and his brother Hakimuddin formed a partnership in the name and style of M/s A. Usuf Ali and Brothers and have been doing the business of taking mining leases for extraction of stones and crushing the same by crusher in the shape of gittis to be supplied for building and other construction purposes. Petitioner's brother Hakimuddin purchased two acres of land in Kh. No. 128/2 in Village Chirrai P.H. No. 26 Tahsil Piparia, District, Hoshangabad vide registered sale deed dated 7-6-1989 and since then he is the Bhumi Swami of the said land. Soon after the purchase of

the land a crusher with 30 H.P. Motor was installed for stone crushing and since then the crusher was in operation for more than a decade. The petitioner holds a mining lease for extracting stones in Kh. No. 198 village Manakwada, Tahsil Tamiya, District, Chhindwara. The lease was granted in his favour on 6-1-1999 for a period of ten years. The said deed of lease has been brought on record as Annexure P. 1. The stones extracted from the mines are brought and crushed in the crusher installed in village Chirrai. It is put forth in the petition that the Additional Collector, Chhindwara had cancelled the mining lease against which the petitioner preferred an appeal before the Additional Commissioner who vide order dated 9-7-1998 set aside the order of cancellation and held that the crusher installed outside the mines area cannot be a legal and valid ground for cancelling the mining lease. A copy of the order has been brought on record as Annexure P. 3. After the controversy was put to rest on 12-5-2000 the petitioner received a letter from respondent No. 2 stating therein that since the land on which the crusher is installed comes within the area of Panchmarhi Sanctuary, the crusher be removed forthwith as there is no permission from the director Wild Life and the installation of crusher is contrary to the provisions of Wild Life (Protection) Act, 1972. In the said notice nothing was mentioned to show which provision was contravened. The petitioner submitted his written arguments as per Annexure P. 5. The petitioner's contentions did not find favour with the respondent No. 2 who vide Annexure P. 6 dated 17-5-2000 seized the crusher with 30 H.P. Electric Motor and gave the same on "Supradnama". The petitioner moved an application before the Magistrate First Class, Sohagpur on 19-5-2000 for release of his crusher and Electric Motor. The learned Magistrate by order dated 24-5-2000 rejected the application on the ground that he has no jurisdiction to release the crusher which has been seized by the Forest Department. Assailing the aforesaid seizure it is urged in the petition that the crusher was installed on the Bhumi Swami land of the petitioner and the same cannot be removed by the State Government without determining the rights of the petitioner as contemplated u/s 19 of the Wild Life (Protection) Act (hereinafter referred to as "the Act"), 1972 and, therefore, the respondents would have allowed the continuance of the right of the petitioner over the area in question as per section 24(c) of the Act. It has been averred that no proceeding has ever been initiated u/s 25 of the Act and no compensation has been paid to the petitioner. With the aforesaid averments reliefs have been sought as have been indicated hereinbefore.

A return has been filed by the answering respondents contending, inter alia, that the petition is not maintainable as the same has not been filed by the alleged owner of Kh. No. 128/2 Hakimuddin and no right accrues in favour of the petitioner to agitate the matter before this Court. It is further put forth that Hakimuddin, the brother of the petitioner, had purchased the alleged Khasra No. 128/2 vide registered sale deed dated 7-6-1989 which he could not have done. It is averred that in accordance with the provisions of the Act a notification was issued u/s 18 for declaration of Sanctuary on 1-6-1977 as per Annexure R. 1 and

as per the said notification, the area reserved for Panchmarhi Sanctuary has been mentioned in Schedule II and the boundaries have been defined. It is putforth that the land which has been purchased by the petitioner and his brother Hakimuddin fall within the boundaries of Panchmarhi Sanctuary. It is further putforth that the originally the land belonged to one Mangi s/o Budhu Yadav and in pursuance of the notification issued u/s 18 of the Act declaring the area of Panchmarhi Sanctuary the land come within purview of the aforesaid Act and hence, any action taken by the land owners runs contrary to the provisions of the Act. It has been further pleaded that the Collector while exercising the power u/s 19 of the Act is required to enquire into and determine the rights of person in or over the land falling within the limits of Sanctuary for which the Collector has to publish a proclamation u/s 21 of the Act in the regional language which has been done on 23-10-1996 as per Annexure R. 3. In the proclamation the Village Chirrai has been mentioned. In the proclamation it has been directed the claimants to lodge their claim till 24-12-1996. Neither the petitioner nor his brother Hakimuddin lodged any claim pursuant to said proclamation. It is further setforth that as the petitioner and his brother Hakimuddin were running the crusher over the land which comes within the area declared as sanctuary they have violated the provisions of the Act and therefore, they are liable for prosecution. They were given notice for removal of the said crusher and in spite of the notices when the crusher was not removed the authorities were constrained to seize the crusher and Electric Motor and has lodged a Preliminary Offence Report. It has been putforth that the seizure has been made under the provisions of the Act and offence has been registered under the Act as well as under the Indian Forest Act. It is further putforth that the petitioners have no right over the said land which comes within the Sanctuary area as the same was so declared in the year 1977. It is averred that the petitioner has committed an offence under sections 20 and 29 of the Act and fundamental right of the petitioner has been infringed.

After the counter affidavit was filed the petitioner has filed an application for taking certain additional documents on record. In the said application it has been mentioned that the notification dated 1-6-1977, Annexure R. 1, is not one u/s 18(1) of the Act in pursuance of which proclamation was made on 23-10-1996 as putforth by the respondents. It has been urged in the said petition that no notice as contemplated u/s 22 of the Act was ever issued to the petitioner or his brother or his firm and no inquiry was made by the Collector. It has also been averred no proceeding under sections 24 and 25 of the Act was ever taken for acquisition of the land. It has been pleaded in the petition that on the basis of Annexure R. 1 officers of the State Government were harassing the inhabitants of the area. Therefore, the forest department issued a press note on 15-12-1997 contained in Annexure P. 8. Thereafter the State Government through the Chief Wild Life Warden, Bhopal issued a circular dated 9-8-2000 and constituted a committee to enquire from the public representatives about the limits of the sanctuary and submit a report by 31-12-2000. A copy of the said circular has been brought on

record as Annexure P.9.

A further application was filed for taking additional documents on record. In the said application it has been stated that certain villagers of village Chhirai whose lands are said to have been included in the sanctuary have given affidavits to the effect that no compensation have been paid. The additional documents were taken on record.

I have heard Mr. J.P. Sanghi, learned counsel for the petitioner and Mr. Sanjay K. Agarwal, learned P.L. for the respondents. It is submitted by Mr. Sanghi that the land in question was purchased by the petitioner after obtaining due permission from the concerned collector as the same is not a forest land and hence, the forest department could not have interfered in his possession. It is further canvassed by him the claim of the government that it is a forest land because there has been a notification in the year 1977 under the Act does not render any assistance to the respondents as the same is not a final notification and it cannot be given effect to. It is argued by him that the notifications come into existence at two stages, namely, one at the initial stage and other at the final stage as contemplated u/s 26A of the Act. Learned counsel has referred to various provisions of the Act to show that the land in question has not been included in the sanctuary as per the provisions of the Act and hence, at this stage the seizure could not have been effected. To reinforce his submission he has placed reliance on a decision rendered in the case of Pradeep vs. Union of India 1996 117 652.

Resisting the aforesaid submissions of the learned counsel for the petitioner, Mr. Sanjay K. Agarwal, learned P.L. for the respondents has submitted that notification was issued on 1-6-1977 in exercise of the powers conferred by section 18(1) of the Act, whereby lands falling in Schedule I and II were recorded as the game sanctuaries under the Act for all animals and birds in the sanctuary and since the date of notification it has become a sanctuary and hence, the petitioner is not entitled to have his crusher therein. It is further put forth by him in the map contained in Annexure R. 2 the boundaries have been mentioned and the land of the petitioner comes within the said boundary. The learned State counsel has also referred to the proclamation dated 23-10-1996 wherein reference has been made to the notification issued u/s 18(1) of the Act. It is urged by the learned P.L. for the State that as the notification was issued under the unamended provisions of the Act that was not a step towards the publication of the final notification but a complete notification in itself. It has been further urged by the learned counsel for the State that once a notification is issued the petitioner could not have purchased the property and the permission granted by the Collector being contrary to the provisions of the Act is ab initio void and on the basis of a null and void deed the petitioner cannot claim any legal right.

To appreciate the rival submissions raised at the Bar it is apposite to refer to certain provisions of the Act. Section 2(26) defines Sanctuary. It reads as

under:--

sanctuary" means an area declared, whether u/s 26A or section 38, or deemed, under sub-section (3) of section 66, to be declared, as a wild life sanctuary.

Section 18 which occurs in Chapter IV reads as under:--

18. Declaration of sanctuary. -- (1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation:-- For the purposes of this section, it shall be sufficient to describe the area by roads, rivers or other well known or readily intelligible boundaries.

It is relevant to state here that section 18 was amended by Act No. 44 of 1991. Before the amendment sub-section (1) read as under:--

(1) The State Government may, by notification, declare any area to be sanctuary, if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(emphasis supplied)

Section 19 deals with the provision authorising the Collector to determine the rights of any person in and over the land comprised within the limits of sanctuary. Section 20 deals with bar of accrual of rights after the issue of a notification u/s 18. Section 21 deals with proclamation by Collector after issuing of notification u/s 18 of the Act. Section 22 deals with enquiry by the Collector. Section 23 provides the power of Collector. Section 24 deals with acquisition of rights. Section 25 deals with acquisition proceedings. Section 26A which has been emphasised upon by Mr. Sanghi reads as under:--

26-A. Declaration of area as sanctuary.-- (1) When --

(a) a notification has been issued u/s 18 and the period for preferring claims has elapsed, and all claims, if any, made in relation to any land in an area intended to be declared as a sanctuary, have been disposed of by the State Government; or

(b) any area comprised within any reserve forest or any part of the territorial waters which is considered by the State Government to be of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary,

the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be a sanctuary on and from such date as may be specified in the notification.

Provided that where any part of the territorial waters is to be so included, prior concurrence of the Central Government shall be obtained by the State Government:

Provided further that the limits of the area of the territorial waters to be included in the sanctuary shall be determined in consultation with the Chief Naval Hydrographer of the Central Government and after taking adequate measures to protect the occupational interests of the local fishermen.

(2) Notwithstanding anything contained in sub-section (1), the right of innocent passage of any vessel or boat through the territorial waters shall not be affected by the notification issued under sub-section (1).

(3) No alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State.

(emphasis supplied).

The said provision has been inserted by Act No. 44 of 1991. Submission of Mr. Sanghi is that u/s 18 a notification is issued declaring the intention of the Government to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary under certain conditions. Thereafter the other provisions are taken recourse to. Finally the section 26A comes into play and if the period for preferring claims has elapsed and the claims are determined the State Government is required to issue a notification specifying the limits of the area which shall comprise the area of the sanctuary and declare as may be specified in the notification. Submission of Mr. Sanghi is that when no notification has been published u/s 26A of the Act the area in question cannot be declared as a sanctuary. It is further urged by him that section 20 may create a bar of accrual of rights but that cannot authorise the competent authorities to proceed for seizure or confiscation of the crusher or the motor as accrual of right may be relatable to grant of compensation. It is putforth by him that from the date of issue of notification u/s 18 of the Act till the notification u/s 26A there is no prohibition under the Act for carrying on any business. In this context he has placed heavy reliance on the decision rendered in the case of Pradeep Krishen (*supra*).

To meet the aforesaid submission of Mr. Sanghi, Mr. Agarwal, learned P.L. for the State has referred to the notification issued by Annexure R. 1. Submission of learned counsel for the State is that the said notification was issued in exercise of powers u/s 18(1) of the Act when the provision was not amended. He has given immense emphasis on the language of the notification to highlight that the State Government has declared the area specified in the schedule as the game

sanctuary under the Act for all animals and birds in the said sanctuary. Submission of Mr. Agarwal is that the unamended provision did not engulf the concept of intention but straightaway empowered the Government to declare an area to be a sanctuary. Learned counsel has submitted that the section 26A came into the statute book in the year 1991 and that contemplated issuance of a further notification specifying the limits of the area. The essence of the submission of learned counsel for the State is that if the amended provisions are not taken into consideration it can safely be construed that by virtue of the notification contained in Annexure R. 1 the area in question became a game sanctuary and, therefore, if any person has any right it is only with regard to payment of compensation. The learned counsel has referred to section 27 which provides restriction in entry in the sanctuary and section 28 for grant of permit for certain purposes. The learned counsel has also referred to section 51 which deals with penalties.

The heart of the matter is whether on the basis of the Annexure R. 1 the area in question can be regarded as a sanctuary. It is to be borne in mind that the notification in Annexure R.1 was issued under unamended provision enshrined u/s 18 of the Act.

Before I proceed to deal with the import and impact of the unamended provision I think it is appropriate to refer to the decision rendered in the case of Pradeep Krishen (*supra*). In the aforesaid case their Lordships in paragraph 16 scanned the scheme under amended Act and held as under:--

16. Chapter IV, *inter alia*, deals with Sanctuaries and National Parks, section 18 before its amendment by Act 44 of 1991 provided that the State Government, may, by notification, declare any area to be a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating wildlife or its environment. After its amendment, it provides that the State Government may, by notification declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wildlife or its environment. In substance, the thrust of the section is the same except that earlier the State Government could straightaway declare any area to be a Sanctuary by issuing a notification but under the amended section, it has to declare its intention to constitute any area other than an area comprised within any reserved forest or territorial waters as a Sanctuary. When a notification is issued u/s 18, the Collector is required to enquire into and determine the existence, nature and extent of the rights of any person in or over the land comprised within the limits of the Sanctuary. After such a notification is issued, no right can be acquired in or over the land comprised within the said limits except by succession, testamentary or otherwise. Section 21 requires the Collector to publish the notification in the

regional language in every town and village in or in the neighbourhood of the area comprised therein specifying the situation and the limits of the Sanctuary and calling upon persons claiming any right to prefer the claim before the Collector specifying the nature and extent of such right and the amount and particulars of the compensation, if any, and the claim in respect thereof. The Collector is then expected to inquire into the claim preferred by any person and pass an order admitting or rejecting the same in whole or in part. If such a claim is admitted in whole or in part, the Collector may either exclude such land from the limits of the proposed Sanctuary or proceed to acquire such rights unless the rightholder agrees to surrender his rights on payment of agreed compensation, worked out in accordance with the provisions of the Land Acquisition Act, 1894 or allow the continuance of any right of any person in or over any land within the limits of the Sanctuary. If he decides to proceed to acquire such land or right in or over such land, he shall proceed in accordance with the provisions of the Land Acquisition Act. Section 27 bars the entry of any person other than those specified in clauses (a) to (e) thereof from entering or residing in the area of the Sanctuary except in accordance with the conditions of permit granted u/s 28. Section 26A, which was introduced in the Act by the amending Act 44 of 1991, has already been extracted earlier. Sections 29 and 30 prohibit the destruction and setting of fire within the Sanctuary and section 31 prohibits entry into the Sanctuary with any weapon unless specifically permitted. Section 32 bans the use of injurious substances; section 33 provides for control of Sanctuaries; Section 34 requires registration of certain person in possession of arms. These are the provisions which relate to Sanctuaries. Section 35, which we have extracted earlier deals with National Parks and sub-section (3) thereof provides that where any area is intended to be declared as a National Park, the provisions of section 19 to 26A (both inclusive) except clause (c) of section 24(2) shall, as far as may be, apply to the investigation and determination of claims, and extinguishment of right, in relation to any land in such area as they apply in the said matters in relation to any land in a Sanctuary. It will be seen from this provision that the provisions which apply in relation to investigation and determination of claims, and extinguishment of rights in the case of Sanctuaries also apply, as far as may be, in the case of National Parks.

As has been stated earlier Annexure-R-1 was issued under the unamended provision enshrined u/s 18 of the Act. The aforesaid provision confers power on the State Government to declare a particular area as a sanctuary. The language of the said provision was absolutely clear and unambiguous. There has been a change in the amended provision which postulates a concept of intention which attains finality and gets concretised if notification is issued u/s 26A of the Act but in view of the notification which was under unamended provision there remains no trace of doubt that the area in question has already become a sanctuary. This is also the view of the Apex Court in the case of Pradeep Krishen (supra). Their Lordships have expressed that earlier the State Government could straightaway declare any area to be a sanctuary by issuing a notification. In the present case

the notification was issued before the amended provision came into force. Thus, there remains no iota of doubt that the area covered under the notification contained in Annexure-R-1 had already gained the status of a sanctuary.

The next submission of Mr. Sanghi is that the land which he and his brother have purchased does not fall within the sanctuary. The learned counsel has also referred to Annexure P.9 by which the State Government has constituted a committee to highlight that there was a proposal to de-notify certain areas or to de-limit the boundaries. I have gone through the aforesaid notification but I am of the opinion the same does not render any assistance to the petitioner in praesenti. The committee has not been assigned the duty to enquire about the limits of the sanctuary. Mr. Agarwal, learned P.L. for the state submits that the Khasaras belonging to the petitioners are covered in the sanctuary. He endeavoured hard to point out the same from the map which has been brought on record as Annexure R. 2. As the aforesaid controversy squarely relates to a factual one and the clear picture does not emerge, I think it is apposite to direct the Director, Wild Life to hear the petitioner and cause an enquiry with regard to the exact situation of the land to find out whether the area in question comes within the limits of sanctuary. It needs no special emphasis to state here that the Director of Wild Life would afford adequate opportunity of hearing to the petitioner by fixing the date. The petitioner would be permitted to produce the relevant material before the said authority. Enquiry in question shall be conducted and finalised within a period of two months from the date of production of the order passed today before the said authority. Till the matter is finalised the impugned order passed on 5-6-2000 shall remain in force. The learned counsel for the State shall intimate the Director, Wild Life about the order of this Court. It is expected that the Director of Wild Life would objectively scrutinise the material brought before him and pass the reasoned order so that the justifiability of the same can be tested by the Higher Forums. That apart the Director may pass such orders as permissible in law if the facts and circumstances so warrant.

The writ petition is accordingly disposed of without any order as to costs.