

**(1998) 04 PAT CK 0027**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 1526 of 1997**

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|-------------------------------------------------|------------|
| The Bihar State Mineral Development Corporation | APPELLANT  |
| Vs                                              |            |
| The State of Bihar Ors.                         | RESPONDENT |

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**Date of Decision :** 09-04-1998

**Acts Referred:**

Forest (Conservation) Act, 1980 — Section 2  
Forest Act, 1927 — Section 4

**Citation :** (1998) 3 BLJR 1676 : (1998) 2 PLJR 204

**Hon'ble Judges :** S.N. Mishra, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.N. Mishra, J.—In this writ application the petitioner has challenged the legality of the order dated 11.12.1996 issued by respondent principal Chief Conservator of Forest by which the petitioner Bihar State Mineral Development Corporation has been directed to stop mining operation with effect from 26.12.1996 and further for a declaration that lands measuring 86 acres appertaining to village Chandula and 86.80 acres of land appertaining to village Simalgoda, are not the forest land within the meaning of Section 2 of the Forest (Conservation) Act, 1980. Further prayer has been made for a direction to the respondents to consider and grant permission to the petitioner-Corporation for carrying on mining operation over the land, in question.

2. Briefly stated the case of the petitioner is that the petitioner Bihar State Mineral Development Corporation was established in the year, 1972 with the sole aim of promoting mineral development in the State after obtaining mining lease in the State. The land, in dispute, was acquired through Land Acquisition proceeding in the year 1965 for quarrying stone materials for use of Farakka Barrage after acquisition of the land, in question. The said land was vested in Farakka Barrage authority and as such, the Department of Forest, Govt. of Bihar, ceased to have any control over the said land. After construction of the said

Farakka Barrage, the said lands were transferred for mining purposes in October, 1975 and since then the petitioner Corporation is in possession over the same and carrying on mining operation. After the lands having been transferred to the petitioner Corporation in October, 1975, the petitioner became the owner of the property and the Forest department has nothing to do with the same. The respondent State of Bihar granted lease in 1975 for five years which was subsequently renewed till 15.10.1982. The petitioner Corporation, thereafter, applied for further renewal of the lease on 2.6.1992 which was rejected by the respondent Deputy Commissioner vide his order dated 18.6.1992, copy of the said order is made Annexure-3 to this writ application. The petitioner being aggrieved by the said order of the Deputy Commissioner preferred a revision before the Commissioner of Mines and the respondent Commissioner of Mines while admitting the said revision application has stayed operation of the order passed by the Deputy Commissioner vide his order dated 23.8.1994, copy of the said order is made Annexure-4 to this writ application. Meanwhile, respondent Divisional Forest Officer issued a notice to the petitioner Corporation stating therein that the land over which the mining operation is being carried on by the petitioner is the forest land and without obtaining prior permission from the Union of India the mining operation by the petitioner Corporation is in violation of Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the "Act"). It is also stated that the action of the petitioner Corporation is a penal offence under the provisions of the Act and, accordingly, directed the petitioner to stop the mining operation with effect from 30.4.1996, Copy of the said notice is made Annexure-5 to this writ application. Subsequently, the Union of India through its Ministry of Environment and Forest granted permission for carrying on mining operation over the land, in questions, till 11.9.1996. The respondent Principal Chief Conservator of Forests has directed the petitioner Corporation to forthwith stop the mining operation on the ground that the period for which permission was granted by the Union of India for mining operation has already expired.

3. A counter affidavit has been filed on behalf of respondent No. 6 Divisional Forest Officer wherein, inter alia, it is stated that the petitioner Corporation was in possession of the lease-hold areas having several plots both in village Simalgoda and Chandula. Some of the plots were described as Jangal Jhari, Kurwa Bari etc. It is alleged that in between 1875 to 1884 it was found that massive deforestation was taking place in the forest falling in the district of Santhal Pargana and in order to check further deforestation the then Government of Bengal vide its Notification No. 4844 dated 2.11.1894 declared all the unsettled Govt. land as protected forest under the provisions of the Indian Forest Act, 1878. Pursuant thereto the land, in question, was declared as protected forest by the forest department and the said Notification still holds the field. Report of Survey Settlement operation as well as the said Notification are made Annexures "B" and "C" respectively to this counter affidavit. It is alleged that in the last survey settlement operation the lands were recorded as

"Gairmazrua Jangal" (waste land suitable for afforestation or protection) and "Gair Mazrua Digar" (other kind of waste land) and, as such, the lands, in question, were legally constituted protected forest land. The final report of the last survey settlement operation in the district of Santhal Pargana is made Annexure "D" to the counter affidavit. It is then stated that vide Govt. Notification dated 25th February, 1946 the land, in question, was notified u/s 4 of the Indian Forest Act, 1927 as reserved forest and, accordingly, the Government appointed a Forest Settlement Officer and Deputy Commissioner, Santhal Pargana, as Appellate Authority. It is further alleged that the petitioner Corporation has got two leases of village Simalgoda and Chandula in 1982 for five years without approval of the Central Government. At the time of renewal of the lease, the respondent District Mining Officer was informed vide letter dated 16.5.1988 that the land, in question, constituted the forest land and for renewal of the mining lease approval of the Central Government is necessary in terms of the Provisions of Forest (Conservation) Act, 1980. It is also alleged that pursuant to the direction of the District Forest Officer the petitioner Corporation submitted a proposal for seeking permission of the Central Government under the Forest (Conservation) Act but the petitioner Corporation has not supplied the complete information. Sum and substance of the stand taken in the counter affidavit is that the land, in question, being forest land, and the lease with respect to the mining area having not been renewed, the respondent has rightly directed the petitioner Corporation to stop mining operation. According to the respondent, the land is not raiyati land of the petitioner, on the contrary it falls within the forest area and, as such, the petitioner cannot claim any right over the land in absence of the approval from the Central Government in terms of the provisions of the Forest (Conservation) Act, 1980.

4. Learned Counsel for the petitioner has challenged the order of the respondent authority on the ground that since the land, in question, having been acquired through land acquisition proceeding for the use of Farakka Barrage the land was transferred in favour of the petitioner for carrying mining operation, which was being carried on till 1975, it is a private land of the petitioner and, as such, the State respondent has no jurisdiction to interfere with the mining operation of the petitioner Corporation. According to the learned Counsel, the provisions of the Forest (Conservation) Act, 1980 is not applicable in the facts and circumstances of this case since the land was acquired for a particular project in the year 1964-65 and the said lands are free from all encumbrances. Once the land is acquired and ultimately vested to the petitioner Corporation, Government have no claim over the same. According to the learned Counsel, the said land was acquired through land acquisition proceeding for the public purposes and, in that view of the matter, it cannot be said to be the forest land. It has been submitted that the Forest Department cannot interfere with the mining operation since the land admittedly belonged to the private person which was acquired through land acquisition proceeding for which adequate compensation was awarded to the original land owner, Accordingly, the land, in question, will not come within the

mischief of the provisions of the Act.

5. In opposition, however, Mr. Ganga Prasad Roy, learned Additional Advocate General has supported the action of the respondent authority and submitted that the land having been declared as forest land vide notification issued by the then Bengal Government as well as the subsequent survey Settlement Operation wherein the land, in question, were declared to be a protected area, the petitioner cannot claim any vested right to continue mining operation without the permission of the Central Government, as envisaged under the provisions of Forest Conservation Act. Learned Counsel submits that admittedly the mining lease having not been renewed, the respondent authority has rightly issued such direction to the petitioner Corporation. Sum and substance of the submission of the learned Counsel for the respondent is that the land, in question, being a protected area and without approval of the Central Government, as envisaged under the statute, the petitioner cannot claim as a matter of right to carry on the mining operation in a forest land.

6. In order to appreciate the rival contention of the learned Counsel appearing for the parties, it has to be ascertained the nature of the land, in question, as to whether it is a forest land within the meaning of the Act. As has been stated above, the land, in question, situates in the district of Santhal Pargana and the same have been declared as forest land vide notification issued by the then Bengal Government, as it appears from the averments made in the counter affidavit. That apart, during the last survey settlement operation it was also found that the land, in question, is a forest land and, accordingly, the Department of Forest Govt. of Bihar, has issued necessary direction to its officials to act accordingly. In that view of the matter. it can safely be held that the land, in question, is a forest land. Even the land belonged to a private person, it is well known principle of law that irrespective of the ownership, whether it is a private or public, will come within the mischief of the provisions of the Act. The Forest (Conservation) Act was enacted for conservation of forest and the provisions thereto will apply to all such forest irrespective of the ownership whether it is a private or public. Similar view has been expressed by the Apex Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, and a Division Bench of this Court has also taken similar view in the case of State of Bihar and Others Vs. R.M.C. Dill and Co. (P) Ltd. and Others, . Admittedly, the lease has not been renewed in favour of the petitioner Corporation and the petitioner Corporation cannot claim the renewal of lease as a matter of right. Lease cannot be renewed if the renewal will lead to further deforestation. In order to prevent ecological imbalance and also to prevent deforestation the Forest (Conservation) Act, 1980, has been enacted by the Central Government Section 2 of the Act is relevant for the purpose of this case, which provides as follows:

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.

(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 re-afforestation.

Explanation. -For the purpose 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, spices, rubber palms, oil bearing plants, horticultural crops or medical plants:

(b) any purpose other than re-afforestation.

but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wire less communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

Mere perusal of the provisions, as quoted above, it is mandatory and/or obligatory for the State Government to obtain prior permission from the Central Government for dereservation of forests and/or use of the forests land for non-forest purposes. Even if it is accepted that after acquisition of the land through land acquisition proceeding, it has become the private property of the petitioner Corporation but in view of the operation of Forest (Conservation) Act, the question of renewal of the lease will not be as a matter of right unless the approval is granted by the Central Government. In view of the specific and unambiguous provisions as contained in Section 2 of the Act, as quoted above, read with the explanation thereto, the State Government or any of its authority cannot allow the forests land be used for any non-forest purposes without prior approval of the Central Government. Admittedly, in the instant case, the lease was granted in favour of the petitioner by the State Government prior to the coming of the Act, which expired after coming of the Act, and, as such, the said lease cannot be renewed by the State Government without prior permission of the Central Government. The renewal of the lease in favour of the petitioner will amount to further deforestation which is prohibited under the provisions of the Act, as quoted above. The Supreme Court in the case of Ambalal Manibhai Patel

Vs. State of Gujarat, has held as follows:

The appellants are asking for a renewal of the quarry leases. It will lead to further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place in that view of the matter, in the facts and circumstances-of the case, in our opinion, the ratio of the said decision cannot be made applicable to support the appellants demands in these cases because the facts are entirely different here. The primary purpose of the Act which must subserve the interpretation in order to implement the Act is to prevent further deforestation. The Central Government has not granted approval. If the State Government's of the opinion that it is not a case where the State Government should seek approval of the Central Government, the State Government cannot apparently seek such approval in a matter in respect of which, in our opinion, it has come to the conclusion that no renewal should be granted.

7. Mr. Mishra appearing on behalf of Union of India, after having adopted the submissions of the learned Additional Advocate General, has submitted that the instant writ application is not maintainable in view of the fact that prior approval of the Central Government having not been obtained for renewal of lease, this writ application can be dismissed on this ground alone. It is further submitted that Section 2 of the Act clearly mandates that the renewal of the lease of the forest area for non-forest purpose can only be passed by the State Government after obtaining prior approval of the Central Government. The approval of the Central Government is sine qua non before renewal of the lease can be considered by the State Government with respect to the forest land. In support of his contention Mr. Mishra has relied upon a Full Bench decision in the case of Vishnu Kumar Khatar Vs. State of Bihar and Others . The ratio of the Full Bench decision (supra) clearly supports the submission of Mr. Mishra.

8. The contention of Mr. Mahto that the mining operation is being carried on having regard to the lease granted in its favour and, as such, the provisions of the Act will not be attracted, seems to be misconceived one. The renewal of the lease must be in accordance with the law in existence at the time of renewal of the lease irrespective of the fact that the petitioner was carrying on mining operation pursuant to the lease granted to it but the moment the Act came into operation, the lessee has no vested right for renewal of the lease within the forest area without prior approval of the Central Government The lessee, having regard to the total prohibition, as envisaged u/s 2 of the Act, had no right to continue the mining operation. I am supported by the view taken by the Apex Court in the case of Divisional Forest Officer and Others Vs. S. Nageswaramma, .

9. Having heard the learned Counsel for the parties and going through the pleadings and the law laid down by the Apex Court as well as this Court the respondent has rightly directed the petitioner to stop its mining operation which is in accordance with the intention of the Act. I am unable to accept the submissions raised on behalf of the petitioner.

10. In the result, this writ application falls and, accordingly, the same is dismissed but in the facts and circumstances, there shall be no order as to costs.