
(2016) 10 CHH CK 0035
In the Chhattisgarh High Court
Case No : Writ Petition No. 4624 of 2005

Tilak Nath

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 158, Section 165(7-b)
Forest (Conservation) Act, 1980 — Section 2

Citation : (2017) AIRCC 921 : (2017) 7 FLT 51

Hon'ble Judges : Shri Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mr. Krishna Kumar Dewangan, Advocate, for the Petitioners; Mr. Ashish Surana, Panel Lawyer, for the State/Respondents No.1 and 3

Final Decision : Dismissed

Judgement

Shri Sanjay K. Agrawal, J.—Impugning legality, validity and correctness of the order dated 26-5-2005 passed by the Board of Revenue by which the Board of Revenue has affirmed the order of the Commissioner setting aside the sale made by the original holders in favour of the petitioners and vesting the land in favour of the Government finding that the sale made by the original holders of the land in favour of the petitioners is in violation of the provisions contained in Section 165(7)(b) of the Chhattisgarh Land Revenue Code, 1959 (for short "the Code of 1959"), the petitioners have filed these writ petitions.

2. In W.P.No.4624/2005 (Tilak Nath v. State of Chhattisgarh and six others) and likewise also in W.P.No.5076/2005 (Ramlal v. State of Chhattisgarh and five others), similar orders have been passed by the Board of Revenue which have been impugned therein and since both the cases involve common question of fact and law they were clubbed together, heard analogously and are being decided by this common order.

3. Essential facts required to be noticed for adjudication of the instant writ petitions are as under: -

3.1) In W.P.No.5076/2005, 10 acres of land situate at Village Nevta, Tahsil Kondagaon, Khasra No.1/100 was allotted on Government lease to Rajman Kalar on 19-8-1968. He sold the said land to Ramlal Koshta on 29-9-1975 who in turn sold it to Tilaknath Koshta on 30-12-1980 and in the year 1986 Tilaknath Koshta sold it to Jankibai, wife of Raghunath, and finally, Jankibai again sold the said land to Ramlal Koshta on 10-11-1989. No permission was taken from the competent authority under the provisions contained in Section 165(7)(b) of the Code of 1959 for all these transactions.

3.2) In W.P.No.4624/2005, 10 acres of land situate at Village Nevta, Patwari Halka No.32, Tahsil Kondagaon, bearing Khasra No.1/106 was granted on Government lease to Sundar Koshta on 19-8-1968 and upon his death, his wife Mehatreen sold the land to petitioner Tilak Nath on 19-1-1990 and no permission was obtained from the Collector as provided in Section 165(7)(b) of the Code of 1959.

4. It was brought to the notice of the Commissioner that the said lands have been sold in violation of Section 165(7)(b) of the Code of 1959 by the original persons to whom the lands were allotted on Government lease, and also in violation of Section 158 of the Code of 1959. Suo motu proceedings were initiated by the Commissioner and the Commissioner by its order dated 29-1-1998, held that the lands in dispute are recorded in revenue records as bade jhad ka jangal and reserved for nistari jangal, and the said lands have been allotted in violation of the provisions contained in Section 158(3) as well as Section 165(7)(b) of the Code of 1959 and therefore, the sale made by the original allottees in favour of the petitioners is null and void and thus, declared the sale as void and vested the suit lands in favour of the State.

5. The petitioners, aggrieved in both the cases, preferred revisions before the Board of Revenue and the Board of Revenue concurred with the findings of the learned Commissioner and dismissed the revision petitions clearly holding that transfer made by the original allottees is in violation of the provisions contained in Section 165(7)(b) of the Code of 1959 in addition to clause 7 of the allotment order as well as such transfer was barred under the provisions contained in Section 158(3) of the Code of 1959 as within ten years from the date of allotment, transfer could not have been made by the original allottee. Feeling aggrieved against the orders passed by the Board of Revenue affirming the orders of the Commissioner, these two writ petitions have been filed by the petitioners stating inter alia that the orders passed by the Commissioner declaring the sale deeds as null and void and vesting the lands in favour of the Government as affirmed by the Board of Revenue, are bad in law.

6. Return has been filed by the State in both the writ petitions stating inter alia that the provisions of Section 237(2) of the Code of 1959 have not been complied with while making allotment in favour of the original allottees, as the land in dispute is recorded as bade jhad ka jangal and reserved for jangal nistar and therefore the said lands could not have been allotted to the original allottees

and it has rightly been declared null and void by the Commissioner in exercise of suo motu jurisdiction and the same has rightly been affirmed by the Board of Revenue.

7. Mr. Krishna Kumar Dewangan, learned counsel appearing for the petitioners in both the writ petitions, would submit that the orders passed by the two Courts below declaring the sale made by the original holders to the petitioners are unsustainable and bad in law, as the allotment made was strictly in accordance with law and no jurisdictional error was committed by the learned Collector while making allotment and therefore the orders of the Commissioner as affirmed by the Board of Revenue deserve to be set aside. He would further submit that the Commissioner has no power to exercise the suo motu revisional jurisdiction.

8. Mr. Ashish Surana, learned Panel Lawyer appearing on behalf of the State/respondent and its authorities, would submit that the lands in dispute are recorded as bade jhad ka jangal and they are reserved for nistari jangal and therefore without following the procedure envisaged under Section 237(2) of the Code of 1959, these lands could not have been allotted to the persons to whom the lands have been allotted. He would further submit that the transfer made was in violation of clause 7 of the conditions of lease and no permission from the Collector under Section 165(7)(b) of the Code of 1959 was taken by the allotted persons, therefore, the Commissioner has rightly been declared the transactions as null and void and vested the lands in favour of the Government.

9. I have heard learned counsel for the parties and also perused the records and considered their rival submissions.

10. From perusal of the records, it is quite vivid that the suit land was junk of Khasra No.1/2, 5; area 1835.05 acres; and recorded as bade jhad ka jangal reserved for jangal nistar as per adhikar abhilekh panji prepared under Section 115 of the Madhya Pradesh Land Revenue Code, 1954, and in both the cases part of these khasra numbers was allotted to Sundar Koshta in one case and to Rajman Kalar in another case on temporary lease with no right to alienate to the extent of 10 acres on 19-8-1968 which they had sold to Tilaknath in one case and to Ramlal in another case, and ultimately, Ramlal sold it to some other persons and ultimately it has been purchased by the petitioners herein. The said transfer is in violation of clause 7 of the lease deed.

11. It is established in case of the petitioners that the original grantees after grant of lease in their favour, contrary to clause 7 of the lease deed, which prohibits transfer of land, transferred the allotted lands in violation of clause 7 of the lease deed which has been duly recorded by the Board of Revenue. Not only this, the land in dispute was, admittedly, recorded as bade jhad ka jangal in revenue records (Annexure R/2).

12. The question to be considered is whether the land which is a forest land bade jhad ka jangal can be allotted/leased to Sundar Koshta and Rajman Kalar without prior approval of the Central Government under Section 2 of the Forest

(Conservation) Act, 1980.

13. Section 2 of the Forest (Conservation) Act, 1980 (for short "the Act of 1980") reads as under:-

"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 ceased 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 organization 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 purpose of this section "nonforest 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, horticulture crops or medicinal plants.

(b) any purpose other than reafforestation, 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, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

14. The Supreme Court in the matter of T.N. Godavarman Thirumulkpad v. Union of India and others(1997) 2 SCC 267 has held that the word "forest" must be understood according to its dictionary meaning, this description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act, 1980. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. Paragraph 4 of the report is as under:-

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters

connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests to understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat* (1987) 1 SCC 213, *Rural Litigation and Entitlement Kendra v. State of U.P.* (1989) Supp (1) SCC 504 and recently in the order dated 29- 11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority WP(C)No.749 of 1995* decided on 29-11-1996). The earlier decision of this Court in *State of Bihar v. Bansi Ram Modi* (1985) 3 SCC 643 has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

15. The principle of law laid down in *T.N. Godavarman Thirumulkpad* (supra) was followed subsequently by the Supreme Court in the matters of *Sri Ram Saha v. State of W.B. and others* (2004) 11 SCC 497, *In Re: Construction of Park at Noida Near Okhla Bird Sanctuary* (2011) 1 SCC 744 and very recently in the matter of *B.S. Sandhu v. Government of India and others* (2014) 12 SCC 172.

16. On a close reading of Section 2 read with sub-clause (iii) of the Act, 1980, it would appear that the State Government or any authority cannot assign by way of lease or otherwise to any private person or to any authority, the reserved forest notified under Section 4 of the Indian Forest Act, 1927 read with Section 2 of the Act of 1980 without prior approval of the Central Government, as Section 2 of the Act of 1980 has been given overriding effect to any other law for the time being in force.

17. The Supreme Court in the matter of *A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.* 2008 AIR SCW 5922 held that prior approval is required for diversion of any forest land and its use for some other purpose. Paragraph 6 of the report states as under:

"6. A bare perusal of the aforesaid provision would show that prior approval is required for the diversion of any forest land and its use for some other purpose. This is further fortified by a look at Rule 4 which provides that every State Government or other authority seeking prior approval under Section 2 of the Act shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposal would be examined by a committee appointed under Rule 2-A within the parameters and guidelines postulated in Rule 5. There is nothing on record to suggest that this procedure had been adopted."

18. Again, the Supreme Court in the matter of Tarun Bharat Sangh, Alwar v. Union of India and others 1993 AIR SCW 1300 has held that once an area is declared as protected forest, it becomes forest within the meaning of Section 2 of the Act of 1980 and prior approval of the Central Government is a condition precedent for grant of lease under the Rajasthan Minor Mineral Concession Rules, 1986.

19. The Supreme Court in the matter of Natural Lovers Movement v. State of Kerala & others 2009 AIR SCW 3656 held that after enforcement of the Forest (Conservation) Act, 1980, the State Government or any authority cannot make an order or issue direction for de-reservation of reserved forest or permit for the use of forest land or any portion thereof by way of lease.

Paragraph 27(2) of the report states as under:-

"27(2). After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for de-reservation of reserved forest or any portion thereof or premise use any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government."

20. The above decision of the Supreme Court in the aforesaid case T.N. Godavarman Thirumulkpad (supra) has been followed by this Court in the matter of Baliram v. Board of Revenue & another 2009(1) CGLJ 30 and it has been clearly held that once land is recorded as "Bade Jhad Ka Jangal" no allotment can be made by the State authorities without obtaining permission of the Central Government. Paragraph 6 of the report is as under:-

"6. There is no irregularity or infirmity in the order passed by the Board of Revenue. Admittedly, the land is recorded as "Bada Jhad Ka Jangal", in the revenue records. Once it is recorded as "Bade Jhad Ka Jangal", no allotment can be made by the State Authorities without obtaining permission of the Central Government. It is evident from the various decisions of the Hon"ble Supreme Court in the matter of T.N. Godavarman Thirumulkpad (supra)."

21. Keeping in view the provisions contained in Section 2 of the Act of 1980, particularly keeping in view that the land is forest land and in view of Section

2(iii) of the Act of 1980, the suit lands are forest lands bade jhad ka jangal within the meaning of Section 2(iii) of the Act of 1980, this Court is of the considered opinion that no allotment/lease could have been made by the State Government without obtaining prior permission from the Central Government to the aforesaid persons. Therefore, the learned Commissioner is justified in declaring the transactions as null and void and further justified in vesting the lands in favour of Government which has rightly been affirmed by the Board of Revenue in revisional jurisdiction.

22. As a fall out and consequence of aforesaid discussion, both the writ petitions deserve to be dismissed and are accordingly dismissed, leaving the parties to bear their own costs.