

(1987) 10 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 9466 of 1987

Yashwant Stone Works

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-10-1987

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2

Forest Act, 1927 — Section 20

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : AIR 1988 All 121

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Kailash Nath Tripathi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This petition under Art, 226 of the Constitution seeks Mandamus directing the Collector, Mirzapur, to grant mining lease to the petitioner for mining operations of stone chips, their crushing, transportation etc. An application was made by the petitioner for the purposes aforesaid under the U. P. Minor Minerals (Concession) Rules, 1963, The petitioner's grievance is that the application has been unduly and unjustifiably kept pending by the Collector on the ground of prohibition to the granting of leases alleged to have been imposed under the Forest (Conservation) Act, 1980 (Act 69 of 1980), hereinafter referred to as "1980 Act".

2. In 1957, the Parliament in order to provide for the regulation of mines and the development of minerals under the control of the Union, enacted the Mines and Minerals (Regulation and Development) Act, 1957. The intention was that the mineral wealth of the country should be conserved and should be worked properly without waste and by persons qualified in that kind of work, Section 2 provides that in public interest the Union could take under its control the

regulation of mines and development of minerals to the extent provided therein. The State Government, after the declaration of the Central Government u/s 2, became a delegated authority. It has been empowered to frame rules relating to minor minerals by Section 15 of the said Act. In exercise of this power, the State of U. P. framed the Uttar Pradesh Minor Minerals (Concession) Rules, 1963. The rules lay down in detail the procedure and the manner in accordance with which the rights for mining operations have to be given.

3. By a notification issued on 25th April, 1979, the State Government applied Minor Minerals (Concession) Rules, 1963, to district Mirzapur, empowering the Collector to grant licences and permits.

4. In May 1987, the petitioner applied for grant of lease under the aforesaid Rules for quarrying stone grids etc. in respect of one Khadan, situated in Plot No. 3567 of village Billi Markundi,, Pargana Agori, tehsil Robertsganj, district Mirzapur. The decision on the application, according to the petitioner, has been withheld by the Collector on the ground of the prohibition alleged to have been imposed by the Forest (Conservation) Act, 1980.

5. The question before us is whether the Collector-could with hold the consideration of the application made by the petitioner for giving of a lease on the ground aforesaid.

6. In order to appreciate the question of applicability of the Forest (Conservation) Act, 1980, it is necessary to examine the Objects and Reasons of the Act. The Statement of Objects and Reasons is quoted below :

"Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

2. With a view to checking further deforestation, the President promulgated on the 25th October. 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central Government necessary for dereservation of reserved forests and for use of forest land for non-forest purpose. The ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.

3. The Bill seeks to replace the aforesaid Ordinance."

7. The Statement of Object sand Reasons indicates that the Act was passed with a view to checking deforestation which had been taking place in the country on a large scale and which had caused ecological imbalance leading to environmental deterioration. It is well known that breaking up of the soil or the clearing of the forest land affects seriously reafforestation or regeneration of forests and, therefore, such breaking up of the soil can only be permitted after taking into consideration all aspects of the question such as the overall advantages and disadvantages to the economy of the country, environmental conditions,

ecological imbalance that is likely to occur, its effects on the flora and the fauna in the area etc.

8. It was, therefore, thought that the entire control of forest areas should vest in the Central Government. With that end in view. S. 2 provided that prior approval of the Central Government should be obtained before permitting the use of the forest land for non-forest purposes. Section 2 of the 1980 Act is being extracted below :

"Section 2. Restriction on the de-reservation 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.

Explanation-- For the purposes Of this section "non-forest purposes" means breaking up or clearing of any forest land or portion thereto for any purpose other than reafforestation."

9. The Act had preceded an Ordinance known as the Forest (Conservation) Ordinance, 1980, and the said Ordinance was repealed by Section 5 of the Act. Section 3 contemplates about the constitution of Advisory Committee for the purposes of advising the Government with regard to -

(i) the grant of approval u/s 2, and

(ii) any other matter connected with the conservation of forests which may be referred to it by the Central Government.

10. The argument of the State counsel was that Section 2 makes it obligatory for the State Government to obtain the permission of the Central Government for (i) de-reservation of reserved forests, and (ii) use of forest land for non-forest purposes. Counsel's argument was that two dual situations were intended to be prevented by the legislation in question, namely, de-reservation of reserved forests, and use of forest land for non-forest purposes,

11. In the instant case a notification u/s 4 of the Forest Act, 1927, was made by the State Government deciding to constitute the land in question as reserved forest. Section 4 has to be allowed by publication of a notification declaring forest as reserved forest. Admittedly no such declaration u/s 20 of the Forest Act was made.

12. The question, however, is whether in the absence of declaration of the forest

in question as reserved forest u/s 20, the permission of the Central Government was required to be obtained for use of forest land for non-forest purpose.

13. "Non-forest purpose" means breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation. Indisputably, using a forest land or a portion thereof for the purpose of mining is a non-forest purpose. This has been so held by the Supreme Court in *State of Bihar Vs. Banshi Ram Modi and Others*, , by saying :

"We are, therefore, of the view that while before granting permission to start mining operations on a virgin area Section 2 of the Act has to be complied with"

14. In the aforesaid case, the controversy, briefly, was that the respondent Bansi Ram Modi was granted a mining lease for mining and winning mica in respect of an area of eighty acres of land in two villages of district Hazaribagh. The said lease was to expire on April 24, 1986. During mining operations, Bansi Ram Modi came across two other minerals, namely, feldspar and quartz, which are commonly known to be associate minerals of mica. On discovery of these two varieties of minerals, Bansi Ram Modi applied to the State Government to include the said minerals in the lease executed in April 1966, so that he could win and dispose of those minerals also. The State Government agreed and a deed of incorporation was duly executed in April, 1983. It was then that the attention of the State Government was drawn to the Forest (Conservation) Act, 1980. The respondent Bansi Ram Modi was then informed that as previous approval of the Central Government had not been obtained for inclusion of feldspar and quartz in the mining lease, as was required by the 1980 Act, he could not be permitted to win those two new minerals. The High Court accepted the writ petition holding that Bansi Ram Modi could win and take away feldspar and quartz from the mining area, as the lease had been executed" in his favour earlier to 1980. The appeal of the State of Bihar was dismissed by the Supreme Court. The Supreme Court held that as the lease had been granted earlier to the enforcement of the 1980 Act, Section 2 did not apply. The Supreme Court held :

"Explanation to Section 2 of the Act defines "non-forest purpose" as breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation. Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government."

15. Before us, however, the controversy is whether the Collector could be issued a direction to grant lease to the petitioner despite the fact that entire (there) is no prior approval of the Central Government for the purpose of carrying out the mining operations.

16. Reverting to the argument of the petitioner's counsel that as no notification

u/s 20 of the Forest Act, 1927, declaring the forest in question as "reserved forest" had been issued therefore, prior approval of the Central Government was not required, we find ourselves unable to agree. u/s 2 of the 1980 Act, there are two prohibitions. The first is that the State Government would not be empowered to declare a reserved forest assessing to be so, and the second is that any forest land or any portion thereof cannot be used for non-forest purpose. The words important in Clause (ii) of Section 2 are : "any forest land. The word "forest" has not been defined in the Act. This word has been used in the general sense, which means "all lands bearing vegetative associations demarcated by trees of any size exploited or not, capable of producing wood of other forest products of exerting an influence on the climate or on the water regime or providing shelter for livestock and wildlife." This definition has been given by Food and Agriculture Organization (F.A.O.) of the United Nations. The prohibition, thus, being that no forest land or any portion thereof can be used for non-forest purposes, prior approval of the Central Government would be needed. Mining operations would clearly be covered by the Explanation appended to Section 2 of the 1980 Act. The Explanation includes "any purpose other than reforestation". Mining operation is definitely a purpose other than reforestation. For what no permission or approval of the Central Government is required u/s 2 is for converting a land into a forest of a forest which had been destroyed or finished, to reconvert it into forest. This is in keeping with the object for which the Act was passed, the same being to check further deforestation.

17. A Division Bench of the Andhra Pradesh High Court in Anupama Minerals Vs. Union of India and Others, , held that :

"Indisputably, using a forest land or a portion thereof for the purpose of mining is a non-forest purpose....."

18. This decision of the Division Bench was although not approved in its entirety by the Full Bench in G. Raghava Das v. Govt. of Andhra Pradesh, AIR 1987 Andh Pra 166, but the portion quoted above was approved by the Full Bench in paragraph 8 of its judgment.

19. In Ratan Lal Sharma Vs. The Secretary to the Government, Forest Department and Others, , grant of mining lease without prior approval of the Central Government was held to have not conferred any right on the person obtaining the lease to operate the mine.

20. In Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 , one of the questions was about the renewal of a lease which was granted in November, 1971. The case, of the appellant Ambica Quarry Works was that the lease lands were since de-reserved from the forest area from 1971, the requirement of obtaining approval from the Central Government under the 1980 Act did not apply. The Supreme Court did not accept the argument holding that in a case of renewal of lease the forest land would have to be dug up for mining operations, hence Section 2 of the 1980 Act applied even to that case. The

Supreme Court held :

"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 area where deforestations have taken place. In that view of the matter, in the fact 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."

21. The decision on which reliance had been placed before the Supreme Court was *State of Bihar Vs. Banshi Ram Modi and Others*, . That case was distinguished by the Supreme Court by holding that the decision of that case given on its own facts and the ratio of that decision had to be understood in the background of the facts of that case.

22. In *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 the Supreme Court said that S. 2 of the 1980 Act makes it obligatory for the State Government to obtain the permission of the Central Government for (1) dereservation of reserved forest, and (2) for use of forest land for non-forest purpose. It is apparent, therefore, that the two dual situations were intended to be prevented by the legislation in question, namely, dereservation of reserved forest, and use of forest land for non-forest purposes.

23. From this, it appears to us to be clear that for applying the 1980 Act it is not necessary that there should have been a reserved forest. It applies to "any forest land" which is to be used for non-forest purpose. "Any" is a word of very wide meaning and prima facie the use of this word excludes limitation or qualification. If the word "any" is also kept into account, there would be no difficulty in finding that the term "forest" has not to be confined to "reserved forest" only. Section 2 imposing restriction on the use of forest lands for non-forest purposes will apply to all the forests.

24. The Government of India, Ministry of Agriculture, on 26th October, 1981 issued letter No. C-11021/25/76-FRY (Coord), saving that:

"Since mining is a non-forest activity, it is essential that in all cases where mining activity is carried on in forest areas, permission of the Central Government should be obtained u/s 2 of the aforesaid Act. Mining activities in forest areas without the approval of the Central Government attracts the provisions of the Forest (Conservation) Act."

25. In *Encyclopaedia Britannica*, Vol. 9, page 614, some of the forest values have been given. It has been said :

"It is essentially a community-technically known as an eco system in which trees are dominant form of vegetation but in which other plants, animals, Soil and the area all play an important role."

Amongst the important services rendered by the forest are control of Soil erosion, protection of watersheds and a melioration of local climate. The forest canopy breaks the force of the violent rainfall on the Soil. The decaying leaves and twigs make the Soil more porous and, therefore, more effective reservoir for the storage of water."

26. We have noted the objection for the achievement of which the 1980 Act was passed. In *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213, the Supreme Court says :

" "1980 Act was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act of 1980."

27. If the objects of the Act are kept into account, it would be clear that the words "any forest" would take within themselves all forests irrespective of the fact that they are reserved or protected or not. It is a well settled proposition of law that the object of an Act is helpful in interpretation of the various provisions made therein. In *Reserve Bank of India v. Peerless G. F. & I. Co.* AIR 1987 SC 1023, the Supreme Court has emphasised on the utility of objects and reasons in interpreting the provisions of an Act.

28. For what we have said above, we find that the 1980 Act applies and until and unless permission or approval of the Central Government has been granted, the State Government would have no power to grant any lease or permission under the U. P. Minor Minerals (Concession) Rules, 1963.

29. We may also deal with the argument of the petitioner's counsel at the end that renewal is different from grant of a fresh lease. It is a lease for a fresh period. In *State of Tamil Nadu Vs. Hind Stone and Others*, . Hon"ble Chinnappa Reddy, J., speaking for the court held that an application for renewal of a lease is in essence an application for grant of a lease for a fresh period. In view of this decision, an application for renewal has to be treated as an application for a fresh lease for the purpose of Section 2 of the Act, and approval of the Central Government has to be necessarily obtained.

30. On behalf of the petitioner, written arguments have been filed by Sri S. P. Singh laying the claim of the petitioner for grant of mining lease in preference to respondents 3 and 4. In that connection, it has been pointed out that as the Stone Mohal Act, 1886, has been rendered redundant, the claim of the contesting respondents for being given the lease on that basis could not be recognised. It has been said that the petitioner has been granted lease in the year 1983, and that the same was being continued since December 1983, without interruption up to 19th, December, 1986, and therefore, it is the petitioner who is entitled for getting the permission over plot No. 2751.

31. Since the Forest (Conservation) Act, 1980, applies, lease could not be

granted without the permission of the Central Government. Consequently, it is immaterial that the petitioner has been excavating since December 1983 and had applied for the renewal in February, 1986 for permit over plot No. 2751. Counsel appearing for the petitioner admitted before us that the first question to be decided is about the "applicability of the Forest (Conservation) Act, 1980, and only if that question is decided in favour of the petitioner; that the application for grant of mining lease could be considered on merits. We have held that the Forest (Conservation) Act, 1980, applies.

32. The petitioner's Counsel invited our attention to a stay order passed in Writ Petition No. 15938 of 1983 which is quoted below :

"Meanwhile the petitioners functioning and working of the quarries and transport of stone chips may not be interfered with, provided the petitioner deposits the requisite fee payable for it."

33. The stay order cannot decide the rights of the parties.

34. We, consequently, find no merits in this petition and dismiss the same.