

**Subhadra Devi Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Jul-27-2001

**Judge :** Aftab Alam, J.

**Appeal No. :** C.W.J.C. No. 3782 of 1998

**Appellant :** Subhadra Devi

**Respondent :** State of Bihar and ors.

**Disposition :** Petition Dismissed

**Judgement :**

**Aftab Alam, J.**

1. This writ petition is directed against the order, dated 21-2-1998 passed by the Member, Board of Revenue, Bihar by which he allowed the revision filed by the Bihar State Forest Development Corporation and rejected the petitioner's claim of having interests over an area of 543.27 acres of land which along with other lands were notified under Section 29 of the Indian Forest Act, 1927 (hereinafter referred to as 'the Act') as 'protected forest.

2. This case has a chequered history which goes back almost 50 years. The controversy relates to the petitioner's claim of raiyati interest over 543.27 acres of land which along with other tract were declared to be protected forest by a

notification issued under Section 29 of the Act. It is important to bear in mind that the dispute relates to lands which were notified as protected forest and further that 'protected forest' and 'reserved forest' are two entirely different categories under the Act and the Act has different sets of provisions in respect of the two categories. It seems that in the earlier round of litigation before this Court, this vital difference was overlooked and that led to a lot of unnecessary complications in this case.

3. The relevant facts which are admitted or which are in any case undeniable can be stated as follows. The State Government by notifications, dated 6-1-1953 and 19-1-1954 issued under Section 29 of the Act declared a large area of land in the old district of Champaran as protected forest. The lands covered by the two notifications also included survey plot Nos. 1, 8, 9 and 10 of village Hariharpur, P.S. Ramnagar in their entirety. The petitioner claimed raiyati interests over parts of plot Nos. 1, 8 and 9 and whole of Plot No. 10, having a total area of 543.27 acres, on the basis of a settlement made by the erstwhile Ramnagar Estate under a Sada Hukumnama. The petitioner petitioned the District Magistrate asserting his raiyati interests over the disputed lands and according to the petitioner the District Magistrate sent a favourable report to the Government. The letter of the District Magistrate is not on the record. There is, however, a letter dated 4-2-1954 (Annexure-3) which was written by the Addl. Under Secretary to the Government of Bihar, Revenue Department, Patna to the Chief Conservator of Forests, Bihar. The petitioner places much reliance on this letter, the relevant portion of which is produced below:

I am directed to refer to your letter No. 8087, dated the 3rd November, 1953 in the subject noted above and to say that as recommended by you, the State Government are pleased to decide that an area of 195 acres left out of demarcation in village Hariharpur may be released to the applicants. For the remaining area of lands, they may file their claims before the Forest Settlement Officer for compensation.

4. The claim of the petitioner then came up for determination before the Forest Settlement Officer. The Forest Settlement Officer on a detailed consideration of

the matter came to find and hold that the alleged settlement was a sham and Benami transaction purported to have been made without any consideration; that the Patta and the other papers produced by the petitioner were quite vague and on the basis of those documents it was not possible to connect the lands which the petitioner claimed to have been settled in her favour to the lands covered by the notification and that no portion of the protected forest was ever under cultivation or under the possession of the petitioner. On these and similar other findings, the Forest Settlement Officer by his order, dated 27-2-1962 passed in F.C. Case No. 1 of 1956-57 held that the claimants (Including the present petitioner) had no title or any manner of possession over the lands which were demarcated by pillars and, therefore, there was no question of acquisition of the disputed lands on payment of compensation to the claimants. The Forest Settlement Officer accordingly directed that the Forest Department will maintain their possession according to the demarcated map.

5. Against the order passed by the Forest Settlement Officer the claimants preferred an appeal before the Collector, Champaran which was registered as Revenue Appeal No. 24 of 1962-63. The Collector by his order, dated 30-9-1963 (copy at Annexure-6) allowed the appeal, setting aside the order passed by the Forest Settlement Officer. The Collector directed that the area of land which though shown in the notifications issued under Section 29 of the Act, was latter left out of demarcation, should be released in the petitioner's favour and further held that the claimants were entitled to compensation for the rest of the lands claimed by them because the Forest Department had taken possession of lands belonging to them for the purpose of constituting a protected forest.

6. Against the order passed by the Collector the State Government filed an appeal (after about six years from the date of the order) before the Commissioner, Tirhut Division which was registered as District: Champaran No. 255 Misc. 69-70. The Commissioner by order, dated 6-3-1986 (Annexure-7) allowed the appeal filed by the State Government and set aside the order passed by the Collector.

7. Against the order passed by the Commissioner, the petitioner filed a revision being Case No. 480 of 1986 before the Board of Revenue which was dismissed by

order passed under resolution, dated 16-12-1987 (copy at Annexure-8).

8. The petitioner then came to this Court in CWJC No. 1364 of 1988 challenging the orders passed by the Commissioner and the Member, Board of Revenue. In that writ petition, it was contended on behalf of the petitioner that the Act provided for only one appeal after which a revision would lie before the State Government. It was accordingly submitted that the order passed by the Commissioner in a second appeal preferred by the State Government was a nullity being without jurisdiction and the order passed by the Board of Revenue was also liable to be set aside as it tended to uphold and affirm an order which was passed without any authority in law. The submissions made on behalf of the petitioner were upheld and by order, dated 11-5-1993 (copy at Annexure-9) that writ petition was allowed on that ground alone. It is a brief order, the relevant portion of which is reproduced below:

As this writ petition is bound to succeed on a short question, as such, it is not necessary to state the facts. It has been submitted on behalf of the petitioner that against the appellate order passed by the District Magistrate, the only remedy provided was to prefer a revision before the State Government and neither any appeal nor any revision was maintainable before the Divisional Commissioner. Section 18 of the Act confers only one right of appeal and under Section 22 of the Act revisional powers can be exercised by the State Government. Since the appellate power was already exercised by the District Magistrate and there was neither any provision for exercising second appellate power nor the Divisional Commissioner was the revisional authority, I am clearly of the view that the Divisional Commissioner was not justified in interfering (sic) the appeal preferred by the State as a second appeal and allowing the same. Therefore, the order contained in Annexure-8 is become invalid (sic). Since the order contained in Annexure '8' is invalid, the subsequent order contained in Annexure '9' affirming the same is also fit to be set aside.

In the result, this writ application is allowed and the orders contained in Annexures '8' and '9' are hereby quashed.

9. The aforesaid order which is based on the assumption that a second appeal before the Commissioner and a revision before the Board of Revenue was not provided in law appears to have been passed because an important notification being S.O. 1014, dated 5-11-1969 issued by the Governor in exercise of powers conferred by Section 29(3) of the Act was not brought to the notice of the Court. By this notification the State Government provided for a complete scheme for determination of claims of individuals over lands notified as protected forest under Section 29 of the Act. The scheme envisaged the determination of the claim at the first instance by the Forest Settlement Officer, an appeal before the Collector of the district, a second appeal before the Divisional Commissioner and finally a revision before the Board of Revenue. Therefore, there was no question of the order passed by the Commissioner in the second appeal filed by the State Government being unauthorised or without jurisdiction nor was the order passed by the Board Revenue lacking in jurisdiction. It further appears that at the stage of the earlier writ petition the distinction between the reserved forest and the protected forest was overlooked which is evident from the order making a reference to Sections 18 and 22 which are in Chapter II of the Act, dealing with reserved forests and are of no relevance to protected forests notified under Section 29 of the Act.

10. At the beginning of this judgment, it was pointed out that reserved forests and protected forests are two entirely different categories under the Act. In this regard it is to be noted that provisions relating to reserved forests are contained in Sections 3 to 27 in Chapter II of the Act. Section 3 deals with the State Government's power to constitute reserved forests. Section 4 confers upon the State Government the power to issue notification declaring its decision to constitute any land a reserved forest. When a declaration is made regarding the Government's decision to constitute large areas of land into reserved forest, it is quite possible and likely that individual claims would arise in respect of the lands covered by the declaration. Chapter 11 of the Act, therefore, provided a complete mechanism for investigation and determination of any claims that might be raised by individuals in respect of the lands covered by the declaration. Following the notification under Section 4, Section 6 obliges the Forest Settlement Officer to publish a proclamation in local vernacular giving the details regarding the

reservation of such forest. Objections received by the Forest Settlement Officer are to be inquired into under Section 7 of the Act and Section 8 defines the powers of the Forest Settlement Officer. Section 11 provides that in case the claim of a private individual is admitted by the Forest Settlement Officer, the land over which the right is admitted could be acquired under the Land Acquisition Act. Section 12 deals with the claims to rights of pasture or to forest produce. Sections 13 to 15 allow for the continuance of exercise of such rights if admitted by the Forest Settlement Officer. Section 17 provides for an appeal against an order passed by the Forest Settlement Officer and expressly limits the appeal as being available only against orders passed under Sections 11, 12, 15 or 16. Section 18 deals with the procedure concerning the appeal after which comes Section 20 which empowers the State Government to issue a 'notification declaring forest reserved. Section 22 then deals with the State Government's revisional power and provides that the State Government may within five years from the publication of any notification under Section 20 revise any arrangement made under Section 15 or Section 18 and may for this purpose rescind or modify any order made under Sections 15 or 18 of the Act.

11. On a conjoint reading of Sections 5 to 22, it becomes absolutely clear that these provisions deal with the determination of rights claimed over lands regarding which the State Government should declare its intention to constitute reserved forest by issuing a notification under Section 4 of the Act.

12. After Chapter II dealing with the reserved forests comes Chapter III with the marginal note 'Of Village-Forests'. This Chapter contains the single Section 28. Next comes Chapter IV dealing with protected forests. This Chapter begins with Section 29 and ends at Section 34. Section 29 which is relevant for the present is reproduced below:

29. Protected forests.--(1) The State Government may, by notification in the official Gazette, declare the provisions of this Chapter applicable to any forest-land or waster-land which is not included in a reserved forest but which is the property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waster lands comprised in any such notification shall be called a 'protected forests.

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waster land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waster-land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the mean time to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

13. Sub-section (3) of Section 29 with its proviso allows that State Government two options while notifying protected forests; one, as contained in the main body of the sub-section is to issue the notification only after the rights of private persons over the lands comprising the area which is to constitute the protected forest are examined and determined. The other option as allowed by the proviso to Sub-section (3) is to make the notification first and then to examine and determine the rights of private persons over lands comprising reserved forests.

14. What, however, is significant to note is that unlike Chapter II dealing with the reserved forests, in Chapter IV of the Act dealing with the protected forests, there is no mechanism or scheme provided for examining and adjudicating upon the rights of private person over lands comprising protected forests. And it was in order to fill up this gap that the Government of Bihar issued S.O. No. 1014, dated 5-11-1969 providing for a complete mechanism for examining and determining the claims of private persons over lands comprising protected forests. The S.O. reads as follows:

S.O. 1014 the 5th November, 1969.--In exercise of the powers conferred by Sub-section (3) of Section 29 of the Indian Forest Act, 1927 (Act No. 16 of 1927), and

in supersession of all the existing notification in the subject, the Governor of Bihar is pleased to lay down the following procedure for enquiry into and regarding the rights of Government and of private persons in or over the forest-lands and waster-lands included in the 'protected forest':

(1) An officer designated as Forest Settlement Officer will be appointed to enquire and record these rights and the jurisdiction of the Forest Settlement Officer.

(2) The said rights of Government and private persons shall be enquired into and recorded in accordance with the provisions contained in the schedule below.

15. The scheme provided in the schedule to the notification broadly follows the same pattern as provided in the case of reserved forests under Sections 6 to 18 with the exception that para 8 (ii) of the schedule provided for a second appeal before the Divisional Commissioner against the order passed by the Collector and a revision before the Board of Revenue against the order of the Divisional Commissioner passed on second appeal.

16. Seen in this light it would appear that it was the petitioner's appeal before the Collector which was filed without any authority and was, therefore, not maintainable as in the year, 1962 there was no appeal provided before the Collector against the order passed by the Forest Settlement Officer. This also explains why the State Government had to wait for about six years for filing a second appeal before the Divisional Commissioner against the order passed by the Collector. The Collector's order was passed on 30-9-1963, but at that time there was no appeal or revision provided against such an order which itself was without jurisdiction. The provision for an appeal before the Collector and a second appeal before the Divisional Commissioner only came on 5-11-1969 with the issuance of S.O. 1014 by the State Government and that might be construed to give retrospective legitimacy to the order passed by the Collector and also providing for a second appeal against that order before the Divisional Commissioner. The proceedings in the case in hand had clearly followed the provisions of Section 0.1014, dated 5-11-1969 but this fact was unfortunately not brought to the notice of this Court in the earlier round of litigation.

17. The earlier order, dated 11-5-1993 passed by this Court in C.W.J.C. No. 1364 of 1988, though proceeding on incorrect premises was nevertheless a fully binding order on the parties. It acquired further authority when it was affirmed by the Supreme Court. It appears that the Bihar State Forest Development Corporation which had come into existence during the long passage of this litigation and had acquired control over the land and which hitherto was not a party in the Court proceedings preferred a special leave petition being S.L.P. (Civil) No. 16614 of 1993 against the aforesaid judgment and order passed by this Court. The S.L.P. was disposed of by a brief order passed by the Supreme Court on 30-11-1993. The order of the Supreme Court is as follows:

We have heard learned Counsel for the State of Bihar as well as the learned Counsel for the Bihar State Forest Development Corporation. We see no ground to interfere with the impugned order of the High Court. But, at the same time, we are of the view that the High Court should have remanded the case back to the State Government for fresh hearing as a revisional authority. We order accordingly. We further direct the State Government to permit the petitioner Bihar State Forest Development Corporation to be impleaded as a party in the revision petition. The S.L.P. is disposed of accordingly.

18. The order of the Supreme Court was plain and clear and it allowed a fresh hearing on the dispute before the State Government as the revisional authority. But, the Bihar State Forest Development Corporation, instead of filing a revision before the State Government, once again filed the revision before the Board of Revenue. The petitioner appeared before the Board of Revenue and contested the matter on merits and the Board of Revenue by its order, dated 21-2-1998 (Annexure-11) reaffirmed the order passed by the Divisional Commissioner (unmindful of the fact that the order was set aside by this Court by order, dated 11-5-1993), rejected the petitioner's claim for compensation on the ground of having raiyati interests over the disputed land and allowed the petition filed by the Bihar State Forest Development Corporation.

19. The petitioner then filed the present writ petition in the second round of litigation before this Court challenging the order passed by the Board of Revenue

mainly on the ground that the revisional proceeding before the Board of Revenue was contrary to the directions given by the Supreme Court. Earlier, on a prayer made by the Counsel for the Forest Development Corporation the hearing of this case was adjourned by order, dated 28-10-1999 to enable the Corporation and the State Government to move the Supreme Court for appropriate directions in connection with its earlier order, dated 30-11-1993. Thereafter, the Forest Development Corporation filed I.A. No. 3 in S.L.P. (Civil) No. 16614 of 1993 making a prayer for clarification/ modification of the earlier order, dated 30-11-1993. The Supreme Court dismissed the I.A. by passing the following order:

Heard Counsel for the parties.

We do not find any case for clarification of our order. The application is dismissed.

20. It was in these facts and circumstances that this writ petition was finally taken up for hearing before this Court.

21. Mr, Satyavrat Verma, learned Counsel for the petitioner strenuously argued that the impugned order passed by the Board of Revenue was liable to be set aside without much ado as the revisional proceeding before the Board of Revenue was clearly contrary to the direction given by the Supreme Court.

22. After having given the entire matter a very careful consideration, I am unable to accept the submission of Mr. Verma. It is true that the Forest Development Corporation acted with gross indirection in filing its revision before the Board of Revenue after the order of the Supreme Court. The direction of the Supreme Court was required to be followed in letter and in spirit without indulging in an interpretation of the correct legal position and regardless of the provision of the Bihar Government notification, dated 5-11-1969. The Forest Development Corporation undoubtedly committed a grave mistake in filing its revision before the Board of Revenue and not before the State Government but the question is whether on that ground alone the order is liable to be set aside. On this issue, I have serious reservations and I think that the impugned order cannot be set aside for that reason alone. It is to be noted that the earlier order of the High Court had held (though erroneously) that the revisional power lay with the State Government

and for that reason had proceeded to set aside the orders passed by the Divisional Commissioner and the Member, Board of Revenue with the result that the order passed by the Collector was restored and became final. The Supreme Court was clearly of the view that that the party aggrieved by the order of the Collector should have been allowed an opportunity before the revisional authority and to that end the High Court should have remanded the matter back to the State Government. It accordingly allowed for a fresh hearing on the dispute before the State Government as the revisional authority. It is seen above that the State Government by notification, dated 5-11-1969 had created the revisional forum in the Board of Revenue and it was there that the revisional proceedings finally went. In the facts and circumstances of this case, therefore, the direction given by the Supreme Court can be deemed to have been duly complied with and I do not feel inclined to set aside the impugned order solely on the ground that it was passed by the Board of Revenue and not by the State Government.

23. Mr. Verma next submitted that the Board of Revenue had committed manifest error in referring to the earlier order passed by the Divisional Commissioner and in finally re-affirming that order inasmuch as the order passed by the Divisional Commissioner was non-existent, having been set aside by this Court by its order, dated 11-5-1993 passed in the earlier round of litigation. The submissions made by Mr. Verma is not without substance. It is true that in the impugned order the Board of Revenue at times appears to be unmindful of the fact that the order of the Divisional Commissioner was set aside by the High Court and it was, therefore,, no longer in existence to which the Board of Revenue could make a reference and which could be re-affirmed by its order. It is also true that the Board of Revenue ought to have heard the matter as if the proceeding had come to it directly from the order passed by the District Magistrate, Champaran, removing from any consideration the intermediate order passed by the Divisional Commissioner. If I were to accept the submissions made by Mr. Verma on this score, I should have set aside the order passed by the Board of Revenue and remitted the revisional proceeding for a fresh hearing but I do not feel inclined to take that course as, to my mind, an order of remand would be an empty formality. This is for the reasons that on a careful consideration of the materials on record, I find myself in complete agreement with the findings recorded by the Forest Settlement Officer that the

story of settlement from the Ramnagar Estate was concocted to defeat the provisions of the Forest Act and the Bihar land Reforms Act, etc. The so-called settlement was sham and Benami and without consideration and the disputed lands were never under cultivation or in the possession of the petitioner.

24. Mr. Verma lastly submitted that the petitioner was at least entitled to 195 acres of land on the basis of the Government decision as communicated by letter, dated 4-2-1954 (Annexure-3). I am unable to accept this submission either. No provision of law was brought to my notice on the basis of which a land notified as protected forest under Section 29 of the Act could be 'released' by the Government on the basis of a decision commuted by the Additional Under Secretary to the Government. It is an admitted position that no follow up measures were ever taken and no notifications were issued recalling or modifying the notifications, dated 6-1-1953 and 19-1-1954 issued under Section 29 of the Act. I am, therefore, unable to issue any direction for the release of the land on the basis of the letter of the Additional Under Secretary to the Government. Moreover, this Court cannot lose sight of the fact that during the past half a century over which this proceeding is spread, a wild life sanctuary has been established in the protected forest in question. In the larger national interests of preservation of the forests and the wild life I find myself completely to issue any direction for the release of the land in favour of the petitioner.

25. For the reasons discussed above, no relief can be granted to the petitioner. This writ petition is accordingly dismissed but with no order as to costs.

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