

Surendra Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : May-11-2004

Judge : Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.

Acts : Bihar Minor Minerals Concession Rules, 1972

Appeal No. : LPA No. 496 of 2004

Appellant : Surendra Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : R.K. Dutta, S.C.-4

Advocate for Pet/Ap. : Basudeva Prasad, Sr Adv. and Ashok Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

Ravi S. Dhavan, C.J.

1. The order impugned in this Letters Patent Appeal is dated 4 March, 2004 on CWJC No. 10944 of 2000 : Surendra Singh v. The State of Bihar and Ors..

2. The issue apparently had arisen when the erstwhile licence holder under the Bihar Minor Mineral Concession Rules, 1972 did not receive the renewal of his licence to quarry. Thus, the issue. Any renewal which could have made dated to

1973.

3. The issues are, as the State contends, that since 1993 no licences have been renewed.

4. This aspect is not denied in the writ petition and the petitioner accepts on record when he places annexure '9' while submitting on it in paragraph 13 of writ petition. It is not only the petitioner but there are others, also, who perhaps have been denied the renewal of such licences.

5. This matter relates to an area near Bhimbandh in Munger district where quarrying of stones has been stopped. There is a hillock within this district. It is contended on behalf of the petitioner that many years ago a railway line ran through it. In the circumstances, it is contended that the area was not preserved as a reserved forest in any case. It had been chalked out for development and he cites the example of this railway running through it perhaps to contend that urbanisation of the area was the theme not the protection of the forest.

6. The petitioner is confronted with the fact, notwithstanding that there may have been a declaration of a forest, which the petitioner contends there is not any, the area has been notified under the Wild Life (Protection) Act, 1972. This aspect is not denied. In so far as the declaration of a reserved forest is concerned, on behalf of the State it is contended that an area corresponding to 681.90 square kilometers had been reserved in two stages. First in 1946 and then in 1952. Reference is invited to the notifications dated 6 February, 1946 and 15 December, 1952 on which submission have been made in paragraph 18 of the counter affidavit of the State. Thus, the issues between the parties rest on this submission.

7. May be the petitioner is aggrieved that he is not receiving the renewal of the licence under the rules, aforesaid. The petitioner feels that having been granted a licence to quarry, he should not be denied the renewal of it, even after ten years.

8. Several decisions have been cited on behalf of the petitioner to fortify the contention that if ultimately the scheme is beneficial in the public interest and to the State there ought not to be denial of the renewal of the licence to quarry. In

this regard much emphasis is paid to a noting of an Hon'ble Minister writing to his Secretary dated 13 October, 2000, annexure '11' to the writ petition. This emphasis of the Hon'ble Minister appears to be on two aspects. One is the removal of Berojgari, that is unemployment and the other is amdani (income).

9. When it comes down to protecting mother nature, the protection of environment and ecology, there are no competing equalities. Law will not encourage nor protect any ecological imbalance and Courts should not decide on it. The theme is better understood to preserve, and not violate. If it is the latter then the Court steps in. Such is the spirit of the Constitution of India, under Article 51 -A, ordaining Fundamental Duties. Protecting environment and preserving ecological balance is a duty. Blasting hills for quarrying is the antithesis.

10. In this regard are certain decisions of the Supreme Court. In re. T.N. Godavaram Thirumalpad v. Union of India and Ors., AIR 1997 SC 1228 in no uncertain terms the Supreme Court repeated again and again that forest has to be understood in its dictionary meaning and with all its bio-diversity. Then, when the attention of the Supreme Court was drawn to the preserved area, the Supreme Court held that disbalance of bio-diversity will not be permitted. In re. State of H.P. and Ors. v. Ganesh Wood Products and Ors., (1995) 6 SCC 363 the Supreme Court said, it did not make any difference between government and private forests. Implying the obligation to preserve bio-diversity. Renewal of licence in national park areas was found impermissible. Again in the matter of T.N. Godavaram Thirumalpad v. Union of India and Ors., (2002) 10 SCC 606 the Supreme Court discouraged dereservation of forests, sanctuaries, national parks. The Supreme Court lent more meaning to the Environment (Protection) Act, 1996. The three decisions combined together spell out a very simple formula for the preservation of mother nature and the obligation on the present generation to leave a better world for the next generation.

11. The Minister may be interested in generating employment. This is politics. The Minister may be interested in getting income for the State, this may be a very laudable purpose too. But it cannot be for the price to disturb ecological and environmental balance, and create it's degradation.

12. Of the few hillocks which are left in Bihar, given an occasion, the quarry owner would like to blast it out to smithereens, for his business. These, hills, the little that is left, are a bio-diversities in itself. If the Court had its way it would have passed an injunction to stop all quarrying in Bihar forthwith. But, this is an aspect which the State of Bihar has to consider first not the court. Slowly and gradually as years roll by all the hillocks in Bihar will be flattened out. These hills should be declared as bio-diversity areas.

13. Now coming to the aspect of the declaration which was made under the Wild Life (Protection) Act, 1972.

14. This cannot be made an issue if the area was a reserved forest long years ago in 1946 or in 1952. The Wild Life (Protection) Act, 1972 came much later. The Act cannot be seen in isolation. The Fundamental Duties in the Constitution on environment and ecology are not platitudes left away so that those who may have vested interests make a business out of it. The legislation to preserve bio-diversity is an effort to protect the environment. Simple obligations have been set in Article 51-A, the chapter on Fundamental Duties. In the context of environment and ecology, the reform, the approach and the collective activity for achievement, it runs thus:

'51-A Fundamental duties.--It shall be the duty of every citizen of India--
.....

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;.....'

15. The Courts cannot spell out a formula of preserving an ecological balance but sitting here in Patna or anywhere else in the nation the people should be concerned about an upsetting ecological balance. Merely bothering will not do.

Acting on the concern will. A depleted ozone layer on the poles of the Earth, the acid rain, the brown layer clouds with hydrocarbons, a falling ground water table, the receding snow line, the melting glaciers, the rising sea level, the disappearing , plant and animal life, the vanishing rain forests and the spread of deserts are matters of concern for those who care for nature. Why should it bother a quarry owner in Bihar? When the cycle of nature is disturbed, there will be no quarry owner nor his minister who attempted to give him the favour to quarry. Their progenies will face an unnatural world.

16. In the circumstances, the Court cannot spell out that the learned Judge has committed any error in not passing an order on the writ petition that the petitioner's licence ought to be renewed.

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