The Divisional Forest Officer Vs. the Forest Settelement Officer and ors.

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Court : Andhra Pradesh

Decided On : Sep-15-2008

Reported in : 2008(6)ALD541

Judge : Ramesh Ranganathan, J.

Acts : Hyderabad Forest Act - Sections 2(1), 4, 4(1), 5, 6, 7, 8, 10, 10(1), 10(2), 13, 14, 16, 17, 17(1), 17(2), 17(3), 17(4) and 19; Land Acquisition Act; Andhra Pradesh Forest Act - Sections 15; Constitution of India - Article 226

Appeal No. : Writ Petition Nos. 13948 and 25421 of 1995

Appellant : The Divisional Forest Officer;A.V.S. Rammohan S/O A. Venkateswara Rao @ A.V. Shastry and ors.

Respondent : The Forest Settelement Officer and ors.;The Forest Settelement Officer And; the Divisional Forest of

Advocate for Def. : A. Sudershan Reddy, Adv. for Respondents 1 to 10 and 20 to 22 in Writ Petition No. 13948 of 1995,; H. Venugopal, Adv. for Respondents 25 to 29 in Writ Petition No. 13948 of 1995,; GP in Writ Petition

Advocate for Pet/Ap. : GP in Writ Petition No. 13948 of 1995,; V. Sandhya, Adv. in Writ Petition No. 25421 of 1995 and; A. Sudarshan Reddy, Adv. in Writ Petition No. 25422 of 1995

Judgement :
ORDER

Ramesh Ranganathan, J.

1. Seeking to have the order passed by the 2nd respondent in A.S. No. 6 of 1989 dated 27.12.1994, in partly confirming the order of the 1st respondent dated 23.9.1986, quashed, the Divisional Forest Officer, Nalgonda has filed W.P. No. 13948 of 1995. Aggrieved by the judgment and decree in A.S. No. 6 of 1989 dated 27.12.1994, in reducing the compensation from Rs. 606/- per acre to Rs. 250/- per acre, and seeking a direction for payment of compensation of Rs. 1750/- per acre with interest, solatium and all other benefits, W.P. No. 25421 of 1995 is filed. A similar relief is sought in W.P. No. 25422 of 1995 also. It is necessary to note that the petitioners in W.P.Nos. 25421 and 25422 of 1995 are among the respondents in W.P. No. 13948 of 1995. Since the very same order of the District Judge, Nalgonda, in A.S. No. 6 of 1989 dated 27.12.1994, is under challenge in all the three writ petitions, they were heard together and are now being disposed of by a common order. The parties shall, hereinafter, be referred to as they are arrayed in W.P. No. 13948 of 1995.

2. Facts, in brief, are that Sri Velamakanti Lakshmana Rai Sastry filed a claim petition before the Nizam's Forest Settlement Officer on 11.3.1935 claiming that he was the son and successor of late Venkata Shobhandri Rai allegedly the pattedar of the lands in Sy. Nos. 272, 273, 274, 267, 270, 244, 96 and 269 of Weltur Village and Sy. No. 266 of Chintalapalem village, Huzurnagar Taluk, Nalgonda District. The relief sought for in the claim petition was to delete the above said lands from the records of the forest block to enable the claimant to enjoy the same or in the alternative to compensate him with an equivalent extent of land in other villages of the Taluk. The claimant prayed, in the alternative, for compensation of Rs. 50/- per acre contending that it represented half the market value of Rs. 100/- per acre. He claimed compensation for the value of wood at Rs. 5000/-. He sought compensation of Rs. 2,28,550/- for the entire land and the value of timber.

3. After an elaborate enquiry, the Forest Settlement Officer passed an order on 1.11.1938 (i) declaring that Sy. No. 96 and 1265 of Weltur village had not been included in the Reserve Forest; (ii) that the claimant's patta of Sy. No. 269 of Weltur village and Sy. Nos. 290/1 and 290/2 of Chintalapalem village had not been proved and, as such, the claim regarding the same was dismissed for want of proof. These lands were directed to be included in the Reserve Forest; and (iii) that as the area of patta of Sy. Nos. 244, 267, 270, 273, 274 of Weltur village; Sy. Nos. 266, 8/1 of Chintalapalem village, and Sy. Nos. 245 and 351 of Thammavaram village, was subject to the approval of the Forest Department in view of the circular No. 84, and as the Forest Department had refused patta for these lands, these survey numbers should be excluded from the patta and included in the Reserve Forest.

4. Aggrieved thereby, Sri Lakshmana Rai Sastry filed an appeal before the Subedar under Section 16 of the Hyderabad Forest Act. The appellate authority, after considering the submissions, and the material on record, passed order dated 30.9.1939 holding that the Forest Settlement Officer did not have the power to order cancellation of the pattas and if, during his enquiry, it came to light that the pattas granted by the Revenue Department were not valid, it was his duty to get them cancelled after submitting a report to the government. The appellate authority observed that, since the pattas were conferred in the years 1306-1311 fasli, and the government had decided that the pattas granted after the year 1305 fasli were liable to be cancelled in case the Forest Department deemed it fit for the purposes of the Reserve forest, the Forest Department ought to have taken steps to get the pattas, granted earlier, cancelled. The appeal was allowed and the order of the Forest Settlement Officer was set aside.

5. On the matter being carried in revision to the Government in the Revenue department, the Secretary, Revenue, after hearing arguments, observed that the Forest Settlement Officer had considered the matter in detail and had justly rejected the claim of pattas, that, in fact, there was no proof of patta regarding survey Nos. 96 and 269 situated at Weltur village and Survey Nos. 290/1 and 2 situated at Chintalapalem, that the Settlement officer had rejected the claim regarding survey Nos. 96 and 265 situated in Weltur as they had not been

included in the Reserve forest and that the claim regarding Survey Nos. 269 and 290/1 and 2 of Chintalapalem, which had been included in the Reserve forest, had been rejected as there was no proof of their patta. It was further observed that the decision of the Forest settlement officer about the 'entry' was correct, that the Forest Department had not expressed its consent regarding the pattas granted and, as such, they had been included in the reserve forest. While observing that pattas were standing for certain period, it was held that there was no enjoyment and that the revenue amount paid during this period could be taken back by moving the Revenue Department. In conclusion, it was observed:.It seems that the appeal was preferred to the Subedar against this decision of the Settlement Officer and the matter was abruptly considered that the patta granted by the Revenue Department is not liable to be cancelled without reference or consult with it and the Forest Department is not entitled to get the patta cancelled after 44 years. In view of this the order was made by the appellate Court. In fact it is evident from the record that these Sy. No. had been included in the proposed Reserved Forest of the Forest Department long before 1315 F. The rights of the pattadars remained in paper only notwithstanding it seems that the subedar was in misconception about the nature of patta and longstanding patta holders. The Settlement Officer cannot be enshouldered by this responsibility. As far as we have considered that it is the duty of the claimants to prove their case before the Settlement Officer otherwise he has no other go except to the reject the claims. On the above grounds, the Revision petition of the Forest Department is allowed....

(emphasis supplied)

6. It is thus evident that the order of the Subedar was set aside and the order of the Forest Settlement Officer was confirmed in revision.

On conclusion of the proceedings before the revisional authority, the government issued a notification under Section 19 of the Hyderabad Forest Act, (published in the gazette on 18.2.1954), constituting the Chitalapalem Reserve Forest Block with effect from 18.3.1954.

7. More than three decades thereafter, Sri V.V. Sobhanadri Rao, filed application dated 02.09.1985 contending that he was owner and pattedar of an extent of Acs.

1804.02 in Weltur village of Huzurnagar Taluq, Nalgonda District, that the Forest Department had occupied the lands in the year 1337-39 F. without observing the formalities required by law, that prior to occupation of the said lands by the Forest Department the ancestors of the claimant had enjoyed the lands for a period of 39 years i.e. from 1298 F. to 1337 F, that the revenue officials had been collecting land revenue regularly and till date the entire land was being recorded in the name of the claimant during Jamabandi which showed that the Forest Department had not cared to follow the legal procedure of paying compensation to the owners. According to the claimant they had approached the Forest Department in the year 1944 F. for either release of the land to the claimant or for payment of compensation which was rejected by the Forest Department, that aggrieved by the said order they had preferred an appeal to the Subedar who had upheld the claim vide judgment No. 191 of 1348 F. The claimants further contended as under:.The forest department filed Revision to the Board of Revenue. It was held by the Board that these lands belong to the claimant only and patta cannot be cancelled as circular No. 84 dated 21.12.1305 F. is not applicable to these lands and that it is proper to pay such huge amount as compensation and advised the claimant to approach the Revenue Department for getting refund of the land revenue paid by the pattedars though Forest Department had occupied the said lands....

8. As is evident from the order of the Additional Revenue Secretary, on behalf of the government in the Revenue department, the aforesaid observations attributed to them, in the petition filed by the claimants, are not reflected in the said order. In their claim petition dated 02.09.1985, the claimants sought compensation towards the land, forest produce, solatium and interest.

9. The Forest Settlement Officer, vide letter dated 03.09.1985, informed the Divisional Forest Officer that Sri V.V. Shobhanadri Rai had preferred two claim petitions for different extents of land in Weltur and Chitalapalem villages and that a claim petition was filed by A. Venkateswar Rao with respect to the land in Thammavaram village of Huzurnagar Taluk of Nalgonda District. The Divisional Forest Officer was called upon to submit a report with regards the name of the forest block, its legal status and whether these lands were included in the Reserve forest. The Divisional Forest Officer submitted his reply on 20.04.1986 stating that

all the files had been submitted to the Revenue Secretary by the Chief Conservator of Forests, on 14.12.1949 and that the matter was pending with the Government.

10. On the aforesaid application of the respondents-claimants dated 02.09.1985, the Forest Settlement Officer passed an order on 23.09.1986 taking note of the notification under Section 7 of the Hyderabad Forest Act which was published in the Gazette dated 06.09.1343 F. corresponding to 01.01.1934 and that the notification under Section 14 was prepared by the Forest Settlement Officer on 17.09.1953. He noted that the deceased claimant Sri Lakshmana Rai Shastry had submitted that the Pattadar of the Acs.6809-23 Sri Sobhanadri Rao was his adoptive father, that aggrieved by the earlier Forest Settlement Officer's orders the claimants' legal heirs had filed an appeal before the then Subedar, that the appellate authority had upheld the claim, that, thereupon, the Forest Department had filed a revision to the Board of Revenue which was dismissed by the Additional Secretary to the Board of Revenue. This finding of the Forest Settlement Officer is contrary to the evidence on record as the revision petition filed by the Forest Settlement Officer had, in fact, been allowed and not dismissed. The Forest Settlement Officer further observed that the appellate and revisional authorities had allowed the claim and that, under Section 13 of the Hyderabad Forest Act, every order passed in appeal had to be treated as final and the Forest Settlement Officer had to deal with it as if it had been made in the first instance.

11. On the question of delay, the Forest Settlement Officer observed that when they were asked to show cause for the inordinate delay from one stage to another, the claimants had pointed out that the principal claimant Sri Lakshmana Rai Shastry was murdered when the present claimants were aged 4 years and 2 years respectively. The Forest Settlement Officer held that limitation did not apply to this case as the properties were under the Court of wards at the time of notification and hence the lands in question gained the status of trust property. He found substance in the representation of the claimants that, as long as compensation was not paid by the government for their lands included in the Reserve forest, the Forest Department was under an obligation towards them in as much as the Government continued to be a trustee of the claimants and, hence, limitation had

not expired. The Forest Settlement Officer referred to the appeal preferred by the claimant to the Subedar, to the order of the Subedar and then observed:.Against the order of Subedar the Forest Department filed revision before the then Additional Secretary, Board of Revenue on the ground that permission to cancel pattas can be obtained any time after the formation of a forest block. It was also stated in revision that the Subedar had not delved deep into the matter and so he had arrived at the conclusion which is unfavourable to the Forest Department. The claimants, who were the respondents in the Revision petition, contended that the pattas of the said lands were granted prior to the issue of circular No. 84 of 1305 F. which provides that as and when bandobast pattas are to be issued the Forest Department's consent has to be obtained. The Board of Revenue also subscribed to the order of the Subedar regarding payment of compensation to the pattedar and his descendants....

12. The afore-extracted observations are also not reflected in the order of the Board of Revenue. The Forest Settlement Officer further held:.The order of the appellate authority i.e., the Subedar, Gulshanabad and the Board of Revenue and the opinion expressed by successive collectors to award compensation to the pattedars requires to be honoured even today.

When the higher authorities set right the matter, may it be quantum of compensation, it becomes obligatory be implement the orders of the appellate authority. When the Secretary to former Board of Revenue did not express any view which was contrary to the orders of the Subedar, Medak upholding the rights of the pattedar, the Forest Department kept quiet. By implication the Department allowed the claimant the relief granted by the appellate authority. After the death of the father claimant, the deceased claimant's successors awaited compensation on the basis of orders in their favour. The FSO who was duty bound to submit the valuation of the lands failed to do so from 2nd Shahrevar, 1338 F. to date. As any further delay would have imposed greater burden on the exchequer in the shape of accumulation of interest etc. the valuation statement of the patta lands included in the Forest Block was submitted to the Collector for his approval and for providing funs for payment of compensation. Copies were marked to CCF, CF, DFO, and GP Nalgonda. Since there was no response from the authorities

concerned except the District Collector Nalgonda it became necessary for me to pass the award especially when the claimants insisted on some order or other.....

13. The Forest Settlement Officer fixed the compensation at Rs. 600/- per acre for 3033 acres, and apportioned the compensation amount of Rs. 2,10,31,428/- at 60% to the pattedars and 40% to the creditors/pairavikars. In addition, he directed payment of interest at 9% per annum from 1.1.1934 to 31.12.1934, at 15% per annum for 52 years from 01.01.1935 to 31.12.1986 and 30% solatium on the market value which, according to the Forest Settlement Officer, worked out to Rs. 6,934/- per acre. The said amount was apportioned between the pattedars and creditors/pairavikars.

14. It is this order of the Forest Settlement Officer dated 23.9.1986 which the petitioner claims was passed behind their back and that a copy thereof had been received by them only on 6.10.1988. Raising several grounds, including that the Forest Settlement Officer, who passed the order under appeal, did not have jurisdiction to pass the order as it was passed after a notification was issued under Section 15 of the A.P. Forest Act corresponding to Section 19 of the Hyderabad Forest Act, that, in the earlier award passed by the then Forest Settlement Officer, the rights of parties had been conclusively decided, that the Forest Settlement Officer had passed the order under appeal without notice to the petitioner, that the order was passed behind their back, that the Forest Settlement Officer had conveniently failed to mention that the earlier order of the Subedar was set aside and the order of the then Forest Settlement Officer had been upheld by the Revenue Secretary, the petitioner preferred an appeal in A.S. No. 6 of 1989 before the District Judge, Nalgonda. The said appeal was disposed of by order dated 27.12.1994 reducing the compensation awarded by the Forest Settlement Officer from Rs. 606/- to Rs. 250/- per acre along with the statutory benefits provided by Act 68 of 1984, additional market value, 30% solatium and interest at 9% and 15% per annum respectively. Aggrieved thereby, the present Writ Petitions were filed before this Court.

15. Learned Government Pleader for Forests would submit that the Forest Settlement Officer was appointed pursuant to a notification issued in 1348 Fasli

proposing to constitute an extent of Acs. 6809.23 of land as Reserve forest, that on completion of the enquiry, orders being passed pursuant thereto, the appeal preferred thereagainst being disposed of, and on an official notification being issued under Section 19 of the Hyderabad Forest Act, the Forest Settlement Officer becomes functus officio. According to the Learned Government Pleader, the order of the Secretary, Revenue, passed in the year 1945, attained finality, that a final notification under Section 19 of the Hyderabad Forest Act was issued in the year 1954 and the respondents-claimants, having kept quiet for more than three decades thereafter, could not reopen concluded issues or claim compensation on the specious plea that their lands were also taken over for the purpose of constituting a Reserve Forest. She would contend that, while the order of the Subedar was set aside by the Secretary, Revenue, the subsequent Forest Settlement Officer had selectively extracted portions of the said order, had included therein conclusions which did not form part of the original order and had held that the order of the Subedar had been confirmed in appeal. She would submit that several sentences, which are not to be found in the Order of the Secretary, Revenue, were quoted in the subsequent order of the Forest Settlement Officer dated 1.11.1938 as if it formed part of the original Order and that the order of the Forest Settlement Officer dated 23.09.1986, directing payment of compensation to the respondents-claimants, were acts of fraud and deceipt. Learned Government Pleader would submit that the Forest Settlement Officer had directed payment of compensation observing that it was in the course of implementing the orders of the government through the Secretary, Revenue when, in fact, the government had held against the claimants and had confirmed the order of the previous Forest Settlement Officer. According to the Learned Government Pleader the letter dated 03.09.1985 was not a notice, it did not mention the date of hearing, in reply thereto the Forest Department had addressed letter dated 20.04.1986 informing the Forest Settlement Officer that the records were with the government, that the respondents herein, in their application filed before the Forest Settlement Officer dated 02.09.1985, had only sought implementation of the order of the government in the revenue department and did not contend that the said order was a nullity. She would submit that the contention that the order of the Secretary, Revenue is a nullity was evidently an after-thought

as the order of the Forest Settlement Officer dated 23.09.1986 was not based on such a premise, that no order carries the brand of invalidity on its forehead and, until it is declared to be a nullity by a competent Court/Tribunal, the order continues to remain in force and must be presumed to be valid. She would contend that, since the petitioner herein was not put on notice of the dates of hearing nor was any officer of the Forest Department examined by the Forest Settlement Officer, before passing an order directing payment of compensation, the order of the Forest Settlement Officer dated 23.9.1986 was illegal. Learned Government Pleader would submit that while all these contentions, including that the impugned order was barred by res judicata, had been raised in appeal, the District Court, despite recording that such contentions had been urged, however, chose not deal with any of the contentions. She would submit that the order of the District Court suffered from errors apparent on the face of the record requiring it to be quashed in certiorari proceedings under Article 226 of the Constitution of India. Learned Government Pleader would submit that, pursuant to the interim orders passed in the writ petition, the petitioner had deposited Rs. 20 Lakhs which the respondents-claimants were permitted to withdraw on furnishing third party security and that, in case the petitioner was to succeed in the writ petition, the petitioner must be held entitled to recover the said amount of Rs. 20 lakhs.

16. Smt. V. Sandhya, Learned Counsel appearing for some of the claimants, would fairly state that there was only one order of the Secretary, Revenue, and that the said order was in favour of the Forest Department and against the respondents-claimants. Learned Counsel would, however, contend that the said order was a nullity as the original claimant had died during the pendency of revision proceedings and that his legal representatives were not brought on record. She would contend that, since the order of the Secretary, Revenue was ab-initio void, the only valid order in' force was the order of the Subedar which was in the claimants' favour. Learned Counsel would contend that, since the earlier Forest Settlement Officer had not decided the question relating to award of compensation, mere issuance of a final notification did not preclude the claimants from putting forth such claims subsequent thereto. She would submit that the claimants had taken the plea that the order of the Secretary, Revenue was a nullity in their written submissions filed before the District Judge and that they had raised

a similar plea in the affidavits filed in support of the Writ Petitions filed by them.

17. Sri E.V.S.S. Acharyulu, Learned Counsel for some of the other claimants, would refer to Section 10(c) and Section 10(2)(a) of the Hyderabad Forest Act to contend that the compensation payable under the Forest Act has to be computed in accordance with the provisions of the Land Acquisition Act including payment of interest, solatium etc., Learned Counsel would submit that the Writ Petition filed by the Forest Department was only against the order of the Civil Court and, since the only question examined by the District Judge related to the compensation payable, this Court could only examine whether the compensation so determined was just and proper and could not adjudicate upon the validity or otherwise of the order of the Forest Settlement Officer dated 23.09.1986.

18. Sri C. Bharghava Sharma, Learned Counsel appearing for some of the claimants, would submit that the letter dated 3.9.1985 is a notice issued to the Divisional Forest Officer, that the Forest Department was not entitled to take advantage of their failure to appear before the Forest Settlement Officer despite being put on notice, that the plea of res judicata should have been raised at the first instance and, since the petitioner chose not to raise such a contention before the Forest Settlement Officer, it could neither have been raised before the District Judge nor in proceedings under Article 226 of the Constitution of India. Learned Counsel would adopt all the other submissions urged by Smt. V. Sandhya.

It is wholly unnecessary for this Court to examine all the contentions urged by the Learned Government Pleader for Forests, including whether the Forest Settlement Officer, consequent to the order in revision of the Government in the Revenue Department, became functus officio, whether any fresh claim could be entertained long after a final notification was issued under Section 19 of the Hyderabad Forest Act, declaring the area to be a Reserve Forest etc, for I am of the view that the orders under challenge are required to be set aside on the grounds of violation of principles of natural justice and that the earlier proceedings, culminating in the order of the government in the revenue department, constituted res judicata barring similar issues being raised afresh in subsequent proceedings.

19. On the question whether the petitioners herein were put on notice, and given an opportunity of being heard, it must be noted that the Forest Settlement Officer, in his letter dated 03.09.1985, while enclosing a copy of the claim petition filed by Sri V.V. Sobhanaadri Rao dated 02.09.1985, had requested the Divisional Forest Officer to look into the matter and furnish a detailed report regarding the name of the Forest Block, its legal status including the extent included and whether any compensation had already been awarded. The Divisional Forest Officer was requested to offer his remarks after spot verification and to return the original application. In reply to the said letter dated 03.09.1985 the Divisional Forest Officer, vide letter dated 20.04.1986, informed the Forest Settlement Officer that the division office files mentioned therein had been submitted to the Revenue Secretary by the Chief Conservator of Forests for his decision on the compensation issue and that the case was pending with the government for final orders. There is no material on record to show that, after receipt of the said reply dated 20.04.1986, the Forest Settlement Officer had either called upon the Divisional Forest Officer to participate in the enquiry proceedings or had examined officials of the Forest Department or given them an opportunity to cross-examine the claimants or rebut the documents relied upon by them. There is no material on record to show that the petitioners herein were informed of any enquiry being conducted by the Forest Settlement Officer with regards payment of compensation to the claimants for the lands allegedly belonging to them and which formed part of the Reserve Forest. Neither does the letter of the Forest Settlement Officer dated 03.09.1985 constitute a notice of enquiry nor was the petitioner given an opportunity of being heard or to participate in the enquiry proceedings. The impugned order of the Forest Settlement Officer dated 23.09.1986, passed behind the petitioner's back, is, therefore, in violation of principles of natural justice. While it is no doubt true that an appeal was preferred by the petitioner against the orders passed by the Forest Settlement Officer, the District Judge has not examined this and other contentions urged except regarding the quantum of compensation to be paid to the respondents-claimants. Denial of reasonable opportunity by the original authority cannot, therefore, be said to have been cured on an appeal having been filed.

20. The next question which necessitates examination is whether the earlier order of the Forest Settlement Officer dated 1.11.1938, as confirmed in revision by the Government in the Revenue Department in the year 1945, constitutes res judicata barring such an issue being re-agitated again in subsequent proceedings inter-parties. It is well settled that the binding character of orders of Courts/Tribunals of competent jurisdiction is, in essence, a part of the rule of law on which administration of justice is found. An order, passed after a hearing on merits, must bind the parties till set aside in appeal or revision. (Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra : [1990]2SCR900 ; UPSRTC v. State of U.P. : AIR 2005 SC446).

The doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such a decision. (Supreme Court Employees Welfare Association v. Union of India AIR 1990 SC 344). The principle of res judicata envisages that an order of a Court/Tribunal of competent jurisdiction directly upon a point creates a bar, as regards a plea, between the same parties in some other matter in another Court/Tribunal, where the said plea seeks to raise afresh the very point that was determined in the earlier order. (Swamy Atmananda v. Swami Bodhananda : AIR 2005 SC2227 ; Iswar Dath v. Land Acquisition Collector : AIR 2005 SC3165). An order passed by a Court/Tribunal having jurisdiction over the subject matter, and over the parties, cannot be ignored as a nullity unless such erroneous orders are corrected in accordance with law. Such orders bind the parties in a subsequent litigation. (Barkat Ali v. Badrinarain). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (State of Haryana v. State of Punjab : (2004)12SCC673).

21. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court/Tribunal on facts which are the foundation of the right, and the relevant law applicable to the determination of the transactions which is the source of the right, is res judicata. A

previous decision on a matter in issue is a composite decision; the decision of law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be res judicata in a subsequent proceeding if it be the same as in the previous proceeding. (Sushil Kumar Mehta v. Gobind Ram Bohra : (1990)1SCC193 ; Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy : [1970]3SCR830 ; Supreme Court Employees Welfare Association : (1989)IILLJ506SC).

22. The doctrine of res judicata applies to all judicial proceedings whether civil or otherwise. It applies equally to quasi-judicial proceedings of tribunals other than civil courts. (Sulochana Amma v. Narayanan Nair : 1994ECR195(SC)).

23. To determine whether or not the proceedings before the Forest Settlement Officer, the appeal before the Subedar/Forest Court, and the revision before the Government in the Revenue Department, are quasi judicial, it must first be ascertained whether these statutory authorities are Tribunals and whether the jurisdiction they exercise is quasi judicial in nature.

25. The procedural rules which regulate proceedings before Tribunals, and the powers conferred on them in deeding with matters brought before them, are sometimes described as the 'trappings of a court'. In determining the question whether a particular body or authority is a tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a court. (Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi (1950) SCR 459; Engineering Mazdoor Sabha v. Hind Cycles Ltd. : (1962)IILLJ760SC). In order to be a tribunal, the main and the basic test is whether the adjudicating power, which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. (Associated Cement Co. Ltd. v. P.N. Sharma : (1965)ILLJ433SC).

27. A quasi-judicial function has been termed to be one which stands midway between a judicial and an administrative function. The primary test is whether the authority, alleged to be a quasi-judicial one, has any express statutory, duty to act judicially in arriving at the decision in question. If the reply is in the affirmative, the

authority would be deemed to be quasi-judicial. (State of H.P. v. Raja Mahendra Pal : [1999]2SCR323). Three requisites, each of which must be fulfilled, in order that the act of the body may be a quasi-judicial act, are that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. The real and determining test for ascertaining whether an act authorised by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially. (Radeshyam Khare v. State of M.P : [1959]1SCR1440 ; Raja Mahendra Pal : [1999]2SCR323 .

26. Section 2(1) of the Hyderabad Forest Act, prior to its repeal by the A.P. Forest Act, defined 'Forest Settlement Officer' to mean an officer appointed under Section 4. Under Section 4(1)(c), whenever it was decided to constitute any land as a reserve forest, the Government was required to publish a notification in the Jareeda appointing an officer called the 'Forest Settlement Officer' to enquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land or forest produce comprised within such limits and to deal with the same as provided in Chapter II of the Act. Section 6 required the Forest Settlement Officer to publish in Urdu, and in the local vernacular, in every town and village and at the headquarters of the Taluqa in which any portion of the land was comprised therein, a proclamation (a) specifying the situation and limits of the land desired to be constituted as a reserve forest; (b) explaining the consequences which would ensue on the reservation of such forest; and (c) fixing a period of not less than four months from the date of proclamation and requiring persons, claiming any right mentioned in Sections 4 and 5, to present to such officer, within such period, a written notice specifying the nature of the alleged right claimed or to appear before him and state the nature of such right and the amount and particulars of such compensation, if any, claimed in respect thereof. Section 7 required the Forest Settlement Officer to take down in writing all statements made under Section 6, to enquire into all claims, and the extent of any rights mentioned in Sections 4 and 5 and not claimed under Section 6, in so far as the same may be ascertainable from the Government records and the evidence of any person likely to be acquainted with the same. Section 8 empowered the Forest Settlement Officer, for the purpose of such enquiry, to exercise (a) the power to

enter upon any land, survey, demarcate and make a map of the same; (b) the powers of a Civil Court in the trial of suits.

27. Section 10(1) required the Forest Settlement Officer to pass an order admitting or rejecting the claim to a right in or over any land in whole or in part and to either (a) exclude such land from the limits of the proposed reserve forest or come to an agreement with the owner thereof for the surrender of his rights; or (c) proceed to acquire such land in the manner provided by the Land Acquisition Act. Under Section 10(2), for the purpose of acquiring such land, (a) the Forest Settlement Officer was deemed to be a Taluqdar proceeding under the Land Acquisition Act; (b) the claimant was deemed to be a person interested and appearing before him in pursuance of a notice served on him under Section 7 of the Act and (c) the provisions of Section 7 and the preceding sections of the Act were deemed to have been complied with and the Taluqdar, with the consent of the claimant, or as provided by the Land Acquisition Act, the Court, with the consent of both parties, was empowered to award compensation in land, or in money, or partly in land and partly in money. Section 16 provided that a person, who had made a claim, could prefer an appeal, against the order passed by the Forest Settlement Officer, within 60 days, before the Forest Court constituted under Section 17 and, if no such Court was constituted, before the Subedar. The order passed in appeal by the Subedar was subject to revision by the Government in the Revenue Department. Under Section 17(1), a Forest Court was to be constituted with the Sessions Judge of the Division to which any portion of the land, the rights in or over which were in dispute, was situated. Under Section 17(2), the Sessions Judge was to be the President of the Court. Under Sub-section (3), for the hearing of the appeals, the Forest Court was empowered to fix a date and to give notice thereof to the parties. All cases before the Forest Court were required to be heard and disposed of, so far as may be, in accordance with the provisions of the Code of Civil Procedure. Under the proviso thereto if, on the hearing of any such case, any question of law or usage having the force of law, or the construction of a document affecting the merits of the case, arose on which the Court entertained reasonable doubts, the Court was empowered either on its own motion, or on the application of any of the parties, to draw up a statement of the case and submit it with its own opinion for the opinion of the High Court. The Forest Court was also empowered to

make such reference to the High Court if the question involved any principles of general importance or affected the rights of a particular class. Under Sub-section (4), after conclusion of the enquiry, the Forest Court was empowered to proceed to pass such order in the case as it considered just and proper.

28. It is evident from these provisions that the power which the Forest Settlement Officer, the Subedar/Court and the Government, exercised under the Hyderabad Forest Act, was a part of the State's judicial power, that such a power had been conferred on them by a statutory provision to be exercised in respect of disputes between claimants and the Forest Department or claimants inter-se. There is, in that sense, a lis. There is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order passed is binding. Against the order passed by the Forest Settlement Officer an appeal lay to the Subedar/District Court and against the appellate order of the Subedar a revision lay to the Government in the Revenue Department. Having regard to these distinctive features, and the nature and extent of powers conferred on these statutory authorities, they must, necessarily, be held to be quasi-judicial tribunals.

29. Since the order of the Forest Settlement Officer dated 1.11.1938, which was eventually confirmed in revision by the Government in the Revenue Department in the year 1945 is a quasi judicial order, the principles of res-judicata would apply if the issues involved in the earlier proceedings, and in the subsequent order of the Forest Settlement Officer dated 23.9.1986, are held to be identical. The claim before the Forest Settlement Officer, which eventually resulted in the order dated 1.11.1938, was either to delete the lands in Sy.Nos. 272,273, 274, 270, 244, 96 and 269 of Weltur village and Sy. No. 266 of Chintalapalem village from the proposed reserve forest to enable the claimants to enjoy the same or to compensate the claimants with an equivalent extent of land in other villages or in the alternative for payment of compensation for such land. In the subsequent claim petition dated 2.9.1995, identical claims have been raised for payment of compensation for the very same lands which the sons, of the earlier claimant, claim to be the owner of. Since the factual issues involved, in both the earlier and the subsequent proceedings, are identical, the earlier decision of the Forest

Settlement Officer, as confirmed in the revision by the Government in the Revenue Department, constitutes res judicata and necessitates the subsequent order of the Forest Settlement Officer dated 23.09.1986, as confirmed by the District Court in A.S. No. 6 of 1989 dated 27.12.1994, being quashed on this ground.

30. The fact that the order of the Government in the Revenue Department dated 2nd Shabrewar 1355 F. (in the year 1945) was distorted by the respondents-claimants, who in their claim petition dated 2.9.1985, sought implementation of the said order as if it was in their favour, cannot be ignored while exercising the discretionary jurisdiction under Article 226 of the Constitution of India. The Forest Settlement Officer, in his order dated 23.9.1986, relied on non-existent observations in the order dated 2nd Shabrewar 1355 F(in the year 1945). Both Smt. V. Sandhya and Sri E.V.S.S. Acharyulu, Learned counsel for the respondent-claimants, would fairly state that the order of the revisional authority dated 2nd Shabrewar 1355 F (in the year 1945) was, in fact, in favour of the forest department and against the respondents-claimants. Reliance placed by the respondent-claimants, on a non-existent order, could only be to defraud Government revenue. Consequently, the order of the Forest Settlement Officer dated 23.09.1986, based on a non-existent order of the Government in the Revenue Department, must be held to be vitiated by fraud and deceipt. The mere fact that the said order has been confirmed in appeal by the District Court would not justify exercise of restraint by this Court in certiorari proceedings for it is evident that the said order is not only against larger public interest but has also resulted in manifest injustice in that the respondents-claimants were held entitled to a sum in excess of Rs. 2.00 Crores as compensation for the lands acquired for the reserve forest and, in addition, for the statutory benefits under the Land Acquisition Act.

31. It is, however, contended that, since the original claimant had died during the pendency of proceedings before the Secretary, Revenue, the revisional order of the Government in the Revenue Department passed in the year 1945, was against a dead person and a nullity, that, consequently, the appellate order of the Subedar revived and, as the said order was, admittedly, in favour of the respondents-claimants, they are entitled for payment of compensation. It must be borne in mind

that even a void order, or a decision rendered between parties, cannot, ordinarily, be said to be non-existent. Normally, such an order will, in fact, be effective inter parties until it is successfully avoided or challenged in a higher forum. Mere use of the word Void' is not determinative of its legal impact. The word Void' has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal and that it can be avoided. (Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth : AIR 1996 SC906).

32. All decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction. (Judicial Review of Administrative Action, De Smith, Woolf and Jowell 1995 Edn. at pp. 259-60). Until its validity is challenged, its legality is preserved. (Halsbury's Laws of England 4th Edn. (Re-issue) Vol. 1(1) in para 26, p.31. An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity, and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders. This is equally true even where the brand of invalidity is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the court. (Wade and Forsyth: Administrative Law Seventh Edn. at pp. 341-342; Smith v. East Elloe Rural District Council (1956) AC 736).

It will be a dangerous proposition to be laid down as one of law that any individual or authority can ignore the order assuming authority upon itself to decide that the order is coram non judice. A judicial/quasi-judicial order, not invalid on its face, must be given effect to entailing all consequences, till it is declared void in a duly constituted judicial proceedings. (Prakash Narain Sharma v. Burmah Shell Coop. Housing Society Ltd. : [2002]SUPP1SCR643).

33. If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs. But, nonetheless, the order has at least a de-facto operation unless

and until it is declared to be void or a nullity by a competent body or court. A party aggrieved by the invalidity of the order has to approach the court for the relief of a declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for. (State of Punjab v. Gurdev Singh : (1992)ILLJ283SC). The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the Void' order remains effective and is, in reality, valid. (Wade Administrative Law 6th edition Page 352).

34. The earlier order of the Government in the Revenue Department was passed in the year 1945. Respondents - claimants contended that they were 4 years and 2 years when their father, the original claimant, was murdered. No explanation is forthcoming for their inaction for forty years before they submitted an application afresh' in the year 1985. Even in their application dated 2.9.1985 the respondents-claimants had only sought implementation of the earlier order of the government in the Revenue Department and had not contended that the said order was a nullity. The order of the Forest Settlement Officer dated 23.9.1986 is also based on the premise that the order of the Government in the Revenue Department was in favour of the respondent-claimants and not, as is now evident, against them. There was no challenge, by the respondents either before the Forest Settlement Officer or the District Court, Nalgonda or even before this Court in the present writ petitions, to have the order of the Government in the Revenue Department, passed in the year 1945, declared a nullity. In the absence of any justifiable explanation for the inordinate delay of more than forty years and, since there is no challenge even in the present proceedings to the earlier order of the Government in Revenue Department, I sec no reason to declare the said order a nullity.

35. The contention that the earlier order of the Forest Settlement Officer did not decide the question regarding award of compensation and, therefore, the respondents claimants are not precluded from putting forth such a claim subsequent thereto must only be noted to be rejected. The Forest Settlement Officer had specifically held that the petitioners had no title over the lands which

formed part of the reserve forest. Once the respondents - claimants are held not to possess title, the question of their being entitled for payment of compensation does not arise and the subsequent order, based on the erroneous premise that they had title over the said land, placing reliance on a non-existent order, would not enure to their benefit.

36. It must be noted that the writ petitioner herein, (Divisional Forest Officer), had specifically raised the contention of res judicata and of violation of the rules of natural justice in the appeal filed before the District Court, Nalgonda in A.S. No. 6 of 1989. The Learned District Judge, while noting these contentions, did not, however, adjudicate on these issues. Since the order of the District Court, confirming the order of the Forest Settlement Officer with regards the respondents-claimants entitlement for payment of compensation, is under challenge in W.P. No. 13948 of 1995, this Court has, necessarily, to examine the validity of the contentions urged by the petitioner herein before the District Court, Nalgonda. As such the contention that it is only the quantum of compensation which would necessitate examination in these writ proceedings does not merit acceptance. The contention that the plea of res judicata should have been taken at the first instance is also without merit. Petitioners herein were neither put on notice, nor were they given an opportunity of being heard, by the Forest Settlement Officer in awarding compensation to the respondents - claimants by his order dated 23.9.1996. The petitioners could not, therefore, have raised this plea of res judicata before the Forest Settlement Officer. Viewed from any angle, the impugned order of the District Court in A.S. No. 6 of 1989 dated 27.12.1994 and the order of the Forest Settlement Officer dated 23.9.1986 must be, and are accordingly, quashed.

37. As both the orders, of the Forest Settlement Officer dated 23.9.1986 and the District Court dated 27.12.1994, are being set aside, the question of the respondents - claimants being entitled for enhancement of the compensation awarded by the District Court does not arise. Needless to state that the petitioner in W.P. No. 13948 of 1995 is entitled to take such action as is available to them in law as a consequence of the said orders now being quashed by this Court.

W.P. No. 13948 of 1995 is allowed. W.P. Nos. 25421 of 1995 and W.P. No. 25422 of 1995 are dismissed. However, in the circumstances, without costs.