

Mohammad Siddiq and ors. Vs. the State of U.P. and anr.

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Court : Allahabad

Decided On : Nov-13-1967

Reported in : AIR1968All396

Judge : G.D. Sahgal, ;R. Chandra and ;K.C. Puri, JJ.

Acts : [Forest Act, 1927](#) - Sections 15, 17, 18, 18(4) and 22

Appeal No. : Writ Petn. No. 186 of 1960

Appellant : Mohammad Siddiq and ors.

Respondent : The State of U.P. and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S. Rahman and ;S.P. Bhalla, Advs. absent but Akhtar Hussain, Adv. is holding brief

Judgement :

G.D. Sahgal, J.

1. This petition has been referred to a Full Bench by Jagdish Sahai and K. Chandra, JJ. on the point as to whether the revision application filed by the Divisional Forest Officer, North Kheri, before the State Government was competent.

2. The facts of the case are that the father of the petitioners, viz., Sheikh Fazal Husain was the sub-tenant of certain plots situate in village Salband, Pargana Khairigarh, Tahsil Nighasan in the district of Kheri. He obtained bhumidhari sanad with respect to those plots with the consent in writing of the tenant-in-chief. On April 3, 1954, the State Government issued a notification under Section 4 of the Indian Forest Act (hereinafter referred to as 'the Act') proposing to constitute certain lands in the district of Kheri as reserved forest including the land of which bhumidhari rights were granted to the father of the petitioners. A proclamation was issued by the Forest Settlement Officer under Section 6 of the Act and a claim was filed by the father of the petitioners. The claim was admitted by the Forest Settlement Officer on June 18, 1956. No appeal was filed against that order on behalf of the Forest Department nor were any proceedings taken for the acquisition of that land. The result was that on the 17th of January, 1957 the Forest Settlement Officer released the land in favour of the petitioners, their father having died in the meantime. On February 7, 1957, however, the Divisional Forest Officer, North Kheri Division, moved an application for the setting aside of the aforesaid release order but this application was rejected by the Forest Settlement Officer on May 5, 1958. There was then an appeal against that order by the Forest Department which was dismissed by the Deputy Commissioner on April 20, 1959. A revision was then preferred by the Forest Department to the State Government challenging all the above orders passed on June 18, 1956, January 17, 1957, May 5, 1958 and April 20, 1959. The State Government allowed the revision and set aside all these orders, communication of the order of the State Government to the Forest Department being contained in Annexure 5. A copy of the said communication of the State Government was also forwarded to the petitioners. It is against the order of the State Government so communicated that the writ petition giving rise to this reference has been filed.

3. A number of points were raised in the petition but the only point that has been referred to the Full Bench is as to whether the revision preferred to the State Government by the Divisional Forest Officer, North Kheri Division, was competent.

4. In order to appreciate the point referred to the Full Bench we have to look into the relevant provisions of the Indian Forest Act.

5. Section 3 of the Act gives power to the State Government to constitute any forest-land or waste-land which is the property of Government or over which the Government has the proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner prescribed in the succeeding sections.

6. Section 4 provides that when it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in official Gazette declaring that it has been decided to constitute such land a reserved forest, specifying, as nearly as possible, the situation and limits of such land, and appointing an officer to be known as the 'Forest Settlement Officer' to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in the Act.

7. Section 5 provides that after the issue of a notification under Section 4 no right shall be acquired in or over the land comprised in the notification except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. It also prohibits fresh clearings for cultivation or for any other purpose except in accordance with such rules as may be made by the State Government in this behalf.

8. Section 6 provides that when a notification has been issued under Section 4, the Forest Settlement Officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, among other things, a proclamation fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

9. Section 7 provides for the Forest Settlement Officer to take down in writing all statements made under Section 6, and also to inquire into all claims duly preferred

under that section, and the existence of any rights mentioned in Section 4 or Section 5 and not claimed under Section 8 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

10. Section 8 gives to the Forest Settlement Officer the powers of a Civil Court in the trial of suits. It also authorises him either himself to enter upon any land and to survey, demarcate and make a map of the same or to authorise any officer to do so.

11. Section 9 provides that rights in respect of which no claim has been preferred under Section 6 and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished. It, however, extends the period of making a claim upto the stage of publication of the notification under Section 20 in certain circumstances but not beyond that

12. Section 10 deals with a claim relating to the practice of shifting cultivation in which case the Forest Settlement Officer is required to record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government together with his opinion as to whether the practice should be permitted or prohibited wholly or in part. If the practice is permitted wholly or in part the Forest Settlement Officer may arrange for its exercise by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe. All these arrangements are subject to the previous sanction of the State Government. The practice of shifting cultivation shall, in all cases, be deemed a privilege, subject to control, restriction and abolition by the State Government:

13. Section 11 provides that in the cast of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest produce or a water-course, the Forest Settlement Officer shall pass an order admitting or rejecting the

same in whole or in part. If such a claim is admitted in whole or in part, the Forest Settlement Officer shall either exclude such land from the limits of the proposed forest, or come to an agreement with the owner thereof for the surrender of his rights, or proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.

14. Under Section 12, in the case of a claim to right of pasture or to forest produce, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

15. Section 13 provides as to how the record is to be prepared by the Forest Settlement Officer when passing an order under Section.

16. Section 14 provides that the Forest Settlement Officer, in case he admits in whole or in part any claim under Section 12, shall also record the extent to which the claim is so admitted, specifying the number and the description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is admitted, the quantity of timber and other forest produce which he is from time to time authorised to take or receive, and such other particulars as the case may require.

17. Section 15 then provides that after making such record the Forest Settlement Officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose the Forest Settlement Officer may set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest produce (as the case may be) to the extent so admitted, or so alter the limits of the proposed forest as to exclude forest land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants or record an order, continuing to such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the State Government.

18. Section 16 then provides that in case the Forest Settlement Officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under Section 15 as shall ensure the continued exercise of the said rights to the extent so admitted he shall, subject to such rules as the State Government may make in this behalf commute such rights, by the payment to such persons of a sum of money in lien thereof, or by the grant of land, or in such other manner as he thinks fit.

19. Section 17 provides that any person who has made a claim under the Act or any Forest Officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by Forest Settlement Officer under Section 11, Section 12, Section 15 or Section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the State Government may, by notification in the official Gazette, appoint to hear appeals from such orders. Section 17 also provides that the State Government may establish a Court known as the Forest Court composed of three persons to be appointed by the State Government, and, when the Forest Court has been so established, all such appeals shall be presented to it.

20. Section 18 then provides as to how an appeal shall be preferred and how it has to be heard.

21. Sub-section (4) of Section 18 provides that the order passed on appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the State Government, be final.

22. It is this provision of law, viz., Sub-section (4) of Section 18 which has to be interpreted for the purpose of deciding the point referred to the Full Bench

23. The question to be decided is as to whether this provision of law gives power to the State Government to revise any order passed on appeal under Section 17 on claims decided by the Forest Settlement Officer under Sections 11, 12, 15 and 16.

24. In order to appreciate this point two more sections of the Act, viz., Sections 20 and 22 have to be examined.

25. Section 20 provides that when the period fixed under Section 6 for preferring a claim has elapsed and all claims, if any, made under that section or Section 9 have been disposed of by the Forest Settlement Officer if any such claims have been made, the period limited by Section 17 for appealing from the orders passed on such claims has elapsed, and all appeals, if any, presented within such period have been disposed of by the appellate officer or Court; and all lands, if any, to be included in the proposed forest, which the Forest Settlement Officer has, under Section 11. elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government under Section 16 of that Act, the State Government shall publish a notification in the official Gazette, specifying definitely, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

26. It is from the date so fixed that such forest shall be deemed to be a reserved forest.

27. Section 22 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 Section 15 or Section 18, and direct that any one of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings or that the rights admitted under Section 12 be commuted under Section 16.

28. The question is whether in view of the provisions of Section 22, does Sub-section (4) of Section 18 give power to the State Government to revise each and every order passed under Section 17 or does it limit the scope of the revising power of the State Government only to the extent provided under Section 22? The words used in Sub-section (4) of Section 18 are:

'18 (4). The order passed on appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the State Government, be final'.

29. A perusal of this provision of law shows that it does not specifically describe as to what powers of the State Government in revision are, It only states that the order passed on appeal is final subject only to interference made by the State Government in exercise of its power of revision. It does not mean that it gives any power to the State Government to revise each and every order passed in appeal under Section 17 decided under Section 18. The powers to the extent of which the order under Section 18 may be revised are contained in Section 22 of the Act. This is the view of a Division Bench of this Court in the case of Raghunath Singh v. State of Uttar Pradesh, 1961 All WR (HC) 532. Doubts, however, have been expressed on behalf of the State as to whether this view is correct in view of certain observations of the Supreme Court in Mahendra Lal Jaini v. State of Uttar Pradesh, AIR 1963 SC 1019. While analysing the scheme of Chapter II of the Act at p. 1032 in Paragraph 26, the following remarks have been made by the Supreme Court:

'Section 17 provides for appeals from orders passed under Sections 11, 12, 15 and 16, while Section 18(4) provides for revising an appellate order by the State Government'.

Their Lordships then proceeded to observe that Sec, 19 permits lawyers to appear before the Forest Settlement Officer or in appeal and when all these proceedings are over, the State Government has to publish a notification under Section 20 specifying definitely the limits of the forest which is to be reserved and declaring the same to be reserved from the date fixed by the notification, and from such date the forest shall be deemed to be a reserved forest. It is then observed that it is not necessary to refer to the remaining sections which provide for ancillary matters after the notification under Section 20. The point for decision before their Lordships at the time these remarks were made was as to whether the Forest Amendment Act, 1956, was valid and constitutional and in that connection they examined the various provisions of Chapter II of the Forest Act from Section 3 to Section 27

dealing with the reserved forest. The analysis of the various provisions that was made in that connection was not for the purpose of laying down any law but was for the purpose of determining the main question in the case.

30. Even the remark on which reliance has been placed does not necessarily lay down that the powers of the State Government in revising an appellate order are absolute. The observation is only to this effect that Section 18(4) provides for revising an appellate order by the State Government. This observation does not lay down the extent of the revising power of the State Government. It only describes that there is power of revision in the State Government. For finding out the extent of the powers of the State Government we have to look to Section 22 which specifically gives to the State Government the powers of revising the orders of the appellate authority under Section 18. This section confines the power of the State Government in revision only to interfering with the arrangement made under Section 15 or Section 18 and for doing so it may rescind or modify any order made under that provision and direct that any one of the proceedings specified in Section 15 be taken in lieu of any other of such proceedings or that the rights admitted under Section 12 be commuted under Section 16.

31. A perusal of Section 15, as we have already seen shows that it gives power to the Forest Settlement Officer to make arrangement as to how certain rights round to exist in a reserved forest can be ensured. It is only this arrangement that can be revised by the State Government under Section 22. Section 18 itself does not provide for any such arrangement being made; it only provides for the deciding of an appeal under Section 17, Section 22, therefore, in so far as it refers to an arrangement being made under Section 18 cannot but mean the arrangement made under Section 15 in so far as it has been modified in an appeal heard under Section 18. Thus Section 22 contemplates the revising of an arrangement made either under Section 15 or the arrangement made under Section 15 in so far as it may have been modified in an appeal under Section 17 heard under Section 18. The revising powers of the State Government, therefore, are not absolute but are limited as provided under Section 22, Section 18(4) contemplating finality of the order passed in appeal only to the extent to which that order has not been modified under Section 22 in respect of the arrangement contemplated under

Section 15 on to the extent it may have been modified under Section 18 as a result of the hearing of the appeal. The law laid down on the point in Reghunath Singh's case, 1961 All WR (HC) 532, therefore, still holds good, being the correct law and is not overruled by the observations of the Supreme Court in Mahendra Lal Jaini's case, AIR 1963 SC 1019, referred to above. It would thus appear that the order that was passed by the Deputy Commissioner in appeal in the instant case being not an order in connection with any arrangement that might have been made under Section 15 was not revisable.

32. Our answer to the reference, therefore, is that the revision application filed by the Divisional Forest Officer, North Kheri, before the State Government was not competent.

33. Let the above answer to the question referred to the Full Bench, be returned to the Bench concerned.

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