

Smt. Pyari Devi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-09-2003

Reported in : AIR2004All70

Judge : S.P. Srivastava and ;Ashok Bhushan, JJ.

Acts : [Constitution of India](#) - Articles 141, 225 and 226; Mines and Minerals (Regulation and Development) Act, 1957 - Sections 15; Uttar Pradesh Minor Minerals (Concession) Rules, 1963; Forest (Conservation) Act, 1980 - Sections 2 and 17; Allahabad High Court Rules, 1952 - Rule 5

Appeal No. : Civil Misc Writ Petition No. 6047 of 2003 and Spl. A. No. 591 of 2002

Appellant : Smt. Pyari Devi

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Y.K. Saxena, Adv.

Disposition : Petition dismissed

Judgement :

Ashok Bhushan, J.

1. We have heard this writ petition along with Special Appeal No. (519) of 2002.

2. The petitioner in this writ petition and the appellant in Special Appeal No. (519) of 2002 (hereinafter referred to as special appeal) are similarly situated and have filed writ petition and special appeal for similar relief. The special appeal has arisen out of Writ Petition No. 29926 of 2002 (Bhairao Ram v. Additional District Judge, Anpara situated at Obra, Sonbhadra and Ors.). In Writ Petition No. 29926 of 2002 almost similar relief has been claimed by the petitioner/appellant, Bhairao Ram, which are being claimed in this writ petition. The writ petition filed by Bhairao Ram being Writ Petition No. 29926 of 2002 has been dismissed by learned Single Judge vide his judgment dated 4-10-2002 against which special appeal has been filed. Since both the cases arise out of the same facts and circumstances, Writ Petition No. 6047 of 2003 is being treated as leading case and reference of facts of the above writ petition are sufficient to decide both the cases.

3. By this writ petition, the petitioner has prayed for issuance of following writs:--

(1) issue a writ, order or direction in the nature of mandamus commanding and directing the respondents by permitting the petitioner for excavation/lifting of minor mineral granted to the petitioner in pursuance of lease deed dated 16th March, 2001 from river bed to the extent of 10 Acre over Plot No. 246/1 mi. Lot No. 5 at Village Gurdah, Pargana Agori, Tehsil Robertsganj, District Sonbhadra.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondents not to give effect to the order dated 29-6-2002 (Annexure-1) providing the restriction upon the right of petitioner from excavation of minor mineral granted in pursuance of lease deed dated 16-3-2001 (Annexure-14) after realisation of royalty and other charges as well as No Objection Certificate by the Divisional Forest Officer dated 14-5-1999 (Annexure-12) declaring the ex parte order passed by respondent No. 4 in Review Application No. 2810 of 1992 after 9-5-1994 (order dated 30-1-1999 and amendment in Revision made on 15-2-2001 and also the order dated 3-6-2002, Annexure-17) as null and void and also without jurisdiction.

4. Brief facts giving rise to this writ petition are; petitioner was granted a mining lease of sand for excavating a minor mineral. The lease deed was executed by the District Magistrate, Sonbhadra in respect of Plot No. 246/1 to the extent of an area of 10 acres situate in Village Gurdha, Tahsil Robertsganj, District Sonbhadra. The

lease was executed for a period of three years in accordance with the provisions of U. P. Minor Mineral (Concession) Rules, 1963. The petitioner started mining operation after execution of lease deed. By an order dated 29th June, 2002, the mining operation of 11 persons including the petitioner was prohibited. It was stated in the order that Additional District Judge in Review. Application No. 2810 of 1992 (Forest Department v. Mahendra Singh and Ors.) has passed an order directing for constituting reserved forest in Plot No. 246/1 area 453 bighas and 17 biswas under Section 4 of Forest Act.

5. Petitioner's case in the writ petition is that petitioner has not committed breach of any condition of lease deed nor petitioner was given any notice before prohibiting her from carrying on her mining operation. In the writ petition, the petitioner has also prayed for declaring the order dated 3rd June, 2002 passed by Additional District Judge in Review Application No. 2810 of 1992 and also the orders dated 30-1-1999 and 15-2-2001 passed on the aforesaid review application as void and without jurisdiction.

6. Sri Y. K. Saxena learned counsel appearing for the petitioner challenging the order dated 29th June, 2002 submitted that petitioner having granted mining lease after obtaining no objection certificate from the District Magistrate is entitled to carry on mining operation for the period for which lease was granted. The petitioner having not breached any condition on lease, the order dated 29th June, 2002 amount to suspension of her lease which is not permissible in law. The order dated 29th June, 2002 has been passed ex parte. Challenging the order dated 3rd June, 2002 passed by Additional District Judge in Revision Application No. 2810 of 1992 (State of U. P. (Forest Department) v. Mahendra Singh), it has been contended that the said order is illegal and without jurisdiction. It has been submitted that by order dated 3rd June, 2002 second review application was allowed by Additional District Judge in appeal filed under the Forest Act. It has further been contended that Court of Additional District Judge, which has passed the review order, was directed by the order of the Apex Court dated 18th July, 1994 (Annexure-10 to the writ petition) passed in Writ Petition No. 1081 of 1982 (Banwasi Sewa Ashram v. State of U. P.) to continue till 30th September, 1994, hence the Additional District Judge has to jurisdiction to entertain any review

application and pass order thereafter. Various other grounds have been taken challenging the order passed by Additional District Judge on the review application in appeal under the provisions of Forest Act.

7. Learned counsel for the petitioner has also cited several judgments of the apex Court in support of his submissions, which shall be referred to while considering the respective submissions.

8. Before proceeding to consider the submission raised by counsel for the petitioner in Writ Petition No. 6047 of 2003, it is also necessary to refer to the facts, in brief, which have given rise to special appeal. Special appeal has been filed against the judgment of learned single Judge dated 4th October, 2002 by which Writ Petition No. 29926 of 2002 filed by Bhairo Ram has been dismissed. The appellant, Bhairo Ram, was also granted a mining lease on 12th March, 2001 for excavation of sand for a period of three years on 10 acres area of Plot No. 246/1, Village Gurdah, Tahsil Robertsganj, District Sonbhadra.

9. By the same order dated 29th June, 2002, the appellant was restrained from carrying out the mining operation in pursuance of the judgment of Additional District Judge dated 3rd June, 2002 passed on the Review Application No. 2810 of 1992 directing for constituting reserved forest in Plot No. 246/1 area 453 bighas and 17 biswas. The appellant who was granted similar lease as has been granted in favour of petitioner of Writ Petition No. 6047 of 2003, filed Writ Petition No. 29926 of 2002 praying for quashing of the order dated 3rd June, 2002 passed by Additional District Judge in Review Application No. 2810 of 1992. A further prayer was made seeking a mandamus declaring the entire proceedings conducted by Additional District Judge in passing the order dated 3rd June, 2002 as illegal, unconstitutional and void. Further mandamus was sought directing and commanding the respondents not to restrain the appellant in pursuance of the order dated 3rd June, 2002 from his right of excavation of minor mineral on the basis of lease deed dated 12th March, 2001. The writ petition was dismissed by learned single Judge vide its judgment dated 4th October, 2002 upholding the order dated 3rd June, 2002 passed by Additional District Judge. Against the said Judgment, the special appeal has been filed.

10. A report has been submitted by the Stamp Reporter of this Court that Special Appeal is not maintainable in view of Chapter-VIII, Rule 5 of the Rules of the Court.

11. Learned counsel for the appellant, Sri Y. K. Saxena, challenging the report of Stamp Reporter submitted that special appeal is fully maintainable. The counsel for the appellant contended that bar of Chapter-VIII, Rule 5 of the Rules of the Court is not attracted in the present case since the order dated 3rd June, 2002 passed by Additional District Judge is without jurisdiction. Sri Saxena further contended that Additional District Judge had no Jurisdiction to review the appellate order dated 27th February, 1992 and the judgment dated 3rd June, 2002 allowing the review application being without jurisdiction, the special appeal is not barred under Chapter-VIII, Rule 5 of the Rules of the Court.

12. Elaborating his submission, the counsel for the appellant, contended that power of review cannot be exercised by Additional District Judge since it has not been statutorily conferred nor is available even by implication. The counsel for the appellant submitted that the order dated 3rd June, 2002 having not been passed by Additional District Judge in exercise of any jurisdiction conferred under Forest Act, the said order is without jurisdiction and the bar under Chapter-VIII, Rule 5 of the Rules of the Court is not applicable.

13. We have considered the submissions and perused the record.

14. From the prayers of the Writ Petition No. 6047 of 2003, as quoted above, it is clear that petitioner has substantially asked for two reliefs from this Court. First relief is to the effect that petitioner be allowed to continue her mining operation in pursuance of the lease deed dated 16th March, 2001 and the order dated 29th June, 2002 prohibiting the petitioner from carrying on her mining operation be not given effect to. The second relief of the petitioner is for declaring the order passed by Additional District Judge in Review Application No. 2810 of 2002 dated 3rd June, 2002, 30th January, 1999 and 15th February, 2001 as void and without jurisdiction. In support of aforesaid reliefs, as claimed in the writ petition, petitioner has made various submissions as noted above.

15. Coming to the first prayer made in the writ petition, there is no dispute that petitioner was granted a mining lease on 16th March, 2001 for a period of three years of excavation of sand on Plot No. 246/1 on 10 Acres area in accordance with Chapter -11 of U. P. Minor Mineral (Concession) Rules, 1963. The order dated 29th June, 2002 was passed for stopping the mining operation after the judgment of the Additional District Judge dated 3rd June, 2002 In review application aforesaid. Before proceeding further to consider the matter, it is necessary to look into the nature of proceedings in which the order dated 3rd June, 2002 was passed by the Additional District Judge.

16. The State Government issued a notification dated 9th April, 1969 which was published in U. P. Gazette 21st June, 1969 under Section 4(1) of the Indian Forest Act, 1927 (hereinafter referred to as Forest Act) declaring that it has been decided to constitute the land, as detailed in notification, as reserved forest. The aforesaid notification included Plot No. 716 area 485 bighas and 15 biswas (out of which Plot No. 246/1 area 453 bighas and 17 biswas has been made). A writ petition was filed before the apex Court by one Banwasi Seva Ashram in the nature of public interest litigation claiming that Adiwasis and other backward people using forest land as their habitation and means of livelihood will be deprived in case the State Government is permitted to declare entire land as reserved forest. The apex Court entertained the writ petition and issued certain directions with regard to consideration of the claims of persons with regard to land, which has been notified under Section 4(1) of Forest Act. Apex Court directed that demarcation pillars shall be raised by the Forest Officers identifying the land covered under Section 4 of Forest Act which will be widely publicised. The Apex Court directed to appoint adequate number of record officers and also directed for making services available of five experienced Additional District Judges. The order further directed that after Forest Settlement Officer has done the needful under the provisions of the Act, the findings with the requisite papers shall be placed before the Additional District Judge of the area even though no appeal is filed and the same shall be scrutinised as if an appeal has been taken against the order of the authority and the order of the Additional District Judge passed therein shall be taken to be the order contemplated under the Act. It was further directed that when the appellate Authority finds that the claim is admissible, the State Government shall honour the

said decision. The said direction of the apex Court is reported in : [1987]1SCR337 Banswasi Seva Ashram v. State of U. P.

17. It is also necessary to look into the statutory scheme under the Forest Act for declaring an area as reserved forest. Section 4(1) of Forest Act contemplates that whenever it has been decided to constitute any land, a reserved forest, the State Government shall issue a notification in the official gazette specifying the situation and limits of such land and also appointing an officer named 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 comprised within such limits. Section 6 provides that Forest Settlement Officer shall publish in the local vernacular in every town and village of neighbourhood specifying the situation and limits of the proposed forest, explaining the consequences and fixing a period and requiring every person claiming any right mentioned in Section 4 or Section 5 of Forest Act within such period either to present to the Forest Settlement Officer a written notice or to appear before him and state the nature of such right. Section 7 contemplates enquiry by Forest Settlement Officer. The Forest Settlement Officer is required to pass order under Sub-section (2) of Section 11 regarding claim made by a person and under Section 12 regarding claim to rights of pasture or to forest produce and under Section 15 to pass order which may ensure the continued exercise of the rights so admitted. Under Section 17 an appeal is provided against an order of Forest Settlement Officer. Provision of Section 17 as applicable to State of Uttar Pradesh, Is quoted as below :--

'17. Appeal from order passed under Section 11, Section 12, Section 15 or Section 16.-- Any person who has made a claim under this 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 the Forest Settlement Officer under Section 11, Section 12, Section 15 or Section 16, present an appeal from such order to the District Judge.

Explanation -- In this section and the succeeding sections of this Chapter, District Judge' means the District Judge of the District in which the land is situate, and includes an Additional District Judge to whom an appeal is transferred by the

District Judge.'

18. On Plot No. 246/1 Mahendra Singh and Rajendra Singh sons of Bhupendra Singh filed an objection claiming that an area of 26 bighas and 8 biswas is their bhumidhari land which be declared as their bhumidhari land and not included in the reserved forest. The Forest Settlement Officer passed an order on 20th June, 1991 for recording the names of Mahendra Singh and Rajendra Singh on an area of 26 bighas and 8 biswas as assami and the rest of land was directed to be excluded from reserved forest. Various appeals were decided by Additional District Judge, Chopan, Sonbhadra including the appeal filed by the State against Mahendra Singh and Rajendra Singh. As noted above, the Apex Court vide its order dated 20th November, 1986 has directed that after the order of Forest Settlement Officer the findings with requisite papers shall be placed before the Additional District Judge even though no appeal is filed and the same shall be scrutinised as if an appeal has been taken. The Additional District Judge had allowed the appeal of Mahendra Singh and Rajendra Singh while deciding the several appeals. A review application was filed by the State Government through Forest Department challenging the order dated 27th February, 1992 of the Additional District Judge. In the review application it was prayed that the order dated 27th February, 1992 be set aside and the disputed land be directed to be made reserved forest. It appears that review applications were rejected on 9th May, 1994 but the order was subsequently recalled by the Additional District Judge vide his order dated 30th January, 1999 Certain amendments in the review application were also permitted by the Court and thereafter by detail judgment dated 3rd June, 2002 the Additional District Judge allowed the review application and set aside the order of Forest Settlement Officer dated 27th February, 1992 and directed that Plot No. 246/1 area 453 bighas 17 biswas be reserved for constituting reserved forest.

19. The petitioner was granted lease in Plot No. 246/1 for an area of 10 acres and after the aforesaid plot being declared as reserved forest mining operation were prohibited. Coming to the first relief claimed by the petitioner that petitioner is entitled to continue his mining operation in pursuance of the lease deed dated 16th March, 2001 and as he has not committed any breach of condition of lease he

could not have been prohibited from carrying on his mining operation, it is clear that prohibitory order has been passed not on account of any breach of condition but due to the reason that plot over which lease was granted has been directed to be included in the reserved forest in proceedings which were initiated under the provisions of Indian Forest Act after the notification under Section 4 of Forest Act dated 9th April, 1969.

20. On declaration of an area as reserved forest the provisions of Forest (Conservation) Act, 1980 come into play and Section 2 of Forest (Conservation) Act, 1980 provides that no State Government or other authority shall make any order except with the prior approval of the Central Government directing that any forest land or any portion thereof may be used for any non forest purpose. Section 2 of the Forest (Conservation) Act, 1980 is quoted below :--

'2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.-- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,--

(i) that any reserved forest (within the meaning of the expression 'reserved forest' in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation).'

21. The Forest (Conservation) Act, 1980 was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of

deforestation have become social menaces and further deforestation and ecological imbalances should be prevented. The apex Court in : AIR 1997 SC1228 T. N. Godavarman Thirumulkpad v. Union of India had issued general direction that all on going non forest activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease. The said directions were issued by the Apex Court on 12th December, 1996. Paragraph 5(1) of the said judgment is quoted as below :--

'5. Each State Government should constitute within one month a Expert Committee to :--

(i) Identify areas which are 'forests', irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;.....

22. The consequences of declaration of the plot on which lease was granted to the petitioner as reserved forest is that provisions of Section 2 of Forest (Conservation) Act, 1980 came into play and any non forest activity in the land cannot be carried on without the prior approval of the Central Government and further under the general directions issued by the Apex Court in T. N. Godawarman Thirumulkpad's case (supra), as extracted above, the State Government was obliged to stop all non forest activity in any forest area. The prohibitory order dated 29th June, 2002 stopping the petitioner from carrying mining operation is in accord with provisions of Section 2 of Forest (Conservation) Act, 1980 and also in accord with the general directions issued by the Apex Court in T. N. Godavarman Thirumulkpad's case (supra).

23. The counsel for the petitioner has placed reliance on : AIR 1985 SC814 ; State of Bihar v. Banshi Ram Modi. The fact in above case were that respondent was granted a mining lease by the State of Bihar for mining and winning mica in respect of an area of 18 acres of land which formed part of reserved forest area in the year 1966. The period of lease was to expire on April 24, 1986. During the mining operations the respondent came across two other minerals namely felspar and quartz commonly known to be associate minerals of mica. The respondent

applied to the State Government to include the said minerals also in the lease executed on April 25, 1966 so that he could win and dispose of those minerals also. The State Government agreeing to do so executed a deed of incorporation. The Divisional Forest Officer wrote to respondent that mining area was situated within the reserved forest area and previous approval of the Central Government has not been obtained for inclusion of Felspar and quartz in the mining lease, hence the respondent could not be permitted to win felspar and quartz. The respondent filed a writ petition in the High Court which allowed the writ petition. An appeal was filed by State of Bihar against the judgment of the High Court before the Apex Court. The Apex Court itself, in paragraph 7, has noted special feature of the case which is quoted below :--

'7. In this case it has to be mentioned that the learned counsel for Respondent No. 1 has stated that Respondent No. 1 would not in any event carry on any mining operations on any area other than the five areas of land which had already been utilised for non-forest purposes even before the Act came into force by breaking up the land, for the purpose of winning felspar or quartz. It has also to be mentioned here that before the High Court, the learned Standing Counsel for the Central Government had stated that the Act had no application to leases granted prior to the coming into force of the Act and that there is no repudiation of that stand before us by the Central Government. In view of the above statements the only question which remains to be considered in this appeal is whether the mining operations which are being carried on in the five acres of land for the purpose of winning felspar and quartz are illegal and by reason of the absence of the previous approval of the Central Government granted under the Act.'

The apex Court after considering the question raised before it held in paragraph 10 of the said Judgment :--

'10.If the State Government permits the lessee by the amendment of the lease deed to win and remove felspar and quartz also in addition to mica it cannot be said that the State Government has violated Section 2 of the Act because thereby no permission for fresh breaking up of forest land is being given. The result of taking the contrary view will be that while the digging for

purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica. That would lead to an unreasonable result which would not in any way subserve the object of the Act, We are, therefore, of the view that while before granting permission to start mining operations on a virgin area Section 2 of the Act has to be complied with it is not necessary to seek the prior approval of the State Government for purposes of carrying out mining operations in a forest area which is broken up or cleared before the commencement of the Act. The learned counsel for Respondent No. 1 has also given an undertaking that Respondent No. 1 would confine his mining operations only to the extent of five acres of land on which mining operations have already been carried out and will not fell or remove any standing trees thereon without the prior permission in writing from the Central Government. Taking into consideration all the relevant matters, we are of the view that Respondent No. 1 is entitled to carry on mining operations in the said five acres of land for purposes of removing felspar and quartz subject to the above conditions.'

From the above judgment, it is clear that five acres of land on which winning of felspar and quartz was permitted was an area which was already broken before commencement of the Act, hence the apex Court permitted the respondent to win the associate minerals. The aforesaid judgment is not applicable in the facts of the present case. Furthermore, there is a general direction by the apex Court itself in T. N. Godavarman Thirumulkpad's case (supra) directing the State Government to stop all non-forest activities in a forest area. From the directions issued by the Apex Court in T. N. Godavarman Thirumulkpad's case (supra), it is clear that no exception has been made out in the said directions in the case of even leases which were current on date of issue of the aforesaid directions.

24. Apex Court in : AIR 1988 SC2187 Rural Litigation and Entitlement Kendra v. State of U. P. issued directions for stopping of mining operations in view of the provisions of Forest (Conservation) Act, 1980. Apex Court in its aforesaid judgment has noted in detail that various mining leases were still current and were not yet expired but apex Court held that Forest (Conservation) Act, 1980 did not permit mining in the forest area. The apex Court in the said judgment also directed

the State to set up Rehabilitation Committee for rehabilitating those persons whose mines were directed to be stopped. The aforesaid judgment clearly supports the view that even if the leases are current no mining can be permitted in forest area. The apex Court held in paragraph 46 of the said Judgment :--

'46. We have already recorded a finding elsewhere in this Judgment that most of these mines are either within reserved forests or in forest lands, as covered by the U. P. Amendment of the Forest Act. To these areas the Forest Conservation Act applies and to allow mining in these areas even under strictest control as a permanent feature would not only be violative of the provisions of Forest (Conservation) Act but would be detrimental to restoration of the forest growth in a natural way in this area. Once the importance of forests is realised and as a matter of national policy and in the interests of the community, preservation of forests is accepted as the goal, nothing which would detract from that end should be permitted. In such circumstances we reiterate our conclusion that mining in this area has to be totally stopped.'

25. A Full Bench of Andhra Pradesh High Court in 0043/1990 : AIR 1990 AP257 ; Hyderabad Abrasives and Minerals, Hyderabad v. Govt. of Andhra Pradesh, Forest Department, Hyderabad and an other held that prior approval of the Central Government for breaking up or clearing the forest land is necessary even though mining lease over forest land was granted prior to Forest (Conservation) Act, 1980. Following was laid down in paragraph 12 of the said Judgment :--

'What is material for the purpose of the Act' is not the date on which the lease is granted, but the date on which the State Government or other authority permits the breaking up or clearing of the forest land, or any portion thereof.'

26. In the present case since the petitioner is claiming for permitting her to carry on her mining operation in a reserved forest area, the permission of Central Government is necessary as required under Section 2 of Forest (Conservation) Act, 1980 and no illegality has been committed in directing the petitioner to stop her mining operation. The petitioner has not claimed in the writ petition that at any point of time permission of the Central Government has been obtained. In view of what has been said above, we do not find any error in the order dated 29th June,

2002 prohibiting the petitioner from carrying on her mining operation. Permitting the petitioner to carry on mining operation in pursuance of lease-deed dated 30th June, 2001 in view of the fact that area which was leased out to the petitioner has been directed to be included as reserved forest by competent Court will be permitting the petitioner to violate provisions of Section 2 of Forest (Conservation) Act, 1980, No mandamus can be issued for permitting a person to violate statutory provisions of law. Further, in view of specific and clear direction of the Apex Court in T. N. Godavarman Thirumulkpad's case (supra) for stopping all non-forest activities in forest area. State Government cannot possibly permit the petitioner to carry on mining operation in pursuance of the lease. The prohibitory order stopping the petitioner from carrying on mining operation is, thus, perfectly justified and is in accordance with law. The prayer made by the petitioner for permitting her to carry on her mining operation in pursuance of the lease-deed and to declare the order dated 29th June, 2002 inoperative cannot be granted.

27. The second relief as claimed in the writ petition regarding challenge to the order dated 3rd June, 2002 and the orders dated 30th January, 1999 and 15th February, 2001 passed by the Additional District Judge in review application dated 28-10-1992 is to be considered. From the facts, as noted above, it is clear that the petitioner is only lessee with regard to part of the land comprised in Plot No. 246/1. The proceedings in which the aforesaid orders were passed by Additional District Judge were proceedings under Forest Act initiated by issue of notification under Section 4(1) dated 9th April, 1969. The orders passed by Additional District Judge are orders in review application filed by State of U. P. through Forest Department for reviewing the judgment of the appellate Court passed in exercise of appellate Jurisdiction under Section 17 of the Forest Act. The petitioner had no concern with any claim pertaining to land declared as reserved forest. Petitioner had neither filed any objection in the aforesaid proceeding nor was party to the aforesaid proceeding. The proceeding under the Forest Act culminating into appellate order which was sought to be reviewed was on the basis of proceeding under the Special Act and between the specific parties. Notification was, admittedly, issued proposing to constitute reserved forest in the entire plot No. 246/1 but due to the order of the appellate authority dated 27th February, 1992, the said plot was excluded from reserved forest. On the review application filed by the State of U. P.

through Forest Department, the aforesaid order was set aside and the entire plot was declared to be Included in the reserved forest. The petitioner could not be permitted to challenge the aforesaid order dated 3rd June, 2002 and orders dated 30th January, 1999 and 15th February, 2001 since he was not party to the aforesaid proceedings. The proceedings culminating into the order dated 3rd June, 2002 being proceeding under the Special Act giving right to the party to the proceeding on different stages, a person who was not party at any stage cannot be allowed to challenge the orders passed in those special proceedings. It is relevant to note that State which has granted lease to the petitioner, has not challenged the order of Additional District Judge dated 3rd June, 2002 directing the plot to be included in the reserved forest. The petitioner who is a lessee from the State Government cannot claim a higher right from its lessor. The State of U. P. having not challenged the order declaring the plot No. 246/1 as reserved forest, it is not open to a lessee of the State of U. P. to challenge the said order, in case petitioner feels that there is breach of condition of lease on the part of the State Government, it is open to the petitioner to file a suit for damages against the State. Various submissions raised by the petitioner challenging the orders passed by Additional District Judge dated 3rd June, 2002 on merits need not be considered since we are of the view that petitioner has no right to challenge those orders. In view of this, we do not consider the various submissions on merit raised by the petitioner challenging the order dated 3rd June, 2002, There is no necessity for considering the submissions raised by the petitioner on merits and various decisions cited by the petitioner in support of her respective contentions.

28. Now coming to the special appeal, the first submission, which requires consideration is as to whether the present special appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court. Chapter VIII, Rule 5 of the Rules of the Court which provides for filing of special appeal is extracted below :--

'(5. Special Appeal.-- An appeal shall lie to the Court from a Judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by the Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal Jurisdiction (or in the

exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award -- (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.)'

The aforesaid provisions of Chapter -VIII, Rule 5 of the Rules of the Court provides that an appeal shall lie to the Court from a judgment in respect of a decree or order made by one Judge. However, there are several excluded categories of cases in which special appeal is barred.

29. A Division Bench of this Court had occasion to consider the provisions of Chapter-VIII, Rule 5 of the Rules of the Court of which one of us (Hon'ble Ashok Bhushan, J.) was a member in (2003) 1 UPLBEC 496 : (2003 All LJ 883), Vajara Yojana Seed Farm, Kalyanpur v. Presiding Officer, Labour Court II, U. P., Kanpur. After considering Chapter-VIII, Rule 5 of the Rules of the Court as well as the provisions of U. P. High Court (Abolition of Letters Patent Appeals) Act, 1962, as amended up to date, it was held that special appeal from Judgment of one Judge is excluded in six categories, as noted in paragraph 64 of the judgment. Paragraph 64 of the said judgment is extracted be-low :--

'64. From the above discussions and looking into the provisions of U. P. Act No. 14 of 1962 as amended by Amendment Act of 1981 and Chapter VIII, Rule 5 of the Rules of the Court, 1952, special appeal is excluded from a judgment of one Judge of this Court in following categories :--

(i) Judgment of one Judge passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the superintendence of the Court.

(ii) Judgment of one Judge in the exercise of revisional jurisdiction.

(iii) Judgment of one Judge made in the exercise of its power of superintendence.

(iv) Judgment of one Judge made in the exercise of criminal jurisdiction.

(v) Judgment or order of one Judge made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution In respect of any judgment, order or award of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise of purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in State List or Concurrent . List.

(vi) Judgment or order of one Judge made in exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award by the Court or any Officer or authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any Uttar Pradesh Act or under any Central Act.

30. The present case squarely falls in category 5 as incorporated In the aforesaid Division Bench judgment. In the present case, judgment which is impugned of the Additional District Judge was a judgment of a Court made or purported to be made in exercise Of jurisdiction under Forest Act, 1927 which pertains to a matter included in Concurrent List. Forest is included in Entry No. 17A of Concurrent List. The Additional District Judge having exercised the jurisdiction under the Forest Act while passing the order 3rd June, 2002, this special appeal is barred under express provisions of Chapter-VIII, Rule 5 of the Rules of the Court.

31. In view of the fact that the order dated 3rd June, 2002 impugned in the writ petition was passed in purported exercise of jurisdiction by the Additional District Judge under Forest Act, the special appeal is barred under Chapter-VIII, Rule 5 of the Rules of the Court. The objection that special appeal is barred under Chapter-VIII, Rule 5 of the Rules of the Court is, thus, upheld.

32. The next submission of counsel for the appellant that the Additional District Judge has no jurisdiction to pass order dated 3rd June, 2003 is also required to be considered. The submission of counsel for the appellant is that Additional District

Judge exercising the appellate jurisdiction under Section 17 of the Forest Act is not conferred power of review nor the power of review can be read by necessary implication, hence the order is without jurisdiction and it cannot be said that the said order was passed in exercise of jurisdiction under any Central Act. The submission is that bar of Chapter -VIII, Rule 5 of the Rules of the Court will be applicable only when the order has been passed by a Court in exercise of any jurisdiction under U. P. Act or Central Act pertaining to matters included in Concurrent List. There is no dispute that Section 17 of Forest Act as applicable in the State of U. P. confers the appellate power on the Court of District Judge/Additional District Judge, thus, the judgment dated 3rd June, 2002 is a judgment passed by a Court. The submission which has been raised by counsel for the appellant is that there is no power of review in the Court of Additional District Judge has to be considered. As noted above, under the order of the Apex Court dated 20th November : [1987]1SCR337 the findings of Forest Settlement Officer with requisite papers shall be placed before the Additional District Judge even though no appeal is filed and the same shall be scrutinised as if an appeal has been taken against the order. The aforesaid directions is extracted below (at page 377 of AIR) :--

'III. After the Forest Settlement Officer has done the needful under the provisions of the Act, the findings with the requisite papers shall be placed before the Additional District Judge of the area even though no appeal is filed and the same shall be scrutinised as if an appeal has been taken against the order of the authority and the order of Additional District Judge passed therein shall be taken to be the order contemplated under the Act.'

33. In the same case, the apex Court passed order dated 18th July, 1994 in which the apex Court specifically directed the Government to implement the decisions given by various Additional District Judges in various appeals and reviews decided by the learned Judges. Last two paragraphs of the said judgment is extracted below :--

'It has been stated by Justice Loomba in his 14th Report that an area of about 26947 acres in about 12 villages, covered by Notification under Section 4 of the

Indian Forests Act, has in fact been dealt with under Section 54 of the U. P. Land Revenue Act. We direct the Revenue Secretary, Government of Uttar Pradesh, to set up special Officers to deal with this area in terms of our order dated November 20, 1986. We further direct the Revenue Secretary to implement the decisions given by various Additional District Judges in various appeals and reviews decided by the Learned Judges.

We close the proceedings in this case. We, however, give liberty to the parties to approach this Court as and when it becomes necessary to do so for obtaining necessary directions.'

From above directions of the apex Court, it is clear that apex Court directed the State Government to implement the decisions given by various Additional District Judges in various appeals and reviews decided by learned Judges, The aforesaid direction clearly directs that judgment of the review has also to be implemented. The Apex Court itself having directed implementation of the reviews decided by the Additional District Judges, the submission of counsel for the appellant that order of Additional District Judge passed in review is without jurisdiction cannot be accepted. In fact, the Divisional Forest Officer brought this fact before the Apex Court that several errors have been committed by the Additional District Judge while deciding the appeal and he be permitted to review and review be directed. The aforesaid fact has been noted by the Apex Court in its order dated 4th October, 1993. Relevant extract of the order of the Apex Court dated 4th October, 1993 is quoted below :--

'Mr. Abhay Kumar Singh, the Divisional Forest Officer, District Sonbhadra has filed an affidavit wherein it is stated that during the physical verification made by the forest department, certain cases have come to light where wrong orders have been passed. He seeks directions from this Court for the review of those cases. The Forest Department may bring those cases to the notice of the Additional District Judges who shall consider these cases in accordance with law.'

From the aforesaid, it is clear that Apex Court permitted the applications and ultimately directed implementation of judgment passed by Additional District Judge in review which clearly means that Apex Court has accepted filing of review and

implementation of the said order. The argument of counsel for the appellant is in the teeth of the aforesaid direction and cannot be accepted. The judgments of the Apex Court are binding for all courts under Article 141 of the [Constitution of India](#).

34. One more aspect of the matter also needs to be considered. As noted above, the Apex Court vide its judgment dated 20th November, 1986 directed that findings of Forest Settlement Officer be placed before the Additional District Judge even though no appeal is filed and the same was directed to be scrutinised by the Additional District Judge as if an appeal has been taken. From the facts brought up on the record, it is clear that in notification issued under Section 4 of Forest Act Plot No. 246/1 area 453 bighas and 17 biswas was included. Only objection which was filed was by Mahendra Singh and Rajendra Singh that too with regard to an area of 26 bighas and 8 biswas. No objection was filed with regard to rest of area of Plot No. 246/1. Under the scheme of the Forest Act, the Forest Settlement Officer was to hold an enquiry under Section 7 regarding all claims duly preferred under Section 6 and the existence of any rights mentioned in Section 4 or Section 5 and not claimed under Section 6 so far as the same may be ascertainable from the records. Section 7 of Forest Act is quoted below :--

'7. Inquiry by Forest Settlement Officer.--The Forest Settlement Officer shall take down in writing all statements made under Section 6, and shall at some convenient place inquiry 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 6 so far as the same may be ascertainable from the records of the Government and the evidence of any persons likely to be acquainted with the same.'

From the order of SO, it is clear that there was no claim with regard to Plot No. 246/1 except the claim by Mahendra Singh and Rajendra Singh that too limited with 26 bighas 8 biswas. There being no claim for rest of the plot nor there is any finding of existence of any right mentioned under Section 4 or 5, there was no occasion for Forest Settlement Officer for taking away the entire Plot No. 246/1 from reserved forest. The appellate Court was directed to scrutinise the findings of Forest Settlement Officer even though no appeal is filed. The Additional District

Judge while deciding the case on 27th February, 1992 did not advert to the directions of the Apex Court dated 20th November, 1986 as noted above. The judgment of the appellate Court dated 27th November, 1992 being not in consonance with the direction of the Apex Court, the Additional District Judge has ample power to correct the said mistake in the order. The Additional District Judge being Court has inherent power to correct the mistake. The Apex Court in : AIR 1996 SC2592 , Indian Bank v. Satyam Fibres (India) Pvt. Ltd., has held that every Court has inherent jurisdiction to correct any mistake. Following was laid down by the Apex Court in paragraph 23 the said judgment (at page 2597 of AIR) :--

'23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have Inherent power to set aside an order obtained by fraud practised upon that Court, similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order (See Benoy Krishna Mukerjee v. Mohanlal Goenka (AIR 1950 Cal 287); Devendra Nath Sarkar v. Ram Rachpal Singh (AIR 1926 Oudh 315); Salyed Mohd, Raza v. Ram Saroop (AIR 1929 Oudh 385); Bankey Behari Lal v. Abdul Rahman (AIR 1932 Oudh 63); Lakshmi Amma Chacki Amma v. Mammen Mammen (1955 KLT 459). The Court has also the Inherent power to set aside a sale brought about by fraud practised upon the Court (Ishwar Mahton v. Sitaram Kumar (AIR 1954 Pat 450) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh : AIR1958 Pat618 ; Tara Bai v. V. S. Krishnaswamy Rao (AIR 1985 Kant 270)).'

35. In view of the above, the Additional District Judge had inherent power to correct the mistake which was apparent in the order dated 27th February, 1992. In view of this, in the present case it is not necessary to consider the question and decide as to whether the statute has specifically or by necessary implication has conferred the power of review on the Additional District Judge exercising the appellate jurisdiction under Section 17 of the Forest Act.

36. From the foregoing discussions, the judgment of Additional District Judge dated 3rd June. 2002 cannot be said to be without Jurisdiction. The Additional

District Judge while passing the order dated 3rd June, 2002 was within his jurisdiction and the said jurisdiction was exercised by the appellate Court in exercise of Jurisdiction conferred under Forest Act which is Central Act referable to Entry 17A of the Concurrent List. The judgment dated 3rd June, 2002 which was challenged in the writ petition being a judgment passed by a Court in exercise of jurisdiction under Central Act, the special appeal is clearly barred under Chapter-VIII, Rule 5 of the Rules of the Court and the submission of counsel for the appellant that present special appeal is maintainable cannot be accepted.

37. In any view of the matter while deciding Writ Petition No. 6047 of 2003 in which similar reliefs have been claimed, which have been claimed by the appellant in the special appeal, we have held that writ petitioner is not entitled for any relief, no relief can be granted to the appellant is Special Appeal No. (591) of 2002.

38. In view of what has been said above both. Writ Petition No. 6047 of 2003 as well as Special Appeal No. (591) of 2002 are dismissed.