

Kamal Kishore and ors. Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Jan-18-2006

Reported in : AIR2006MP167; 2006(2)MPHT45; 2007(1)MPLJ181

Judge : S.S. Jha and ;S.A. Naqvi, JJ.

Acts : Gwalior State Forest Act Samvat, 1962 - Sections 5 and 6; Madhya Bharat Forest Act Samvat, 2007 - Sections 86; Madhya Bharat Forest Act Samvat, 1950; Madhya Pardesh Extension of Laws Act, 1958 - Sections 6; [Indian Forest Act, 1927](#) - Sections 4, 20A, 20A(1), 20A(2), 20A(4), 26, 33, 68 and 82; ;Madhya Pradesh Forest (Amendment) Act, 1965 - Sections 20; Forest Act, 1905; Madhya Pradesh Extension of Laws Act - Sections 6.1; Indian Forest (Madhya Pradesh Amendment) Ordinance, 1964; ;Forests (Conservation) Act, 1980 - Sections 2

Appeal No. : Writ Petition No. 1413/2002

Appellant : Kamal Kishore and ors.

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : Ravinandan Singh, Adv. General and ;S.B. Mishra, Additional Adv. General

Advocate for Pet/Ap. : N.K. Gupta and ;M.P.S. Raghuwanshi, Advs.;V.K. Tankha, Sr. Adv., ;D.K. Katare, ;V.K. Bhardwaj, ;Arvind Dudawat, ;M.P.S. Raghuwanshi, ;Vijay Sundaram and ;Jitendra Sharma, Advs.

Judgement :

ORDER

S.S. Jha, J.

1. In this petition filed in public interest, petitioner has challenged the action of the respondents in permitting non-forest activities in the forest area. Though this petition related to a limited area to be developed by the Special Axea Development Authority (SADA) respondent No. 6 and has challenged the development plan of the said Authority in which forest area is being utilised for non-forest activities for construction of Counter Magnet City and permission of mining in the forest area, during the course of arguments, this being a public interest litigation, the Court has enquired about the non-forest activities in the district of Gwalior and issuance of mining lease to various persons on the forest land. In view of the contradictory reply by the Department of Forest and Revenue, a committee was constituted which was headed by Justice R.B. Dixit, a retired Judge of this Court, Committee submitted its report. State was not satisfied with the said report and further requested that another commission be appointed. Therefore, vide order dated 14-2-2005 expert committee was directed to be constituted which comprised of:

(i) An officer of the rank of Chief Conservator of Forests to be appointed by the Principal Chief Conservator of Forests.

(ii) The Collector, Gwalior.

(iii) An expert to be appointed by the Secretary, Forest Department, Government of India.

2. It was also directed that the Committee shall visit all the villages in question referred to in the report dated 13-9-2004 and identify the forests and submit a report keeping in view the directions of Hon'ble the Supreme Court in the series of judgments and orders issued in the case of T.N. Godavarman. Committee convened its meetings, inspected the villages and submitted its report. While identifying the forest lands of the area surrounding Gwalior, and portions forming part of erstwhile Gird District under the then Gwalior State, the committee after considering the provisions of forest laws of Gwalior State, for identifying reserved and protected forests under the control of the Forest Department submitted its report identifying the forest lands. Forest areas were declared as Reserved Forests (R.F.) or Protected Forests (P.F.) as per the provisions of Quanoon Jungalat, Gwalior Samvat, 1969. These forests were carved out from the revenue Khasra and grouped into a management unit called Forest Block and given a particular name. A forest block was subdivided into smaller managements units called compartments which were numbered. A forest block comprised of revenue Khasra from a number of adjoining villages. A Block or a member of such Blocks, forming a consolidated forest area had been constituted as Reserved Forests. This report was submitted after examining the records of the Forest Department. The committee, while identifying the forest areas in the villages also considered (i) the report on the Administration of the Forest Department, Gwalior Government 1914-15, (ii) Annual report of the Forest Department, Gwalior Government 1934-35, (iii) Working Plan of Gwalior State for the period 1944-45 to 1954-55 and (iv) Working Plan of Gwalior Forest Division between 1975-76 to 1989-90.

3. Immediately after the report was submitted, this Court ordered that non-forest activities on the lands identified as forests be stopped. State filed a review application praying therein that the provisions of Quanoon Jungalat are not applicable as the said Quanoon Jungalat has been repealed by the Madhya Bharat Forest Act. It is further contended by the learned Advocate General that since Quanoon Jungalat has been repealed, the lands identified as Reserved Forests or Protected Forests under the Quanoon Jungalat shall cease to exist as Reserved Forests or Protected Forests after repeal of Quanoon Jungalat.

4. Number of intervenors in their applications have prayed that mining lease granted to them is not on the forest land and is on the revenue land. They submitted that since their lease are not on the forest lands, they should be allowed to continue their mining operations over the lease granted to them.

5. In this petition, serious question has been raised by the learned Advocate General that the lands declared as forest lands, Reserved Forests or Protected Forests by the erstwhile Gwalior State under the Quanoon Jungalat are no longer the forest lands and the State is entitled to grant lease over the lands which were identified as forest lands under the repealed forest law of erstwhile Gwalior State.

6. Counsel for the petitioner submitted that the provisions of Quanoon Jungalat are still relevant today and the lands earmarked as Reserved Forests or Protected Forests or Forest under the said Act will deem to remain forest and those lands can not be termed as revenue lands. He submitted that even after repeal of the Quanoon Jungalat, forest declared shall continue to remain as forest.

7. In order to save the forest lands, the Legislature has amended and inserted Section 20A in [Indian Forest Act, 1927](#) by State Amendment No. 9 of 1965. It is provided by the amendment that entire lands declared as forests by the erstwhile merged State will be deemed to be Protected Forests.

8. Now the main question which requires to be considered is whether the lands identified as forest lands under Quanoon Jungalat of Gwalior State are forest lands or not

9. Erstwhile Gwalior State enacted Gwalior State Forest Act Samvat, 1962. This Act defines Reserved Forests, Forest Village, Protected Forests and the Forests. As per Gwalior Forest Act all the Jungles which are notified as Jungles shall be under the Department of Forest and Protected Forests and Reserved Forests shall be notified. After this Act came into force, another enactment Quanoon Jungalat was enacted in Samvat, 1969. In

the said Act, 'Reserved Forest' is defined in Section 5. Section 6 provides for the procedure for declaring the reserved forest. It is provided that as and when any forest is decided to be declared as Reserved Forest, then Conservator shall submit his report and opinion to the Board of Revenue Darbar for approval. If the Darbar agrees with the report of Conservator, then publication shall be made in the Gwalior Gazette for declaring a particular forest as reserved forest and its area and boundaries will be notified. After the publication, proclamation shall be issued by the Officer Bandobast Jungle and the public will be intimated about the intention to declare reserved forest. Objections shall be invited and after considering the objections, orders declaring reserved forest shall be passed. It is further provided in Quanoon Jungalat that every land falling within the periphery of three miles of reserved forest shall be called as protected forest.

10. Learned Advocate General submitted that Gwalior State forest laws stood repealed after Madhya Bharat Forest Act Samvat, 2007 came into force vide Act No. 73 of 1950. Under Section 86 of the said Act, on coming into force the said Act, all Acts or any other similar laws or any other provisions having the force of law relating to forests, in force, in any of the Covenanting States shall stand repealed. Counsel for the State, therefore, submitted that under Section 86 of the Madhya Bharat Forest Act, Quanoon Jungalat and other forest laws of the Gwalior State stood repealed and as such, lands declared as reserved forests, protected forests village forests, or forests ceased to continue as forests after M.B. Forest Act was enacted. Counsel for the State, therefore, submitted that the report submitted by the Committee is not correct. Lands identified as forest lands under the provisions of Quanoon Jungalat are no longer forest lands and Quanoon Jungalat ceased to exist after its repeal with effect from 17th May, 1950 when Madhya Bharat Forest Act, Samvat, 2007 came into force.

11. Learned Advocate General further submitted that Madhya Bharat Forest Act was repealed on formation of new State of Madhya Pradesh with effect from 1st November, 1956. He invited attention to M.P. Extension of Laws Act, 1958 and submitted that under the Extension of Laws Act, the provisions of Madhya Bharat Forest Act stood repealed and provisions of [Indian Forest Act, 1927](#) was extended to entire State of Madhya Pradesh. He submitted that since Madhya Bharat Forest Act stood repealed and nothing has been saved, in the absence of any saving clause lands declared as reserved forest, protected forest or village forest under the Quanoon Jungalat has no force of law.

12. Counsel for the petitioner invited attention to the provisions of Section 86 of the Madhya Bharat Forest Act, Samvat 2007. This section has two provisions. It was provided in the first provision that all the actions taken, orders given, prosecutions started or penalties imposed under the earlier relevant Acts, shall be deemed to have been taken, given, started, or imposed, as the case may be, under this Act. It further provides that rules, orders made under them shall remain in force until superseded by rules made by the Competent Authority. He submitted that the orders declaring lands as reserved lands, protected lands and forests have been saved from the said repeal and lands declared as forest lands under the said Act are still continuing to be the forest lands.

13. Counsel for the petitioner then further invited attention to Section 6 of the M.P. Extension of Laws Act, 1958 and submitted that under the provisions of Section 6, declaration of forest is saved and reserved forests continue to remain in operation. He further submitted that even otherwise, the State Government has amended the [Indian Forest Act, 1927](#) and inserted Section 20A in the Act which relates to forest land or waste land which shall be deemed to be reserved forest. Counsel for the petitioner referred to Sub-section (4) of Section 20-A and submitted that the forests recognised in the merged territories as village forests or protected forests, or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act. He submitted that in view of amended Section 20-A of the Indian Forest Act all the reserved forests, protected forests and forests in the merged territories shall be deemed to be reserved forests, protected forests or forests. He submitted that intention of the Legislature is clear and explicit. Repeal of Quanoon Jungalat will not affect the nature of forest lands and forest lands will not ceased to be the forest lands on account of repeal.

14. Intervenors appearing in the case submitted that they are having lease of the mines which are not on the forest lands. Though this Court has ordered that non-forest activities on the forest lands should be stopped, but orders have been issued for closure of all the mines irrespective of whether they exist on the lands other than revenue lands. They submitted that grave injustice has been done to them. They are not carrying on mining operations on the forest lands and they should be permitted to continue their mining operations.

15. After the order dated 12-12-1996 passed by the Apex Court in Writ Petition (Civil) No. 202/95 State Government has submitted a report before the Apex Court. Letter was issued on 13-1-1997 wherein it is provided that definition of forest should be drawn from the dictionary meaning. Forest lands mean entire lands which are forest according to dictionary meaning and it will include the land which is recorded as forest in the Government records irrespective of its ownership.

16. Reply on behalf of Ministry of Environment and Forest was submitted on affidavit by Shri A.R. Chhadha DIG Forest which is filed as Annexure P-24. This affidavit relates to forests in the District of Damoh and other parts of Madhya Pradesh.

17. In the Working Plan of Gwalior Forest Division for the years 1975-76 to 1989-90 settlement of forest in the erstwhile State of Gwalior was discussed prior to enactment of Forest Act, 1905 by the Gwalior State. History of forest has been traced from the year 1899 and it is provided that after merger of the States in 1948 and creation of Madhya Bharat, new forest Act came into force in 1950. After formation of Madhya Pradesh in the year 1956, Extension of Laws Act, 1958 came into force from 1-1-1959 and Indian Forest Act was made applicable. Vide Amendment Act No. IX of 1965 Section 20 of the Indian Forest Act was amended and Section 20-A was inserted. In the year 1962 occupied areas of forest villages situated in the heard of the reserved forests have been transferred to the Revenue Department for management of the protected forests under the Gwalior State and forests of Datia range and notified under Section 4(i) of the [Indian Forest Act, 1927](#). Alongwith this report, list of all the villages in District Gwalior having reserved forests has been submitted. Vide Annexure A-XI, dated 17-1-2005 State Government has issued legal opinion and circular to Commissioners, Gwalior and Chambal Divisions, Conservator of Forest, Gwalior Circle, Gwalior and Collectors, Gwalior, Datia, Bhind, Morena and Sheopur that any unoccupied land within three miles periphery of the reserved land were protected forests and after M.P. Extension of Laws Act under Section 6.1 said lands continued to be the protected forests. Lands within the periphery of three miles, from the reserved forests are protected forests and such protected forests continue to remain as such. Under Section 20-A (4) of the Indian Forest Act, declaration by the erstwhile ruler will also fall in the definition of protected forests and therefore, all lands declared as forests or recorded as forests in the revenue papers are forest lands. Though Quanoon Jungalat stood repealed but its orders declaring reserved forests, protected forests and forests have been saved.

18. State of Madhya Pradesh brought a Bill before the Legislature known as the Indian Forest (Madhya Pradesh Amendment) Bill, 1965. Statement of objects and reasons will be relevant to understand the intention, which are reproduced below :-

STATEMENT OF OBJECTS AND REASONS

In this State there are a large number of merged States, which had various laws governing their forests. Some of them had probably no laws at all and constitution of reserved or protected forests was governed by either executive orders or through custom only. Constitution of such forests as reserved or protected under the Indian Forest Act has been challenged in the Courts and frequently the Government has found itself helpless in enforcing the restrictions imposed by this Act in respect of such land: For this purpose, it is necessary that a provision should be made in the Act that if a certain area was recognised as a reserved or protected forest in the erstwhile merged States, it shall continue to be so recognised under the Indian Forest Act.

2. At present, there is no provision in the Act whereunder a protected forest could be declared to be a longer protected. It is, therefore, proposed to make such a provision in the Act.

3. Section 82 of the Act empowers the State Government to recover certain types of dues as arrears of land revenue. The interpretation of Courts so far, has been that compensation levied under Section 68 is not covered by this Section and is not recoverable as, arrears of land revenue. It is considered desirable, that all dues other than fines should be made recoverable as arrears of land revenue.

4. The Central Board of Forestry has suggested, that the existing punishment in various sections of the Act is rather inadequate. It is, therefore, considered necessary that the punishment should be raised to make it more deterrent.

5. For some years, State Government have been faced with the problem of large scale encroachments on forest lands. In some areas, such encroachments have involved a threat to maintenance of law and order as well. Under Sections 26 and 33 of the Indian Forest Act, clearing of land for cultivation or for any other purposes, is an offence and is punishable with imprisonment extending up to 6 months or with fine up to Rs. 500. The experience of the Government has been that even when persons encroaching are prosecuted and convicted by Courts of law, they continue their encroachments on forest lands, since the Act does not have a specific and summary provisions for eviction of such persons. This makes it extremely difficult for the Government to remove encroachments from forest lands, particularly when the encroachments occur on a mass scale or as a regular movements.

6. As the amendment pertaining to eviction of persons encroaching upon forest land could not be kept pending till the next session of the Vidhan Sabha, the Indian Forest (Madhya Pradesh Amendment) Ordinance, 1964 (No. 11 of 1964) was promulgated. It is now proposed to convert the Ordinance into Bill.

7. Opportunity has also been taken to incorporate certain further minor amendments to facilitate implementation of the Act which have been considered necessary.

8. The Bill is designed to achieve the aforesaid objects,

19. After repeal of the forest laws of the erstwhile Gwalior State Government was facing difficulties in defending regarding forest lands in Courts of law. Continuation of such forests as reserved or protected forests was challenged and the Government has found itself helpless in enforcing the restrictions imposed by this act in respect of such lands. Therefore, it was necessary to amend the Indian Forest Act and since there was no provision in the Act whereunder protected forest could be declared to be no longer projected, it was, therefore, proposed to make such as provision in the Act. Act No. 9 of 1965 was passed by the Legislature which received the assent of the Governor on 20th March, 1965 and the Act came into force from the date of receipt of assent of the Governor on 20th March, 1965. It was published in Madhya Pradesh Official Gazette (Extra- ordinary) dated 20th March, 1965. Section 20-A of the Indian Forest Act is reproduced below :-

20-A. Forest land or waste land deemed to be reserved forest.-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any forest land or waste land in the territories comprised within an Indian State, immediately before the date of its merger if any of the integrating States nor forming parts of this State thereafter in this section referred to as the 'merged territories'.

(i) which had been recognised by the Ruler of any such State immediately before the date of merger as a reserved forest in pursuance of any law custom, rule, regulation order of notification for the time being in force; or

(ii) which had been dealt with as such in any administration report or in accordance with any working plan, or register maintained or acted upon immediately before the said date and has been continued to be so dealt with thereafter:

shall be deemed to be reserved forest for the purposes of this Act.

(2) In the absence of any rule, order of notification under this Act, applicable to the area in question, any law, custom, rule, regulation, order or notification mentioned in sub-section (1) shall, anything in any law to the contrary notwithstanding, be deemed to be validly in force, as if the same had the force and effect of rules, orders and notification made under the provisions of this Act and shall continue to so remain in force until superseded, altered or modified in accordance therewith.

(3) No report, working plan, or register as aforesaid or any entry therein shall be questioned in any Court of law, provided that the State Government have duly certified that such report, working plan, or register had been prepared under the authority of the said Ruler before the date of the merger and has been under the authority of the State Government continued to be recognised maintained or acted upon thereafter.

(4) Forest recognised in the merged territories as village forests or protected forests, or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of Sub-sections (2) and (3) shall mutatis mutandis apply.

20. Section 20-A (1) and (2) relates to reserved forests. Sub-section (3) provides that no report, working plan, or register as aforesaid or any entry therein shall be questioned in any Court of law, provided that the State Government have duly certified that such report, working plan, or register had been prepared under the authority of the said Ruler before the date of the merger and has been under the authority of the State government continued to be reconsidered maintain'e'd or acted upon thereafter.

21. Thus, whatever entries have been made by the then Ruler can not be questioned now after such long lapse of time. Sub-section (4) further provides that forest recognised in the merged territories as village forests or protected forests or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests. Therefore, after enforcement of the Act any forest declared to be forest, protected forest or village forest by the erstwhile Ruler or under laws of the Gwalior State shall be deemed to be protected forests. For the purpose of definition of protected forest, reserved forest and village forest provisions of Quanoon Jungalat are relevant though repealed and to determine the nature of land, Quanoon Jungalat is required to be considered as the act done or proclaimed by the erstwhile Ruler declaring reserved forest, protected forest or village forest shall bedeedmed to be continued as such after amendment in Section 20-A of the Indian Forest Act vide M.P. Amendment Act No. 9 of 1965.

22. Now the question is whether non-forest activities can be permitted on the forest lands.

23. Under the Forest (Conservation) Act, 1980 no non-forest activities ca.n be permitted on the said forest lands. State is directed not to allow any non-forest activities on the forest lands which comprised of reserved forests and protected forests as defined under Section 20-A (4) of the Indian Forest Act.

24. It will be appropriate that the State shall constitute a committee comprising of Commissioner, Land Records, Collector, District Gwalior, Chief Conservator of Forest, Gwalior Division and other officers. These officers shall sit together, examine the area and determine the forest land. Intervenors who had been granted mining lease shall also submit their claims before the Committee. Commissioner, Land Records shall provide all the necessary documents alongwith the map prepared by its by aerial survey in which forest lands are determined. Report of the aerial survey and the map be also made available to the committee in orderto enable it to identify the forest lands. Committee shall complete this exercise and submit its report before this Court within two months.

25. State shall submit its report pertaining to mines which are being run on the forest lands and the mines which are not running on the forest lands. Respondents shall forthwith stop non-forest activities including colonization under Counter- Magnet City under the Control of special Area Development Authority. Under Section 2 of the Forests (Conservation) Act, .1980 State and the Special Area Development Authority are directed to strictly adhere to the provisions of the aforesaid Conservation Act and that shall submit their report in that light. They shall specify the lands or mines on which non-forest activities can be permitted. On

submission of the report, orders for permission to Intervenors to continue their mining operation or other non-forest activities shall be passed. Entire exercise be completed within two months and report be submitted.

26. List after two months for further orders.

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