

(1966) 10 AHC CK 0021

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 805 of 1962

Swami Nath Singh and
Others

APPELLANT

Vs

State of Uttar Pradesh
and Others

RESPONDENT

Date of Decision: Oct. 10, 1966

Acts Referred:

- Constitution of India, 1950 - Article 226
- Forest Act, 1927 - Section 17, 18(4)
- Uttar Pradesh Land Revenue Act, 1901 - Section 14A, 14A(3)

Citation: AIR 1967 All 472

Hon'ble Judges: K.B. Asthana, J

Bench: Single Bench

Advocate: D.S. Sinha and S.C. Khare, for the Appellant; Junior Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.B. Asthana, J.

By this petition under Article 226 of the Constitution, the petitioners have challenged the validity of proceedings taken under the provisions of Chapter II of the Indian Forest Act, 1927 (Act No. 16 of 1927)

2. By a notification dated 19th May, 1964 published in the official gazette dated 5th June 1954 the State Government in exercise of its powers u/s 4 of the Forest Act proposed to constitute certain land as reserved forest. Eight plots on which the petitioners claimed sirdari rights, lying in village Grainahi were also included in the land mentioned in the schedule of the said notification. Thereupon the petitioners filed claims before the Forest

Settlement Officer objecting to the inclusion of their sirdari plots in the reserved forest. The case of the petitioners was that they had taken the plots in dispute on lease from the former zamindars and had executed a patta and Iqrarnama for the purpose.

They also alleged that they had given a large sum of money to the former zamindar as price of the trees standing on the land demised to them and thereafter cleared the land by cutting the trees and prepared it for agricultural operations by incurring a large amount as expense. The Forest Settlement Officer made a local inspection, took evidence and on a consideration of the entire material on record rejected the claim of the petitioners. Thereupon the petitioners filed an appeal u/s 17 of the Forest Act before the Collector, Deoria. The appeal eventually came up for hearing before Sri N.P. Pande, Additional Collector, Deoria. A preliminary objection was raised on behalf of the petitioners before Sri N.P. Pande to the effect that he as the Additional Collector had no jurisdiction to entertain and hear the appeal u/s 17 of the Forest Act. Sri N.P. Pande considered the above said preliminary objection and rejected it. He held that as Additional Collector he had the same jurisdiction and power as the Collector of Deoria in so far as the hearing of appeals under the Forest Act was concerned. On merits Sri Pande affirmed the findings recorded by the Forest Settlement Officer. The result was that the appeal of the petitioners was dismissed. If is these proceedings which have been impugned on this petition.

3. Sri D.S. Sinha, holding the brief for Sri S.C. Khare, on behalf of the petitioners contended that Sri N.P. Pande, Additional Collector, Deoria, had no jurisdiction to entertain and hear the appeal u/s 17 of the Forest Act and his order dated 30-11-1961 dismissing the appeal of the petitioners being wholly without jurisdiction deserved to be quashed by a writ of certiorari. Learned counsel also contended that even on merits the said order was vitiated as there was an error manifest on the record, the appellate court having rejected from consideration the material documentary evidence on the erroneous ground that the document required registration.

It was also submitted that the finding recorded by the appellate court was vitiated at least in regard to that part of the land in dispute on which the petitioners were found in possession and carrying on cultivation.

4. I will take up the question of jurisdiction as raised on behalf of the petitioners first. If on this question the answer is in favour of the petitioners then it would not be necessary to examine the validity of the other contentions raised in support of the petition on the merits of the case.

4a. Section 17 of the Forest Act reads as follows:

"17. 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 u/s 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.

It is not necessary to mention the proviso to that section as nothing turns on that in this case. By the notification dated 19th May, 1954 published in the official gazette dated 5th June 1954, which I have mentioned earlier, the State Government appointed the "Zila Dhish" of Deoria (Collector of Deoria) as the person authorised to entertain and hear appeals u/s 17 of the Forest Act. The petitioners it is not disputed, addressed their appeal to the Zila Dhish, Deoria. Sri N.P. Pande, who was posted as Additional Collector in Deoria, seized of this appeal in view of notification No. 2700 (xi)/II-A-202/1961 dated June 27, 1981, whereby he was transferred from Pratapgarh to Deoria and with effect from the date of taking over charge under Sub-section (1) of Section 14-A of the U. P. Land Revenue Act, 1901 he was to be an Additional Collector in the said district and under Sub-section (3) of the said section he was authorised to exercise all the powers and to perform all the duties of a Collector in all classes of cases.

Section 14 of the U. P. Land Revenue Act, 1901, empowers the State Government to appoint in each district an officer who shall be the Collector of the district and who shall throughout his district exercise all the powers and discharge all the duties conferred and imposed on a Collector by the Land Revenue Act or any other law for the time being in force. Section 14-A of the U. P. Land Revenue Act empowers the State Government to appoint an Additional Collector in a district or in two or more districts combined.

Sub-Section (3) of Section 14-A, as it then stood, enjoined that an Additional Collector shall exercise such powers and perform such duties of a Collector in such cases or class of cases as the State Government or, in the absence of orders from the State Government, the Commissioner concerned may direct.

Sub-section (4) of Section 14-A then provided that the Additional Collector when exercising any powers or discharging any duties under Sub-section (3) would be treated as if he was the Collector of the district.

5. In rejecting the preliminary objection raised before him, Sri N.P. Pande relied upon the above said provisions of law the above mentioned notifications. In addition Sri Pande pressed into service a notification issued by the State Government by which the Additional District Magistrates were appointed and the powers of the District Magistrates under the Criminal Procedure Code were conferred upon them. It is obvious that Sri Pande was in error in relying upon the said notification which related to the powers of the District Magistrate and the Additional District Magistrates.

The Collector as a revenue officer is an absolutely different office as compared to the office of the District Magistrate under the Criminal Procedure Code. It may be a

coincidence that for convenience of administration the State Government appoints one person as, head of the district, namely the Zila Dhish, making him Collector for revenue jurisdiction and District Magistrate for criminal jurisdiction. That by itself will not make the two powers which are distinct and separate in nature as one and the same. Thus one limb of the argument which was advanced in support of the jurisdiction being vested in the Additional Collector to hear appeals u/s 17 of the Forest Act, which argument was attempted to be reiterated by the learned Junior Standing Counsel before me, has no legs to stand.

6. The real question which arises is whether Sri N.P. Pande, Additional Collector, having been appointed u/s 14-A of the U. P. Land Revenue Act, 1901, and having been authorised by the State Government to exercise all the powers and to perform all the duties of the Collector in all classes of cases could be said to have properly seized of the appeal u/s 17 of the Forest Act. It was submitted on behalf of the petitioners that Section 17 does not empower the Collector as such to entertain and hear appeals.

What it lays down is that the State Government will appoint an officer of the Revenue Department of the rank not lower than that of a Collector by a notification in the official gazette. Reliance was placed in this connection on the notification dated 19th May, 1954 published in the official gazette dated 5th June, 1954 and it was contended that the Government appointed the Zila Dhish of Deoria for the purpose as persona designate from amongst the various classes of officers of the Revenue Department of the rank not lower than that of a Collector. It was also submitted that an Additional Collector was an officer of the Revenue Department of a rank lower than that of a Collector and even if Sri Pande could be said to have been authorised to entertain and hear appeals u/s 17 of the Forest Act the provisions of that section of the Forest Act would be violated and the exercise of appellate jurisdiction by Sri Pande under that section would be null and void.

For the purposes of deciding this case I do not think it necessary to go into the question whether the Additional Collector is an officer of the Revenue Department of a rank below the rank of a Collector. In my judgment merely for the reason that Sri Pande was appointed as Additional Collector u/s 14-A of the Land Revenue Act and was authorised to exercise all the powers and to perform all the duties of a Collector in all classes of cases by its own force that circumstance would not authorise him to entertain and hear appeals u/s 17 of the Forest Act when the State Government specifically for the purposes of entertainment and hearing of appeals under that section had appointed the Zila Dhish of Deoria.

If what the learned Junior Standing Counsel has argued is accepted then there would be two appellate authorities, one the Additional Collector and the other the Collector. Learned Junior Standing Counsel has not been able to satisfy me that for the reason that Sri N.P. Pande, when he was transferred to Deoria, was empowered and authorised under Sub-section (3) of Section 14 of the Land Revenue Act to exercise the powers of the Collector, in all classes of cases, the notification of the Government authorising the

Zila Dhish to entertain and hear appeals u/s 17 of the Forest Act stood superseded or modified. It is significant to note that under the scheme as it prevailed at the relevant time the Collector had no power to assign any of his duties or to assign any case or class of cases to the Additional Collector.

It is after the amendment of the Land Revenue Act, by U. P. Land Laws (Amendment) Act 21 of 1962 that Sub-section (3) of Section 14-A left it to the Collector of the district to confer powers and assign duties to the Additional Collector in cases or classes of cases. The Additional Collector in view of this amendment cannot be said to be an officer of the Revenue Department of the rank equal to that of the Collector for he has now to discharge his duties on the direction of the Collector and thus has been subordinated. However, as I have already observed earlier I am not concerned with this question and the law as it stood at the relevant time before the amendment was not so.

I am emphasising this fact that at the relevant time the Collector was not the Officer who had the authority to assign any case or class of cases to the Additional Collector, whether the cases arose out of tenancy laws or out of any other law for the time being in force. The Collector alone was the appellate authority u/s 17 of the Forest Act and the Collector by himself could not transfer the appeals u/s 17 of the Forest Act for hearing to the Additional Collector. Perforce, therefore, the learned Junior Standing Counsel relied on the notification appointing Sri N.P. Pande as the Additional Collector u/s 14A of the U. P. Land Revenue Act and conferring upon him all the powers of the Collector in all classes of cases.

I have pointed out the difficulty in relying upon the said notification for it would mean that the State Government was contemplating two kinds of officers of the revenue Department as appellate authority u/s 17 of the Forest Act. I cannot attribute any such intention to the State Government. Further on the well settled principle that the special derogates from the general, when I find that there is a specific notification of the State Government appointing the Collector of Deoria as the authority to entertain and bear appeals u/s 17 of the Forest Act. I would not be justified and there seems to be no warrant in law that I should apply the general law contained in Section 14-A of the Land Revenue Act, 1901 and should spell a power in Sri Pande, the Additional Collector, for hearing appeals u/s 17 of the Forest Act.

In the view which I have taken above it is not necessary to express any final opinion on the question whether the officer of the Revenue Department authorised by the State Government u/s 17 of the Forest Act would entertain and hear appeals as a persona designate, though I am inclined in favour, of the submissions made by the learned counsel for the petitioner that he is a persona designate. If that were not so the decision of the Collector or of the Additional Collector under the Forest Act would be appealable to the Commissioner and revisable by the Board of Revenue I do not think the Forest Act contemplates any such higher appellate forum or revisional forum. If at all there is any indication in the Forest Act, it is the State Government which is contemplated as the

revising authority.

7. For the reasons given above I hold, that Sri N.P. Pande, Additional Collector, Deoria, had no jurisdiction to entertain and hear the appeal filed by the petitioners u/s 17 of the Forest Act.

8. It was strenuously contended by the learned junior Standing Counsel that the petitioners had an equally efficacious and effective alternative remedy by way of revision to the State Government under the Forest Act and they not having taken recourse to that remedy this Court in exercise of its jurisdiction under Article 226 of the Constitution, which is discretionary, ought not to interfere.

I have some difficulty in accepting this argument. I do not find any clear provision in the Forest Act conferring any right on an aggrieved claimant to go up in revision to the State Government. Learned Junior Standing Counsel relied on Sub-section (4) of Section 18 of the Forest Act. In the absence of any other provision in the Forest Act defining the scope of the revisional power of the State Government it is not possible to say whether the remedy by way of revision available to an aggrieved party would be equally efficacious or effective. Learned Junior Standing Counsel in this connection referred to a Division Bench decision of the Calcutta High Court in the case of [Mohaluxmi Bank Ltd. Vs. Province of Bengal](#), . The decision in that case is not of much assistance in so far as the instant case is concerned.

What was held in the Calcutta case was that after a decision u/s 18(4) of the Forest Act became final the civil court had no jurisdiction to interfere with it. That case, therefore, hardly has any relevancy to the exercise of powers by this Court under Article 226 of the Constitution. It has been demonstrated above that the impugned order of Sri Pande dated 30-11-1961 is wholly, without jurisdiction. In my judgment this Court would be wrongly exercising its discretion if it does not afford relief to the petitioners in the circumstances.

9. In view of my decision that Sri N.P. Pande had no jurisdiction to hear the appeal I do not think I should examine the case of the petitioners on merits as I propose to send the matter back to the Collector of Deoria after quashing the impugned order of the Additional Collector.

10. The result is that this petition succeeds and it is allowed. The impugned order of Sri N.P. Pande dated 30-11-1961 is quashed. It is directed that the appeal of the petitioners shall be restored to its original number and shall be heard and disposed of in accordance with law by the Collector, Deoria, within a reasonable time. The petitioners would be entitled to their costs of this petition from the opposite parties.