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**(2007) 03 AHC CK 0128**

**Allahabad High Court**

**Case No:** None

Subhash Stone Products

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** March 19, 2007

**Acts Referred:**

- Forest Act, 1927 - Section 10, 11, 12, 13, 14

**Citation:** (2007) 3 ADJ 635 : (2007) 3 AWC 3007

**Hon'ble Judges:** Umeshwar Pandey, J; R.P. Misra, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

R.P. Misra and Umeshwar Pandey, JJ.

Heard Sri Shashi Nandan, learned Sr. Advocate assisted by Sri Madan Lal Srivastava for the petitioner and Sri C.B. Yadav, learned Chief Standing Counsel for the respondents.

2. The petitioner has come to the court seeking relief for issue of writ in the nature of certiorari quashing the order dated 14.11.2006 (Annexure-10) passed by the respondent No. 2 and also for a writ in the nature of mandamus restraining the respondents from realising any transit fee from the petitioner on the basis of the aforesaid impugned order.

3. The short admitted facts in the present matter are that the petitioner had earlier approached this Court in writ petition No. 24911 of 2004 seeking relief for issue of writ in the nature of mandamus restraining the respondents from realising the transit fee from it while lifting and transporting the stone chips, stone grids and boulders from the mining site to different destinations. In the judgment (Annexure-7 of this writ petition) the Division Bench had though dismissed the petition itself but it had left open to the petitioner to move an application before the authority concerned to prove that the goods, which were being transported by the

petitioner, do not pass through forest land as to make it not liable for payment of transit fee in that regard. In pursuance to the aforesaid direction of the court, a representation was made to the forest department and by the impugned order (Annexure-10) the respondents rejected the same holding that the goods are "forest produce" and in the light of the judgment of this Court in writ petition No. 975 of 2004 Kumar Stone Works and Ors. v. State of U.P. and Ors. it is liable for being levied and charged with transit fee under the rules. It is however, also not disputed that in the earlier judgment delivered by the learned Single Judge in writ petition No. 29546 of 2003, Ved Prakash Garg v. Additional District Judge, it is held that the land in question over which the present petitioner is carrying out the mining work, cannot be treated as land belonging to the forest department as the same was admitted by the Principal Secretary (Forest) in his affidavit given in that case stating "that in view of decision taken in the meeting dated 6<sup>th</sup> December, 2004...it has been resolved that the land in question should be treated as the land belonging to the Revenue department of the State Government. The mining operation thereon should be permitted as earlier". In the petition of Ved Prakash Garg, there was another controversy relating to the permission to be given to the petitioner for mining operation over the land of plot No. 7536 Gha of village Billi Markundi. It is also admitted that the land over which the petitioner passes while carrying its goods to different destinations was though decided by the State Government for its constitution as reserved forest u/s 4 of the Forest Act (hereinafter referred to as the "Act") but the declaration of the total area of such land as reserved forest, as provided u/s 20 of the Act, has not yet been done. Therefore, the only controversy which now remains for decision in the present petition is, therefore, whether the land from which the petitioner's vehicles pass carrying the goods taken out in the mining operation is the land of forest reserve or not?

4. It has been contended by Sri Shashi Nandan, learned Sr. Advocate, that since the gitti and boulders, which are taken out from the land under the mining operation when not carried through the forest reserve land and the vehicles carrying boulders etc. do not pass through such land, there is absolutely no justification for imposing or levying any transit fee for carriage of goods by the respondents in its impugned order.

5. In reply to this submission made from the side of the petitioner, the Chief Standing Counsel appearing for the respondents submitted that even though there is no declaration u/s 20 of the Act in respect of the land over which the vehicles of the petitioner pass through while carrying the boulders etc., yet it is pertinent that the land has to be treated as forest land for which due transit fee is leviable by the forest department for the carriage of the goods from the mining site. Learned Counsel has placed reliance in support of his contention on the different cases being [Yashwant Stone Works Vs. State of Uttar Pradesh and Others](#), U.P. Gandhi Ismarak Nidhi, Vyayasthapak and Ors. v. State of U.P. and Ors. 1988 ALJ 149 Smt. Pyari Devi v. State of U.P. and Ors. 2004 (96) RD 27 and [Kumar Stone Works Partner Inder Singh](#)

[and Others Vs. State of U.P. and Others,](#) With the strength of the aforesaid cases, much emphasis has been given upon the fact that irrespective of publication of notification u/s 20 of the Act, the land if once decided by the Government to constitute a reserve forest, it becomes a forest land and the forest department in that view of the matter has every right to levy transit fee in regard thereto. Learned Counsel has also submitted that in view of decision of writ petition No. 24911 of 2004 given by the Division Bench (Annexure-7) once the prayer for exemption from transit fee has been refused, the petitioner does not have any substantive right to approach this Court again for the same relief in the present petition.

6. So far as the cases referred to above by the Chief Standing Counsel are concerned, we find that they deal with in respect of different other issues involved with regard to forest land. Those judgments are in different context wherein the court has held that irrespective of publication of notice u/s 20 of the Act the land if once decided to constitute reserve forest would be treated as reserve forest. Nowhere in those judgments, it has been propounded that even without such notification u/s 20 of the Act, the forest department would be entitled to realize transit fee from the person carrying his or her goods through such land so decided to constitute reserve forest.

7. In the case of M/s Yashwant Stone Works (supra), the Division Bench of this Court was required to decide the character of the land as reserve forest for renewal of the lease for carrying out the mining operation within forest land and the question was as to whether for such renewal the permission of the Central Government, as required by Section 2 of Forest (Conservation) Act, would be a necessary formality or not? In the light of Section 2 of Forest (Conservation) Act, the Bench has given a decision that the land bearing vegetative association providing shelter to livestock and wildlife may be treated as forest and for that purpose the land in question in that case was held to be the forest land. In that fact situation, it was found by the Division Bench that irrespective of publication of notice u/s 20 of the Act, the land should be treated as forest and it did require approval of Central Government for renewal of the lease for carrying out the mining operation. At nowhere in the judgment the land in question had been held to be a reserve forest.

8. In other judgment of U.P. Gandhi Ismarak Nidhi (supra), the Division Bench was concerned for the decision on a point whether the State Government can grant licence for mining over the land in question under U.P. Minor Mineral (Concession) Rules. The court was also called upon to consider the question of applicability of Forest (Conservation) Act. The court found that since the permission for mining involved the issue of dereservation of reserved forest and use of forest land for non-forest purposes, grant of permission was not possible ignoring the provision of Section 2 of the Forest (Conservation) Act, 1980. So was also the question for consideration by the Division Bench of this Court in Smt. Pyari Devi's case (supra). In that case too, the question of applicability of Section 2 of the Forest (Conservation)

Act was under decision and since the permission for carrying out the mining operation in the land in question was there, the court held that the same was not possible without obtaining the permission of the Central Government u/s 2 of the Forest (Conservation) Act.

9. In the case of Kumar Stone Works (supra) the Division Bench of this Court was considering the levy of transit charge upon the movement of forest produce (as defined u/s 2(4) of the Act) through forest area. Any gitti, boulders or other such produce from the mining operation has definitely been found by the Division Bench to be forest produce but while considering this aspect of the matter, as involved in those petitions, it has been held that since the major part of District Sonbhadra etc. are covered by forest area, it goes without saying that all these items of the forest produce actually pass through forest land. In this case the issue with regard to desirability of notice u/s 20 of the Act for declaring a land as reserve forest was not raised and the Bench has not adverted to and touched that point at all.

10. Learned Sr. Advocate, Sri Shashi Nandan, has actually given great emphasis only on the aforesaid point relating to the necessity of declaration of the land as reserve forest and publication of such notice u/s 20 of the Act and has tried to impress upon the court that for want of such notice in respect of land over which the petitioner's vehicles pass through carrying forest produce, cannot be taxed with the transit fee for such transportation. The provisions of Section 4 of the Act, as are clear in themselves, do not declare any particular definite piece or chunk of land as forest reserve. It simply says about the decision of the State Government to constitute any land as a reserve forest and in its Sub-clauses (a), (b) and (c) of Sub-section (1) several formalities have been detailed, which are required to be gone into in order to give a concrete shape to such decision of the Government. Section 5 of the Act thereafter says about certain embargoes created in respect of such land prohibiting acquisition of right by any person in such land, clearance of cultivation, deforestation etc. Thereafter Section 6 of the Act refers about proclamation to be issued by Forest Settlement Officer by its publication for inviting objections against such decision of the State Government and thereafter Section 7 of the Act provides about inquiry, which is to be conducted in the claims preferred by the objectors from public. Section 8 of the Act describes the powers of Settlement Officer and then Section 9 of the Act refers to the extinction of right of the persons, who do not prefer objection u/s 6 of the Act. Section 10 of the Act deals with treatment of claims relating to practice of shifting cultivation and Section 11 of the Act deals with the State Government's right to acquire the land over which the right or title of any individual is found. Section 13 of the Act deals with the preparation of record by the Forest Settlement Officer and Section 14 to 16 of the Act deal with the way as to how the Settlement Officer shall decide the respective claims of the persons from public preferred before him. Against the orders of the Settlement Officer the provision of appeal is provided u/s 17 and Sub-section (4) of Section 18 of the Act says about finality of the order passed in appeal by the District Judge. Obviously, in aforesaid

Sections 5 to 18 of the Act there are several formalities, which have been detailed and different embargoes have been created with regard to acquisition of right and title over the land regarding which the notification u/s 4 of the Act has been published. It is thereafter only that the provision for notification declaring the land as forest reserve has been provided under the Act. In Section 20 of the Act it has also been provided that the State Government shall publish a notice in the official gazette clearly specifying the definite area with boundaries showing limits of the forest, which is to be reserved and declaring the same to be reserved from a date fixed by the notification. Section 20 of the Act being very relevant in this context is reproduced as below:

20. Notification declaring forest reserved. - (1) When the following events have occurred, namely:

(a) the period fixed u/s 6 for preferring claims has elapsed and all claims, if any, made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

(b) 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

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement Officer has, u/s 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government u/s 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.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

11. Before a land shall be deemed to be a reserve forest the formalities, as required within the Act and stated from Section 5 to Section 19, unless are gone into, such declaration u/s 20 is not possible. Before deeming a particular chunk of land or area of land to be a reserve forest, the Clauses (a), (b) and (c) of Section 20 also describe certain conditions, which have to be necessarily fulfilled. Admittedly, in the present case such declaration, as provided u/s 20 of the Act has not been done and as per para-9 of the counter affidavit the notification u/s 20 of the Act is still pending and is under process. Therefore, to say that the whole area of District Sonbhadra should be deemed to be a reserve forest would be definitely a wrong proposition. The dispensation of the formality of declaration u/s 20 of the Act, as has been dealt with in the aforesaid cases of M/s Yashwant Stone Works (supra), UP. Gandhi Ismarak Nidhi (supra) and Smt. Pyari Devi (supra) are actually found by the Division Bench of this Court to be in different context as we have already dealt with above. The

notification u/s 4 of the Act cannot be alone said to be such step whereby a demarcated chunk of land can be deemed to be a reserve forest unless and until all the formalities, as have been described from Section 5 to Section 19 of the Act, have been gone into. A declaration u/s 20 of the Act has been duly made and published in the official gazette. In Kumar Stone Works (supra) this question whether a notification u/s 20 of the Act is necessary for levying the transit fee by the forest department of the State Government for carrying the forest produce through the land, which is not claimed to be a forest reserve or not, has not been dealt with. Obviously, the respondents without notification u/s 20 of the Act cannot legally claim a chunk of land as forest reserve. Therefore, the ratio, which has been propounded in Kumar Stone Works (supra) is definitely not going to help the respondent's case. The realization of transit fee by the Forest Department in respect of the carriage of the forest produce through the land, which is not a reserve forest, thus is definitely not possible. It is nowhere a case of the respondents that any such Rule for levying transit fee upon the carriage of the goods through non reserve forest land, has been made by the State Government.

12. Learned Chief Standing Counsel has tried to impress upon the court that by virtue of decision of Division Bench of this Court in Kumar Stone Works (supra) no different view can be taken by this Bench but while appreciating the case of the present petitioner and the arguments advanced before us by the learned Counsel for the parties, we find that the issue in the present case is only as to whether the goods taken out by the mining operation by the petitioner are being carried through the land of forest reserve or not? The decision on this question actually hinges on the point as to whether any land, which has not been declared u/s 20 of the Act as forest reserve, should be legally treated as forest reserve or not? In fact, this point as we have already observed above, was not touched by the Division Bench in Kumar Stone Works (supra) and therefore, we are of the considered view that the land through which the vehicles of the petitioner pass through carrying forest produce being not the land of reserve forest, the respondents-Forest department cannot levy transit fee for such carriage. Of course, any transit fee, which is permissible under the Rules with regard to transportation of such goods being forest produce, if possible, can definitely be realised by the State Government but the transit fee for passing through the land of non reserve forest can definitely not be legally realised by the respondents-Forest department. We accordingly direct that such transit fee for using the non reserve forest land for the carriage of forest produce through which the vehicles of the petitioner pass, shall not be realised from it.

13. The petition stands disposed of as above.