

**(2010) 07 JH CK 0001**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 1653 of 2009

R.S. Singh @ Rama Shankar  
Singh and Others

APPELLANT

Vs

The State of Jharkhand,  
Divisional Forest Officer, Bokaro  
Forest Division and Forester,  
Bhagaband Sub Block

RESPONDENT

---

**Date of Decision:** July 31, 2010

**Acts Referred:**

- Bihar Private Forest Act, 1947 - Section 30
- Chotanagpur Tenancy Act, 1908 - Section 67, 67(A)
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Forest (Conservation) Act, 1980 - Section 2
- Forest Act, 1927 - Section 29, 29(1), 29(3), 33, 63

**Hon'ble Judges:** D.G.R. Patnaik, J

**Bench:** Single Bench

**Final Decision:** Allowed

---

### **Judgement**

D.G.R. Patnaik, J.

Since the common issues are involved in all these four cases, they are taken up for disposal by this common order.

2. Heard counsel for the petitioners and the counsel for the State.

3. Invoking the inherent powers of this Court u/s 482 of the Code of Criminal Procedure, petitioners have prayed for quashing the entire criminal proceedings including the order of cognizance passed by the court below for the offences under Sections 33 and 63 of the Indian Forest Act, 1927, which are pending against them.

4. The brief facts, relevant for the disposal of these cases, are as follows:

On the basis of reports submitted by the Forest Guard claiming that a brick boundary wall was being illegally constructed by the employees of the petitioners company by engaging labourers, over forest land, the Forester, Chas Forest Division, Bokaro, after verifying the informations received, submitted offence reports addressed to the Divisional Forest Officer, Bokaro Forest Division and on the basis of which, separate prosecution reports were filed before the Chief Judicial Magistrate, Bokaro, on the allegations that the petitioners, without obtaining prior permission from the forest department, have not only encroached upon the protected forest land, but have also started raising illegal construction over the same. On the basis of the prosecution reports, cognizance was taken by the Chief Judicial Magistrate, Bokaro against the alleged offenders namely, the present petitioners in each of the cases, for the offences under Sections 33 and 63 of the Indian Forest Act.

The case of the prosecution is common in each of the cases is that vast portions of land comprising 133.38 acres including lands under plot Nos. 1159, 1389, 1428, 1289, 1120 and 1321 under Khata No. 58 Mouza No. 83 at village Bhagabanda, in the district of Bokaro, was notified by the Government of Bihar u/s 29 of the Indian Forest Act as Protected Forest, vide notification dated 24.05.1958. After the lands being so declared as Protected Forest land, the Forest Settlement Officer had demarcated the different plots and a detailed map was accordingly prepared. The petitioners, being the employees of M/s Electro Steel Integrated Limited, had not only trespassed into the Protected Forest land, but had also illegally constructed boundary wall in violation of the provisions of the Indian Forest Act punishable for the offence u/s 33 of the Act.

5. Petitioners have assailed the criminal prosecution initiated against them in each of the cases, on the following grounds.

i. The notification dated 24.05.1958 relied upon by the complainant, is incomplete since it was issued only after making it subject to the rights of individual persons over the lands in question and since no inquiry was conducted to assess the rights of the individual raiyats. their rights were not extinguished.

ii. Even otherwise, the lands in plot Nos. 1429 and 1289 and 1830 of village Bhaganbanda under Khata No. 58, are not covered under any notification declaring the same to be protected forest or reserved forest. As such, in respect of the lands in these plots, the complainant is neither empowered nor justified to prosecute the petitioners.

iii. Even in the entire case of the prosecution is taken to be true, no offence under Sections 33 and 63 of the Indian Forest Act, 1927 is made out since the only allegation is that the petitioners are carrying out some construction activities in a protected forest and there is no allegation that the petitioners were found destroying any flora or fauna. Furthermore, none of the prosecution reports / complaints discloses as to how the petitioners, who were admittedly not present at

the place of occurrence, could be liable for prosecution for commission of the alleged offences.

6. Elaborating the grounds, counsel for the petitioners would explain that the notification dated 24.05.1958 does not bring the lands in question within the category of protected forest. Referring to the Section 29(1) of the Indian Forest Act, learned Counsel explains that the provisions no doubt empower the State Government to declare by notification that the provisions of Chapter-IV of Act will be applicable to any forest or waste land, but the issuance of such notification is subject to a pre-condition that over such lands, the Government must have proprietary rights. Such notification in respect of lands of private individuals cannot be issued unless, the nature and extent of rights of the Government and that of the private persons over any or over the forest or waste land, have been inquired into and / or recorded by a survey of settlement. Learned Counsel adds that even under exceptional circumstances, as laid down u/s 29(3) of the Act, such notification issued in case of urgency, cannot abridge or adversely affect any existing right of the individual or communities over the lands notified. But till date, the nature and extent of rights of the Government and of private persons over the notified lands, has not been inquired into, nor has any survey as contemplated u/s 29(3) of the Act, been carried out.

Tracing the history of the land in dispute in the present cases, learned Counsel explains that these lands were in fact permitted to be converted into a raiyati land by allowing the same to be settled in favour of the raiyats by order dated 16.08.1932 passed by the Deputy Collector, Purulia in Settlement Case No. 104/31-32, in exercise of his powers u/s 67 of the Chhotanagpur Tenancy Act and the order having attained finality, continued to remain operative and is binding on the State Government.

Learned Counsel argues further that the petitioners are employees of M/s Electro Steels Limited. The disputed lands were acquired by the company under various sale deeds executed by the respective raiyats. When the respondent Forest Department attempted to interfere with the rights of the raiyats over the lands, one such vendor of the company namely, Hari Pada Mahato instituted a suit in the court of Sub-Judge-I, Bokaro vide Title Suit No. 25 of 1996 for a decree for declaring his permanent occupancy raiyat and confirmation of possession over the lands which form part of plot No. 1159, 1229, 1329 and 1321. The Divisional Forest Officer, Bokaro appeared in the suit as defendant and contested the suit on the ground that the suit lands were already declared as Protected Forest by the Government notification dated 24.05.1958. The suit was decreed on contest on 29.5.2007 in favour of the plaintiff declaring that the plaintiff had become occupancy raiyat over the suit land and since no inquiry u/s 29(3) of the Indian Forest Act was conducted and therefore, the right of the raiyat over the suit land has not been extinguished. The trial court had also declared that the defendant's claim that the suit land was a

Protected Forest, is a mere myth and such claim was not duly proved. Learned Counsel argues that even though, against the judgment and decree of the trial court as passed in the aforementioned title suit No. 25 of 1996, the defendant Divisional Forest Officer had filed an appeal which is still pending, but the operation of the judgment and decree has not been stayed by the Appellate Court. Learned Counsel adds that in yet another suit filed by another raiyat vide title suit No. 26 of 1989 involving the lands under other plots, the same notification relied upon by the forest department came up for consideration by the court and the claim of the plaintiff / raiyat over the lands was upheld by declaring that the notification did not extinguish the rights of the raiyats over the lands in question. The judgment and decree passed by the court on 22.8.1991 in the aforementioned title suit No. 26 of 1989, was affirmed up to the Hon'ble Supreme Court in Civil Appeal No. 5471 of 1991. The Apex Court while dismissing the appeal, has held in the following terms:

After examining the documents which were part of the documents, we are satisfied that the lands in question were never declared to be forest land or private forest.

Referring to the judgment of the Supreme Court in the case of [State of Bihar Vs. Lt. Col. K.S.R. Swami](#), learned Counsel submits that while deciding the case u/s 30 of the Bihar Protected Forest Act, which is pari materia to Section 29 of the Indian Forest Act, the Apex Court had held that the notification issued under the proviso to Section 30 of the Act is not intended to amount to a final constitution of private forest as a private protected forest and the notification under the proviso is to be made only pending the said inquiries, procedures and appeals.

Arguing further, learned Counsel submits that on the basis of the same notification dated 24.05.1958, the State Government had initiated proceedings under the Public Land Encroachment Act against the company as well as the petitioners seeking their ejection from the land covered under the notification. Such proceeding was challenged by the company in a writ application vide W.P.(C) No. 3362 of 2009. The State Government offered stiff contest in the writ application taking the same stand that the 1958 notification is binding upon the company and that the land referred to in the judgment and decree passed in Title Suit No. 25 of 1996 and Title Suit No. 26 of 1996, do not cover the entire area and the said judgment was of no help to the writ petitioners. Despite such objection of the State Government, this Court allowed the writ application holding inter-alia that in view of the disputed title, summary proceeding under the Public Land Encroachment Act, cannot be allowed to be continued and had quashed the proceeding initiated against the company and the petitioners under the Act. Learned Counsel adds that all the present criminal cases are based on the same offence reports which were matters in the Public Land Encroachment proceedings and this High Court having already held that the company cannot be said to be encroacher over the forest land. The criminal prosecution against the petitioners cannot legally be initiated for any alleged offence under the Indian Forest Act.

7. Elaborating the third ground, learned Counsel submits that even if the entire case of the prosecution is taken to be true, no offence under Sections 33 and 63 of the Indian Forest Act, 1927 is made out since the only allegation is that the petitioners were carrying out some construction activities in the protected forest and there is no allegation that the petitioners were found destroying flora or fauna. The petitioners were admittedly not present at the place of occurrence while the alleged act of construction work was being carried out. Under such circumstances, no vicarious criminal liability upon the Director or officials of the company can be enforced. Learned Counsel in this context refers to a judgment of the Supreme Court in the case of [Maksud Saiyed Vs. State of Gujarat and Others](#), and submits that there is no provision under the Indian Forest Act for fixing vicarious liability upon the Director or officials of the company.

8. Per contra, the stand taken by the opposite party namely, the state Government and the Forest Officials is as follows:

The notification dated 24.05.1958 was issued by the Government of Bihar under proviso to Section 29(3) of the Indian Forest Act. After issuance of the notification, the Forest Settlement Officer had demarcated the different plots of the notified land and had also prepared a detailed map of the different plots of Mouza Bhagaband. Pursuant to the notification, lands under the said notification, having been declared as a "Protected Forest". A general prohibition is contained in the notification against private individuals and any violation of the provisions of the Indian Forest Act is punishable u/s 33 of the Act which has now been made a non-bailable and cognizable offence. The employees of the petitioners' company were found carrying non-forest activity such as levelling and digging forest land and encroaching upon the forest land by way of construction work. Such non-forest activities were found to be carried on lands in plot No. 1120, 1120, 1329, 1428 and other plots of Mouza Bhagaband and such activities were being carried at the behest of the petitioners on behalf of the petitioners company. Learned Counsel adds that the word "forest" as explained by the Supreme Court in the Civil Appeal No. 202 of 1995 and as defined u/s 2 of the Forest Conservation Act, includes any area recorded as "forest" in the Government records irrespective of the ownership. The same definition of forest would apply in the context of the Indian Forest Act also. The Government of India, Ministry of Environment and Forest vide its Circular dated 17.02.2005 (Annexure-C to the counter-affidavit) had declared that the legal status of any land declared as forest or jungle jhar in Revenue Records, cannot be changed without prior approval of the Central Government as per the provisions of the Forest Conservation Act, 1980.

Learned Counsel argues further that the status of the lands in plot Nos. 1120, 1259, 1329 and 1321 was recorded in the Government Survey Khatian as Jungal Jhar. It is further argued that since the owner of the land, mentioned in the notification, is the State of Bihar and now the State of Jharkhand and therefore, the status of such

lands would continue to be protected forest until denotified and deprotected by the competent authority of the Government of India.

Learned Counsel argues that the total lands which were declared by the 1958 notification as protected forest comprised of 133.38 acres whereas, the area of lands involved in the two title suits namely, Title Suit Nos. 25 of 1996 and 26 of 1996 comprised only total of 17.68 acres. As such, the judgment and decree passed in the aforesaid two title suits filed by the purported raiyats, would not operate in respect of remaining lands which constitute the land in the present criminal proceedings.

Learned Counsel argues further that the purported sale deeds on the basis of which the petitioners company has sought to rely is of no avail as because, on the close scrutiny of the sale deeds, it would transpire that the lands purported to have been sold by the raiyats, though bear the same plot number, but do not fall within the 1958 notification issued by the Government of Bihar. 9. From the rival submissions, the following salient features emerge:

i. The lands under several plots including plot Nos. 1159, 1389, 1428, 1289, 1120 and 1321 of Mouza No. 83 of village Bhagaband in the district of Bokaro, were notified as protected forest land under the provisions of Section 29(3) of the Indian Forest Act by the Government of Bihar vide its notification dated 24.05.1958.

ii. Prior to the said notification, the lands were permitted to be converted into raiyati land by allowing the same to be settled in favour of the raiyats, by order dated 16.08.1932 passed by the Deputy Collector, Purulia in the Settlement Case No. 104/31-32 under the provisions of Section 67A of the Chhotanagpur Tenancy Act. Ever since the date of settlement, the settlees have continued to remain in occupation of the land.

iii. The petitioners company M/s. Electro Steels Limited claims to have acquired the lands from the settlees by virtue of separate sale deeds executed in its favour on different dates. iv. Pursuant to the Government notification of 1958 when the Forest Department intended to take over the lands, some of the settled raiyats objected by filing title suits before the Civil Court. Two such suits vide Title Suit No. 26 of 1989 and Title Suit No. 25 of 1996 were filed. The Forest Department contested both the suits on the common ground that the suit lands were notified and declared as Protected Forest by virtue of the notification issued by the State of Bihar in 1958 and therefore, the plaintiffs in the suits have no right, title and interest over the lands. Both the suits were decreed in favour of the plaintiffs and against the defendant Forest Department. The findings recorded by the court of Sub Judge in Title Suit No. 26 of 1989, was that the 1958 notification of the State Government even if issued u/s 29(3) of the Indian Forest Act, would not extinguish the rights of the raiyats, until the entire procedures as contemplated under the Act for the purposes of acquisition and converting the land into forest land, is not completed. Such findings was upheld even by the Supreme Court in the SLP filed before it. Against the judgment and

decree passed in favour of the plaintiffs in title Suit No. 25 of 1996, the defendant Forest Department had preferred an appeal which is presently pending.

v. While considering an identical issue contested by the Forest Department on the basis of the notification issued u/s 30 of the Bihar Protected Forest Act which is parameteria of Section 29 of the Indian Forest Act, the Supreme Court has held that the notification even if issued under the proviso to the Section, is not intended to amount to a final constitution of private protected forest and the notification is to be made only pending the required inquires, procedures and appeals.

10. It is relevant to note here that admittedly, on the basis of same facts and cause of action, the Forest Department had initiated a proceeding under the Bihar Public Land Encroachment Act against the petitioners. The proceeding on being contested, this Court vide its judgment passed in WPC No. 3.362 of 2009, while holding that in view of disputed title, the proceeding under the Bihar Public Land Encroachment Act is bad, had quashed the proceedings; initiated against the employees of the company.

11. The same issue, as involved in the present cases raised by the Forest Department on the basis of the State Government Notification of 1958, was considered by a Bench of this Court in the case of Brajesh Kumar Ray v. State of Jharkhand and Anr. 2005 (3) JCR 464 (Jhr.). The petitioner Brajesh Kumar Ray challenged the order of cognizance of the offences u/s 33 of the Indian Forest Act, 1927 which was passed by the Chief Judicial Magistrate, Bokaro on the basis of the prosecution report filed by the Divisional Forest Officer, Bokaro. The stand taken by the Forest Department was that the lands over which the petitioner Brajesh Kumar Ray and others had encroached upon, were forest lands and waste lands which were declared as such under the State Government Notification of 1958. The writ petitioner protested the claim of the Forest Department on the ground that the lands were purchased from the original occupancy raiyats under registered sale deeds and that, notwithstanding the 1958 notification of the State Government, issued u/s 29(3) of the Indian Forest Act, raiyati rights of the raiyat, was not extinguished. The writ petitioner had also taken support of the judgment and decree passed in favour of the raiyats in Title Suit No. 7 of 1997 since by the decree, the court had declared that the occupancy rights of the raiyats over the suit lands, was not extinguished merely by the 1958 notification issued by the State Government u/s 29(3) of the Indian Forest Act.

Upon considering the entire issues involved in the writ application, this Court had observed as follows:

All this merely shows that the parties are at litigating terms and both of them are claiming their respective right, title and possession. The petitioners are claiming right and title on the basis of registered sale deeds obtained from the raiyats, whereas the State has claimed that it is "protected forest" and thereby land of the

State.... In the aforesaid circumstances, there being genuine dispute of right and title, I hold that the criminal proceedings are not warranted in law. In fact, the State Government including its Forest Department should pursue a remedy in the suit / appeal either pending before the Civil Court, having competent jurisdiction, or before this Court.

On the basis of the aforesaid observations, the court had set aside the entire criminal proceedings against the writ petitioners.

12. In the present cases also, the nature and dispute between the parties is identical in as much as, both parties have claimed their respective right, title and possession over the land under reference in these cases. While the petitioners are claiming right and title on the basis of registered sale deeds obtained from the raiyats, the State as well as the Forest Department are claiming that the lands involved in these cases, are part of protected forest and thereby the lands of the State.

The facts as also the nature of dispute involved in the present applications being identical to the facts and dispute raised in the case of Brajesh Kumar Ray (Supra), the ratio decided by this Court in the case of Brajesh Kumar Ray (Supra) would squarely apply.

In the aforesaid situation, there being genuine dispute over right and title, I hold that the criminal proceedings against the petitioners are not warranted in law. The State including its Forest Department can pursue the remedy in the suit / appeal pending before the Civil Court having competent jurisdiction or before this Court.

13. In the light of the facts and circumstances and for the reasons stated above, the common order of cognizance dated 05.11.2009 passed in B.F. Case Nos. 21 of 2009, 20 of 2009, 19 of 2009 and 22 of 2009 and the entire criminal proceedings vide the separate cases pending against the petitioners following the order of cognizance before the court below, so far it relate to the petitioners of the present cases, are hereby quashed.

These criminal miscellaneous petitions are accordingly allowed with the above observations.