
(1997) 6 JT 634

Supreme Court of India

Case No: Civil Appeal No. 4603 of 1997 (Arising out of S.L.P. No. 21457 of 1993)

Hyderabad Abrasives
and Minerals (P) Ltd.
Represented by Shri
M.V.S. Subramaniam,
Managing Director

APPELLANT

Vs

State of Andhra
Pradesh and Others

RESPONDENT

Date of Decision: July 11, 1997

Acts Referred:

- Andhra Pradesh Forest Act, 1967 - Section 24
- Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 - Regulation 3(1), 3
- Forest (Conservation) Act, 1980 - Section 2

Citation: (1997) 6 JT 634

Hon'ble Judges: G.B. Pattanaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

G.B. Pattanaik, J.
Leave granted.

2. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court dated 27.8.1993 in writ petition No. 3734 of 1993. The present Appellant was Respondent No. 6 before the High Court. Sakti, a voluntary social organization for the enlistment of tribal in East Godavari District filed the writ petition in the Andhra Pradesh High Court praying therein that the mining activities which are carried on by the Respondents 6 to 10 in the said writ petition should be immediately stopped as the grant of mining leases in their favor is in contravention of Section 3 of the Andhra Pradesh Scheduled Areas Land, Transfer Regulation, 1959 (hereinafter referred to as the

"Regulation") as well as Section 2 of the Forest (Conservation) Act, 1980 (hereinafter referred to as the "Conservation Act"). It was averred in the writ petition that the villages where the mining activities are being carried on were notified as protected forests u/s 24 of the Andhra Pradesh Forest Act, 1967 with effect from 8.9.1975 and within the said forest area it is not permissible to continue any mining activity in view of the provisions of the Conservation Act which prohibits user of forest land for non-forest purpose.

3. Respondents 1 to 4 before the High Court, who were the public officers of the State Government supported the case of the Petitioner and took the stand that a joint inspection report had been conducted after surveying the area over which the mining activities are being carried on by the Respondents 6 to 10 and the said report reveals that mining leases have been granted over the forest area which is prohibited under the Conservation Act without prior approval of the Central Government.

4. Respondent No. 6, the present Appellant took the stand that the lease having been granted much prior to the area in question was included as a protected forest, the embargo contained in the provisions of the Conservation Act will not apply and in this connection reliance was placed on the decision of this Court in the case of *State of Bihar v. Banshi Ram*, (1995) 3 SCC 643. It was also contended that Section 3 of the Regulation has no application to a transfer by the Government in respect of its land in favour of a non-tribal and the word "person" in Section 3 of the said Regulation will not include the Government. It is not necessary for us to examine the stand taken by other private Respondents, namely Respondents 7 to 10.

5. The High Court by the impugned judgment came to the conclusion that the transfer of any land in scheduled area to a non-tribal is void u/s 3 of the Regulation, and therefore, the lease in favour of Respondent No. 6 within the scheduled area is void. The High Court came to the conclusion that the word "person" in Section 3 of the Regulation includes the Government, and therefore, leases granted by the State Government in scheduled area to a non-tribal is void.

On the question of applicability of the Conservation Act the High Court also relied upon the decision of this Court in the *Banshi Ram*'s case (supra) and came to the conclusion that for grant of mining lease in a protected forest area for non-tribal purpose the prior approval of the Central Government is mandatory and since the Government did not obtain the approval of the Central Government, leases are in contravention of Section 2 of the Forest Conservation Act, 1980. Having considered the judgment of this Court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 and taking into account the fact that Respondent No. 6 had completed the mining operation over 42 acres the High Court permitted the said Respondent No. 6 to remove the dug up mineral in the presence of Joint Collector of the District, Assistant Director of Mines and Geology and the District Surveyor of Forests. Respondent No. 6, the present Appellant was prohibited from mining operation in the area with the aforesaid conclusion and thus the appeal by special leave.

6. Learned Counsel for the Appellant argued with vehemence that the conclusion of the High Court that the word "person" in Regulation 3(1)(a) includes the State Government and the transfer of any land within the scheduled area in favour of a non-tribal is null and void is wholly erroneous as the embargo in question is applicable in respect of transfer of land belonging to the Scheduled Castes and Scheduled Tribes and not to land belonging to the State Government. The learned Counsel also urged that the restrictions and prohibitions in the Conservation Act will have no application to an existing lease and the lease in favour of the Appellant having been granted much prior to the coming into force of the Conservation Act, the High Court committed error in holding that the leases are in violation of the Conservation Act.

Chambaran, Motihari in S.T. No. 138/69 of 1978/81 and confirmed by the High Court. Writ Petition No. 543/92 is filed by accused Ramayan Singh whose SLP was earlier dismissed by this Court.

7. The Appellants have been convicted on the basis of the evidence of 2 eye witnesses P.W. 2 Amila Devi and P.W. 3 Bhagwani Devi. Both these witnesses have been believed by the trial court and also by the High Court. No good reason is advanced by the learned Counsel for the Appellant for taking a different view as Regards the credibility of these 2 witnesses. We do not find any infirmity in their evidence. Merely because they happened to be sister and mother respectively of the deceased their evidence cannot be discarded. In absence of any infirmity either in the appreciation of their evidence or in the reasons given by the courts below we see no reason to interfere in this appeal and the Writ Petition. Both are, therefore, dismissed. The Appellants in criminal appeal are directed to surrender to custody to serve out the remaining sentence.