
(2017) 02 PAT CK 0088

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 3361 of 2014

Bam Shanker Ray

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Feb. 17, 2017

Acts Referred:

- Constitution of India, 1950 - Article 226
- Forest Act, 1927 - Section 29

Citation: (2017) 7 FLT 310

Hon'ble Judges: Mr. Jyoti Saran, J.

Bench: Single Bench

Advocate: Mr. Satyendra Krishna Prasad, Advocate, for the Petitioner; Mr. Sushil Kumar, G.P. 22, for the Respondent

Final Decision: Allowed

Judgement

Mr. Jyoti Saran, J. (Oral)—Heard Mr. Satyendra Krishna Prasad, learned counsel for the petitioner and Mr. Sushil Kumar, G.P.22 for the State.

2. With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission itself. The petitioner prays for issuance of a writ in the nature of mandamus restraining the respondent Nos.1 to 5 i.e. the State authorities in the Department of Forest including the Authorities coming under the Banka Division to restrain themselves from taking forceful possession over the raiyati land of the petitioner appertaining to Thana No.166 Khata No.39 Khesra No.609 Mauza- Gopdih Harni/ Behelgaro P.S. Chandan in the present District of Banka (old district of Bhagalpur).

3. It is the argument of Mr. Prasad learned counsel for the petitioner that the State authorities in its Forest Department in complete misconception of the legal position underlying Section 29 of "the Indian Forest Act" are trying to interfere with the right, title and possession of the petitioner over the plot in question merely on publication of

Notification dated 2.12.1955 in the Bihar Gazette Extraordinary dated 25.1.1956, a copy of which is enclosed at Annexure-A to the counter affidavit.

4. The grievance is contested by the learned State counsel who relies upon the notification referred to above, as the source of power for the respondents for exercising jurisdiction over the land declared as forest land under Section 29 of "the Act" and since the plot of the petitioner finds mention in the notification hence the support.

5. I have heard learned counsel for the parties and I have perused the records.

6. The action complained of is de hors the legal position and the law settled by this Court in the judgment reported in **AIR 1967 Patna 287 (M/s Jetmull Bhojraj v. State)**. Section 29 of "the Act" defines "protected forest" and inter alia vests jurisdiction in the State Government to declare any area as forest land or waste land and any such declaration is to be preceded with an enquiry and survey in this regard. Meaning thereby, an opportunity of expression to the land holders is to be given. The proviso accompanying Section 29 would be relevant for the purpose and for the sake of convenience Section 29 along with the proviso is reproduced herein below.

"29. Protected forests. -(1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which, is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be protected forest, but so as not to abridge or affect any existing rights of individuals or communities."

(Emphasis is mine)

7. The jurisdiction so vested in the State to exercise jurisdiction over the areas declared "forest" under Section 29 of "the Act" came up for consideration before the Division Bench of this Court in the case of Jetmull Bhojraj (supra) and the legal position settled by

the Division Bench of this Court in paragraph 18 of the judgment is an answer to the issue posed by this Court which runs as under:-

"18.(b) This period commences from the 8th December, 1953, and the 22nd November, 1954, when notifications under Section 29 of the Indian Forest Act were issued in respect of Debipur and Telaiya forest, respectively. Sub-section (1) of Section 29 lays down:

"The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled."

Under Sub-section (2), the forest and waste lands are to be called protected forest. There is no provision in Chapter IV for transfer of possession over any property to the Government. Legally, therefore, possession could not pass to Government by the mere fact of publication of the notification. Mr. Menon has, however, argued that officers of the Forest Department of the Government should be held to have taken possession in colourable exercise of their power. This requires consideration. Several documents have a bearing upon the question of possession during this period. I give them below in chronological order."

8. It is rather surprising that even when the statutory provision is loud and clear leaving no room for confusion and even though the position has been settled by the Division Bench of this Court holding that by mere publication of a notification, possession does not pass on to the Government, yet the Forest Department appears oblivious of the legal position to interfere with the right, title and possession of the land holders whose land has been notified as a protected forest under Section 29 of "the Act". It is settled that a mere publication of a notification declaring any area as a protected forest by itself would not be sufficient for the State to interfere with the right, title and possession over the land holders until such time that the State by a positive step reflects its intention to acquire the land so notified as a protected forest but until such time that the State would take recourse to any such remedy available to them for acquisition of any land, their exercise of power to interfere with the right, title and possession of the land holders is clearly without jurisdiction.

9. For the reasons so discussed, the writ petition is allowed and the respondents more particularly the respondent Nos.1 to 5 are directed to refrain from interfering with the right, title and possession of the petitioner over the land bearing Khata No.39, Khesra No. 609, Mauza Gopdih Harni/ Behelgaro, P.S. Chandan, District Banka, which also finds mention at Item No.17 of the notification impugned at Annexure-4.

10. Let a writ of mandamus issue accordingly. No order as to costs.