

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.474 of 2004

1. Smt. Sudhiyarin Bai, Wd/o Late Shri Bodhan Nishad, aged about 56 years
2. Santosh Kumar, S/o Late Shri Bodhan Nishad, aged about 30 years
3. Navin Kumar, S/o Late Shri Bodhan Nishad, aged about 32 years

All R/o Village Pidhi, Tehsil and District Mahasamund (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mantralaya, D.K.S. Building, Raipur (C.G.)
2. The Collector, Mahasamund, District Mahasamund (C.G.)
3. The Naib Tehsildar, Mahasamund, District Mahasamund (C.G.)
4. [A] Shambhu Dayal Chandrakar, S/o Late Shri Ghasuram  
[B] Purushottam Chandrakar, S/o Late Shri Ghasuram  
[C] Rekhilal Chandrakar, S/o Late Shri Ghasuram  
[D] Ghansim Chandrakar, S/o Late Shri Ghasuram

All R/o Village Pidhi, Police Station Tumgaon, Tahsil & District Mahasamund (C.G.)

---- Respondents

AND

Writ Petition No.475 of 2004

Jodhan, S/o Shri Vishwanath Nishad, aged about 52 years, R/o Village Pidhi, Patwari Halka No.2, Tehsil & District Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mantralaya, D.K.S. Building, Raipur (C.G.)

2. The Collector, Mahasamund, District Mahasamund (C.G.)
3. The Naib Tehsildar, Mahasamund, District Mahasamund (C.G.)
4. [A] Shambhu Dayal Chandrakar, S/o Late Shri Ghasuram  
[B] Purushottam Chandrakar, S/o Late Shri Ghasuram  
[C] Rekhilal Chandrakar, S/o Late Shri Ghasuram  
[D] Ghansim Chandrakar, S/o Late Shri Ghasuram

Res. No.4A to 4D All R/o Village Pidhi, Police Station Tumgaon,  
Tahsil & District Mahasamund (C.G.)

---- Respondents

For Petitioners: Mr. B.D. Guru, Advocate.  
For State/Respondents No.1 to 3: -  
Mr. Arun Sao, Deputy Advocate General.  
For Respondents No.4A to 4D: -  
Mr. P.K.C. Tiwary, Senior Advocate with  
Mr. Kripesh Kela, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

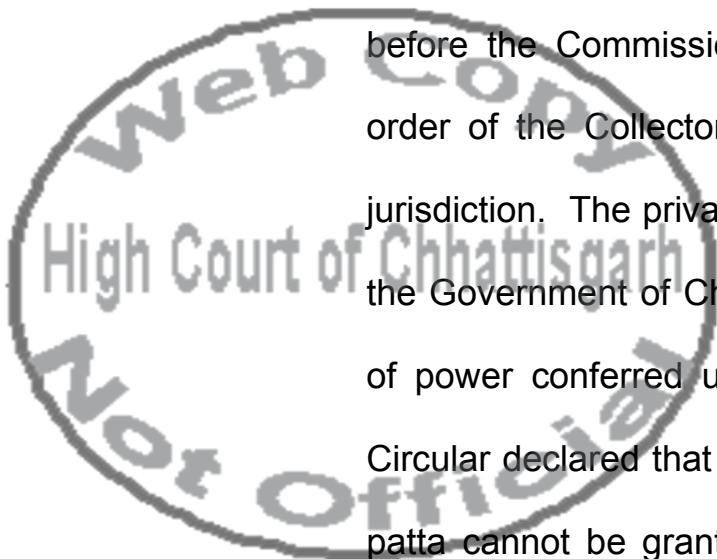
Order On Board

29/06/2017

1. Since common question of law and fact is involved in both the writ petitions, they are being disposed of by this common order.
2. Impugning legality, validity and correctness of the order dated 28-1-2004 passed by the State Government exercising the powers conferred under Part-IV, Serial No.3, clause 5, paragraph 30(3) of the Revenue Book Circular, these two writ petitions have been filed.
3. The Naib Tahsildar, Mahasamund, in Revenue Case No.137/A-19 year 1980-81 by order dated 19-5-1981 granted lease of Survey

No.853/1, area 1.50 to the husband of petitioner No.1 and father of petitioners No.2 & 3 in W.P.No.474/2004, and also to the petitioner in W.P.No.475/2004. Complaint was made by the private respondents herein that the land is recorded as *bade jhad ka jangal* and cannot be allotted without prior permission of the Central Government under Section 2 (ii) of the Forest (Conservation) Act, 1980. The said objection was sustained by the Collector in revision and the order granting lease was set aside against which the present petitioners preferred revision before the Commissioner and the Commissioner set aside the order of the Collector on the ground that the Collector has no jurisdiction. The private respondents herein made revision before the Government of Chhattisgarh and the Government in exercise of power conferred under the provisions of the Revenue Book Circular declared that the land allotted is *bade jhad ka jangal* and patta cannot be granted without prior approval from the Central Government and revoked the said patta against which these writ petitions have been filed.

4. Mr. B.D. Guru, learned counsel appearing for the petitioners in both the writ petitions, vehemently submits that the order passed by both the authorities are apparently illegal and contrary to law and the patta allotted was strictly in accordance with law and, therefore, the order of the State Government be set aside and the order passed by the Commissioner be upheld.
5. The State counsel would oppose the submission and support the



order impugned.

6. From a perusal of the record, it is quite vivid that the suit lands that were allotted to both the writ petitioners – Jodhan and Late Bodhan Nishad (now LRs on record) were part of Khasra No.853/1 and is recorded as *bade jhad ka jangal*, and that has been allotted by the Tahsildar by order dated 19-5-1981 passed in Revenue Case No.137/A-19 year 1980-81 which was set aside by the Collector finding the said land to be *bade jhad ka jangal* and without permission of the Central Government under Section 2 (2) of the Forest (Conservation) Act, 1980, it could not have been allotted to those allottees which has been set aside by the learned Commissioner.

7. The question to be considered is whether the land which is a forest land *bade jhad ka jangal* can be allotted / leased to the petitioners without prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980.

8. Section 2 of the Forest (Conservation) Act, 1980 (for short 'the Act of 1980') reads as under:-

**"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.-** Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing.-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall ceased to be reserved;

(ii) that any forest land or any portion thereof may

be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

*Explanation.-* For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants.

(b) any purpose other than reforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

9. The Supreme Court in the matter of **T.N. Godavarman**

**Thirumulkpad v. Union of India and others**<sup>1</sup> has held that the word "forest" must be understood according to its dictionary meaning, this description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act, 1980. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. Paragraph 4 of the report is as under:-

<sup>1</sup> (1997) 2 SCC 267

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests to understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*<sup>2</sup>, *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>3</sup> and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*<sup>4</sup>). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi*<sup>5</sup> has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

10. The principle of law laid down in **T.N. Godavarman**

**Thirumulkpad** (supra) was followed subsequently by the

2 (1987) 1 SCC 213

3 (1989) Supp (1) SCC 504

4 WP(C)No.749 of 1995 decided on 29-11-1996

5 (1985) 3 SCC 643

Supreme Court in the matters of **Sri Ram Saha v. State of W.B. and others**<sup>6</sup>, **In Re: Construction of Park at Noida Near Okhla Bird Sanctuary**<sup>7</sup> and very recently in the matter of **B.S. Sandhu v. Government of India and others**<sup>8</sup>.

11. On a close reading of Section 2 read with sub-clause (iii) of the Act, 1980, it would appear that the State Government or any authority cannot assign by way of lease or otherwise to any private person or to any authority, the reserved forest notified under Section 4 of the Indian Forest Act, 1927 read with Section 2 of the Act of 1980 without prior approval of the Central Government, as Section 2 of the Act of 1980 has been given overriding effect to any other law for the time being in force.

12. The Supreme Court in the matter of **A. Chowgule & Co. Ltd. v. Goa Foundation & Co. Ltd.**<sup>9</sup> held that prior approval is required for diversion of any forest land and its use for some other purpose. Paragraph 6 of the report states as under:

"6. A bare perusal of the aforesaid provision would show that prior approval is required for the diversion of any forest land and its use for some other purpose. This is further fortified by a look at Rule 4 which provides that every State Government or other authority seeking prior approval under Section 2 of the Act shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposal would be examined by a committee appointed under Rule 2-A within the parameters and guidelines postulated in Rule 5. There is nothing on record to suggest that this procedure had been adopted."

6 (2004) 11 SCC 497

7 (2011) 1 SCC 744

8 (2014) 12 SCC 172

9 2008 AIR SCW 5922

13. Again, the Supreme Court in the matter of **Tarun Bharat Sangh, Alwar v. Union of India and others**<sup>10</sup> has held that once an area is declared as protected forest, it becomes forest within the meaning of Section 2 of the Act of 1980 and prior approval of the Central Government is a condition precedent for grant of lease under the Rajasthan Minor Mineral Concession Rules, 1986.

14. The Supreme Court in the matter of **Natural Lovers Movement v. State of Kerala & others**<sup>11</sup> held that after enforcement of the Forest (Conservation) Act, 1980, the State Government or any authority cannot make an order or issue direction for de-reservation of reserved forest or permit for the use of forest land or any portion thereof by way of lease. Paragraph 27(2) of the report states as under:-

"27(2). After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for de-reservation of reserved forest or any portion thereof or premise use any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government."

15. The above decision of the Supreme Court in the aforesaid case **T.N. Godavarman Thirumulkpad** (supra) has been followed by this Court in the matter of **Baliram v. Board of Revenue & another**<sup>12</sup> and it has been clearly held that once land is recorded as "Bade Jhad Ka Jangal" no allotment can be made by the State

10 1993 AIR SCW 1300

11 2009 AIR SCW 3656

12 2009(1) CGLJ 30



authorities without obtaining permission of the Central Government. Paragraph 6 of the report is as under:-

"6. There is no irregularity or infirmity in the order passed by the Board of Revenue. Admittedly, the land is recorded as "Bada Jhad Ka Jangal", in the revenue records. Once it is recorded as 'Bade Jhad Ka Jangal', no allotment can be made by the State Authorities without obtaining permission of the Central Government. It is evident from the various decisions of the Hon'ble Supreme Court in the matter of T.N. Godavarman Thirumulkpad (supra)."

16. Keeping in view the provisions contained in Section 2 of the Act of 1980, particularly keeping in view that the land is forest land and in view of Section 2(iii) of the Act of 1980, the suit land is forest land *bade jhad ka jangal* within the meaning of Section 2(iii) of the Act of 1980, this Court is of the considered opinion that no allotment / lease could have been made by the State Government without obtaining prior permission from the Central Government to the aforesaid persons. Therefore, the learned Commissioner is justified in declaring the transactions as null and void and further justified in vesting the lands in favour of Government which has rightly been affirmed by the State Government in revisional jurisdiction.

17. As a fall out and consequence of aforesaid discussion, both the writ petitions deserve to be dismissed and are accordingly dismissed, leaving the parties to bear their own costs.

Sd/-  
(Sanjay K. Agrawal)  
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.474 of 2004

Smt. Sudhiyarin Bai and others

Versus

State of Chhattisgarh and others

AND

Writ Petition No.475 of 2004

Jodhan

Versus

State of Chhattisgarh and others

HEAD NOTE

*Bade jhad ka jangal* cannot be allotted on lease by State/its authorities without prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980.

बड़े झाड़ के जंगल को वन (संरक्षण) अधिनियम, 1980 की धारा 2 के अंतर्गत केंद्र सरकार की पूर्वानुमति के बिना, राज्य / उसके प्राधिकारियों द्वारा पट्टे पर आबंटित नहीं किया जा सकता है।