CASE NO.:
Appeal (civil) 5110 of 1999

PETITIONER:
Sri Ram Saha

RESPONDENT:
State of West Bengal & Ors.

DATE OF JUDGMENT: 14/10/2004

BENCH:
SHIVARAJ V. PATIL & B.N. SRIKRISHNA

JUDGMENT:
J U D G M E N T

Shivaraj V. Patil J.

The short question that arises for consideration in this appeal is 'whether any permission is required under Sections 4-B read with Section 4-C of the West Bengal Land Reforms Act, 1955 (for short 'the Act') by the owners of the orchards to fell the old trees for replacing them by new saplings having greater potential of yield'.
The appellant is the owner of certain land classified as 'Bagan' (garden) in the record of rights. Since old trees in the land had been affected with uncontrollable worms and had lost their fruit bearing ability, the appellant decided to uproot them with an intention to renovate the garden by planting high breed saplings. After he cut two to three trees, the local police personnel and the Block Land Reforms Officer prevented the appellant from further felling, citing the judgment of the Supreme Court in T.N. Godavarman Thirumulkpad etc. vs. Union of India & Ors. [AIR 1997 SC 1228]. The appellant, in these circumstances, approached the High Court by filing Writ Petition No. 16280/1997 challenging the action of the officers and seeking certain directions. A learned Single Judge of the High Court referred the writ petition to the Division Bench (Green Bench). By the impugned judgment, the Division Bench of the High Court disposed of the writ petition permitting the appellant to fell trees standing in his garden but subject to certain conditions and restrictions.. Hence, this appeal is filed by the appellant questioning the validity and correctness of the impugned judgment contending that to fell the trees within his garden land, the appellant was not required to seek any permission under Section 4-B read with Section 4-C of the Act.

The learned counsel for the appellant in his arguments reiterated the submissions that were made before the High Court. He contended that in the absence of any provision in the Act or any other legislation requiring the appellant to take permission to fell tree in his garden land, admittedly it being not a forest land and the High Court was not right and justified in imposing certain restrictions and conditions to fell the trees. He also brought to our notice the decisions of the High Court dealing with similar issue. He added that the decision of the Supreme Court in T.N. Godavarman Thirumulkpad (supra) could not be applied to the facts of the case because the observations made and directions given in that case relate and confine to forest lands.

In opposition, the learned counsel for the respondents made submissions supporting the impugned judgment.

In order to appreciate the respective contentions, it is useful to refer to the relevant provisions of the Act:-_

"Section 4A. Certain restrictions on rights of raiyats in Sadar, Kalimpong and Kurseong sub-divisions of Darjeeling district \026 (1) In the Sadar sub-division, Kalipong sub-division and Kurseong sub-division of the district of Darjeeling, the Collector of the district may, from time to time, give directions regarding the form of cultivation to be adopted by a raiyat in respect of his plot of land or prohibiting a raiyat from cutting more than one tree from his plot of land except with the previous permission in writing of the Collector or such other officer as may be authorized by the State Government in this behalf:

Provided that in giving directions as aforesaid, the Collector shall follow such procedure as may be prescribed.

(2) For contravention of any of the directions given under sub-section (1), the Collector may, after giving the defaulting raiyat an opportunity to show cause against the action proposed to be taken, impose upon him, by order, a fine not exceeding one thousand rupees which, if not duly paid, shall be recoverable as a public demand.

(3) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Commissioner against any order passed by the Collector under sub-section (2) and the decision of the Commissioner shall be final.

4B. Maintenance and preservation of land \026 Every raiyat holding any land shall maintain and preserve such land in such manner that its area is not diminished or its character is not changed or the land is not converted for any purpose other than the purpose for which it was settled or previously held except with the previous order in writing of the Collector under Section 4C.

Provided that any raiyat may plant and grow trees on any land held by him within the ceiling area applicable to him and to his family without any previous order under section 4C, if such land is not cultivated by bargadar:

Provided further that without prejudice to the provisions of Chapter IIB of the Act, the provisions of this Section shall not apply to the diminution in area or the change of character of any land or the conversion of any land for any purpose other than the purpose for which it was settled or previously held, if such diminution or change of character or conversion was made in

accordance with the provisions of any law for the time being force.

4C. Permission for change of area, character or use of land \026 (1) A raiyat holding any land may apply to the Collector for change of area or character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land.

Explanation \026 For the purposes of this sub-section, mode of use of land may be residential, commercial, industrial, agriculture plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land.

(2) On receipt of such application, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of being heard, by order in writing either reject the application or direct such change, conversion or alteration, as the case may be, on such terms and conditions as may be prescribed.

(3) Every order under sub-section (2) directing change, conversion or alteration shall specify the date from which such change, conversion or alteration shall take effect.

(4) A copy of the order passed by the Collector directing change, conversion or alteration, if any, under sub-section (2), or in an appeal therefrom shall be forwarded to the Revenue Officer referred to in Section 50 or section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effected by such order and revise the record-of-rights in accordance with such order.

(5) If the Collector is satisfied that any land is being converted for any purpose other than the purpose for which it was settled or was being previously held, or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may, by order, restrain the raiyat from such act."

By the impugned judgment, although the appellant is permitted to fell trees standing in his garden land, as already stated above, certain conditions and restrictions were imposed. In the impugned judgment, it is stated that the appellant is entitled to cut one out of ten trees in two years and replace that one with new sapling. In case, number of trees are less than ten, permission was granted to cut one out of 5 but subject to condition that to cut one tree, the appellant was required to replace with a new sapling. It was further directed that the appellant will not take recourse to felling of trees without giving one month’s notice to the Collector stating therein all necessary particulars and an undertaking to the effect that the new

saplings would be planted within one month of felling the tree. The Collector was also empowered to inspect the land, if so desired and to take appropriate action in case either the impugned order or the provisions of Section 4 are not complied with. In the impugned judgment, the Division Bench also observed that the State Government should consider enacting a comprehensive law as early as possible on the felling of trees in non-forest areas keeping in view the environmental concerns of the day.

This Court in T.N. Godavarman Thirumulkpad (supra) was dealing with forests having regard to the provisions of the Forest Conservation Act, 1980 (for short 'the Conservation Act') and to the environmental and ecological aspects of the matter, considering the possible effect due to deforestation. In para 4 of the judgment, it is stated thus:-

"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 forest 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 recognised 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 forest and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof....."

Directions given under para 5, to the extent they are relevant for the purpose, are extracted below:-

"1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith.

.....

2. .....

3. .....

4. ..... This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest."

In the said judgment, certain specific directions are given to the States specified therein. Relevant directions given for the State of Himachal Pradesh and the hill regions of the States of Uttar Pradesh and West Bengal, to the extent relevant, read as under:

"1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area which is not a 'forest'; and which has not been converted from an earlier "forest". .....
(2) .....
(3) .....
(4) .....".

It is clear from the aforesaid judgment of this Court that the observations made and directions given were in relation to forest land. The term of "forest land" occurring in Section 2 of the Conservation Act will not only include "forest" as understood in the dictionary sense but also includes any land recorded as forest in the Government record irrespective of the ownership. It is also stated that the provisions of the Conservation Act for the conservation of forest and the matters connected therewith must apply clearly to all forests so understood irrespective of ownership or the classification thereof. By the directions given in the said judgment, certain bans are imposed including a ban in respect of felling of trees in forest, irrespective of the nature of the forest, i.e. whether the forest is public forest or private, reserved, protected or otherwise. It is clear from the observations made and directions given in the aforesaid judgment of this Court that though ban was imposed in respect of undesirable activities in the forest irrespective of the nature of the forest and its ownership but such a ban did not affect felling of trees in any private plantation in an area which is not a forest. Thus, it is clear that the direction given by this Court is clearly confined to felling of trees in forest land and the said ban was not extended to non-forest private plantation. It is made clear in the judgment that the directions given are to be implemented notwithstanding any order at variance made or which may be made by Government or any authority, tribunal or court including the High Court. In the impugned judgment, the High Court having referred T.N. Godavarman Thirumulkpad etc. (supra) of this Court, has stated thus:-

"In other words, the direction of the Supreme Court regarding the application of ban on felling of trees in forests and non-application of the same in non-forest private plantations has to prevail over any other deviating order even if such order has been or is passed by the High Court. It is however to be noticed here that while the Supreme Court expressly recorded in its direction about the non-application of the ban in any non-forest private plantation, the Supreme Court only nullified in clear words the orders at variance which might have been or might be passed by any Government, authority, tribunal or court. The Supreme Court however did not say nor purported to say that any statutory or enacted law regarding non-forest private plantation will not be given effect to."

In the impugned judgment, the High Court has clearly stated that ban on felling of trees imposed by this Court was only relating to trees in forest area and not to non-forest private plantation and that any order contrary cannot prevail. Having said so, the High Court went on to say that

this Court did not direct that any statutory or enacted law regarding non-forest private plantation will not be given effect to. This legal position cannot be faulted but the High Court committed an error in its application. Admittedly, there is no statutory or enacted law which enabled the state authorities either to take action for felling of trees in private plantation not being forest and in the absence of any requirement of any statutory enactment to take permission for felling of tree in a private plantation, the High Court could not have imposed restrictions and conditions as is ultimately done in the impugned judgment while permitting the appellant to fell the trees.

The Division Bench of the same High Court dealing with a similar situation in M.A.T. No. 3681/97 in Md. Mustafijur Rahman & Ors. Vs. The State of West Bengal & Ors. having due regard to the decision of this Court in T.N. Godavarman Thirumulkpad (supra) held that the ban on felling of trees would not affect felling in any private plantation comprising trees planted in any area which is not a forest. However, whether the land in that case was a forest land or not was left to be decided by the authorities. That was a case in which learned Single Judge had taken the view that the restrictions with regard to the forest imposed in the decision of T.N. Godavarman Thirumulkpad (supra) did not apply to the case as the lands were recorded as orchard/garden in the record of rights. However, in conclusion, the learned Single Judge imposed certain restrictions with regard to removal of trees. In appeal in M.A.T. 3681/97, the Division Bench of the High Court passed the order as stated above.

Another Division Bench of the same High Court in Re: Cutting of trees at Mankundu [1998 2 CLJ 119] passed an order dated 15.7.1998 directing that there should be total ban on felling of Mahua and Kendu trees and that apart, no other tree should be cut or fell by anybody without obtaining permission from the local authority concerned or the District Forest Officers. This decision runs contrary to the earlier Division Bench judgment in M.A.T. 3681/97 referred to above. Unfortunately, the decision of the Division Bench in M.A.T. 3681/97 and the decision of this Court in T.N. Godavarman Thirumulkpad (supra) were not brought to the notice of the Division Bench while deciding the case of Mankandu on 15.7.1998. In the impugned judgment, the High Court itself has observed that the directions given in Mankundu are inconsistent with the directions given by this Court in T.N. Godavarman Thirumulkpad (supra) particularly where this Court had specifically directed that its order was to operate and had to be implemented notwithstanding any order made or that may be made by any court or Government etc., which might be at variance and that there was no scope for issuing such directions in respect of non-forest private plantation.

In Biswanath Kumar Vs. State of West Bengal [1996 (II) CHN 407], a learned Single Judge of the High Court considered a question whether the owner of an orchard had any right to fell down trees standing there which had become old and had lost their optimum fruit bearing capacity. In the light of Sections 4-B and 4-C of the Act, it was held that so long as area, user and character of the land was not changed, the provisions of Section 4-B as also the proviso thereto would not be attracted in a given case. However, keeping in mind factors relating to

the environment and ecological balance, the learned Single Judge directed that the raiyat will not be entitled to cut down all the trees in the orchard or garden at a time but shall be entitled to cut once every two years and replace the old, uneconomic and/or unproductive tree or trees in the ratio of 1:10 on condition of replacing the same by new sapling. The learned Judge also gave certain other directions. It may be noted that this judgment was delivered before this Court rendered decision in T.N. Godavarman Thirumulkpad (supra).

It is not in dispute that there is no enactment in the State of West Bengal regarding felling of trees in non-forest area. It is abundantly clear and unambiguous that the ban imposed by this Court in T.N. Godavarman Thirumulkpad (supra) would apply only to forest land irrespective of the nature or classification or ownership of such forest land and that the ban did not apply to non-forest private plantation. In the impugned judgment, the Division Bench of the High Court also accepts this position. But the Division Bench reading Sections 4-A, 4-B and 4-C and particularly reading Sections 4-B and 4-C together took the view that Section 4-B of the Act definitely projects a bar against felling of trees; it may not be in respect of felling of single tree; but felling of a number of trees at a time may in particular circumstances amount to changing nature and character of land or the mode of its use and thereby attract provisions of Sections 4-B and 4-C. It was further held by the High Court that for felling of trees in non-forest private plantation, definitely Section 4-B will be attracted and in that case, such a felling cannot be done without obtaining permission of the Collector under Section 4-C. Observations of the High Court in this regard are :

"The learned Judge in the decision in Biswanath Kumar Vs. State of West Bengal (supra) was of the opinion that anticipated change of the character and user of the lands comprising orchards cannot be a ground for objecting to the felling of the trees belonging to the owners in the absence of any law prohibiting them from doing so. In our opinion, however, the position becomes rather different when sections 4B and 4C are read together. The bar imposed by section 4B is against changing the character of land or its conversion for use for a different purpose without the previous permission of the Collector. Cutting of only one tree in an orchard may not by itself change the nature and character of the land or may not amount to conversion of the land for any purpose other than the purpose for which it was settled or was previously held. But felling of a number of trees at a time may in particular circumstances amount to changing the nature and character of the concerned land and thereby attract provisions of sections 4B and 4C. That trees may have some bearing on the nature and character of the land on which they are standing or on the mode of its use is beyond doubt. This gets exemplified by the first proviso to section 4B which permits a raiyat to plant and grow trees on his land without the previous order of the Collector if such land is not cultivated by Bargadar. A land which is used as cultivable land may be converted into a different type by planting quite a number of trees on it thereby replacing

cultivation by afforestation. The proviso permits afforestation or planting or growing of trees on the land without any order of the Collector although by doing so the nature and character of the land or its user may be changed. But this is not permitted if the land is under the cultivation of Bargadar so that the Bargadar's interest in the matter of growing crops in that land and receiving share thereof may not be jeopardized or affected. This is one aspect of the matter. Similarly if an orchard is cleared of the trees or a number of trees are cut down without taking any measure to protect and preserve the nature and the character of the land, in that event section 4B and section 4C will be definitely attracted to such felling of trees. It, therefore, cannot be said that there is altogether no statutory provision imposing any restriction on the felling of trees in non-forest private plantation."

Section 4-A of the Act imposes certain restrictions on rights of raiyats in Sadar, Kalimpong and Kurseong sub-divisions of Darjeeling District. In these sub-divisions under Section 4-A(1), the Collector of the District may, from time tome, give directions regarding the form of cultivation to be adopted by a raiyat in respect of his plot of land or prohibit a raiyat from cutting more than one tree from his plot of land except with the previous permission in writing of the Collector or such other officer as may be authorized by the State Government in this behalf. Under sub-section (2) of the said Section, the Collector may take action against defaulting raiyat for contravention of any of the directions given under sub-section (1) and may impose fine upon him. Under sub-section (3), an appeal is also provided against an order made under sub-section (2). Thus, from Section 4-A, it is clear that its application is confined to the three sub-divisions of Darjeeling District only. When by legislation, scope and application of Section 4-A is consciously confined to the said three sub-divisions of Darjeeling District, court cannot enlarge or extend its scope to the other lands in the State of West Bengal situated in areas other than these sub-divisions. An attempt to extend the scope and application of Section 4-A to the area beyond the said three sub-divisions amounts to courts assuming legislative functions which is impermissible particularly when there is no ambiguity or uncertainty as to the area to which Section 4-A applies. The said provisions cannot be read so as to extend its application to other areas which legislature consciously did not intend to do so. If the legislature wanted to apply Section 4-A to the entire State of West Bengal, it could have done so. On the other hand, the legislature had expressly confined its application to the three sub-divisions of Darjeeling District.

Section 4-B speaks of maintenance and preservation of land. Under this Section, every raiyat holding any land is obliged to maintain and preserve such land in such manner that its area is not diminished or its character is not changed or the land is not converted for any purpose other than the purpose for which it was settled or previously held except with the previous order in writing of the Collector under Section 4-C. Under the first proviso to the said Section, any raiyat may plant and grow trees on any land held by him within the ceiling area applicable to him and to his family without any previous order under Section 4-C, if

such land is not cultivated by bargadar. From plain reading of this Section, it is clear that a raiyat cannot diminish area of the land or change its character or cannot convert the land for any purpose other than the purpose for which it was settled without the previous order in writing of the Collector. Felling of trees is not covered by this Section. Mere felling of trees cannot be taken as diminishing the area of the land or changing its character or converting it for any purpose other than the purpose for which it was settled. The first proviso shows that even a raiyat can plant and grow trees in any land held by him within the ceiling area if such land is not cultivated by bargadar.

Section 4-C deals with the permission for change of area, character or use of land. Under this Section, a raiyat holding any land may apply to the Collector for change of area or character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land. Explanation to sub-section (1) of Section 4-C says that for the purpose of sub-section (1) of Section 4-C, mode or use of land may be residential, commercial, industrial, agriculture plantation of tea, pisciculture, forestry, sericulture, horticulture, public utilities or other use of land. In this view, permission of the Collector is required under Section 4-C for the purpose of change of area, character or use of land not for felling of trees in private plantation. Mere felling of trees neither diminishes the area nor changes the character or use of land covered by explanation to sub-section (1) of Section 4-C. Under Section 4-C(2), the Collector on receipt of application from a raiyat for change of use of land, conversion or alteration, as the case may be, pass an order. Under sub-section (5) of the said Section, the Collector, if satisfied that any land is being converted for any purpose other than the purpose for which it was settled or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may, by order restrain the raiyat from such act. Thus, Collector has to satisfy himself about any contravention in regard to conversion, change of use or change of area or character of land before passing an order to restrain the raiyat from such act. For any contravention of the provisions of the Act, the Act itself has provisions to take care of contravention, if any, under the Act. Thus, even combined reading of Sections 4-B and 4-C of the Act does not show that a permission of Collector is required to fell trees in non-forest private plantation area/garden.

It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot re-write a statute. A purposive interpretation may permit a reading of the

provision consistent with the purpose and object of the Act but the courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation.

This Court in The Commissioner of Sales Tax, U.P. Lucknow vs. M/s Parson Tools and Plants, Kanpur [(1975) 4 SCC 22] has taken the view that if the legislature did not, after due application of mind, incorporate particular provision, it cannot be imported into it by analogy, observing that "An enactment being the will of the Legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it".

Further in para 16 of the said judgment, this Court has observed thus:-

"16. If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of Legislature" (At p 65 in Prem Nath L Ganesh v.Prem Nath, L. Ram Nath, AIR 1963 Punj 62, Per Tek Chand, J.), the primary function of a court of law being jus dicere and not jus dare."

Further para 23 of the same judgment reads:-

"23. We have said enough and we may say it again that where the Legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; ....."

In Sankar Ram & Co. vs. Kasi Naicker & Ors. [(2003) 11 SCC 699], this Court in para 7 has stated thus:-

"7. It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having regard to the object and purpose sought to be achieved by it....."

Thus, in the light of legal position explained in various decisions, the High Court was not right in expanding the

scope and application of Section 4-A so as to apply it to the areas in the State of West Bengal other than the area specified in three sub-divisions of Darjeeling District. When the intention of the legislature is clear to confine its application to the limited area, the court could not ignore it. The High Court was also not right in reading something more in Sections 4-B and 4-C in regard to the felling of trees in the absence of any such legislative intention expressed in these provisions. The court could not have added something more to these Sections.

The High Court, being clear in its mind that the ban imposed in T.N. Godavarman Thirumulkpad (supra) in the matter of felling of trees did not extend to non-forest private plantation and there being no State enactment dealing with the felling of trees in non-forest private plantation, in our view, was not right and justified in reading in the provisions of Sections 4-B and 4-C that a permission of the authorities is required for felling of trees even in non-forest private plantation/orchard. The High Court was also not correct in imposing further restrictions and conditions on the appellant for felling trees in his private non-forest garden land. The High Court in impugned judgment itself has observed that the State Government may consider the desirability of having enacted a comprehensive law as early as possible regarding felling of the trees in non-forest areas with a view to taking care of environmental necessities of the time. If the provisions of Section 4-B read with Section 4-C of the Act serve such a purpose and if the High Court was clear in that regard, there was no reason to make such a observation. Nothing prevents the State Government to enact law in this regard but in the absence of such a law and till law is enacted in that regard, the High Court was not right in imposing restrictions as is done in this case in regard to felling of trees.

The question set out above in the beginning of this judgment is answered in the negative.

In the result, the impugned judgment so far it relates to imposition of restrictions and conditions on the appellant for felling the trees cannot be sustained and they are set aside. To make the position clear, we state that no such permission is required for felling trees in the non-forest private plantation/orchard/bagan. The appeal is allowed accordingly in the above terms. No costs.