

CASE NO.:
Appeal (civil) 781 of 2000

PETITIONER:
CHINTAMANI GAJANAN VELKAR

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 01/02/2000

BENCH:
M. JAGANNADHA RAO & A.P. MISRA

JUDGMENT:
JUDGMENT

2000 (1) SCR 570

The following Order of the Court was delivered :

Leave granted.

Heard learned counsel on both sides.

In this appeal, a limited notice was issued at the time of admission On 29.7.1998.

The appellant before us is the land holder. He was in possession of various extents of lands. Now we are concerned only with Survey Nos. 31, 32 and 33 in the village Versaveo in District Thane comprising various extents of lands in all roughly amounting to 20 hectares. The appellant filed an application under Section 6 of the Maharashtra Private Forests (Acquisition) Act, 1975 which provides for settlement of disputes in relation to private forest land. Section 6 reads as under :

"Section 6 : Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the Tribunal in appeal which may be preferred to the Tribunal within 60 days from the date of the decision of the Collector, or the order of the State Government under Section 18, be final."

Initially the Deputy Collector passed an order on 25.9.80 in favour of the appellant holding that the land was water-logged and could not be treated as forest land and he also held that the land did not vest in the State of Maharashtra on 30.8.1975 when the Maharashtra Act, 1975 came into force inasmuch as notice was issued under Section 35(3) of the Indian Forest Act 1927 on 29.8.1975 and was not served on the landholder before 30.8.1975 but was served only thereafter on 12.9.1975. In other words, the Deputy Collector held that for the purpose of the definition of "Private forest" under Section 2(f) of Maharashtra 1975 Act, it was necessary that notice be not only issued under Section 35(3) of the Indian Forest Act 1927, but should have also been served on the land holder before the commencement of Maharashtra Act on 30.8.1975. He, therefore, held that the private forest land of the appellant did not vest in the State under the 1975 Act on 30.8.75.

On appeal by the State, the Revenue Tribunal Maharashtra, reversed this view of the Dy. Collector dated 25.9.1980 and held that inasmuch as notice was issued on 29.8.1975 under Section 35(3) of the Indian Forest Act 1927, the private forest of the appellant vested in the State even though the

notice was not served on the appellant before 30.8.1975. The Tribunal, therefore, remanded the matter by its order dated 23.8.83 and observed that the Deputy Collector should hold consequential detailed enquiries and dispose of the matter according to law.

Thereafter, after the remand order, the Deputy Collector passed an order on 29.6.1992. The appellant raised a question of issuance of 'notice' once again but the said officer held that this question had become final by the order of the Tribunal above-mentioned and could not be reopened. The appellant then went before the Tribunal which also held by its order dated 28.2.1995 that this question could not be reopened. The Review Application filed by the appellant was dismissed on 26.7.1996. The appellant then filed writ petition before the High. Court which was dismissed on 24.1.1997 by the learned Single Judge. Letters Patent Appeal filed by the appellant was also dismissed on 11.12.1997. The Letters Patent Bench passed the following order ;

"Heard the learned counsel for the Appellant.

In our view, there is no substance in this Letters Patent Appeal. The findings given by the Court below are confirmed by the learned Single Judge. According to the order of the Maharashtra Revenue Tribunal, in the lands bearing Survey Nos. 31.32 and 33 of Village Versova, there were 2639, 352 and 920 trees, respectively. Considering this aspect and considering the provision of Section 2(c)(i) of the Maharashtra Private Forests (Acquisition) Act, the Tribunal has arrived at the conclusion that the lands in question are 'forest', to which the provisions of the Maharashtra private Forests (Acquisition) Act, therefore, the same is dismissed." The only question that arises before us for consideration is whether the word 'issue' used in Section 2(f) of the Maharashtra Act, 1975 means service of notice on the land holder.

Section 2(f) of the Maharashtra Act 1975 reads as follows :

"Section 2(f) : "Private forest means any forest which is not the property to Government and includes -

(i) Any land declared before the appointed date to be a forest under Section 34A of the Forest Act:

(ii) any forest in respect of which any notification issued under sub-section (1) of section 35 of the Forest Act, is in force immediately before the appointed day,

(iii) any land in respect of which notice has been issued under sub-section 3 of Section 35 of the Forest Act but excluding an area not exceeding 2 hectares in extent as the collector may specify in this behalf;

(iv) land in respect of which a notification has been issued under section 38 of the Forest Act;

(v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto."

We are concerned only with sub-clause (iii) of Section 2(f). The definition of "private forest" has been expanded by Maharashtra Act, 1975 so as to take in various categories of lands which are not Government forest land. One such category of land is mentioned in sub-clause (iii) of Section 2(f). Learned counsel for the appellant has relied upon the decision of this Court reported in *Banarsi Debi v. Income Tax Officer, District IV, Calcutta & Ors.*, AIR (1964) SC 1742, and *(Commissioner of Wealth Tax, U.P. and Anr.*

v. Kundan Lal Behari Lal, [1975] 4 SCC 844, to contend that in certain situations the word 'issue' can be construed by this Court as amounting to actual service. On the other hand, learned senior counsel Mr, Mohta has placed reliance on the decision of this Court reported in Commissioner of Income tax v. Bababhai Pitambardas , (HUF) [1993] Suppl. 3 SCC 530.

Before dealing with this question, it is necessary also to refer to Section 35 of the Central Act 1927 which has been referred to in Section 2(f)(iii) of the Maharashtra Act, 1975. Section 35 of the 1927 Act reads as follows :

"Section 35 - Protection of forests for special purposes: (1) The State Governments may, by notification in the Official Gazette :

(i) regulate or prohibit in any forest -

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the felling or clearing of the vegetation;

(d) the girdling, tapping or burning of any tree or the strip-ping off the bark or leaves from any trees;

(e) the lopping and pollarding of trees;

(f) the cutting, sawing; conversion and removal of trees and timber; or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire;

When such regulation or prohibition appears necessary for any of the following purposes :-

(a) for conservation of trees and forests;

(b) for the preservation and improvement of soil or the reclamation of saline or water-logged land, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(c) for the improvement of grazing;

(d) for the maintenance of a water supply in springs, rivers and tanks;

(e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(f) for the maintenance of reservoirs or irrigation works and hydre-electric works;

(g) for protection against storms, winds, rolling stones, floods and drought;

(h) for the protection of roads, bridges, railways and other lines of communication; and

(i) for the preservation of the public health.

(2) The (State Government) may, for any such purpose, construct at its own

expense in any forests such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling on him to show cause within a reasonable period to be specified in such notice why such notification should not be made or work constructed as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Governments.

It will be noticed that the procedure under Section 35 of the 1927 Act is that a notice is to be issued to the landholder under Section 35(3), it is to be served, and his objections heard. If they are rejected, then a notification is to be issued under Section 35(1) treating the land as forest land.

It is true that the Maharashtra Act, 1975 which came into force on 30.8.1975 expended the definition of private forest in Section 2(f). The question for consideration is whether the appellant's land falls within sub-clause (iii) of Section 2(f).

It will be noticed that there is difference between Section 2(f)(ii) and (iii). So far as sub-clause (ii) of Section 2(f) is concerned, it refers to various lands in respect of which Notification has been issued under Section 35(1) of the Indian Forest Act, 1927 before the appointed day 30.8.1975

But sub-clause (iii) of Section 2(f) does not refer to any Notification that could be issued under Section 35(1) of the Indian Forest Act, 1927. It only refers to the notice that could be initially issued under sub-section (3) of Section 35. In a normal case, as already stated, the notice has to be issued under Section 35(3) and should be served on the land holders, objections thereto would have to be heard and an order could be passed treating them as forest land only after the Notification under Section 35(1) was issued.

Thus in Section 2(f) we find lands in respect of which Notification under Section 35(1) has been issued. They fall under sub-clause (ii) of Section 2(f), being cases in which notice has been issued to the land holder under Section 35(3) of the 1927 Act, he had been heard and then his objections have been rejected and then the final Notification has been issued under Section 35(1) of the Indian Forest Act, 1927. Under Section 2(f)(ii) such lands automatically vest in the State on 30.8.75 if the notification under Section 35(1) of the 1927 Act has been issued before 30.8.75. There is no difficulty here. But the question is in respect of the cases where only notice has been issued under Section 35(3) before the appointed day namely, 30.8.1975. Question is whether the Legislature contemplated that there should be no further inquiry and there would be no need for any Notification under Section 35(1) of the 1927 Act?

It is true that the repealing provision - Section 24(1) of the Maharashtra Act, 1975 merely repeals Section 35 of the Indian Forest Act, 1927 and appears prima facie prospective but the question is whether there is anything in the repealing Act of 1975 which can show an intention of the part of the Maharashtra Legislature that the further procedure contemplated by Section 35(3) - namely, notice being issued under Section 35(3) being served on the owner and the Notification under Section 35(1) being issued - has been dispensed with. In our view, the proper clue in this behalf is provided by sub-clause (iii) of Section 2(f) itself. It will be noticed that in cases where a final Notification has been issued under Section 35(1) the entire notified land would automatically vest in the State on the appointed date, namely, 30.8.1975. But in the case where only notice has been issued as per Section 35(3) before the appointed day,

namely, 30.9.1975 - the Maharashtra Legislature thought that the entire property covered by the notice in the State need not vest but if excluded 2 hectares out of the forest land held by the land holder. That was the consideration for not allowing the benefit of an enquiry under Section 35(3) and for not allowing Notification to be issued under Section 35(1) of the 1927 Act.

In our view, the Legislature has not made any discrimination in regard to the matters where Notification had been issued under Section 35(1) of the Forest Act, 1927 on the one hand and in cases where Notification had not been issued and the matter stood till at the stage of notice under Section 35(3) on the other. In latter cases, Legislature thought it fit to exclude 2 hectares of the land holder from vesting. If that was done, a notice that was issued under Section 35(3) would itself be sufficient and if such notice was issued before the appointed day i.e. 30.8.1975 the land vest in the State subject, of course that the Collector has to specify the particular extent of 2 hectares which can be retained by the land holder. There is no need for any service of such notice before 30.8.75, nor for an inquiry nor for a notification under Section 35(1).

In the circumstances, we are of the view that the decision cited by the appellant namely, *Banarsi Debi v. Income Tax Officer, District IV, Calcutta & Ors.*, AIR (1964) SC 1742 and *Commissioner of Wealth Tax, U.P. & Anr. v. Kundan Lal Behari Lal*, [1975] 4 SCC 844, wherein the word "issue" has been construed as amounting to "service" are not relevant for interpreting the word "issue" used in Section 2(f). The word has to be construed in the context in which it is used in the Statute as held in *Commissioner of Income Tax v. Balabhai Pitambardas*, (HUF) [1993] 3 SCC 530.

For the aforesaid reasons, while accepting the view of the High Court and the trial court, we modify the order by directing that the Deputy Collector should specify 2 hectares of land out of Survey Nos. 31, 32 and 33 which could be retained by the appellant. The Deputy Collector will hear the appellant and pass appropriate orders in relation to the retention of 2 hectares of land. If upon such exclusion, it is found that the appellant is holding land in excess of Ceiling area under any law relating to the land ceilings, it will be for the respondents to take appropriate action in accordance with law. Subject to the above, the Deputy collector will specify which 2 hectares can be retained by the appellant. The appeal is disposed of with the above modification. No order as to costs.