

CASE NO.:
Appeal (civil) 4678-4679 of 2000

PETITIONER:
State of Kerala & Ors.

RESPONDENT:
Sunil Kumar S. & Ors.

DATE OF JUDGMENT: 24/04/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in these appeals is to the legality of directions given by a Division Bench of the Kerala High Court varying the order passed by learned Single Judge in a writ petition filed under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). According to learned counsel for the appellants, though the direction appears to be innocuous it is contrary to law. Learned counsel for the respondents on the other hand submitted that no positive direction has been given and only the appellant-State has been directed to seek "prior approval" from the Central Government in the matter of accepting prayer of the respondents for grant of lease.

Factual background in a nutshell needs to be noted.

An extent of 486.63 acres of land was leased out to the predecessor of respondent No.1. It was found by the functionaries of the State that while the lessee was in possession of the land leased, he had encroached upon adjacent portions of land and the extent of such encroachment was 230.39 acres. The Forest Department resumed an extent of 142.39 acres of land during the year 1976. The balance encroached portion remained with the lessee encroacher. Out of the 142.39 acres of land resumed by the Forest Department, an extent of 38.42 acres appears to have been cultivated with cardamom by the encroacher. The Lessee moved the State Government praying that the encroached land may be regularized and a lease may be granted to the lessee of the encroached extent. By order dated 16.10.1980 the State Government decided to grant 108 acres of encroached land continuing in the possession of the lessee and 38.42 acres of encroached planted area already resumed by the Forest Department on a lease to the lessee.

The State Government, therefore, decided to regularize the encroachment in respect of 146.42 acres of Reserved Forest and further decided to grant a lease for 20 years in respect of the said area to be regularized.

On 10.12.1980, one V.R. Thirumalai Swami Gawndar predecessor of the respondent herein remitted Rs.6,56,582/- at the sub treasury as penal interest for encroachment and cutting of the trees upto 31.12.1978.

On 27.12.1980 the Central Government introduced the Forest Conservation Act, 1980 (in short the 'Act') and it came into force with effect from 25.10.1980.

On 14.08.1983, Shri V.R. Thirumalai Swami Gawndar filed O.P. No. 6991/83 for a Writ of Mandamus directing the State Government to implement G.O. No. 392/80 dated 16.10.1980.

On 08.12.1987, the Hon'ble High Court dismissed O.P. No. 6991/83 with the following findings :

"In the instant case, with the materials now available before me I am not in a position to hold that the forest land involved in it had already been broken up or cleared prior to the coming into force of the Central Act 69 of 1980. In the absence of such details, the only course that is open to me is to direct the respondents to examine the question as to whether the forest land in dispute had already been broken prior to 1980 or not. If it had been so broken, the provisions of Act 69 of 1980 will not have any application to the instant case. In such a situation, I do not find any sustainable ground in not complying with the directions contained in Ext. P1. It was also directed that the Government should comply with GO(MS) No. 392/80/AD dated 16.10.1980 (Ext. P1 in that OP) in case the forest land was found to have already been broken up and cleared prior to the coming into force of Act 69 of 1980."

On 08.10.1988, the Government issued letter dated 8.10.1988 to the respondent stating the condition regarding the forest land having already been broken up and cleared prior to the coming into force of the Act is not satisfied and therefore, the Government are unable to comply with G.O. dated 16.10.1980 and hence the request for execution of lease was rejected.

On 20.10.1988, Sh. Thirumala Swami Gawndar filed O.P. No. 8653/88 before the High Court with a prayer to quash the aforesaid Government letter dated 8.10.1988 and to further direct the Government to execute the lease deed in terms of G.O. dated 16.10.1980.

On 13.09.1995, the present respondent claims to have acquired the right from Sh. G.R.Thirumalai Swami Gawndar who died on 25.12.1988. On 13.09.1995 the Division Bench of the High Court dismissed the Writ Petition O.P. No. 8653.

On 09.12.1996, the Special Leave Petition (Civil) No. 568/96 filed by the respondent against judgment in O.P. No. 8653/88 was dismissed by this Court.

On 12.03.1997 the Forest Department resumed possession of the forest land in dispute after preparing mahazar.

On 20.03.1997, O.P. No. 5523/97 was filed by the respondent.

By order dated 16.02.1998, O.P. No. 5523/97 was dismissed by the High Court. The respondent preferred writ appeal No. 641/98 before the Division Bench of the High Court.

The respondent thereafter filed O.P. No. 6376/2000 with a prayer for directing the State Government to get the approval of the Central Government under Section 2 of the Act for grant of lease of the forest land measuring 146.42 acres of the respondent.

The Division Bench by the impugned judgment in the Writ Appeal and the O.P. directed the State Government to seek the approval of the Central Government under Section 2 of the Act for lease of 146.42 acres of land within 2 months from 21.3.2000.

The directions impugned in the present appeal reads as follows :

"In the result, both the Writ Appeal and the writ petition are disposed of accordingly. Prayer (a) in O.P. 5523/97 and prayer (b) in O.P. 6376/2000 are ordered as prayed for. Since the prayer is made in the revised and comprehensive rules and guidelines under the Forest Conservation Act, 1980 for regularization of Pre 1980 encroachment of forest land, prayer (a) made in O.P. 5523/97 and prayer (b) in O.P. 6376/2000 are grantable. Accordingly, both the Writ Appeal and Original Petition are disposed of. No costs.

Government of Kerala is directed to seek the approval of the Central Government under Section 2 of the Forest Conservation Act, 1980 for lease of 146.42 acres of land within two months from today."

As noted above, learned counsel for the appellant-State and its functionaries submitted that there is a statutory restriction on deforestation of forests or use of forest land for non forest use in terms of Section 2 of the Act, which reads as follows :-

"Restriction on the de-reservation 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 \026

- (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 cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purposes;
- (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 tress which have grown naturally in that land or portion, for the purpose of using it for re-forestation.

In the instant case, the State Government does not want to lease any part of the forest land. Therefore, the question of seeking prior approval of the Central Government does not arise. The High Court proceeded on the basis as if prior approval has to be taken from the Central Government even when the State Government does not want to lease the land in question. There is no vested right on the applicant to seek approval. Though learned counsel for the respondent did not dispute the position that there was no vested right in such matter, according to her, in view of the peculiar position and the fact that the applicant had deposited more than Rupees six lakhs as penalty in respect of encroached land an equitable approach is imperative. It is pointed out that there was no direction to the Central Government to accord approval. It is, therefore, submitted that if the State Government seeks approval it is open to the Central Government to deny the request for approval. On a mere technical ground the State Government should not take the stand that in such matters approval is not necessary or it is not required to seek approval.

As rightly pointed out by learned counsel for the State, the question of approval arises only when the State Government makes a request for such approval in respect of cases falling under the enumerated categories in Section 2. A bare perusal of Section 2 of the Act makes the position clear that it has no application when the State Government does not intend to do any of the enumerated acts. The Section starts with a non-obstante clause. It deals with restriction on de-reservation of forests or use of forest land for non-forest purpose. It provides in positive terms that no order in respect of the enumerated actions can be made except with prior approval of the Central Government. It does not even remotely suggest that even when State Government does not want to take action it shall yet be required to seek prior approval. In the instant case, the State Government has made its intention clear that it did not want to grant any lease in respect of the concerned encroached property. Challenge to such decision at different points of time has not yielded any success to the applicant. That being so, view of the Division Bench of the High Court that even for its decisions not to grant lease the State Government has to seek prior approval of the Central Government is not correct. The view is clearly contrary to the express language of Section 2 of the Act. The inevitable conclusion is that the High Court was not justified in giving impugned direction. The impugned judgment of the Division Bench is set aside, and the Writ Petitions are dismissed. The appeals are allowed. No costs.