

State of U. P. and Another

Vs

Dr. Abdul Quddus and Others

Civil Appeals Nos. 16072 of 1973 and 1603-1604 of 1979

(V. D. Tulzapurkar, R. S. Pathak, R. B. Misra JJ)

22.11.1984

ORDER

1. In these appeals the only question raised by counsel for the appellants before us has been whether the notices served upon the respondents under Section 38-H(2) of the Indian Forest Act, 1927 as amended by the U.P. Amendment Act, 1960 (which introduced the entire new Chapter V-A comprising Section 38-A to 38-M in the Act) proposing to take over the management of the Forest standing on the plots mentioned in the notices are valid or not. The High Court has taken the view that these notices are invalid on the ground that the respondents could not be regarded as claimants or owners or tenure-holders of the forest land in question.

2. It appears that long prior to the issuance of the notices under Section 38-H, attempts were made by the Forest Department to declare the lands in question as forming part of the 'reserved forest' but attempts was successful thwarted by the respondents on the ground that the lands in question did not belong to them but that they were owners only of the trees standing thereon which claim to the trees as standing timber was upheld by the District Judge who set aside the orders of Forest Settlement Officers and Divisional Commissioners. After that attempt failed, the present attempt to take over the management of the forest was made by the appellants by issuing notices under Section 38-H (2) of the Forest Act (as amended by the U.P. Amendment Act). The respondents filed writ petitions in the Allahabad High Court challenging the notices on the ground that they were neither the claimants nor owners nor tenure-holders having any interest in the lands whatsoever they being only entitled to the trees and as such the notices were bad in law and, it therefore, the attempt to take over the trees under the grab of taking over management of the forest lands could not succeed against them. The High Court having upheld the challenge allowed the writ petitions and it is this decision of the High Court that is challenged by the appellants before us in these appeals.

3. In Civil Appeal 1602 of 1973 one Raghubar Dayal the owner of the forest land in question had sold the standing trees on the said land to the respondent (Dr Abdul Quddus) for valuable consideration under a registered sale deed dated April 7, 1945 and a period of two years was mentioned therein within which the respondent had agreed to cut and take away the trees. The guanines of the sale deed was never disputed. It is thus clear that though the trees were still standing on the land in question at the time when the impugned notice under Section 38-H was served but in view of the document of sale under which the respondent had agreed to cut and take away the trees, the standing timber would belong to the respondent and that the respondent was having no interest whatsoever into upon the land on which the trees stood. Under Section 38-H(1) power has been conferred upon the State Government to take over the management of any particular forest if the Government to take over the management of any particular forest if the Government to take over the management of any particular forest if the Government considers it necessary or expedient in public

interest to do so in order to secure proper management thereof but such take over of management of the forest land could be done only after issuing a notice under sub-section (2) (a) of Section 38-H to the claimant or the owner or the tenure-holder of the forest or the forest land as the case may be. Admittedly the respondent was neither the claimant, nor the owner, nor the tenure-holder and he had interest only in the standing timber which had because movable property under the registered sale deed and as such the notice served on the respondent was, therefore, clearly misconceived and the High Court in our view, was right in quashing that notice.

4. In the other two appeals, namely, Civil Appeals 1603-1604 of 1979 the position of the respondents is almost similar. In these cases prior to the enforcement of the U.P. Zamindari Abolition and Land Reforms Act the respondents' predecessor-in-interest had executed a deed of gift in favour of Bhudan Yagna Samiti donating the plots in question to the samiti as a result whereof the plots became vested in that Samiti and one of the conditions contained in the deed of gift was that the respondent and their predecessors-in interest would continue to be the owners of the trees while lands on which the trees stood would vest in the Bhudan Yagna Samiti. In other words the respondents and their predecessors-interest retained exclusive owner-ship of the trees standing on the plots obviously with a view to cut and appropriate the same to themselves. Their claims to the trees had been upheld during the earlier proceedings when attempt to declare the plots as reserved forest failed. Here also no notice under Section 38-H(2)(a) had been served upon the Bhudan Yagna Samiti which would be the claimant or the owner or tenure-holder of the plots. The service of the notices upon the respondent who had interest only in the trees would be no avail to the appellants. Here also we are of the view that the High Court was right in quashing the notice served on these respondents.

5. In the result all the appeals are dismissed. there will be no order as to costs.

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