

Divisional Forest Officer and Others

Vs

S. Nageswaramma

Civil Appeal No. 11902 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

23.08.1996

ORDER

1. Leave granted.
2. We have heard learned counsel on both sides.
3. This appeal by special leave arises from the order of the Division Bench of the Andhra Pradesh High Court dated 7-7-1995 made in Writ Appeal No. 96 of 1994. The admitted facts are that the respondent had a mining lease granted by the Director of Mines on 18-9-1979 to extract mines in the forest area for five years, i.e., up to 12-9-1984. The Forest (Conservation) Act, 1980 came into force on 25-10-1980. Therefore, by the date of the expiry of the lease, the authorities were denuded of the power to grant renewal of the mining lease. The lease is right to extract minerals and the renewals should be in accordance with the law in operation as on the date of renewal. Renewal of lease not being a vested right, the application for renewal must be disposed of according to law prevailing as on that date. On expiry of the lease period, on 13-9-1989, an application came to be made for renewal thereof. It would be obvious that the renewal was in violation of Section 2 of the Forest (Conservation) Act since, admittedly, the prior approval of the Central Government was not obtained.
4. Consequently, the Forest Department in the joint inspection made on 7-2-1990 discovered that the respondent was extracting mines within the forest area and, therefore, they issued directions cancelling the lease. Consequently, the respondent came to file a writ in the High Court. After the joint survey was conducted under the direction of the High Court, the High Court directed the respondent to carry on extraction of the stacked material from the forest area, subject to the respondent's obtaining prior approval of the competent authorities. Thus, this appeal by special leave.
5. It is contended by Shri Subba Rao, the learned counsel for the respondent, that what the respondent has been denied is not making any fresh extraction of the mines (sic minerals) in the forest area but only the removing of the stacked minerals from the surface of the earth, that too, with the permission granted by the authorities; the direction issued by the High Court in the impugned order, therefore, is correct in law. We find no force in the contention. The learned Judges have proceeded on the premise that the respondent is entitled to extract and remove minerals, said to be stacked on the ground that the lease is a valid lease; otherwise he does not get any right. The premise on which the Division Bench has proceeded is obviously illegal. Section 2 of the Act prohibits mining operations if the mines are situated within the forest area. It is a total prohibition, unless the State Government grants mining lease with the prior concurrence of the Central

Government. Admittedly, the prior concurrence of the Central Government had not been obtained. Shri Subba Rao sought to place before us the guidelines issued by the Department of Environment and Forest, Government of India in relaxation of Rules/guidelines under Forest (Conservation) Act, 1980. Therein, the question is of the clearance of the projects by the State Government without obtaining the prior concurrence of the Department of Environment and Forest. In that behalf, it was mentioned that the renewal of the mining leases, if they are within a particular radius was directed to be done without any fresh breaking up of fresh area and felling of the trees but subject to reforestation. In this case that situation does not arise. This is a case of grant of renewal in a routine way. Under these circumstances, the direction issued by the Division Bench of the High Court is clearly illegal.

6. The appeal is accordingly allowed but, in the circumstances, without costs.