

State of Orissa

Vs

Duti Sahu and Others

Civil Appeal No. 316 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

13.01.1997

ORDER

1. Delay condoned.

2. Leave granted.

3. Heard learned counsel for the parties.

4. This appeal by special leave arises from the judgment dated 29-3-1996 passed by the Division Bench of the Orissa High Court in OJC No. 1389 of 1996. The admitted position is that the respondents are displaced persons and they sought for and were granted assignment of the land in reserved forest by the State Government on various dates between 1982 and 1985 for cultivation. One of the conditions for the grant was that the trees standing on the land allotted to them "shall be the property of the property of the State Government". It is clear from Section 2 of the Forest Conservation Act, 1980 that it contemplates restrictions on the desecration of forests or use of forest land for non-forest purpose and postulates thus :

"2. 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, -

(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 purpose;

(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 organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation."

5. Having overlooked these crucial statutory provisions, the High Court has directed, by the impugned order, at the behest of the respondents, by way of writ of mandamus, issuance of Timber

Transit Permits to the respondents. The question is whether the impugned direction issued by the High Court is correct in law. Except with prior permission of the Central Government, deforestation is impermissible. It is seen that it cannot be disputed that lands are situated within reserved forest area. In the lands assigned to the petitioner, the trees are standing. In terms of the grant made to them, the trees belong to the Government. Under those circumstances, for the reason that it is a reserved forest area since the grant was made only for the purpose of cultivation the respondents have no manner of right whatsoever to deforest the land and to cut and carry the trees belonging to the Government much less without the permission of the authority.

6. The appeal is accordingly allowed. The order of the High Court stands set aside. No costs.