

Hyderabad Abrasives & Minerals (P) Ltd.

Vs

State of Andhra Pradesh

(G.B. Pattanaik JJ)

11.07.1997

JUDGMENT

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PATTANAIAK, J.

1. Leave Granted.

2. This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court dated 27.8.1993 in writ petition No. 3734 of 1993. The present appellant was Respondent No. 6 before the High Court. SAKTI, a voluntary social organisation for the upliftment of tribals in East Godavari District filed the writ petition in the Andhra Pradesh High Court praying therein that the mining activities which are carried on by the respondents 6 to 10 in the said writ petition should be immediately stopped as the grant of mining leases in their favour is in contravention of Section 3 of the Andhra Pradesh Scheduled Areas Land, Transfer Regulation, 1959 (hereinafter referred to as the 'Regulation') as well as Section 2 of the Forest (Conservation) Act, 1980 (hereinafter to as the Conservation Act'). It was averred in the writ petition that the villages where the mining activities are being carried on were notified as protected forest under Section 24 of the Andhra Pradesh Forest Act, 1967 with effect from 8.9.1975 and within the said forest area it is not permissible to continue any mining activity in view of the provisions of the Conservation Act which prohibits user of forest land for non-forest purpose.

3. Respondents 1 to 4 before the High Court, who were the Public officers of the State Government supported the case of the petitioner and took the stand that a joint inspection report had been conducted after surveying the area over which the mining activities are being carried on by the Respondents 6 to 10 and the said report reveals mining leases have been granted over the forest area which is prohibited under the Conservation Act without prior approval of the Central Government.

4. Respondent No.6, the present appellant took the stand that the lease having been granted much prior to the area in question was included as a protected forest the embargo contained in the provisions of the Conservation Act will not apply and in this connection reliance was placed on the decision of this Court in the case of STATE OF BIHAR Vs. BHANSI RAM (1995) 3 SCC 643. It was also contended that Section 3 of the Regulation has no application to a transfer by the Government in respect of its land in favour of a non-tribal and the word 'person' in Section 3 of the said Regulation will not include the Government. It is not necessary for us to examine the stand taken by other private respondents, namely respondents 7 to 10.

5. The High Court by the impugned judgment came to the conclusion that the transfer of any land in scheduled area to a non-tribal is void under Section 3 of the Regulation, and therefore, the lease in

favour of Respondent No.6 within the scheduled area is void. The High Court came to the conclusion that the word 'person' in Section 3 of the Regulation includes the Government, and therefore, leases granted by the State Government in scheduled area to a non-tribal is void. On the question of applicability of the Conservation Act the High Court also relied upon the decision of this Court in the Banshi Ram's case (supra) and came to the conclusion that for grant of mining lease in a protected forest area for non-tribal purpose the prior approval of the Central Government is mandatory and since the Government did not obtain the approval of the Central Government leases are in contravention of Section 2 of the Forest Conservation Act 1980. Having considered the judgment of this Court in AMBIKA QUARRY WORKS Vs. STATE OF GUJARAT (1987) 1 SCC 213 and into account the fact that respondent No. 6 had completed the mining operation over 42 acres the High Court permitted the said respondent no. 16 to remove the dug up mineral in the presence of Joint Collector of the District, Assistant Director of Mines and Geology and the District Surveyor of Forests. Respondent No. 6 the present appellant was prohibited from mining operation in the area with the aforesaid conclusion and thus the, appeal by special leave.

6. Learned counsel for the appellant argued with vehemence that the conclusion of the High Court that the word 'person' in Regulation 3(1)(a) includes the State Government and the transfer of any land within the scheduled area in favour of a non-tribal is null and void is wholly erroneous as the embargo in question is applicable in respect of transfer of land belonging to the Scheduled Castes and Scheduled Tribes and not to land belonging to the State Government. The learned counsel also urged that the restriction and prohibitions in the Conservation Act will have no application to an existing lease and the lease in favour of the appellant having been granted much prior to the coming into force of the Conservation Act the High Court committed error in holding that the leases are in violation of the Conservation Act. Both these questions have been considered in detail by us in Civil Appeal Nos. _____ arising out of S.L.P. Nos. 17080-81 of 1995 and for the reasons given therein and in view of the conclusions in the said appeals to the effect that the word 'person' used in Section 3(1) (a) of the Regulation does not include the State Government and therefore, the prohibitions contained in the said Regulation with regard to transfer of Land in favour of a non-tribal will not apply to the transfer of land made by the Government, for the purpose of mining lease, the conclusion of the High Court on this score is erroneous. But so far as the question of applicability of the Conservation Act is concerned, in view of our conclusion on the said question in appeals arising out of SLPs referred to earlier (Samatha Vs. State of A.P. & Ors.) the conclusion of the High Court in the impugned judgment has to be sustained. In view of the inquiry report and the stand taken by the State Officials the land over which the appellant was permitted to carry on mining activities is a forest land and before grant of lease in favour of the appellant no approval of the Central Government has been taken. It is no doubt true that Conservation Act came into force much later than the grant of mining lease in favour of the appellant, but in view of the general directions issued by this court in T.N. GODAVARMAN THIRUMULKPAD Vs. UNION OF INDIA & ORS in Writ Petition No. 202 of 1995, the mining activities being a user of the forest land for non-forest purpose has to be stopped and in case it is intended to continue the mining activities the same can be done only after referring the matter to the appropriate authority of the Central Government and getting the permission of the same. In this view of the matter the conclusion of the High Court in the impugned judgment so far as violation of Conservation Act is concerned is unexceptionable, and therefore, the said conclusion is upheld. Necessarily, therefore, the ultimate direction given by the High Court remains unaffected notwithstanding the conclusion of the High Court on the first question with regard to the applicability of the provisions of the Regulation having been reversed by us. In the premises as aforesaid this appeal is dismissed but in the circumstances there will be no order as to costs.