

SUPREME COURT OF INDIA

K.Balakrishnan Nambiar

Vs.

State of Karnataka & Ors.

C.A.No.4994 of 2004

(B.Sudershan Reddy and Surinder Singh Nijjar,JJ.,)

05 05.2011

JUDGMENT

Surinder Singh Nijjar,J.,

Civil Appeal No.4994 of 2004 :

1. This appeal is directed against the final judgment and order of the High Court of Karnataka at Bangalore dated 3rd September, 2003, in Writ Appeal No. 3530 of 2003 (GM - FOR) arising out of Writ Petition No. 17766 of 2000 vide which the order of the Learned Single Judge was affirmed and the appeal was accordingly dismissed.

2. The appellant herein is the transferee of leasehold rights of the land to an extent of 25 acres in Survey No. 336/1A1 (75 acres in total) of Aletti village of Sullia Taluk, Dakshnia Kannada district. The original order of lease grant was made in the favour of one Sri. M. Shankara Narayana Kadambalithaya in the year 1949 by the then government of Madras for a period of 50 years vide order of grant dated 24th March, 1949, issued by the District Forest Officer, Mangalore. The land was granted for the purpose of raising areca nut plantation. The lessee was permitted to grow pepper and other fruit bearing trees as subsidiary crops on the land. Thereafter, on the death of the original lessee, his legal representatives, after obtaining permission from the State Government, alienated the lease hold rights in favour of the appellant. The lease in regard to a portion of the land was to expire on 31st March, 1999 and in regard to remaining portion in the year 2000.

3. The appellant submitted an application dated 4th June, 1996 for renewal of the lease. It appears that no action was taken on the application for renewal. Consequently, apprehending eviction, immediately after the lease period, the appellant alongwith two others filed a writ petition No. 9570-9572 of 1999 in the High Court of Karnataka at Bangalore. In the aforesaid writ petition, the appellant had prayed for the issuance of writ of mandamus directing the respondents to consider the applications for renewal of the lease deed of the land in question. The High Court vide its order dated 25th March, 1999 disposed of the writ petition with a direction to the respondents therein to consider the application for the renewal

of the lease in accordance with law and dispose of the same within two months of the date of receipt of the copy of the order.

4. The appellant thereafter made another representation to respondent No. 2 seeking renewal of the lease. However by order dated 25th March, 2000, the State Government cancelled the lease deed and directed the appellant to hand over the possession of the lease hold land back to the forest department to the extent of 48 acres out of 75 acres immediately and the remaining 27 acres by 31st December, 2001. The reasons given by the State Government in its order dated 25th March, 2000 for rejecting the claim of the appellant were as under:-

"The leasehold land is surrounded by thick forest in East Aletty Reserved Forest Land; this area is near to the boundary of Kerala and Karnataka State. In the event of extending the period of Lease in respect of this area, it is likely that there may be problem for movement of men and vehicles and in order to protect the interest of Forest, it is not felt advisable to lease the extent of 48 acres of Forest land, as the lessees have already raised Areca, Coconut and Cashew trees on the leasehold lands and those trees have fully developed and in the event of extending the Lease period, it is likely that the lessees would commence fresh cultivation on the land in question. It is proposed to take possession of the land in respect of which Lease period is completed and thereafter after doing forestry work on this land and on the land naturally grown trees are allowed to be protected fully and the Reserved Forest could be taken possession and could be maintained as a Reserved forest land only. As the renewal of the Lease or the extension of Lease period would involve obtaining prior sanction of the Central Government and therefore there is no room for granting the forest land for the purpose of forest activities within the Reserved Forest Area. As the period of Lease transferred in favour of Shri K Balakrishnan Nambiar, out of the total extent of 75 acres, Lease period comes to an end in respect of an extent of 48 acres on 31.3.1999, it is felt desirable that there is no justification to extend the Lease period in respect of the Leasehold land and that the Department should take back the possession of the land from the Lessee and in respect of the remaining extent of 27 acres the Lease period expires on 31.12.2001 and thereafter without extending that lease also after the lease period is over, the possession of that land also should be taken back to the department.

After examining these proceedings the Government has passed the following order:-

ORDER OF GOVERNMENT; FG 17 FLL 97, Bangalore, Dated : 25.3.2000. Having regard to the background and reasons explained above, it is hereby ordered that out of the extent of 75 acres of Leasehold land transferred in favour of Sri Balakrishnan Nambiar in the land in S.No.336/1A6 of Aletty Reserved forest land; an extent of 48 acres of Leased land is ordered to be forthwith taken possession of by the Forest Department. It is also hereby ordered that the remaining extent of 27 acres in respect of which lease period comes to an end on 31.12.2001 and thereafter the Lease period should not be extended and the possession of that land also should be taken over by the Forest Department. By order and in the name of the Governor of Karnataka, Sd/-

xx K Krishnamurthy, Under Secretary to Government, Forest & Environment Department."

5. Aggrieved by the aforesaid order, the appellant again moved the High Court of Karnataka at Bangalore in writ petition No. 17766 of 2000. The learned Single Judge dismissed the Writ Petition by order dated 9th April, 2003. The Writ Appeal No. 3530 of 2003 filed by the appellant as against the judgment of the learned Single Judge was also dismissed by order dated 3rd September, 2003. The Division Bench of the High Court held that the issue is concluded by this Court in the case of *T.N. Godavarman Thirumulkpad Vs. Union of India*¹ wherein it has been held that no forest area shall be used for nonforestal activities. The Division

Bench judgment is under challenge before us in the present appeal.

6. We have heard the learned counsel for parties at length.

7. Mr. K.V. Vishwanathan, learned senior counsel appearing for the appellant submits that the High Court has dismissed the matter on erroneous interpretation of the judgment of this Court in *T.N. Godavarman's* case (supra). He then submits that aforesaid judgment of this Court was with regard to 'nonforestal' activities in the 'reserved forest' area. He further submits that plantation of arecanut trees, cashew trees, coconut trees and black pepper vines do not amount to nonforestal activities. He further relies on the reports of the Assistant Conservator of Forest with regard to the adjoining lands, which were similarly leased, to indicate that the lands have lost all the character of forest land and in fact the status of the lands according to the said report had ceased to be 'reserved forest'. Therefore, judgment in the *Godavarman's* case (supra) would not be applicable in the instant matter. He thereafter submits that the appellant has not violated the conditions of grant and his activities on the land do not include breaking up or clearing of any forest land or portion thereto. He then submits that the appellant has incurred huge investments to raise valuable arecanut trees for a number of years. Therefore, it would cause grave injustice to him if the lease period is not renewed. He also submits that appellant has no other source of income. The learned counsel further draws our attention to the letter dated 19th February, 1994 where the Chief Conservator of Forest, Bangalore, has recommended to the State Government for confirming the lease grant on permanent basis.

8. On the other hand, Mr. Anand Sanjay M. Nuli, learned counsel for the State, submits that the lease land is a part of the statutorily declared reserved forest, having been declared as such by Order No. 318 dated 9th February, 1907. This was published in Notification of Board of Revenue (Land Revenue) Forest No. 32 dated 22nd February, 1907, which had declared the land under lease as reserved forest with effect from 1st May 1907 under the Madras Forest Act, 1882. Since then, it has continued to be the reserved forest land. The grant of lease in favour of the predecessors of the appellant did not have the effect of dereservation. At the expiry of the lease, the land was expected to be surrendered to the State as forest land. He further submits that after the enactment of the Forest Conservation Act, 1980, no forest land can be dereserved without prior approval of the Central Government. Under no circumstances, forest land can be permitted to be used for nonforestal activities.

Learned counsel submitted that the High Court was bound to dismiss the writ petition as the matter was squarely covered by the judgment of this Court in T.N Godavarman's case (supra). In order to ensure the effective implementation of the Forest Conservation Act, 1980, the State Government has taken a policy decision not to continue the lease of any forest land. The policy of the State, according to the learned counsel, is in conformity with National Forest Policy, 1988, which has been formulated to maintain the environmental stability and to preserve the ecological balance. The learned counsel submits that the State Government has rejected the claim of the appellant, after taking due notice of the legal position as well as any hardship that may be caused to him.

9. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment of this Court in Godavarman's case (supra), it is not necessary to dilate upon the matter at length, since all the issues raised by Mr. Vishwanathan have been elaborately considered and decided in the aforesaid judgment. We are unable to accept the submission of Mr. Vishwanathan that arecanut cultivation cannot be treated as a non-forestral activity, merely because it does not involve any cutting of the trees. On the other hand, the Government has given cogent and valid reasons for non-renewal of the lease. The order passed by the Government makes it clear that the leasehold land is surrounded by thick forest in East Aletty Reserved Forest land; this area is near to the boundary of Kerala and Karnataka State. It notices that extending the period of lease in respect of this area is likely to cause problems for the movement of men and vehicles. It is also noticed that lessees have already raised Areca, Coconut and Cashew trees on the leasehold lands and those trees are fully developed. Therefore, in the event of extending the lease period, it is likely that the lessee would commence fresh cultivation on the land in question. The intention of the Government is to develop naturally grown forests over the lands. This can only be done if the possession is taken by the Government. Addressing the similar issues, this Court in Godavarman's case (supra) has observed as follows:-

"The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*, *Rural Litigation and Entitlement Kendra v. State of U.P.* and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development*

Authority). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

10. After making these observations, a specific direction has been issued, to all the State Governments, to ensure that all ongoing non- forest activity within any forest, without the prior approval of the Central Government, must cease forthwith. It was emphasized that every State Government must ensure total cessation of all nonforestal activities forthwith. Mr. Vishwanathan had also submitted that since the lease has been granted prior to the operation of the 1980 Act and the land has been declared as dereserved at the time of the grant of the lease, the lease can not be automatically cancelled upon promulgation of the 1980 Act. In our opinion, the aforesaid submission of the learned counsel is also no longer res integra as it has been answered in the case of *Nature Lovers Movement Vs. State of Kerala & Ors*².

11. Upon consideration of the earlier cases pertaining to the conservation of forests in India, this Court culled out certain principles. We may, however, notice only the observations made in Paragraphs 47 and 48, which are as under:-

"47. The ratio of the above noted judgments is that the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after 25-10-1980 i.e. the date of enforcement of the 1980 Act, no State Government or other authority can pass an order or give a direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organisation which is not owned, managed or controlled by the Government.

48. Another principle which emerges from these judgments is that even if any forest land or any portion thereof has been used for non-forest purpose, like undertaking of mining activity for a particular length of time, prior to the enforcement of the 1980 Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25-10-1980 without obtaining prior approval of the Central Government."

12. In view of the aforesaid observations, we are of the considered opinion that there is no merit in the appeal. The appeal is accordingly dismissed with no order as to costs.

Civil Appeal No. 4995 of 2004, Civil Appeal No. 4996 of 2004 and Civil Appeal No.3973 of 2011 (Arising out of SLP (C) No. 26371 of 2008)

13. Leave granted in Civil Appeal No. 3973 of 2011 (Arising out of SLP (C) No.26371 of 2008).

14. In view of the judgment passed in Civil Appeal No. 4994 of 2004, these appeals are also dismissed with no order as to costs.

¹*AIR (1997) SC 1228*

²*(2009) 5 SCC 0373*