

**HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR**

WRIT PETITION NO.14965 OF 2016

Samlu Gond

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.18136 OF 2016

Bhaddu Gond

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.18137 OF 2016

Bhal Singh Gond

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.18138 OF 2016

Tilak Singh Gond

Vs.

State of Madhya Pradesh & others

WRIT PETITION NO.18139 OF 2016

Bansa Gond

Vs.

State of Madhya Pradesh & others

Present :-

Shri Vipin Yadav, Advocate for the petitioners.

Shri G.P. Singh, Government Advocate for the respondents/State.

ORDER

(Passed on this the 07th day of November, 2017)

The order passed in W.P. No.14965/2016 shall also govern the disposal of W.P. Nos.18136/2016, 18137/2016, 18138/2016 and 18139/2016.

2. This petition has been filed under Article 226 of the Constitution of India against the order dated 5.8.2016 passed by the respondent No.2/Collector, Seoni whereby the respondent No.2 in exercise of powers under Section 9(2) of the Madhya Pradesh Adim Jan Jatiyon Ka Sanrakshan (Vrakshon Mein Hit) Adhiniyam, 1999 (hereinafter referred to as '**the Adhiniyam of 1999**') has confiscated the entire teak wood.

3. The petitioner's contention is that the invocation of the provisions of the aforesaid Act is without jurisdiction for the reason that the petitioner is the member of the scheduled tribe only and despite the fact that the aforesaid Act has been framed to safeguard the interests of the members of the scheduled tribe community.

4. In brief the facts of the case are that the petitioner owns a land bearing survey no.6/2 ad-measuring 1.96 hectare, Patwari Halka No.12 at Dhuma Tehsil Lakhnadon, District Seoni. The

petitioner had chopped off 30 teak wood trees from his land without taking any permission from the competent authority, which led to preparation of a report by the Tehsildar, Lakhnadaun on 30.1.2012. After preparation of the aforesaid report, the Tehsildar has placed the same before the Sub Divisional Officer (Revenue) Lakhnadon, who vide his order dated 9.9.2015 has held that the petitioner has wrongfully fallen 30 teak wood trees hence a fine of Rs.50,000/- has been imposed under Section 253 of the M.P. Land Revenue Code, 1959 (in short '**the Code of 1959**') and has further directed to confiscate Rs.50,000/- from the value of the teak wood. Subsequently, as submitted by the counsel for the petitioner, on 23.4.2016 a show cause notice was issued to the petitioner by the office of the Collector, Seoni. On 5.8.2016 in exercise of his suo-moto powers under Section 9(2) of the Adhiniyam of 1999 the Collector has passed the order dated 5.8.2016 (Annexure P/3) whereby the entire teak wood of the petitioner has been directed to be confiscated.

5. The petitioner's contention is that the provisions of the aforesaid Adhiniyam of 1999 cannot be made applicable against the petitioner who happens to be a member of the Scheduled Tribe community and had cut the trees legally and the provisions of Section 9 of the Adhiniyam can only be invoked when the members of other community i.e. except Scheduled Tribe enters into the land of Scheduled Tribe community and cut the trees illegally. Apart from that, it is further submitted that the suo-moto initiation of revisional power in respect of order

dated 9.9.2015 passed by the Sub Divisional Officer after a lapse of 7 months cannot be exercised especially when against the order passed by the Sub Divisional Officer, an appeal is also provided and in such circumstances, the provisions of Section 50(4) (a) & (c) of the Code of 1959 shall be attracted and hence the Collector has clearly acted without jurisdiction.

6. It is further submitted by the petitioner that the violation of Section 240 of the Code of 1959 cannot be levelled against the petitioner as he has cut the trees from his own land without any permission, hence the power of confiscation is also not available to the authority as the confiscation can only take place when the trees have been cut from the Government land.

7. In their return, the respondents' contentions are that the Collector has rightly taken decision by invoking suo-moto revisional power. It is further submitted that the Sub Divisional Officer has taken the cognizance of the incident and has imposed the fine upon the petitioner and the Collector in his suo-moto revisional power after taking note of Section 241(4) of the Code as also Section 9 of the Adhinyam of 1999 has passed the order since the Sub Divisional Officer has not gone through the provisions of the aforesaid Sections, hence the Collector had to invoke his suo-moto revisional jurisdiction and was required to pass order under Section 9 of the Adhinyam of 1999.

8. Heard learned counsel for the parties and perused the record.

9. In the present case, the facts of the case are admitted.

The petitioner belongs to a scheduled tribe community and that he was responsible for cutting of the trees from his own land. The only question is whether the provisions of Section 9 of the Adhiniyam of 1999 can be invoked in such situation and whether the Collector has rightly exercised the suo-moto revisional power vested in him under Section 240 of the Code of 1959. For the purpose of properly appreciating the matter, the relevant Sections of the aforesaid Adhiniyam of 1999 read as under :

“3. Protection of Interest of Bhumiswami belonging to Aboriginal Tribes in specified trees on his holding. (1) No trees of the specified species, standing on the holding of a Bhumiswami belonging to an Aboriginal Tribe shall be cut girdled or pruned except as provided for hereinafter.

(2) xxx xxx xxx

4. Permission to cut the specified trees. - (1) Any Bhumiswami belonging to an Aboriginal Tribe, who intends to cut any specified tree standing on his holding shall apply for permission to the Collector, in the prescribed form, giving full and complete reasons thereof, in such manner as may be prescribed.

(2) The Collector shall have the application enquired into in accordance with such rules as may be prescribed and shall not grant or reject the application without considering the report from Tehsildar, the Sub-Divisional Officer (Revenue) and the Divisional Forest Officer having territorial jurisdiction:

Provided that no such permission shall be granted in a case where a period of five years has not elapsed after the date of acquisition of title in the land in any manner, except by succession.

Explanation. - The date of acquisition of title shall be the date of certification of mutation under the Code.

(3) The permission to cut the trees in a year shall be restricted only to such number of specified trees as may fetch the Bhumiswami such amount of money, not exceeding rupees fifty thousand in a year as is considered by the Collector to be adequate to meet the purpose specified in the application :

Provided that under special circumstances, the Collector may after due consideration, grant permission in a year for a value not exceeding rupees two lakh or the value of one tree, whichever is higher.

8. Appeal, Revision, Review : - The provisions of Appeal, Revision and Review as in the Code shall also apply to any order passed by the Collector under this Act.

9. Punishment for contravention . - (1) Any person who cuts, girdles, prunes or otherwise damages any specified trees standing on the holding belonging to the Aboriginal Tribes or removes any part thereof, in contravention of the provisions of this Act or the rules made thereunder, shall on conviction be liable to rigorous imprisonment which may extend to three years and fine which may extend to ten thousand rupees.

(2) Wood of any specified trees constituting the basis of action under sub-section (1) shall be seized and stand forfeited to the State.

Provided that if conspiracy, fraud and deception is played on the Bumiswami, the sale proceeds of the wood, so forfeited shall be given to the extent of fifty per cent to Bhumiswami subject to a maximum limit of Rupees Fifty Thousand under the order of Collector, after disposal of the criminal case.

(3) xxx xxx xxx

10. Offences to be cognizable. - All offences under Section 9 shall be cognizable.”

10. So far as the contention of the learned counsel for the petitioner that the petitioner belongs to a scheduled tribe community hence the provisions of the aforesaid Adhiniyam of 1999 cannot be invoked by the authorities is concerned, the same is not tenable in the light of the aforesaid provisions of the Adhiniyam of 1999. Section 4 of the same clearly provides that any Bhumiswami belonging to an Aboriginal Tribe, who intends to cut any specified tree standing on his holding shall apply for permission to the Collector, in the prescribed form, giving full and complete reasons thereof, in such manner as may be prescribed. Thus only on the basis of the language used in Section 9, to say that the provisions of this Adhiniyam of 1999 are not applicable to the Bhumiswami who belongs to an Aboriginal Tribe/Scheduled Tribe cannot be accepted. The Adhiniyam of 1999 not only protects the persons of Aboriginal Tribe but protect the trees as well and merely if a person belongs to an Aboriginal Tribe would not entitle him to cut the trees standing on his land on his own will as the trees are the Government property and apparently the aforesaid Adhiniyam of 1999 has been enacted with a view to strike a balance between the interest of the aboriginal tribe vis.a.vis. the trees standing on his holding.

11. Coming to the question of invocation of suo-moto revisional powers under Section 50 of the Code of 1959, Section

50(1) reads as under :

.”50. Revision. - (1) the Board may, at any time on its motion or on an application made by any party or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may, at any time on his own motion, all for the record of any case which has been decided or proceedings is which an order has been passed by any Revenue Officer subordinate to it or him and in which no appeal lies thereto, and if it appears that such subordinate Revenue Office, -

- (a) has exercised a jurisdiction not vested in him by this code, or
- (b) has failed to exercise a jurisdiction so vested, or
- (c) has acted in the exercise of his jurisdiction illegally or with material irregularity,

the Board or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer, as the case may be, make such order in the case as it or he thinks fit:

Provided that the Board of the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officers shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of the proceeding, except where-

- (a) the order, if it had been made in favour of the party applying for revision to the Board, would have finally disposed of the proceeding, or
- (b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.”

12. A bare perusal of the aforesaid section reveals that this power of revision is indeed available to the Collector but in the

considered opinion of this Court the aforesaid Section is not at all applicable in the present case. It is true that the Collector, in the title of his order dated 5.8.2016 has mentioned that it is suo-moto revision but the fact of the matter is that under the Adhiniyam of 1999 it is only the Collector or the Additional Collector who can pass the final order in respect of the trees which are standing on a land of an aboriginal tribe and have been cut.

13. As already mentioned above, the permission to allow a person to cut the trees vests only with the Collector and as per the scheme of the Act, under Section 2(c) the "Collector" means the Collector of the District concerned and includes an Additional Collector of such district who is specially empowered by the State Government by notification to exercise and perform the powers and functions of the Collector under this Act.

14. A perusal of the record reveals that initially an enquiry was conducted by the Naib Tehsildar only who had conducted the enquiry at the instance of the Additional Collector, Seoni. After the enquiry was completed, vide his order dated 25.2.2012 certain directions were issued by the Additional Collector, thereafter the matter was again remanded back to Sub Divisional Officer for its compliance but the Sub Divisional Officer vide his order dated 9.9.2015 has passed the final order which, in the considered opinion of this Court, he had no jurisdiction to pass because as per provisions of the Adhiniyam of 1999 only the Collector or the Additional Collector are

empowered to pass order under the provisions of the Adhiniyam of 1999. Thus in the considered opinion of this Court, the Additional Collector could not have relegated the powers vested in the Collector or to the Additional Collector himself to the Sub Divisional Officer. In the circumstances, initially when the original order itself was passed without jurisdiction by the Sub Divisional Officer hence the Collector had wrongly exercised its suo-moto jurisdiction under Section 50 of the Code and if at all the Collector wanted to exercise his jurisdiction then, he should have held that the order passed by the Sub Divisional Officer is without jurisdiction instead of deciding the matter on merits.

15. Thus, in the considered opinion of this Court, the impugned order dated 5.8.2016 is liable to be quashed though for different reasons as this Court does not find the grounds raised by the learned counsel for the petitioner to be valid grounds but on a close scrutiny of the provisions of the Adhiniyam of 1999 and the Code of 1959 this Court finds that the order passed by the Sub Divisional Officer under the provisions of Adhiniyam of 1999 was wholly without jurisdiction and subsequent revision of the same by the Collector exercising his suo-moto jurisdiction is also untenable and without authority of law.

16. In the result, the writ petition is allowed and the impugned order dated 5.8.2016 is hereby quashed. However, the respondents are at liberty to proceed against the petitioner in accordance with law as provided under the provisions of the

Adhinyam of 1999.

(Subodh Abhyankar)
Judge
07/11/2017

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