

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
ON THE 21st OF MARCH, 2022

WRIT PETITION NO. 462 OF 2019

Between:-

**SUNUPDAS S/O LATE HIRADAS, AGED
ABOUT 23 YEARS, OCCUPATION: FARMER,
R/O AAM GAHAN, TAHSIL BAIHAR
DISTRICT BALAGHAT (M.P.)**

....PETITIONER

(BY SHRI VIPIN YADAV - ADVOCATE)

AND

- 1. STATE OF M.P. THROUGH SECRETARY,
DEPARTMENT OF REVENUE, VALLABH
BHAWAN, BHOPAL (M.P.)**
- 2. COLLECTOR, BALAGHAT**
- 3. DIVISIONAL FOREST OFFICER,
UTHPADAN VAN MANDAL, MANDLA
DISTRICT MANDLA**

....RESPONDENTS

(SHRI ANKIT AGRAWAL – GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the Court passed the following:

ORDER

1. The petitioner in the instant writ petition has sought for the relief to set aside the order dated 20.07.2016 (Annexure-P-4) and order dated 07.06.2018 (Annexure-P-5) passed by the Collector Balaghat and Commissioner, Jabalpur, respectively.

2. The facts of the case are that the petitioner is a Bhumiswami of land Khasara No.25/1, area 5.40 acre, situated at Gram Aamgahan, PHN No.56, RNM Gadhi, Tehsil Baihar District Balaghat. It is an admitted fact that the petitioner belongs to aboriginal Tribes as defined under Section 2 (a) of the Madhya Pradesh Admin Jan Jatiyon Ka Sanrakshan (Vrakshon Me Hit) Adhiniyam, 1999 (hereinafter, referred to "*the Act of 1999*"). The petitioner cut 84 trees from his own land without any permission from any authority. On 10.03.2014, the Sub Divisional Officer has found that there was violation of Section 241 of Madhya Pradesh Land Revenue Code, 1959 (In short "MPLRC") and, therefore, in exercise of powers under Section 253 of the MPLRC, he imposed penalty of Rs.20,000/- against the petitioner. The Sub Divisional Officer has further directed that once the fine amount is deposited, the Forest Department would auction the entire wood of 84 trees and the amount received in such an auction would be returned to the Bhumiswami. Since the said exercise was not conducted despite the penalty amount deposited by the petitioner, he had approached in writ petition No.22347 of 2015, which was disposed of vide order dated 31.01.2016 directing the competent authority to decide the representation of the petitioner within a period of six weeks from the date of receipt of the copy of the order. In pursuance to the aforesaid order passed by this Court,

the Collector on 20.07.2016, has directed that the entire wood of 84 trees stands confiscated as the trees were cut without permission from the competent authority. The petitioner approached the Divisional Commissioner against the order passed by the Collector, who has also affirmed the order passed by the Collector hence, the petitioner is in the instant writ petition.

3. Learned counsel appearing for the petitioner has submitted that the entire action of the respondents authorities is against the provisions of law. He submits that with an object to protect his rights and the trees standing on their holdings and to save them from exploitation, the State legislature has framed the Act of 1999. He submits that no order of confiscation can be passed by the Collector under sub Section 2 of Section 9 of Act of 1999 unless the action under sub-Section 1 of Section 9 is taken. According to him, even if the provisions of MPLRC are made applicable, in that case also, the Collector has no authority to confiscate the wood in view of sub-Section 4 of Section 241 of the MPLRC as the power of confiscation lies with the Sub Divisional Officer. He further submits that even the powers under Section 253 of the MPLRC could only be invoked when trees in question are on the Government land. Since in the instant case, it is not in dispute that the trees were standing on the land belonging to the petitioner , there was no justification in invoking the powers under the provisions of MPLRC.

4. Learned Government Advocate opposes the prayer and he submits that the petitioner has admittedly violated the provisions of Section 4 of the Act of 1999 and without any permission from the competent authority, he

has cut the trees. He further submits that the power under sub-Section 2 of Section 9 of the Act of 1999 can be invoked in absence of any punishment for contravention. Since in the instant case, violation is admitted, therefore, no fault can be found with the order passed by the Collector and the Commissioner, therefore, he prays for dismissal of the petition.

5. I have heard the learned counsel appearing for the parties.

6. Section 4 of the Act of 1999 prescribes 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. Sub Section 2 of Section 4 prescribes that 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. It is further 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.

7. It is seen that the tree in question is a "Sal" which is mentioned at serial No.4 in the list of specified trees species in the Schedule appended to the Act of 1999, as per Section 2 (e) of the Act, therefore, without permission of Collector, the trees could not have been cut. It is also seen from the Scheme of Section 9 of the Act of 1999, that 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. Sub Section 2 of Section 9 of the Act of 1999 postulates that the wood of any specified trees constituting the basis of action under sub-Section (1) shall be seized and stand forfeited to the State. The proviso to sub-Section 2 of Section 9 provides that after the disposal of the criminal case, the Collector by his order shall give to the extent of 50% of the sale proceeds of the wood, so forfeited to Bhumiswami subject to limit of Rs.50,000/-, if he finds any conspiracy, fraud and deception is played by the Bhumiswami .

8. To understand the object of the State to enact an Act of 1999, it would be appropriate to consider the Statement and Object and reasons of the Bill produced on the floor of legislative assembly. The same reads as under:-

“उद्देश्यों और कारणों का कथन

मध्यप्रदेश भू-राजस्व संहिता, 1959 के, दिनांक 01.11.59 को प्रवृत्त होने से, मध्यप्रदेश आदिम जनजातियों का संरक्षण (वृक्षों में हित) अधिनियम, 1956 के कुछ उपबंध असंगत हो गए हैं, इसके अतिरिक्त, इमारती लकड़ी की कीमतों में अत्यधिक वृद्धि हो जाने से, आदिम जनजातियों के, उनके खातों पर खड़े इमारती लकड़ी के वृक्षों के संबंध में, उनके शोषण के मामले निरन्तर बढ़ रहे हैं, इससे उनसे लगे हुए शासकीय वनों में अवैध कटाई को और प्रोत्साहन मिला है, अतः विद्यमान विधि का पुनर्विलोकन करने और ऐसे उपबंध करने की आवश्यकता समझी गई जो कि आदिम जनजातियों को शोषण से बचा सकें और इसके अतिरिक्त उनकी वास्तविक आवश्यकताओं को पूरा करने के लिए वृक्षों को काटने की अनुज्ञा दिलाने की प्रक्रिया को सरलीकृत कर सकें.

तदनुसार, यह प्रस्तावित है कि विद्यमान विधि के स्थान पर नई विधि अधिनियमित की जाए. प्रस्तावित विधि की मुख्य विशेषताएं निम्नानुसार हैं :-

(1) इसमें वृक्षों को काटे जाने की अनुज्ञा अभिप्राप्त करने की प्रक्रिया को सरलीकृत किया गया है और इस प्रक्रिया को पूरा करने के लिए समयावधि विहित की गई है.

(2) इसमें ऐसे मामलों में कार्यवाही किए जाने हेतु अधिकारियों द्वारा अनुसरण की जाने वाली निश्चित प्रक्रिया विहित की गई है ताकि उनकी रिपोर्ट (सूचना) देने में व्यक्ति परकता को समाप्त किया जा सके.

(3) इसमें ऐसे व्यक्तियों के लिए भयपरतिकारी दण्ड का उपबन्ध किया गया है जो विधि और प्रक्रिया का इस प्रकार अतिक्रमण करना चाहते हैं जिसके परिणामस्वरूप आदिम जनजातियों का शोषण हो सके.

2. अतः यह विधेयक प्रस्तुत है."

9. The English translation of the aforesaid is as under:-

"Statement of objectives and reasons

Some of the provisions of Madhya Pradesh Adim Janjatiyon Ka Sanrakshan (Vrikshon Me Hit) Adhinyam, 1956 has become inconsistent from 01/11/59, the date of enforcement of Madhya Pradesh Land Revenue Code, 1959, moreover, due to excessive increase in the prices of Timber, cases of exploitation of aboriginal tribes in respect of the trees of timbers grown on their land holdings are continuously increasing, on account of this illegal cutting of Government Forests adjacent with it has been encouraged, therefore, to review the existing Law and making of such provisions are required which could save aboriginal tribes from the exploitation and simplify the procedure to obtain

permission for cutting the trees to fulfill their actual needs as well. Accordingly, it is proposed that new Law be enacted in the place of existing law. Main features of the proposed Law are as under :-

(i) The procedure to obtain permission to cut trees has been simplified in it and a limitation period has been prescribed to complete this procedure.

(ii) A certain procedure has been prescribed in it to be followed by the Officers in order to take action in such cases, so that individuality may be ended in submission of report (information) by them.

(iii) The provisions of deterrent punishment has been made by it for such persons who wish to encroach the above Law and procedure, in consequence of which they may exploit aboriginal tribes.

2. Hence, this bill is hereby submitted.”

10. From the perusal of the statement, object and reasons, it is apparent that the mischief of exploitation of aboriginal tribes is sought to be remedied by the State legislature. The procedure to obtain the permission to cut the trees has been simplified and provisions of deterrent punishment has been made for such persons who wish to contravene the law and procedure resulting in exploitation of aboriginal tribes. At the same time, sufficient amount is received by the aboriginal tribes so as to meet the requirement out of the sale proceeds of the trees which are standing belonging to his or her Bhumiswami rights.

11. Under Section 6 of the Act of 1999, the amount of consideration payable to Bhoomiswami shall be deposited in any Branch of nationalized

Bank or the Central Co-operative Bank of the District in the joint account of the Collector and the Bhumiswami to be operated jointly by both of them. Sub-Section 2 of Section 6 of the Act of 1999 provides Collector shall exercise utmost caution and care in withdrawals from the joint account ensuring that the same is done in the best interest of the Bhumiswami and for the sole purpose of meeting his *bonafide* and genuine requirement.

12. Taking into consideration the aforesaid Scheme of the Act and also the reasons sought to be achieved by the Act of 1999, it cannot be said that aboriginal tribe who cuts the trees from his Bhumiswami rights can be prosecuted under such Section 1 of the Act of 1999. Even the proviso 2 of Section 9 of the Act of 1999 also ensures that even in case of specified trees constituting the basis of action under Section (1) to Bhumiswami would be entitled for the sale proceeds of the wood to the extent of 50% subject to maximum limit of Rs.50,000/- under the order of Collector, after disposal of the criminal case. While interpreting the provisions of law, the Court should adopt an object oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits.

13. The order passed in the present case dated 10.03.2014 by the Sub-Divisional Officer, wherein, a penalty of Rs.20,000/- has been imposed against the petitioner and the trees were directed to be auctioned by the Forest Department with the further direction to the Department to handover the amount of sale proceeds to the petitioner is in accordance with the Scheme of the Act of 1999. The same is found to be strictly in

accordance of law. The order of Sub-Divisional Officer fulfills the basic object of the Act of 2019. The Collector vide order dated 20.07.2016, has directed for confiscation of the trees without considering the fact that the same were belonging to the petitioner. His action is found to be against the mandate of law. Accordingly the same is set aside. The order passed by the Commissioner dated 07.06.2018 (Annexure-P-5) is also set aside.

14. Accordingly, the petition stands allowed. The order dated 10.03.2014 passed by the Sub-Divisional Officer Baihar District Balaghat be implemented within a period of three months from today strictly in accordance with the mandate of the Act of 1999.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

pb.