



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE NINALA JAYASURYA**

WRIT APPEAL No.390 of 2023

The State of Andhra Pradesh, represented by its Principal Secretary,
Forest Department, Secretariat, Velagapudi, Guntur District, and others

... Appellants

Versus

Mallavarapu Kesava Raya Sarma, S/o. late Atchyuta Rao, aged 71
years, Occ: Agriculture, R/o.D.No.23A-6-62, Shankermetam Street, R.R.
Peta, Eluru Town, West Godavari District, and others

... Respondents

JUDGMENT (ORAL)

Dt:13.04.2023

(Prashant Kumar Mishra, CJ)

The Department of Forests, Government of Andhra Pradesh, is in appeal under clause 15 of the Letters Patent, challenging the order dated 28.09.2022 passed by the learned single Judge in W.P.No.24405 of 2020, disposing of the writ petition directing the respondents to look into the matter afresh by conducting enquiry with the support and cooperation of the revenue officials.

2. Writ petitioners approached this Court under Article 226 of the Constitution of India, seeking implementation of order Rc.No.935/72.B., dated 28.03.1974, of the Forest Settlement Officer, Nellore, to eliminate a portion of land from Somavaram Forest Block comprising



1132 acres in Tiruvuru taluk of Krishna District. This order was passed under Section 10 of the Andhra Pradesh Forest Act, 1967 (for short, "the 1967 Act"), observing that the area was notified under Section 4 of the 1967 Act in G.O.Ms.No.1489, F&A (Forests.III) Department dated 13.08.1969 published in A.P. Gazette dated 04.09.1969. Although no-objection was received pursuant to the proclamation under Section 6 of the 1967 Act, however, in course of enquiry conducted on 08.11.1973, the *karnam* of Somavaram deposed that portion of S.No.558 of Somavaram included in the proposed block is patta land registered in the name of the writ petitioners and it is to be excluded from the block. The District Forest Officer, Khammam, who was present at the enquiry agreed to examine this issue in detail and send a report, which was not submitted before the Forest Settlement Officer, Nellore. Thereafter, the said officer directed that it is a matter of recorded proof that S.No.558 of Somavaram Block is patta land which is included in the Forest Block without there being any justification as to how patta land can be included in the Forest Block. It was specifically observed that the fact that S.No.558 is patta land is too obvious on record; therefore, the same has to be eliminated from the block. Since this order remained unimplemented, writ petition was preferred, which has been disposed of by the learned single Judge directing the respondents therein to look into the matter afresh by



conducting enquiry with the support and cooperation of the revenue officials also in order to classify the subject land for a clear demarcation of forest land, patta land and any other nature of the land by conducting necessary enquiry and hearing the parties concerned including the petitioners therein. It was further directed that pursuant to the proceedings of the Forest Settlement Officer dated 28.03.1974, a joint inspection shall be made by the Forest and Revenue officials with respect to the subject land situated in Somavaram block of 1132 acres in Tiruvuru taluk of Krishna District including S.No.558. While observing that the character and the nature of the land in S.No.558 has to be determined and if it is a patta land (not being the forest land) it shall be excluded from the Somavaram block for the purpose of preparation of the draft notification under Section 15 of the Act, it was directed that the whole exercise shall be completed within a period of four months therefrom.

3. We have heard the learned Government Pleader for Forests and perused the material on record.

4. The material papers of the appeal include Office Note Rc.No.2474/1995-V6, from the office of the Divisional Forest Officer, Krishna Division, Vijayawada, seeking to implement the award passed by the Forest Settlement Officer, Nellore in Rc.No.935/72 B dated



28.03.1974 and submit draft notification proposal under Section 15 of the 1967 Act as well as proposal under Section 2 of the Forest Conservation Act, 1980 immediately. It is also reflected from the said note that the Chief Conservator of Forests, Rajahmundry Circle, Rajahmundry and Forest Settlement Officer, Vijayawada have been reminding the Divisional Forest Officer, Krishna Division, Vijayawada, to submit draft notification proposal under Section of the 1967 Act, which is not submitted by the Forest Range Officer, Nuzvid. Same note was again sent to the Forest Range Officer, Nuzvid on 15.12.2017 vide office note Rc.No.2474/1995-V6.

5. From the above, it is apparent that the Forest Department was, itself, seeking to implement the award of the Forest Settlement Officer, Nellore, dated 28.03.1974 and this award has never been challenged by the Forest Department in any proceedings after 1974. It is strange, when the Department was seeking to implement the award dated 28.03.1974, how an appeal can be preferred against the order passed by the learned single Judge, directing to conduct enquiry in order to classify the subject land for a clear demarcation of forest land, patta land, after hearing the parties and conduct joint inspection and if the land is found to be patta land, it shall be excluded from the Somavaram Block for the purpose of preparation of draft notification under Section 15 of the 1967 Act.



6. Insofar as the contention of the appellants about delay and laches, it is a matter to be borne that the when Department is seeking to implement the award dated 28.03.1974 by issuing communications/office notes in the years 2013 and 2017, the writ petitioners must be under hope that the communications issued by the superior officer, i.e. Divisional Forest Officer, Krishna Division would be implemented by the Forest Range Officer, Nuzvid. However, when the same was not paid attention, writ petition has been preferred, which cannot be said to be suffering from delay and laches. In any case, learned single Judge had directed for a fresh enquiry.

7. The appeal, bereft of substance, fails and is, accordingly, dismissed. Needless to say that the procedure prescribed to be followed before issuance of final notification under Section 15 of the 1967 Act, would have to be necessarily followed by the authority concerned.

No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

Sd/-
PRASHANT KUMAR MISHRA, CJ
MRR

Sd/-
NINALA JAYASURYA, J