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Neutral Citation No. - 2024:AHC-LKO:22337

AFR/Reserved

Court No. - 4

Case :- SECOND APPEAL No. - 756 of 1982
Appellant :- Divisional Forest Officer North Kheri
Respondent :- Surjan Singh And Others
Counsel for Appellant :- C.S.C.
Counsel for Respondent :- Sajid Raza Rizvi,Satendra Nath Rai

Hon'ble Rajnish Kumar,J.

1. Heard Sri Vimal Srivastava, learned Additional Advocate General assisted by Sri S.K. Khare, learned Standing Counsel for the appellant and Sri Satendra Nath Rai, learned counsel for the respondents.

2. This second appeal, under Section 100 of Civil Procedure Code(hereinafter referred to as CPC), has been filed against the judgment and decree dated 16.04.1982 passed by the 1st Additional District Judge Kheri in Civil Appeal No.152/1980, by means of which the appeal has been dismissed upholding the judgment and decree dated 09.09.1980 passed by the VIth Additional Munsif, Lakhimpur Kheri in Regular Suit No.154/1977(Surjan Singh & 3 Ors. Versus Divisional Forest Officer, North Kheri).

3. The following substantial questions of law have been formulated in this appeal:-

"(a) Whether the suit filed by the plaintiff bearing No.154/1977 seeking a decree of permanent injunction was maintainable on the facts as pleaded giving rise to any subsisting cause of action?

(b) Whether the suit of the plaintiff for permanent injunction was maintainable especially when the notification under Sections 4 and 20 of the Indian Forest Act, 1927 was issued in the year 1966 and 1970 respectively?

(c) Whether the decree passed in a suit filed by the plaintiff under Section 229-B of the U.P. Z.A. & L.R. Act, 1950 without impleading the Forest Department as a party instituted in the year 1973 whereas the notification under Section 4 and 20 of the Indian Forest Act, 1927 has already been issued in the year 1966 and 1970

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respectively and in view thereof the suit was maintainable and the effect of a decree passed in such proceedings under Section 229-B of the U.P. Z.A. & L.R. Act, 1950."

4. Learned counsel for the appellant submitted that the notification under Section 4 of the Indian Forest Act,1927(hereinafter referred to as the Act of 1927) was issued in regard to land, which includes the land in dispute, having area 31.60 acre on 05.01.1966 and published in the Gazette on 12.03.1966 and notification under Section 20 of the said Act was issued in regard to land having area 174.31 acre on 27.12.1970 and published in the Gazette on 11.04.1970, therefore the respondents had no right and title on the said land after the said date. He further submitted that the respondents had filed the suit for permanent injunction in the year 1977 claiming their rights on the land in dispute on the basis of the order passed in their favour under Section 229 B of the U.P. Zamindari Abolition and Land Reforms Act 1950(hereinafter referred to as the Act of 1950), which was filed and allowed after the aforesaid notifications, therefore the same was without jurisdiction, and no right or title could have been conferred on the respondents as the same was barred by Section 27 A of the Act of 1927 as per the State amendment of U.P. But without considering the aforesaid, the suit for permanent injunction was decreed, therefore the appellant had filed Civil Appeal, which has also been dismissed upholding the judgment and decree passed by the trial court without considering the aforesaid facts and legal position.

5. Learned counsel for the appellant further submitted that the details of the boundaries of the land of the respondents was not given in the suit and the suit was filed by four persons but their shares were not mentioned,therefore the suit itself was not maintainable. Thus, the submission is that the judgment and decree passed by the trial court as well the first appellate court are not sustainable in the eyes of law and liable to be set aside.

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6. Learned counsel for the appellant relied on ***State of U.P. versus Kamaljeet Singh;MANU/UP/2821/2017, State of U.P. Versus DDC & Ors.;MANU/SC/0612/1996; (1996)5 SCC 194, State of U.P. & Ors. Versus Sonelal & Ors.; MANU/UP/0151/2022, Sukhwant Singh versus Divisional Forest Officer & Ors.;MANU/PH/0435/2009, Padhiyar Prahladji Chenaji versus Maniben Jagmalbhai;MANU/SC/0272/2022, Dhanraj vesus Vikram Singh & Others; Civil Appeal No.3117/2009, Daya Shanker versus DDC Kheri;MANU/UP/1528/2023, AND Moreshar Yadaorao Mahajan versus Vyankatesh Sitaram Bhedi; 2022 Live Law(SC)802.***

7. Per contra, learned counsel for the respondents submitted that similar Second Appeal No.383 of 1979 has been dismissed by means of the order dated 21.12.1995 and Second Appeal No.351 of 1980 and 350 of 1980 having identical facts have also been dismissed by this Court, therefore this appeal is also liable to be dismissed accordingly.

8. He further submitted that the name of the respondents was recorded on the basis of the order passed in the case filed by the respondents under Section 229 B of the Act of 1950 in the khatauni of the 1384 Fasli (1977). The State was a party in the said case, therefore even if the forest department was not party, it will not make any difference and the appellant is not entitled for any benefit of the same. He further submitted that the only photocopy of the notification under Section 4 of the Act of 1927 was produced and the publication whereof also could not be proved, therefore the judgment and decree passed by the trial court as well as the first appellate court have rightly been passed in accordance with law, which does not suffer from any illegality or error. Thus, the submission is that the substantial questions of law formulated by this Court does not arise and the appeal is misconceived and the grounds taken therein are not sustainable in the eyes of law, therefore it is liable to be dismissed.

9. I have considered the submissions of learned counsel for the parties and perused the records.

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10. Before considering the rival contentions of learned counsel for the parties in regard to the substantial questions of law formulated by this Court, since a plea has been taken that the appeal is liable to be dismissed in view of the orders passed by this Court in similar second appeals, this Court has to see first as to whether this appeal can be dismissed on this ground or not.

11. Second Appeal No.383 of 1979(State of U.P. versus Sri Prem Singh and others), was dismissed by means of the order dated 21.11.1995 on the ground that no substantial question of law is involved in the said case, whereas the said appeal was already admitted. However the said order does not disclose that the legal questions raised in this appeal, on the basis of which the aforesaid substantial questions of law have been framed appears either to had not been raised in the said appeal or not pressed. Be that as it may, the same have not been considered in the said order. So far as the Second Appeal Nos.350 of 1980 and 351 of 1980 are concerned, on perusal of the order dated 22.11.2023 passed in Second Appeal No.350 of 1980, it is apparent that Second Appeal No.351 of 1980 was decided by a coordinate Bench of this Court by means of the judgment and order dated 14.08.2001. The State had filed review of the said order, which was dismissed as abated and considering the same, the Second Appeal No.350 of 1980 has been dismissed. Thus the substantial questions of law formulated in this appeal have neither been considered nor decided in the said appeals.

12. Section 100 of CPC provides that the appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Sub-section 4 of Section 100 of CPC provides that Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and as per sub-section 5, the appeal shall be heard on the question so

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formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. Section 100 of CPC is extracted hereinbelow:

"1[100. Second appeal.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
(2) An appeal may lie under this section from an appellate decree passed ex parte.
(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.
(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]"

13. In view of above, in case the Court finds that any substantial question of law is involved in the second appeal, it can be formulated and the appeal shall be heard on the question so formulated and the respondent can argue that the case does not involve such question. However at the time of hearing the Court, for the reasons to be recorded, can hear on any other substantial question of law on being satisfied that it is involved in the case. In the present case, after hearing learned counsel for the appellant as well as the respondents and on being satisfied that the aforesaid substantial questions of law are involved in the instant appeal, the same have been formulated by this Court. Therefore this appeal is to be decided after considering the rival contentions of learned counsel for the parties in regard to the substantial questions of law formulated in this appeal. However learned counsel for the respondent can argue that this case does not involve the said questions. But once the substantial questions of law have been formulated by this Court, this appeal cannot be decided without hearing on the said questions and without recording any finding on those questions. Even otherwise even if a similar appeal

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has been dismissed as discussed above, it can be considered in view of distinguishing features of substantial questions of law involved in this appeal as formulated by this Court after hearing learned counsel for the parties in view of judgment of Hon'ble Supreme Court, in the case of ***Smt. Shanta Rani versus Nasib Kaur; JT 2023(10) 103,*** the relevant paragraph 13 of which is extracted here-in-below:-

> ***13***. *At the outset, it may be noticed that the Civil Appeal has been admitted by referring to a few similar petitions/appeals pending in this Court. The similarity of an issue with a pending matter has been raised as one of the grounds for granting Special Leave, and the Civil Appeal is numbered. With the dismissal of the connected matters, the natural result is that the instant Appeal must follow.*
>
> *Since a distinguishing feature is raised by the Learned Counsel for the Appellant, we would consider the maintainability of the Civil Appeal. We notice that the Appellant confined the challenge to the Order of Eviction only to three grounds before the High Court. Either by choice or for any reason, the Appellant before the High Court did not press any other ground available against the Order of*
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> *Eviction or the Order refusing to grant leave to the Appellant. Having done so, in the Civil Appeal, contentions do not expand more than the scope of consideration either by the High Court or the Rent Controller.*

14. In view of above, this Court is of the view that once the substantial questions of law have been formulated in this second appeal by the court after considering the rival contentions, it cannot be dismissed merely because the similar second appeals have been dismissed by this Court, particularly, when the said orders have been passed without considering the issues raised in this appeal. Therefore the contention of learned counsel for the appellant is misconceived and not tenable and liable to be repelled and accordingly repelled.

15. Adverting to the rival contentions of learned counsel for the parties on the substantial questions of law formulated in the present appeal, the main issue to be considered in this second appeal is as to whether the suit filed by the respondents under Section 229 B of the Act of 1950 could have been filed by the respondents and allowed in favour of the respondents after issuance of the notification under Section 4 and Section 20 of the Act of 1927 and based on the order

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passed in the said suit,the suit for permanent injunction could have been filed by the respondents and decreed by the civil court. To consider the issue, it would be apt to consider the relevant provisions of the Act of 1927 and Act of 1950 first.

16. The Act of 1927 was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. Chapter XII of the Act of 1927 relates to reserve forest. Section 3 of the Act of 1927 provides the power to reserve forests, which provides that the State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights,a reserve forest. Section 3 is reproduced below:-

3. Power to reserve forests.–The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

17. Section 3 in its application to the State of Uttar Pradesh, has been substituted by U.P. Act No.XXIII of 1965 with effect from 23.11.1965 in the following manner:-

3. Power to reserve forests.–The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Explanation The expression holding shall have the meaning assigned to it in the U.P. Tenancy Act 1939 the expression village abadi shall have meaning assinged to it in the U.P. Village Abadi Act 1947.

18. Section 4 provides that whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette. Section 4 is reproduced below:- *:*

"Section 4 : Notification by State Government---(1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette :

(a) declaring that it has been decided to constitute such land a reserved forest ;

(b) specifying as nearly as possible, the situation and limits of such land ; and

(c) appointing an officer (hereinafter called "the forest settlement officer") to inquire into and determine the existence, nature and extent of any rights alleged

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to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation---For the purpose of Clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under Clause (c) of Sub-section (1) shall ordinarily be a person not holding any forest office except that of forest settlement officer.

(3) Nothing in this Section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest office except as aforesaid, to perform the duties of a forest settlement officer under this Act."

19. Section 5 provides that after the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf. Section 6 inter alia gives power to Forest Settlement Officer to issue a proclamation and requiring every person claiming any right mentioned in Section 4 or 5 within such period as prescribed by him to submit his objection claiming his right or appear before him and state his right or the amount of compensation, if any, claimed by him. Section 7 gives power to Forest Settlement Officer to investigate the objections.

20. Section 8 deals with the power of the Forest Settlement Officer, which provides that the forest settlement officer will have all the powers of the civil court in the trial of the suit. Section 9 is with regard to extinction of rights, if no claim is preferred after notification under Section 4 of the Act of 1927 under Section 6 and failed to satisfy that no knowledge could be acquired before publication of notification under Section 20. Sections 8 and 9 are extracted below :

"Section 8--Power of forest settlement officer.--For the purpose of such inquiry, the forest settlement officer may exercise the following powers, that is to say :

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(a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same : and

(b) the powers of a civil court in the trial of the suit."

"Section 9--Extinction of rights,--Rights in respect of which no claim has been preferred under Section 6, and of the existence of which no knowledge has been acquired by inquiry under Section 7, shall be extinguished, unless before the notification under Section 20 is published, the person claiming them satisfies the forest settlement officer that he had sufficient cause for not preferring such claim within the period fixed under Section 6."

21. Section 11 of the Act of 1927 provides that the forest settlement officer shall pass an order admitting or rejecting the claim to a right in or over any land. The appeal against the order passed by the Forest Settlement Officer is provided under Section 17.

22. In view of above, once the notification has been issued under Section 4 of the Act of 1927, all claims can be raised before the Forest Settlement Officer, who can consider the same and decide the claim after affording opportunity of evidence exercising the powers of a civil court in the trial of the suit. After finalization of the proceedings, the notification under Section 20 is issued declaring the land as reserved forest. Section 20 of the Act of 1927 is extracted here-in-below:

*"**20-Notification declaring forest reserved**.-(1) When the following events have occurred, namely:-*

(a) the period fixed under section 6 for preferring claims have elapsed and all claims (if any) made under that section or section 9 have been disposed of by the Forest Settlement-officer;

(b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act,the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

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State Amendments

Uttar Pradesh- *In section 20,in sub-section (1), for clause (b), substitute the following clause namely,*

(b) if any such claims have been made, the period limited bySection 17 for appealing from the orders passed on such claims has clasped and all appeal(if any) persented within such period have been disposed by the District Judge; and

[Vide Uttar Pradesh Act 23 of 1965,sec.8 (w.e.f. 23.11.1965]"

23. Section 23 of the Act of 1927 provides that no right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued.

24. Section 27 A has been added by U.P. Act No.23 of 1965 which provides for finality of orders, which cannot be called in question in any court of law. Section 27 A on reproduction reads as under:-

'Section 27A--Finality of orders, etc.--No act done, order made or certificate issued in exercise of any power conferred by or under this Chapter shall, except as herein before provided, be called in question in any Court."

25. In view of above, it is evident that as per scheme of the Act, in the proceeding beginning with notification under Section 4, all claims regarding land included in the notification are adjudicated by an authorised officer i.e. Forest Settlement Officer, who exercises all the powers of the civil court in trial of the suits as per Section 8, the appeal of which can be preferred under Section 17. Section 5 of the Act of 1927 provides that after issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued. The said notifications published in the official gazettes are public documents which need not be proved and they shall be deemed to have been issued in accordance with law after following the due procedure of law.

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26. The Act of 1950 was promulgated for abolition of the zamindari system which involves intermediaries between the tiller of the soil and the State in Uttar Pradesh and for acquisition of their rights, title and interest and to reform the law relating to land tenure consequent on such abolition and acquisition and to make provision for other matters connected therewith. As per Section 4 of the said Act, after the notification issued by the State Government, all the estates vested in the State. However, certain buildings and appurtenant thereto, wells, tress etc. have been settled in favour of the owners and occupiers thereof under Section 9. Therefore, all the estates in State of U.P. after notification under the said Act vested in State and unless anybody acquired any right or title under the said Act, he is not entitled to claim any right over any land.

27. Adverting to the facts of the present case, the respondents had filed suit under section 229 B of the Act of 1950 after 11.04.1970 i.e. after issuance of the notification not only under Section 4 but Section 20 of the Act of 1927 without impleading the forest department as respondent as admitted by the respondents. However, it has been stated that the State of U.P. was impleaded in the said suit but it has not been disclosed as to through whom State of U.P. was impleaded. However since the land in dispute was already declared as forest land, therefore the forest department was a necessary party to the suit because it could have only given the correct facts and clarified the position. Even otherwise, even if the State was impleaded no effective order could have been passed without impleadment of the forest department or the concerned officer of the forest department. The Hon'ble Supreme Court, in the case of ***Moreshar Yadaorao Mahajan versus Vyankatesh Sitaram Bhedi(supra),*** has held that no effective decree could have been passed in absence of necessary party and if a necessary party is not impleaded, the suit itself is liable to be dismissed. The twin test to be satisfied for being a necessary party is

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that there must be right to some relief against such party in respect of the controversies involved in the proceedings and no effective decree can be passed in the absence of such a party. Similar view was taken by Hon'ble Supreme Court in the case of ***Poonam vs State of Uttar Pradesh and others; (2016) 2 SCC 779.*** Even otherwise, in view of Section 27 A of the Act of 1927, as inserted by the State amendment of U.P., the said suit was not maintainable, therefore the exparte judgment and decree dated 30.09.1973, against the State also, is void.

28. The respondents, claiming right and title over the land in dispute i.e. Plot No.1 minjumla/50 acres situated in Village Madanpur, Pragana/Tehsil Palia, District Kheri on the basis of aforesaid judgment and decree dated 03.09.1973 passed in suit under Section 229 B of the Act of 1950, filed suit for permanent injunction against the appellant on 05.07.1977 bearing Regular Suit No.154 of 1977. The suit was decided in favour of the respondents. The claim of the respondents is that they are in possession on the land in dispute for the last 30 years and are Sirdar of the land in dispute and they have been declared as such by the Divisional Officer, Kheri in the suit filed under Section 229 B of the Act of 1950 and the forest department had no concern with the land in dispute. Even if it is assumed that the suit u/s 229 B of the Act of 1950 could have been filed and decreed, though it could not have been, the respondents were declared Sirdar of the land in dispute by the said order and decree. The Sirdar has no right or title on the land. The Sirdar is not a proprietor but merely the tenure holder and the propriety right of any such land vested with the State. Thus, even if the respondents were in possession on the land in dispute as Sirdar, they have no right or title over the land in dispute and it could have been declared the forest land by the Government under Section 3 of Act of 1927 and State amendment of U.P. by Act No.XXIII of 1965, as it has propriety rights over the said land. Hence, the State

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was justified in declaring and notifying the land in dispute as reserve forest.

29. The Hon'ble Supreme Court, in the case of ***State of U.P. versus Deputy Director of Consolidation and others (supra),*** has held that the person who was holding the land as Sirdar was not vested with propriety rights and he was tenure holder and the propriety rights vested with the State. It has further been held that after notification under Section 4of the Forest Act, the objections could not have been raised qua the said notification before the consolidation authorities and the consolidation authorities were bound by the notification which had attained finality as per scheme of the Act of 1927. The relevant paragraphs 7 to 10 are extracted hereinbelow:-

"7.It is thus obvious that a person who was holding the land as Sirdar was not vested with proprietary rights under the Abolition Act. He was a tenure holder and the proprietary rights vested with the State. The High Court, therefore, fell into patent error in assuming that by virtue of their status as Sirdars the respondents were proprietors of the land. The State being the proprietor of the land under the Abolition Act it was justified in issuing the notification under Section 4 of the Act.

8. The nature of the land - whether covered by Section 3 of the Act or not - could only be determined on the date of the notification under Section 4 of the Act which was issued on March 29, 1954. Neither the Consolidation Authorities nor the High Court have gone into the question as to what was the nature of the land on the relevant date. The Consolidation Authorities recorded their findings in the year 1968-69. They were wholly oblivious of the nature of the land 14-15 years back in the year 1954.

9. The crucial question for consideration, however, is whether the Consolidation Authorities have the jurisdiction to go behind the notification under Section 20 of the Act and deal with the land which has been declared and notified as a reserve forest under the Act. It is necessary, therefore, to examine the scheme of Chapter II of the Act. Section 3 provides that the State Government may constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights or to the whole or any part of the forest produce to which the Government is entitled a reserved forest. Section 4 provides for the issue of a notification declaring the intention of the Government to constitute a reserved forest. Section 5 bars accrual of forest rights in the area covered by the notification under Section 4 after the issue of the notification. Section 6, inter alia, gives power to the Forest Settlement Officer to issue a proclamation fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period, either to present to the Forest Settlement Officer a written notice specifying or to appear before him, and state the nature of such right and the amount and particulars of the Compensation (if

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any) claimed in respect thereof. Section 7 gives power to the Forest Settlement Officer to investigate the objections. Section 8 prescribes that the Forest Settlement Officer shall have the same powers as a civil court has in the trial of a suit. Section 9, inter alia, provides for the extinction of rights where no claim is made under Section 6. Section 11(1) lays down that in the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest produce or water course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part. In the event of admitting the right of any person to the land, the Forest Settlement Officer, under Section 11(2), can either exclude such land from the limits of the proposed forest or come to an agreement with the owner thereof for the surrender of his rights or proceed to acquire such land in the manner provided by the Land Acquisition Act, 1884. Section 17 provides for appeal from various order under the Act and Section 18(4) for revision before the State Government. When all the proceedings provided under Section 3 to 19 are over the State Government has to publish a notification under Section 20 specifying definitely the limits of the forest which is to be reserved and declaring the same to be reserved from the date fixed by the notification.

10. It is thus obvious that the Forest Settlement Officer has the powers of a civil court and his order is subject to appeal and finally revision before the State Government. The Act is a complete code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of the civil court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Settlement Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification under Section 20 of the Act, the respondents could not have raised any objections qua the said notification before the Consolidation Authorities. The Consolidation Authorities were bound by the notification which had achieved finality."

30. In the case of ***State of U.P. versus Kamal Jeet Singh(supra)***, the Division Bench of this Court considered the scheme of the Indian Forest Act and has held that the Forest Settlement Officer has the powers of a civil court and once the notification under Section 4 and Section 20 of the Forest Act has been issued, it attains finality and except revision before the State no authority has jurisdiction to determine the rights as contained in Section 27-A of the Forest Act. Thus, the revenue authorities could not have determined the rights under Section 229 B of the U.P. Z.A. & L.R. Act 1950.

31. A coordinate Bench of this Court, in the case of ***State of U.P. versus Sone Lal and others(supra),*** has held that once notification is

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issued under Section 4 of the Forest Act, no right could have been acquired in or over the land declared as forest land.

32. It is also noticed that though the claim was set up by the respondents in the plaint that they are in possession on the land in dispute for the last 30 years, however in the oral evidence of P.W. 1 Surjan Singh i.e respondent no.1, he admitted in his cross examination that he had not got it from anybody and got it vacant and he also admitted that he has not deposited the land revenue for the last 30 years. He also admitted that he had filed the suit without impleading the forest department but the State was impleaded, however it has not been disclosed as to through whom the State was impleaded in the suit, whereas the State can be impleaded in the suit only through the department concerned in accordance with law.

33. It is also noticed that the commission was issued during the trial, which was conducted on 17.12.1979. The report of commission i.e. GA 2 / 30/1 and Ga 2 30/2 indicates that during the commission, the respondents stated that they have got the patta of the land in dispute in the year 1969 and since then they are in possession of the land in dispute, therefore the respondents could have in possession for the last eight years in view of this. This report has not been challenged by the respondents and nothing has been brought before this Court to show that that this report was challenged and rejected. Therefore a contrary stand has been taken and no patta has been brought on record. Therefore it cannot be said that the respondents have perfected their rights under the Act of 1950 and they are in lawful possession of the land in dispute, even if they may be in possession and such persons are not entitled for any relief in a suit for permanent injunction.

34. In view of above, this Court is of the view that the respondents are not entitled for any benefit of the orders passed in a suit under Section 229 B of the Act of 1950 filed by the respondents and the suit for permanent injunction filed before the civil court. It is settled law that

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injunction cannot be granted against the true owner. In the present case true owner of the land in dispute is State after enforcement of Act of 1950 and after notification under Section 20 of the Act of 1927, the forest department of the State is the true owner of the land in dispute.

35. A coordinate Bench of the High Court of Punjab & Haryana, in the case of ***Sukhwant Singh versus Divisional Forest Officer and others(supra),*** has held that the trespasser cannot seek injunction against the true owner. Therefore no injunction could have been granted in favour of the respondents.

36. The Hon'ble Supreme Court, in the case of ***Padhyar Prahladji Chenaji(Deceased) through L.Rs versus Maniben Jagmalbhai (deceased) through L.Rs. And others(supra),*** has held that the plaintiff who is not in lawful possession of the land in dispute is not entitled for any permanent injunction against the true owner.

37. It is also noticed that the trial court examined the legality and validity of the notification issued under Section 4 and Section 20 of the Act of 1927 without being challenged, whereas the same could not have been done because the same could even not have been challenged in suit for permanent injunction. The notification issued under the statutory provision could not be held illlegal without being challenged. Even otherwise, the trial court has held that it is not completely legal, meaning thereby it's legality has not been disputed but it has been held only on the ground that the appellant has failed to prove as to when notice of the notification was given to the respondents and when it's munadi was done, whereas once notification under Section 4 and Section 20 of the Act of 1927 were issued and published in official gazette, it will be deemed that they have been issued in accordance with law after following due procedure of law and it could not have been held illegal or inoperative without challenge to the notifications in appropriate proceedings but not in a suit for permanent injunction.

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38. The Hon'ble Supreme Court, in the case of ***Dhanraj versus Vikram Singh and others(supra),*** has held that in absence of any challenge to the validity of the statutory provisions, the High Court ought not to have undertaken the exercise of going into the question of repugnancy. Thus, once the provisions of the Indian Forest Act have not been challenged and are valid, the operation of the same cannot be ignored. Consequently, once the notification was issued under Section 4 followed by Section 20 of the Act of 1927, the natural consequence would be that the land in dispute has been declared as forest land and nobody has right on the said land. Any objection in this regard could have been raised only before the Forest Settlement Officer after issuance of the notification under Section 4 of the Act, which admittedly has not been raised. Therefore it had become final after declaration of reserve forest under Section 20 and under Section 27(A) of the Act of 1927 and the order under Section 229 B of the U.P. Z.A. & L.R. Act was passed in a suit filed after issuance of the notification under Section 20 of the Indian Forest Act, which could not have been done. Similarly the injunction could not have been granted by the civil court.

39. A coordinate Bench of this Court, in the case of ***Daya Shankar and others versus Deputy Director of Consolidation Kheri and others(supra),*** has held that if any order is passed by the incompetent authority, de horse the statutory prescriptions, that order would be nullity in the eyes of law and would be void-ab- initio.

40. In view of the aforesaid discussion, it is apparent that after issuance of the notification under Section 4 and Section 20 of the Act of 1927 in the year 1966 and 1970 respectively, no authority or court had power to entertain any dispute in regard to the land declared as reserve forest under Section 20 in view of Section 27(A) as added by U.P. Act No.23 of 1965, therefore, the suit under Section 229-B of the Act of 1950, that too without impleading the Forest department or

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concerned Officer of the forest department, was not maintainable and in any case, no effective relief could have been granted without its impleadment and the orders passed on the back of him cannot be applicable on it. Thus, the suit for permanent injunction, claiming right and title on the said basis was not maintainable and could not have been decreed. Even otherwise, the respondents have failed to prove their case. Thus, the substantial questions of law, formulated by this Court, are answered accordingly.

41. In view of above, this Court is of the view that the judgment and order passed by the trial court as well as the first appellate court are not sustainable in the eyes of law. Thus, the appeal is liable to be allowed.

42. The second appeal is, accordingly, **allowed**. The judgment and decree dated 16.04.1982 passed by the 1st Additional District Judge Kheri in Civil Appeal No.152/1980, by means of which the appeal has been dismissed upholding the judgment and decree passed by the trial court and judgment and decree dated 09.09.1980 passed by the VIth Additional Munsif, Lakhimpur Kheri in Regular Suit No.154/1977(Surjan Singh & 3 Ors. Versus Divisional Forest Officer, North Kheri) are hereby set aside. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 14.03.2024
Akanksha