REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7017 OF 2009

PRABHAGIYA VAN ADHIKARI AWADH VAN PRABHAG .....APPELLANT(S)

VERSUS

ARUN KUMAR BHARDWAJ (DEAD) THR. LRS. & ORS. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Judicature at Allahabad on 30.11.2005 whereby the writ petition filed by the respondents[1] was allowed.

2. The High Court vide the impugned order has set aside the order dated 08.07.2004 passed by the Deputy Director of Consolidation, Lucknow, wherein, the revenue entry of Khasra Nos. 1576 and 1738 was ordered to be corrected in the name of Department of Forest and the claim of rival claimants were set aside.

1 For short, the 'lessees'

3. A notification dated 11.10.1952 under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950[2] was published in U.P. Gazette dated 18.10.1952 to the effect that an area of 162 acres in Village Kasmandi Khurd shall not vest with the Gaon Samaj. The relevant extract of the notification reads thus:

> "No. 617 xIV- In exercise of the powers conferred by section 117 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951), the Governor is pleased to declare that as from the first day of November, 1952-
>
> 1. All land, whether cultivable or otherwise except land for the time being comprised in any holding or grove, and
> 2. All the forest within the village boundaries.
>
> Situate in a circle, which have vested in the state under the said Act, shall, subject to the exceptions shown in Schedules land I and II hereto, vest in the Gaon Samaj established for the Circle.
>
> **Schedule I**
>
> Particulars of uncultivated land and the extent to which they shall not vest in Gaon Samajs

District	Tahsil	Pargana	Village	Extent to which the uncultivated land (to be demarcated shall not vest)
1	2	3	4	5
Lucknow	Lucknow	Bijnor	1. xxx xxx xxx	xxx xxx xxx
			19. Kasmandi Khurd	162

4. The provisions of the Abolition Act, as are relevant for the purpose of the present appeal, read thus: -

2 For short, the 'Abolition Act'

"4. Vesting of estates in the State. - (1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.

(2) It shall be lawful for the State Government, if it so considers necessary, to issue, from time to time, the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of sub-section (1) shall be applicable to and in the case of every such notification.

5. Notification to be published in the Gazette. - The notification referred to in Section 4 shall be published in the Gazette and such publication shall be conclusive proof of the due publication thereof.

6. Consequences of the vesting of an estate in the State. -When the notification under Section 4 has been published in the Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensure in the area to which the notification relates, namely:

(a) all rights, title and interest of all the intermediaries—

(i) in every estate in such area including land (cultivable or barren), groveland, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, waterchannels, ferries, pathways, abadi sites, hats, bazars and melas [other than hats, bazars and melas held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply], and

(ii) in all sub-soil in such estates including rights, if any,

> in mines and minerals, whether being worked or not,
>
> shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;
>
> xx xx xx"

5. It is thus contended that in terms of Section 4 of the Abolition Act, all rights, title and interest of all intermediaries including the forest had vested in the State of Uttar Pradesh. In terms of Section 117 of the Abolition Act, the land of the forest can vest in the Gaon Sabha or any other local authority by a general or special order of the Government. Section 117 of the Abolition Act reads as:

> "117. Vesting of certain lands etc., in Gaon Sabhas and other local authorities.- 1) At any time after the publication of the notification referred to in Section 4, the State Government may, by general or special orders to be published in the manner prescribed declare that as from a date to be specified in this behalf, all or any of the following things, namely:
>
> (i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove;
> (ii) forests;
> (iii) trees, other than trees in a holding or on the boundary of a holding or in grove or a *abadi*;
> (iv) fisheries;
> (v) *hats*, *bazars* and *melas* except *hats*, *bazars* and *melas* held on lands to which the provisions of Clauses (a) to (c) of sub-section (1) of Section 18 apply or on sites and areas referred to Section 9; and
> (vi) tanks, ponds, private ferries, water channels, pathways and *abadi* sites,-
>
> which had vested in the State under this Act shall vest

> in the Gaon Sabhas or any other local authority established for the whole or part of the village in which the said things are situate, or party in one such local authority (including a Gaon Sabha) partly in another:
>
> Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be specified in such order."

6. It may be stated that no general or special orders have been issued by the State Government for vesting any part of the land measuring 162 acres with the Gaon Sabha.

7. It was on 23.11.1955, a notification was issued under Section 4 of the Indian Forest Act, 1927[3]. Vide the said notification, objections were invited in respect of the land forming part of the notification. The relevant extract of the notification reads thus:

> "Government of Uttar Pradesh
> Department of Forest
> Misc.
> 23.11.1955
>
> 6828/1-806-55 – Following land has been declared as Protected Forest by his Excellency Governor, as per the powers provided under Section 4 Indian Forest Act, 1927 (Act No. 16 of 1927)
>
> According to Section 4 sub-section 1(C) of the aforesaid Act, concerned Sub-Divisional Officer is appointed Forest Settlement Officer and Additional Commissioner, Lucknow Division empowered to receive objections against the order of Forest Settlement Officer under Section 17 of the Act.

3 For short, the 'Forest Act'

S.No.	Name of Place	Tehsil	Pargana	Area in Acres according to Gazette	Area taken in Acres	**Details** East	West	**Of** North	**Sides** South
48	Kasmandi Khurd	Malihabad	Malihabad	162	-	Amaniganj Banjar Bhumi and Agriculture field	Railway line Banjar Bhumi Agriculture field	Agriculture field and Canal	Agriculture field

8. After the said notification, a proclamation under Section 6 of the Forest Act was carried out on 28.04.1968. The relevant extract of the proclamation after publication reads thus:

Distt.	Tehsil	Pargana	Village	Area in Khasra No.	Acres Area in Bigha	Details of Boundaries
Lucknow	Malihabad	Malihabad	Kasmandi Khurd	xxx xxx xxx		
				1576	20.13.10	
				xxx xxx xxx		
						(57) 259 4.15 162 Acre
						North – Araji Majruba South – Sarhar Mauja Madhour Satwal Majruba East- Sadak West – Sarhar Mauja Sindhwapur

9. The extract from the Indian Forest Act, 1927 relevant for the present appeal reads thus:

> "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.

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 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.

5. Bar of accrual of forest rights. - 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.

6. Proclamation by Forest Settlement-officer. - When a notification has been issued under Section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) explaining the consequences which, as hereinafter provided, will ensure on the reservation of such forest; and

(c) 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 any) claimed in respect thereof.

xxx xxx xxx

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."

10. It appears that local management committee (Gaon Sabha) had put the lessees into possession of 7 bighas of land on 15.05.1966 and another 5 bighas of land on 26.12.1966 forming part of Khasra No. 1576 measuring 20 bighas 13 biswas and 10 biswansi. Such act of grant of lease was challenged by the Forest Department but remained unsuccessful vide order dated 19.12.1969. Such order passed by Sub-Divisional Officer, Mohan Lal Ganj, Lucknow was set aside by the Additional Commissioner, Lucknow Division on 22.07.1970. The further revision filed by the lessee before the Board of Revenue was dismissed but in terms of order dated 22.07.1970, a fresh decision was to be taken after impleading local management committee who had granted lease to the lessee on behalf of the Gaon Sabha. There is nothing on record as to what happened consequent to the remand by the Additional Commissioner as affirmed upon by the Board of Revenue.

11. In the six-years khatauni for the period 1380 fasli to 1388 fasli, the barren land which could be made cultivable including Khasra no. 1576 were recorded to be transferred from the name of Gaon Sabha village Kasmandi Khurd to Department of Forest.

"Six Years Khatauni

Village: Kasmandi Khurd Pargana and Tehsil Malihabad Distt. Lucknow

Year : From 1380 Fasli year to till Fasli 1388

S.No. of khata Khatauni	Name of Khatedar and Father's name	Year start phical possession	Khasra no. of each plot	Area in Hec in bigha (band)	Payable lagaan or malguzari	Brief of any order of changes, no. and date and the name and post of issuing officer attested by Registrar Qanungo						Comments
						1383	84	85	86	87	88	
1	2	3	4	5	6	7	8	9	10	11	12	13
Category 2 as Sankramniya Bhuomidar												
18 K	(Krishi Yogya Banjar) Barren Land but can be made cultivable		Category 5 Plot No.6 to 1568 1576 1579 to 1800	 N.A. 7.3 N.A.	All the plots mentioned in Khatauni to be transferred from the name of Gram Samaj, Village Kasmandi Khurd, to Department of Forest.							

12. That a six yearly khatauni for the fasli year 1395 to 1400 was issued by which Khasra no. 1576 was transferred to the forest as a protected forest. The relevant extract from the khatauni reads thus:

"INTKHAB SIX YEARLY KHATAUNI
VILLAGE KASMANDI KHURD, PARGANA AND TEHSIL,
MALIHABAD,
DISTT. LUCKNOW, YEAR 1395 TO 1400

Khatauni	Name of	Year of	Plot No.	Area	Illegible	Information

No.	land owner	ownership				regarding change in ownership entered by any officer 1395, 1396, 1397, 1398, 1399, 1400
Category 5 Barren Land but can be made cultivable (Krishi Yogya Banjar) – The land has been transferred according to the forest act as protected forest						
881	Deptt. of Forest	-	1576	20.13.10		

13. The name of the lessee appears for the first time in the khatauni prepared for the year 1407 fasli till 1412 fasli wherein the possession of the lessee was recorded from 1394 fasli to 1395 fasli in respect of 12 bighas of land.

"Six Years Khatauni

Intikhab Khatauni

Village: Kasmandi Khurd Pargana and Tehsil Malihabad Distt. Lucknow

Year : From 1407 Fasli year to till Fasli 1412

S.No. of khata Khatauni	Name of Khatedar and Father's name	Year start phical possession	Khasra no. of each plot	Area in Hec in bigha (band)	Payable lagaan or malguzari	Brief of any order of changes, no. and date and the name and post of issuing officer attested by Registrar Qanungo						Comments
1	2	3	4	5	6	7	8	9	10	11	12	13
Category 2 as Sankramniya Bhomidar												
295	Brij Mohan S/o Kakaram R/o Daliganj Lucknow City	From 1394 to 1395	1576/ A and 1576/ A 2	7 5 ---- 12	---- 75							

14. It is thereafter, proceedings were initiated under the U.P.

Consolidation of Holdings Act, 1953[4] by the Forest Department to rectify the revenue record from the name of the lessee to that of the Forest Department. Such application was dismissed on 22.07.1993. The appeal against the said order was dismissed. The Deputy Director Consolidation, in a revision under Section 48 of the Consolidation Act, vide order dated 08.07.2004, set aside the order dated 22.07.1993. The Deputy Director in its order on 28.02.2004 held as under:

> ".....In this regard it is clear as has been stated before that the notification has been issued regarding the land in village including disputed Plot no. by the Dept. of Forest, copy of which is sent to all the Depts. Therefore at the time of making entry in the records same has to be taken cognizance of and it has been done also accordingly. Since the disputed land has been notified in the name of Deptt. of Forest so that land cannot be used for agricultural purposes and in such situation the grant of patta of the land loses its relevance. If the father of opposite party has got patta Bhoomidari saved on irregular basis, it does not have any significance. The Chakbandi Officer and Astt. Bandobast Officer Chakbandi has distorted the facts and had tried to cause loss to the Govt. and Dept. of Forest and benefit to opposite parties which is highly objectionable.
>
> From the above it is clear that the Chakbandi Officer and Asst. Bandobast Officer Chakbandi had completely ignored the claim of Dept. of Forest regarding the notification of disputed land in their favour and had deleted their name without any reasons and had got the land in question in favour of the land owners. The above act of the officers is punishable offence as it causes damage to Govt. property. In my opinion action to be taken against them according to law. The disputed plot has been notified in the name of Dept. of Forest and the

4 For short, the 'Consolidation Act'

> entry no. 88 to such effect has to be continued with without any interference and double entries to be omitted/cancelled. According the appeal is entitled to be allowed.
>
> Order
>
> Therefore on the basis of above analysis the appeal is hereby admitted. The order of Chakbandi Officer dated 22.7.93 and Astt. Bandobast Officer Chakbandi dated 28.2.2004 is hereby set aside. Plot No. 1576 of area DO/13/10 and Plot No. 1738 of area. 1 Bigha, plot no. 868/1830 of area 2-4-0 entry no. 881 in favour of Dept. of Forest and the claim of other land owners is hereby cancelled. Case file consigned to record room."

15. It is the said order which was set aside by the High Court in the writ petition filed by the lessees.

16. Learned counsel for the appellant submitted that the High Court has gravely erred in setting aside the order passed by the Deputy Director as there was no legal or factual basis to do so. The notification dated 11.10.1952 published in terms of Section 4 of the Abolition Act was to the effect that all estates situated in Uttar Pradesh shall vest in the State. The extent to which uncultivated land which not vests in Gaon Samaj was mentioned in Column 5 stating that 162 acres of Village Kasmandi Khurd would not vest in Gaon Samaj. Such notification has the effect that all rights, title and interest, shall be deemed to be vested in the State of Uttar Pradesh. In terms of Section 117 of the Abolition Act, the State can transfer the lands by a general or

special order as prescribed therein including forests to Gaon Sabha and to other local authorities. It is not the case of any of the parties that the land, which was the subject matter of notification dated 11.10.1952, was subject to any general or special orders by the State to transfer the same in favor of Gaon Sabha and/or any other local authority. Therefore, the land comprising in notification dated 11.10.1952 unequivocally vests with the State.

17. It is thereafter that a notification dated 23.11.1955 was published in respect of 162 acres of land situated in Kasmandi Khurd. Such notification describes the land with boundaries mentioned in the notification. Thereafter, another proclamation was published under Section 6 of the Forest Act in respect of 162 acres of land including 20 bighas 13 biswas and 10 biswansi of Khasra No. 1576 of Village Kasmandi Khurd. The notification under Section 4 of the Forest Act to declare any land as reserved forest could be issued if the State has proprietary rights over such land or if it is entitled to the produce thereof.

18. The State Government has the jurisdiction to declare a protected forest if the land is the property of the Government over which proprietary rights are exercised. The land measuring 162 acres was the property of the Government in terms of the notification dated 11.10.1952. In terms of Section 4 of the Forest Act, the

State Government can issue a notification to constitute any land as reserved forest. The notification dated 23.11.1955 satisfies the three conditions mentioned in sub-section 4 i.e., (i) decision to constitute such land as reserved forest, (ii) situation and limits of such land, and (iii) appointing an officer to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits. The lessees were not in possession of any part of the land at the time of issuance of such notification under Section 4 on 23.11.1955. Therefore, they have rightly not claimed any right over the property nor the Gaon Sabha has claimed any right in the land measuring 162 acres notified under Section 4 of the Act.

19. Section 5 of the Forest Act bars that no right shall be acquired in or over the land comprised in notification under Section 4 of the Forest Act, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government. Once the notification dated 23.11.1955 was published under Section 4 of the Forest Act, there could not be any transfer of right in the land so notified in favour of the lessee by the Gaon Sabha.

20. It is thereafter, a proclamation was required to be issued under

Section 6 of the Forest Act publishing in the local vernacular in every town and village specified, as nearly as possible, the situation and limits of the proposed forest. In the proclamation under Section 6 of the Forest Act, different khasra numbers have been specified including Khasra No. 1576. Such khasra number forms part of the total forest land declared under Section 4 of the Act measuring 162 acres. The proclamation of publication was published in the locality but none including the Gaon Sabha objected to the declaration of land as forest area.

21. Mr. Khan, learned counsel for the lessee and Mr. Hooda, learned counsel for the Gaon Sabha vehemently argued that the details of land in respect of which notification under Section 4 of the Forest Act was issued are not mentioned, except providing the total area measuring 162 acres. It was argued that such notification is vague and does not comply with the conditions specified in Section 4 of the Forest Act. It was only in the proclamation published under Section 6 of the Forest Act that Khasra No. 1576 was mentioned.

22. We do not find any merit in the argument raised by Mr. Khan and Mr. Hooda. In the notification published on 23.11.1955, there was a declaration that land measuring 162 acres shall constitute forest land. Explanation (1) to Section 4 of the Forest Act clarifies

that it would be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries. The notification dated 23.11.1955 has the boundaries on all four sides mentioned therein. There is no other requirement under Section 4 of the Forest Act. It is only Section 6 of the Forest Act which needs to specify the situation and limits of the proposed forest. In terms of such clause (a) of Section 6 of the Forest Act, the details of khasra numbers which were part of 162 acres find mention in the proclamation so published. Therefore, the statutory procedural requirements stand satisfied.

23. Learned counsel for the appellant referred to a judgment reported as ***State of U.P.*** v. ***Dy. Director of Consolidation & Ors.***[5] wherein the land was notified as a reserved forest under Section 20 of the Forest Act but the respondents in appeal before this Court claimed that they were in possession of the land and had acquired Sirdari rights. This Court held that in terms of the Abolition Act, the State was the proprietor of the land and the respondents, even if they were Sirdars, would still be tenure-holders. It was also held that the Consolidation Authorities have no jurisdiction to go behind the notification under Section 20 of the Forest Act. The Court held as under:

> "7. It is thus obvious that a person who was holding the land as Sirdar was not vested with proprietary rights

5 (1996) 5 SCC 194

> 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.
>
> xx xx xx
>
> 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 a 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."

24. Mr. Khan further raised an argument that the final notification under Section 20 of the Forest Act has not been published. A reading of Section 20 of the Forest Act does not show that for a reserved forest, there is a requirement of publication of notification but no time limit is prescribed for publication of such notification under Section 20. Therefore, even if notification under Section 20 of the Forest Act has not been issued, by virtue

of Section 5 of the Forest Act, there is a prohibition against acquisition of any right over the land comprised in such notification except by way of a contract executed in writing by or on behalf of the Government. Since no such written contract was executed by or on behalf of the State or on behalf of the person in whom such right was vested, therefore, the Gaon Sabha was not competent to grant lease in favour of the appellant.

25. In a judgment reported as ***State of Uttarakhand and Ors.*** v. ***Kumaon Stone Crusher***[6], an argument was raised that since notification under Section 20 of the Forest Act has not been published therefore, land covered by notification issued under Section 4 cannot be regarded as forest. This Court negated the argument relying upon Section 5 of the Forest Act as amended in State of Uttar Pradesh by U.P. Act No. 23 of 1965. It was held that regulation by the State comes into operation after the issue of notification under Section 4 of the Forest Act and that absence of notification under Section 20 of the Forest Act cannot be accepted. The Court held as under:

> "145. At this juncture, it is also necessary to notice one submission raised by the learned counsel for the petitioners. It is contended that the State of Uttar Pradesh although issued notification under Section 4 of the 1927 Act proposing to constitute a land as forest but no final notification having been issued under Section 20 of the 1927 Act the land covered by a notification issued under

6 (2018) 14 SCC 537

> Section 4 cannot be regarded as forest so as to levy transit fee on the forest produce transiting through that area. With reference to the above submission, it is sufficient to notice Section 5 as inserted by Uttar Pradesh Act 23 of 1965 with effect from 25-11-1965. By the aforesaid U.P. Act 23 of 1965 Section 5 has been substituted to the following effect:
>
> > "5. **Bar of accrual of forest rights**.—After the issue of the 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 a 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, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest produce removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf."
>
> 146. Section 5 clearly provides that after the issue of the notification under Section 4 no forest produce can be removed therefrom, except in accordance with such rules as may be made by the State Government in this behalf. The regulation by the State thus comes into operation after the issue of notification under Section 4 and thus the submission of the petitioners that since no final notification under Section 20 has been issued they cannot be regulated by the 1978 Rules cannot be accepted."

26. This Court in a judgment reported as ***Prahlad Pradhan and Ors.*** v. ***Sonu Kumhar and Ors.***[7] negated argument of ownership based upon entries in the revenue records. It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title. The Court held

7 (2019) 10 SCC 259

as under:

> "5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property."

27. The six yearly khatauni for the fasli year 1395 to 1400 is to the effect that the land stands transferred according to the Forest Act as the reserved forest. Such revenue record is in respect of Khasra No. 1576. It is only in the revenue record for the period 1394 fasli to 1395 fasli, name of the lessees find mention but without any basis. The revenue record is not a document of title. Therefore, even if the name of the lessee finds mention in the revenue record but such entry without any supporting documents of creation of lease contemplated under the Forest Act is inconsequential and does not create any right, title or interest over 12 bighas of land claimed to be in possession of the lessee as a lessee of the Gaon Sabha.

28. The High Court had referred to the objections filed by the lessees under the Consolidation Act and also objections by the Forest

Department. It was held by the High Court that since no objections were filed by the Forest Department earlier, therefore, the objections would be barred by Section 49 of the Consolidation Act. We find that such finding recorded by the High Court is clearly erroneous. The land vests in the Forest Department by virtue of notification published under a statute. It was the lessee who had to assert the title on the forest land by virtue of an agreement in writing by a competent authority but no such agreement in writing has been produced. Therefore, the lessee would not be entitled to any right only on the basis of an entry in the revenue record.

29. In view thereof, we find that the order of the High Court cannot be sustained in law. The same is hereby set aside. The appeal is allowed. The order passed by the Deputy Director of Consolidation dated 8.7.2004 is restored.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
OCTOBER 05, 2021.