

Mohd. Karrar Ali And Ors. vs The State Of U.P. on 22 July, 1954

Equivalent citations: AIR1954ALL753, AIR 1954 ALLAHABAD 753

JUDGMENT

Malik C.J.

1. This is an application on behalf of three minors that they have been cultivating port

2. It is urged that the Act is ultra vires as it offends against the provisions of Artic

In paragraph 5 of the counter-affidavit it was mentioned that 7.07 acres of land was bro

In the rejoinder affidavit, it was mentioned that the applicants had been paying rent fo

4. As regards the second point, the real dispute relates to a question of lact, the appl

Learned counsel for the applicants does not deny that if his clients are tenants of the

5. The other point raised by learned counsel was that the Act is in contravention of the

Reliance was placed on a decision of the High Court of Australia in -- 'Minister of Stat

We have looked into the provisions of the U. P. Private Forests Act and we cannot say th

"No property, movable or immovable, includin'g any interest in, or in any company,

6. There is no question in this case of either possession or acquisition of the rights o

7. Learned counsel has urged in the alternative that the provisions of the Act are bad b

"A' Forest Officer may on the application of the landlord grant a felling licence for t

Section 13 of the Act provides that

"The Forest Officer may direct any owner of a notified forest to prepare withi

A study of these provisions makes it clear that the only object behind the restriction w

8. We are, therefore, of opinion that the provision of the Act restricting the right of

9. After we had heard learned counsel on the first two points, a point was raised on which
"The Governor is pleased to declare all forest lands in Uttar Pradesh other than

This presupposes that there are certain forest lands in the U. P. which are well known

"Whenever it has been decided to constitute any land a reserved forest, the Provincial Government may

(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 enquire into the

10. It is not possible to say what is the land to which the notification No. 1927/XIV-13

SUBSEQUENT ORDER

Malik, C.J.

11. On 30-9-1953, we dictated a long order and dealt with the various points raised in this writ petition. Towards the end of the hearing, learned counsel had raised a new point that the plots in question were not 'forest' land as there was no notification issued by the Government declaring them to be 'forest' land." We then pointed out that in the U. P. Private Forests Act, 1948, 'forest' has been defined as meaning 'any land which the State Government may, by notification, declare to be a forest for the purposes of this Act'. We gave the counsel for the State time to file a further affidavit giving reference to the notification by which the land in question had been declared to be 'forest'. A counter-affidavit was filed on behalf of the State on 13-10-1953, and reference is made in paragraph 5 of this affidavit to a Government Notification No. 517/XIV, dated 11-10-1952, by which the area of 274.3 acres of land existing in Ailra has been notified as a private forest.

This notification which was published in the U. P. Gazette, Part I, page 1179, and is dated 11-10-1952, was in the exercise of the powers conferred by Section 117, U. P. Zemindari Abolition and Land Reforms Act, 1950 (U. P. Act I of 1951). Section 3. Sub-section (3) of the U. P. Private Forests Act, 1943, with which we are concerned defines 'forest' as meaning any land which the State Government may by notification declare to be a 'forest for purposes of this Act'. So unless the notification makes it out that the land is declared to be a forest for the purposes of the U. P. Private

Forests Act, 1948, the land cannot be treated as 'forest' and the provisions of the Act cannot be made applicable to it. We are, therefore, of the opinion that the District Forest Officer, Gonda, had no jurisdiction to act under the U. P. Private Forests Act, 1948, and prevent either the cutting of the trees or taking forcible possession of the timber that had been cut.

12. We, therefore, issue a direction under Art, 228 of the Constitution that the opposite party is not entitled to act under the U. P. Private Forests Act, 1948, as the provisions of that Act are not applicable to the two plots Nos. 4458 and 4471, with regard to which no notification has yet been issued by the State Government declaring them to be forest land for purposes of the U. P. Private Forests Act, 1948.

13. We make no order as to costs.