

Banwasi Sewa Ashram vs State Of U.P. And Ors on 20 November, 1986

Equivalent citations: 1987 AIR 374, 1987 SCR (1) 336, AIR 1987 SUPREME COURT 374, 1987 CALCRILR 72, 1987 CRILR(SC MAH GUJ) 87 2, 1987 ALL CJ 482, 1987 SCFBRC 154, (1987) SC CR R 73, (1987) 13 ALL LR 35, (1987) EASTCRIC 430, (1987) 1 ALL RENTCAS 300, (1987) 1 SCJ 203, 1986 (4) SCC 753

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Misra Rangnath

PETITIONER:
BANWASI SEWA ASHRAM

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT 20/11/1986

BENCH:
BHAGWATI, P.N. (CJ)
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BHAGWATI, P.N. (CJ)
MISRA RANGNATH

CITATION:
1987 AIR 374 1987 SCR (1) 336
1986 SCC (4) 753 1986 SCALE (2) 867

ACT:

Indian Forest Act, 1927--ss. 4 and 20--Jungle lands notified and declared reserved forest--Possession of the Adivasis--Whether legal and valid.

Environmental Law:

Forests--National Asset--Important for ecological balance and economy--Schemes to generate electricity equally important and cannot be deferred.

Legal Aid

Jungle land inhabited and cultivated by Adivasis--Declared reserved forest--Dispossession sought--Provision of legal aid to protect their rights.

HEADNOTE:

Consequent upon the State Government declaring a part of the jungle lands in two tehsils of the District of Mirzapur as reserved forest under s.20 of the Indian Forest Act, 1927 and notifying other areas under s.4 of the Act for final declaration as reserved forests, the forest officers started interfering with the operations of the Adivasis living for generations in those areas. Criminal cases for encroachments as also other forest offences were registered against them and systematic attempts were made to obstruct their free movement, and even steps were taken under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 for throwing them out of the villages raised by them, and in existence for quite some time. Their attempts to cultivate the lands around these villages, converted by them into cultivable fields and on which they had been raising crops for food, were also resisted.

On the basis of a letter received from the petitioner-Ashram, a writ petition under Art. 32 of the Constitution was registered by this Court with regard to the claims of these Adivasis to land and related rights.

By its order dated August 22, 1983 the Court directed the claims of Adivasis or tribals, to be in possession of land and to regularisation of such possession, to be investigated by a high powered committee with a view to

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reaching a final decision. The committee has since identified 433 villages relevant for the present dispute, and roughly one lakh eighty two thousand acres in unauthorised occupation.

On December 15, 1983 the Court directed appointment of a high powered committee consisting of a retired High Court Judge and two officers for the purpose of adjudicating upon the claims of the persons belonging to Scheduled Castes and backward classes. The Government by notification dated August 5, 1986 has established a special agency for survey and record operations.

While the matter had been pending before the court the Government decided to locate a super thermal power plant of the National Thermal Power Corporation (NTPC) in a part of these lands and acquisition proceedings were initiated. NTPC, now a party before the Court, is seeking dispossession of person in occupation and takeover of lands sought to be acquired for its propose.

The Court gave the following directions:

1. The lands which have already been declared as reserved forest under s. 20 of the Act not to form part of the writ petition. [342 C]

2. Forest Officers to demarcate and identify the lands notified under s.4 of the Act within six weeks from 1st December, 1986. The matter to be widely publicised. Claims as contemplated under s.6(c) of the Act to be received

within three months from 15th January, 1987. [342 F-343 A]

3. Adequate number of record officers to be appointed by December 31, 1986. Five Additional District Judges to be located at five notified places in the area and to exercise the powers of the Appellate Authority as provided under s. 17 of the Act. [343 C-F]

4. After the Forest Settlement Officer has dealt with the matter, the findings with the requisite papers to be placed before the Additional District Judge of the area, even though no appeal is filed. These to be scrutinized by him as if an appeal has been taken. The order of the Additional District Judge passed therein to be taken to be the order contemplated under the Act. [343 G]

5. When the Appellate Authority finds that the claim is admissible, the State Government to honour the said decision and proceed to implement the same. [344 A]

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6. Assistance by way of legal aid to be provided to the persons seeking to raise claims and for facilitating information for lodging of claims and processing them both at the original as also the appellate stage. State Government to provide the necessary funds. [344 C]

7. The land sought to be acquired by the NTPC to be free from the ban of dispossession. However, provisions of the Land Acquisition Act to be complied with. Necessary record to be maintained, as indicated, for use in proceedings that may be taken subsequently. Facilities to be given to land oustees as undertaken before the Court. [344 F]

8. A Board of Commissioners to supervise the operations and oversee the implementation of the directions. [345 C-D]

Forests are a much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty., These have long-term adverse effects on national economy as also on the living process. At the same time, the court cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is great demand in this country for energy such as electricity. A scheme to generate electricity, therefore, is equally of national importance and cannot be deferred. [342 AB]

JUDGMENT:

ORIGINAL JURISDICTION: Crl. Misc. Petition No. 2662 of 1986 IN Writ Petition (Crl.) No. 1061 of 1982 (Under Article 32 of the Constitution of India) M.K. Ramamurthi and M.A. Krishnamurthy for the Petitioner. Dalveer Bhandari and D.D. Sharma for the Respondents. J.C. Seth, Secretary and Gen. Attorney for N.T.P.C. The Court made the following Order:

On the basis of a letter received from Banwasi Seva Ashram operating in the Mirzapur District this writ petition under Article 32 was registered. Grievance was

made on several scores in that letter but ultimately the question that required detailed consideration was relating to the claim of the Adivasis living within Dudhi and Robertsganj Tehsils in the District of Mirzapur in Uttar Pradesh to land and related fights. The State Government declared a part of these jungle lands in the two Tehsils as reserved forest as provided under section 20 of the Indian Forest Act, 1927 and in regard to the other areas notification under section 4 of the Act was made and proceedings for final declaration of those areas also as reserved forests were undertaken. It is common knowledge that the Adivasis and other backward people living within the jungle used the forest area as their habitat. They had raised several villages within these two Tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood--fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood. When a part of the jungle became reserved forest and in regard to other proceedings under the Act were taken, the forest officers started interfering with their operations in those areas. Criminal cases for encroachments as also other forest offences were registered and systematic attempt was made to obstruct them from free movement. Even steps for throwing them out under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 were taken. Some of the villages which were in existence for quite some time also came within the prohibited area. The tribals had converted certain lands around their villages into cultivable fields and had also been raising crops for their food. These lands too were included in the notified areas and, therefore, attempt of the Adivasis to cultivate these lands too was resisted.

On 22.8.1983, this Court made the following order:

"The Writ Petition is adjourned to 4th October, 1983 in order to enable the parties to work out a formula under which claims of adivasis or tribals in Dudhi and Robertsganj Tehsils, to be in possession of land and to regularisation of such possession may be investigated by a high powered committee with a view to reaching a final decision in regard to such claims. Meanwhile, no further encroachments shall be made on forest land nor will any of the adivasis or tribals be permitted under colour of this order or any previous order to cut any trees and if any such attempt is made, it will be open to the State authorities to prevent such cutting of trees and to take proper action in that behalf but not so as to take away possession of the land from the adivasis or tribals."

On behalf of the State of Uttar Pradesh an affidavit was filed by the Assistant Record Officer wherein it was stated:

"It is respectfully submitted that for the information of this Court the State Government is already seized with the matter and is trying to identify claims and find out ways and means to regularise the same. To achieve this aim the Government has already appointed a High Power Committee chaired by the Chairman of Board of Revenue, U.P., Collector, Mirzapur and Conservator of Forest, South Circle, are also

members of this Committee. This Committee has already held two sittings. In the last meeting held at Pipri on 16/17.8.1983 people of all shades of opinion presented their respective points of view before the Committee."

On 15.12.1983, this Court made another order which indicated that the Court was of the view that another High Powered Committee should be appointed. The relevant portion of that order was to the following effect:

" the parties will discuss the composition and modalities of the High Power Committee to be appointed by the Court for the purpose of adjudicating the various claims of the persons belonging to the Scheduled Castes and other backward classes in Robertsganj and Dudhi Tehsils of Mirzapur District. Notice will also specify, that the Court proposes to appoint a High Power Committee consisting of retired High Court Judge and two other officers for the purposes of adjudicating upon the claims of the persons belonging to Scheduled Castes and backward classes in Dudhi and Robertsganj Tehsils of their land entitlements as also to examine the hereditary and customary rights of farmers in those tehsils and to adjudicate upon the claims of tribals of their customary rights with respect to fodder fuel, wood, small timber, sand and stones for the houses, timber for agriculture implements, flowers, fruits and minor forest produce. The Uttar Pradesh Government had in the meantime indicated that the tenure of the Committee under the Chairmanship of Shri Maheshwar Prasad was to expire on December 31, 1983 and Government was awaiting the recommendations of that Committee. In that letter it was specifically stated:

"In the opinion of the State Government it would be more fruitful if the Committee proposed in your letter is constituted after the recommendations and advice of the previous Committee are received. The Government have agreed in principle that the proposed Committee with wide legal powers be constituted for adjudication of disputes."

Admittedly there had been no survey and settlement in these tehsils and in the absence of any definite record, this Court accepted the representation of the parties that it would be difficult to implement the directions of the Court. The Court, therefore, directed that survey and record operations in these Tehsils be completed. But later it was again represented on behalf of the State Government that completion of such operations within a short and limited time would be difficult and particularly, during the rainy and the winter seasons it would not at all be practicable to work. The Court thereafter did not reiterate its directions in the matter of preparation of the survey and record operations and awaited the report of the Maheshwar Prasad Committee. Intermittent directions were given on applications filed on behalf of tribals when further prosecutions were launched.

From the affidavit of Shri B.K. Singh Yadav, Joint Secretary to the Revenue Department of the State Government, it appears that the Maheshwar Prasad Committee identified 433 villages lying south of the Kaimur Range of the Mirzapur District to be relevant for the present dispute. Of those

299 were in Dudhi Tehsil and the remaining 134 in Robertsganj Tehsil. The area involved was 9,23,293 acres out of which in respect of 58,937.42 acres notification under section 20 of the Act has been made declaring the same as reserved forest and in respect of 7,89,086 acres notification under section 4 of the Act has been made. The Committee in its report pointed out that unauthorised occupation related to roughly one lakh eighty-two thousand acres. In the same affidavit, it has been further stated that the Government by notification dated August 5, 1986, has established a special agency for survey and record operations to solve the problems of the claimants in the area and a copy of the notification has also been produced.

While this matter had been pending before this Court and there has been a general direction that there should be no dispossession of the local people in occupation of the lands, Government has decided that a Super Thermal Plant of the National Thermal Power Corporation Limited (for short 'NTPC') would be located in a part of these lands and acquisition proceedings have been initiated. NTPC is now a party before us upon its own seeking and has made an application indicating specifically the details of the lands which are sought to be acquired for its purpose. It has been claimed that the completion of the Project is a time-bound programme and unless the lands intended to be acquired are made free from prohibitive directions of this Court, the acquisition as also the consequential dispossession of persons in occupation and takeover of possession by the Corporation are permitted, the Project cannot be completed.

Indisputably, forests are a much wanted national asset. On account of the depletion thereof ecology has been disturbed; climate has undergone a major change and rains have become scanty. These have long-term adverse effects on national economy as also on the living process. At the same time, we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is great demand in this country for energy such as electricity. In fact, for quite some time the entire country in general and specific parts thereof, in particular, have suffered a tremendous setback in industrial activity for want of energy. A scheme to generate electricity, therefore, is equally of national importance and cannot be deferred. Keeping all these aspects in view and after hearing learned counsel for the parties in the presence of officers of the State Government and NTPC and representatives of the Banwasi Seva Ashram, we proceed to give the following directions: '

1. So far as the lands which have already been declared as reserved forest under section 20 of the Act, the same would not form part of the Writ Petition and any direction made by this Court earlier, now or in future in this case would not relate to the same. In regard to the lands declared as reserved forest, it is, however, open to the claimants to establish their rights, if any, in any other appropriate proceeding. We express no opinion about the maintainability of such claim.
2. In regard to the lands notified under section 4 of the Act, even where no claim has been filed within the time specified in the notification as required under section 6(c) of the Act, such claims shall be allowed to be filed and dealt with in the manner detailed below:

- I. Within six weeks from 1.12.1986, demarcating pillars shall be raised by the Forest Officers of the State Government identifying the lands covered by the notification

under section 4 of the Act. The fact that a notification has been made under section 4 of the Act and demarcating pillars have been raised in the locality to clearly identify the property subjected to the notification shall be widely publicised by beat of drums in all the villages and surrounding areas concerned. Copies of notices printed in Hindi in abundant number will be circulated through the Gram Sabhas giving reasonable specifications of the lands which are covered by the notification. Sufficient number of inquiry booths would be set up within the notified area so as to enable the people of the area likely to be affected by the notification to get the information as to whether their lands are affected by the notification, so as to enable them to decide whether any claim need be filed. The Gram Sabhas shall give wide publicity to the matter at their level, Demarcation, as indicated above, shall be completed by 15.1.1987. Within three months therefrom, claims as contemplated under section 6(c) shall be received as provided by the statute.

II. Adequate number of record officers shall be appointed by 31st December, 1986. There shall also be five experienced Additional District Judges, one each to be located at Dudhi, Muirpur, Kirbil of Dudhi Tehsil and Robertsganj and Tilbudwa of Robersganj Tehsil. Each of these-Additional District Judges who will be spared by the High Court of Allahabad, would have his establishment at one of the places indicated and the State shall provide the requisite number of assistants and other employees for their efficient functioning. The learned Chief Justice of the Allahabad High Court is requested to make the services of five experienced Additional District Judges available for the purpose by 15th December, 1986 so that these officers may be posted at their respective stations by the first of January, 1987. Each of those Additional District Judges would be entitled to thirty per cent of the salary as allowance during the period of their work. Each Additional District Judge would work at such of the five notified places that would be fixed up by the District Judge of Mirzapur before 20th of December, 1986. These Additional District Judges would exercise the powers of the Appellate Authority as provided under section 17 of the Act.

III. After the Forest Settlement Officer has done the needful under the provisions of the Act, the findings with the requisite papers shall be placed before the Additional District Judge of the area even though no appeal is filed and the same shall be scrutinized as if an appeal has been taken against the order of the authority and the order of the Additional District Judge passed therein shall be taken to be the order contemplated under the Act.

3. When the Appellate Authority finds that the claim is admissible, the State Government shall (and it is agreed before us) honour the said decision and proceed to implement the same. Status quo in regard to possession in respect of lands covered by the notification under section 4 shall continue as at present until the determination by the appellate authority and -no notification under section 20 of the Act shall be made in regard to these lands until such appellate decision has been made.

4. Necessary assistance by way of legal aid shall be provided to the claimants or persons seeking to raise claims and for facilitating obtaining of requisite information for lodging of claims, actual lodging of claims and substantiating the same both at the original as also the appellate stage as contemplated, by the claimant. Legal aid shall be extended to the claimants, without requiring compliance of the procedure laid down by the Legal Aid Board. The Legal Aid and Advice Board of Uttar Pradesh and the District Legal Aid and Advice Committee of Mirzapur shall take appropriate steps to ensure availability of such assistance at the five places indicated above. For the purpose of ensuring the provision of such legal aid, State of Uttar Pradesh has agreed to deposit a sum of rupees five lakhs with the District Legal Aid Commit-

tee headed by the District Judge of Mirzapur and has undertaken to deposit such further funds as will be necessary from time to time. It shall be open to the District Legal Aid Committee under the supervision of the State Legal Aid Board to provide legal aid either by itself or through any Social Action Groups, like the Banwasi Seva Ashram.

5. The land sought to be acquired for the Rihand Super Thermal Power Project of the NTPC shall be freed from the ban of dispossession. Such land is said to be about 153 acres for Ash Pipe Line and 1643 acres for Ash Dyke and are located in the villages of Khamariya, Mitahanai, Parbatwa, Jheelotola, Dodhar and Jarha. Possession thereof may be taken after complying with the provisions of the Land Acquisition Act, but such possession should be taken in the presence of one of the Commissioners who are being appointed by this order and a detailed record of the nature and extent of the land, the name of the person who is being dispossessed and the nature of enjoyment of the land and all other relevant particulars should be kept for appropriate use in future. Such records shall be duly certified by the Commissioner in whose presence possession is taken and the same should be available for use in all proceedings that may be taken subsequently.

The NTPC has agreed before the Court that it shall strictly follow the policy on "facilities to be given to land oustees" as placed before the Court in the matter of lands which are subjected to acquisition for its purpose. The same shall be taken as an undertaking to the Court.

6. It is agreed that when a claim is established appropriate title deed would be issued to the claimant within a reasonable time by the appropriate authority.

7. The Court appoints the following as a Board of Commissioners to supervise the operations and oversee the implementation of the directions given:

(i) Mr. P.R. Vyas Bhiman (I.A.S. retired), Executive Chairman of the State Board of Revenue, U.P. now residing at Lucknow;

(ii) Dr. Vasudha Dhagamwar;

(iii) A representative to be nominated by the Banwasi Seva Ashram.

The Committee shall be provided by the State Government with transport facilities and the appropriate infrastructure. This should be completed before 31st December, 1986.

In the affidavit filed by Shri Yadav, Joint Secretary to the State Government on November 7, 1986, certain instructions of the State Government have been detailed. To the extent the instructions are not superseded by the Court's directions in to-day's order the same shall remain effective.

We must express our satisfaction in regard to the co-operation shown by the parties. Mr. Gopal Subramaniam appearing for the State of Uttar Pradesh has taken considerable pains to give shape to the matter. Mr. Ramamurthi for the petitioner has also done considerable work in evolving the ambit of the guidelines which we have adopted. We hope that all parties concerned with the matter would exhibit the proper spirit necessary to successfully complete the assignment. We give liberty to parties to move for directions as and when necessary. The Board of Commissioners shall also be at liberty to approach this Court for directions when necessary for implementing the present arrangements.

P.S.S.
disposed of.

Petition