

A STATE OF ANDHRA PRADESH AND ORS.

v.

M/S. ANUPAMA MINERALS ETC. ETC.

SEPTEMBER 7, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

A.P. Mining Rules, 1966 : Rule 31.

C *Mining Lease—Renewal of—Direction by High Court—Held Mandamus cannot be issued in violation of mandatory provisions of Act.*

Forest Conservation Act, 1980 : Section 2.

Reserved forest area—Grant of lease in—Prohibition against.

D The respondents were granted mining leases. Subsequent to the coming into force of the Forest Conservation Act, 1980 they applied for renewal of the leases but the State Government refused it because of the prohibition contained in Section 2 of the Act. The High Court directed the appellant to consider the renewal of the lease and seek approval of the Central Government under Section 2 of the Act. In this appeal the State
E Govt. questioned the legality of the direction issued by the High Court.

Allowing the appeals and setting aside the order of the High Court, this Court

F HELD : 1. The direction issued by the Court is clearly in violation of the State and on *mandamus* or direction could be issued to violate the mandatory provisions of the Act. On the facts and circumstances in these cases specially in view of the prohibition contained in the Forest Conservation Act, 1980, renewal cannot be granted after the Act had come into force. So any grant of renewal should be consistent with the provisions
G contained in the Act. In view of the prohibition for grant of lease in the reserved forest area, grant for renewal in the prohibited are will be in violation of law. Therefore, the authorities though had the power, but had duty while conserving the forest to refuse to grant renewal. In that view the Government's refusal to grant renewal cannot be said to be illegal. If
H they consider that renewal could be granted, even then the prior approval

of the Central Government is mandatory under Section 2 of the Act.
[216-C, 215-G-H, 216-A-B]

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Ambica Quarry Works v. State of Gujarat & Ors, [1987] 1 S.C.C. 213, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3702 to 3707 of 1984.

B

From the Judgment and Order dated 9.6.82 of the Andhra Pradesh High Court in W.P. Nos. 679, 691, 1668, 2063 and 2064 of 1981.

K. Madhava Reddy and G.Prabhakar for the Appellants.

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S.V. Tambwekar (N.P.) for the Respondents.

The following Order of the Court was delivered :

Leave granted in SLP No. 1457 of 1986.

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The respondents were granted mining leases under Rule 31 of the A.P. Mining Rules, 1966. The Forest Conservation Act, 1980 (for short 'the Central Act') had come into force on October 25, 1980. Subsequently in terms of the grant of the lease the respondents applied for renewal. The State Government refused to grant renewal in view of the prohibition contained in Sec. 2 the Act. The respondents filed the writ petitions in the High Court and the Division Bench in the impugned Judgment dated June 9, 1982 directed to consider the renewal of the respondents and seek approval of the Central Government under Sec. 2 of the Act. Calling in question of the legality of the directions issued by the High Court these appeals by Special Leave have been filed. In some of the cases the application for renewal has been filed after the Act had come into force but on the question of law does not make much difference. The point raised is no longer *res-integra*. This Court in *Ambica Quarry Works v. State of Gujarat & Ors.*, [1987] 1 SCC 213, held that the public authority is vested with the power the expression 'may' has been construed as 'shall' because if the conditions for the exercise of the power are fulfilled, it is coupled with the duty. When the grant of renewal was sought to be made then the authority has been invested with the duty to grant of renewal. On the facts and circumstances in these cases specially in view of the prohibition contained in the Act renewal cannot be granted since the Act had come into force. So any grant of renewal should be consistent with the provisions contained

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- A in the Act. The purpose of the Act is Conservation of the Forest and to prevent the depletion of the forest. In other words the Act intended not only to protect the existing forest but also conserve forest and protection of the existing forest in accordance of the provisions of the Act. In view of the prohibition for grant of lease in the reserved forest area, grant of renewal in the face of the prohibited area will be in violation of law.
- B Therefore, the authorities though had the power, but had duty while conserving the forest to refuse to grant renewal. In that view the Government's refusal to grant renewal, therefore, cannot be said to be illegal. If they consider the renewal could be granted, even then the prior approval of the Central Government is mandatory under Sec. 2 of the Act.
- C The renewal cannot be granted in view of the prohibition contained in the Act. Therefore, the direction issued by the High Court is clearly in violation of the Statute and on *mandamus* or direction could be issued to violate the mandatory provisions of the Act. The direction accordingly is illegal. The appeals are allowed the order of the Division Bench of the High Court is set aside but in the circumstances without costs.

T.N.A.

Appeals allowed.