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UNION OF INDIA AND ORS.

v.

KAMATH HOLIDAY RESORTS PVT. LTD.

JANUARY 9, 1996

B

[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

Forest (Conservation) Act, 1980 :

C

Section 2—Reserved forest area in Daman—Site leased out for putting up a snack bar and restaurant for tourists—Order of Collector objected to by Conservator of Forests on grounds of restriction envisaged by s.2 and the need for prior approval of Central Government—High Court approving the action of Collector since he was an officer of the Central Government and need not seek prior approval—On appeal Collector directed to send the proposal together with the objection of the Conservator of Forests to the Central Government which would pass orders thereon within three months—Collector to abide by the orders of the Central Government.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3548 of 1989.

E

From the Judgment and Order dated 28.4.89 of the Bombay High Court in W.P. No. 24 of 1989.

W.S.A. Qadri and Ms. A. Subhashini for the Appellants.

Yogeshwar Prasad and Ms. Rachna Gupta for the Respondent.

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The following Order of the Court was delivered :

Counsel have been heard at length in this appeal.

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The established position is that the Collector of the Union Territory, Daman, as a step towards promoting tourism leased out a site in the reserved forest area to the respondent for putting up a snack Bar and a restaurant to cater to the needs of tourists visiting the forest. It was the Conservator of Forests who raked up the matter and objected to the grant of such lease affecting the reserve forest. The lease was for a period of five years, renewable in terms. The objection of the Conservator of Forests was legal in as much as there was restriction on the de-reservation of forest or use of forest land for

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non-forest purposes, as envisaged under Section 2 of the Forest (Conservation) Act, 1980. Whenever any forest land was required to be put to non-forest use, the State Government or other authority was required to put the matter for prior approval of the Central Government and then make an order directing forest land to be used for non-forest purposes. Section 2 as is relevant is set out below :

"Section 2 : Restriction on the dereservation of forests or use of forest land for non-forest purpose - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make except with the prior approval of the Central Government, any order directing :

(i) that any reserved forest (within the meaning of the express 'reserved forest' in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purposes;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion for the purpose of using it for reafforestation."

Since the area leased out to the respondent was within a Union Territory, the Collector apparently entertained the view that observance of the procedure under Section 2 of the Forest (Conservation) Act, 1980, was not necessary, the administration being of the Central Government. But the Conservator of Forests strongly held the opposite view and put to stop further activities of the respondent.

The respondent was thus led to move the High Court of Bombay in writ proceedings, contending mainly that the Forest (Conservation) Act, 1980 was in fact meant to involve State Governments, or other authorities nominated by them and that the Act was not meant to apply to Union Territories as they

A themselves were governed by the Central Government. In other words, it was maintained that an Officer of the Central Government moving in the matter need not seek prior approval of the Central Government under Section 2 of the Act.

B This assertion and interpretation as accepted by the High Court, in our view, was in the teeth of the clear applicability of the Act extending to the whole of India except the State of Jammu and Kashmir. The Act was obviously meant to apply to Union Territories as well and not to the States alone. And in the context, the expression 'other authority', as is evident from the above reproduction of the provision, is all comprehensive and far wide so as to include any authority concerned with the matter. Such authority instantly being the Collector was thus required to seek approval of the Central Government before passing orders under Section 2, consonant with the orders of the Central Government. Nothing of the kind was done here. The High Court on that basis, erroneously though, approved the action of the Collector who had acted solely, without seeking the prior approval of the Central Government.

E We cannot agree with such view of the High Court and therefore have felt the need to substitute its order with the present one for it appears to us that it is essential to marshal the priorities; instantly on one side those of the tourist department and on the other of the forest department. For this purpose, Section 3 of the Forest (Conservation) Act, 1980 has envisaged the constitution of an Advisory Committee to advise the Government in the matter of grant of approval under Section 2 and on any other matter connected with the conservation of forest which may be referred to it by the Central Government. We assume that a Committee of the kind has been constituted. All current streams of thought lead towards protection of environment and preservation of forest wealth. On the other hand there are demands in justification of other use telling on the forest. A balance would have to be struck, in a cool and dispassionate manner.

G As a way out, therefore, we direct that the proposal as mooted by the Collector and approved by his action, together with the objection of the Conservator of Forest be sent by the former to the Central Government under Section 2 of the Forest (Conservation) Act, 1980 read with the rules framed thereunder. The Central Government may on receipt of such proposal by the Collector act in accordance with the provisions of the aforesaid Act and the rules and after obtaining advice from the Advisory Committee pass such

orders thereon, which may be warranted in the facts and circumstances, A
informing the Collector accordingly. The Collector shall thereafter abide by
the orders of the Central Government. Let the entire exercise be over within
a period of three months from today. The appeal would stand disposed of with
these directions. No costs.

G.N.

Appeal disposed of.