(Reportable)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5180 OF 2001

A. Chowgule & Co. Ltd. .....Appellant

Vs.

Goa Foundation & Ors. .....Respondents

J U D G M E N T

HARJIT SINGH BEDI,J.

1. The facts leading to the filing of this appeal are as under:

2. The appellant, a company incorporated under the Companies Act, has its registered office at Chowgule House, Mormugao Harbour,Goa and is a recognized star trading house engaged in the mining, processing and export of iron ore. In the year 1979, the appellant took a decision to establish a 100 per cent export oriented unit in Sanguem Taluka situated at a short distance from its

existing mines. The process of locating suitable land for the unit took about 10 years and the process for the unit was finally set in motion by a letter dated 21st December 1988 from the Collectorate of South Goa, Revenue Department to the Inspector of Survey, Land Records, Mangao-Goa informing the said officer that the Government of Goa had decided to lease an area of 15 hectare out of 26.4675 hectares to the appellant under Survey No. 12 of Potrem Village in Sanguem Taluka and directions were issued that the area be demarcated and the other formalities complied with. On 17th August 1989, the appellant addressed a letter to the Secretary for Industrial Approvals, Ministry of Industries of the Central Government about the proposal to set up an integrated unit including a benefication plant at Tuduo Mines for the production of saleable iron ore at a cost of Rs.25 crores and to operate it as a 100 per cent export oriented unit. A formal letter of intent was also issued to the appellant on 25th January 1991. Pursuant to the decisions taken, a Memorandum of Lease dated 1st

November 1989 was executed between the Governor of Goa and the appellant whereby an area of 12 hectares was leased out for the purpose of ancillary work connected to mining and for that purpose the appellant was authorized to construct the necessary civil structures. The appellant also, on 7th of February 1990, entered into a contract with a Japanese Corporation for the export of processed iron ore. A No Objection Certificate from the Goa State Pollution Control Board was obtained on 15th April 1991 and a Sanad dated 10th July 1991 was also issued by the Deputy Collector of Goa permitting the use of the land for non-agricultural purposes upon payment of Rs.6 lakhs by way of conversion fees. It is the case of the appellant that pursuant to the aforesaid administrative sanctions and decisions, machinery worth Rs.12 crores was imported for the operation of the project. At this juncture Respondent Nos.1, 2 and 3 filed Writ Petition No.113 of 1992 in public interest before the Goa Bench of the Bombay High Court praying for a writ of certiorari for

quashing the Memorandum of Lease dated 1st November 1989 and for several other reliefs. Respondent No.5 herein, the Conservator of Forests, Goa filed an affidavit before the High Court pointing out that the 12 hectares of land which had been leased to the appellant had already been classified as Revenue Land meant for "Dry Crops" and was not a forest area, as had been contended by the writ petitioners/respondents 1,2 and 3. On 26th March 1992, the High Court adjourned the matter for 8 weeks in view of the statement made by the Advocate General that the State Government proposed to take up the matter with the Central Government so as to secure the necessary approvals postulated under section 2 of the Forest Conservation Act, 1980 (hereinafter called the "Act") and as such it was unnecessary to proceed with the writ petition. The High Court, accordingly, adjourned the matter for 8 weeks without any discussion on merits with liberty to all parties to press their submissions in case the need arose. Pursuant to the assurance given by the Advocate General to the High Court, the State

Government wrote to the Ministry of Environment and Forest, New Delhi on 7th May 1992 pointing out that out of the 12 hectares leased to the appellant a small area of about 5000 square meters would be used for the erection of the benefication plant and that appellant had also taken to raise compensatory afforestation in one hectare in non-forest area in Survey No.42 Santanu Village of Sangueme Taluka and as the unit was likely to earn foreign exchange and the broad sanctions had already been given by the concerned quarters, clearance under section 2 of the Act be accorded. The writ petition aforesaid once again came up for consideration on 17th November 1992 and while granting some interim relief to the writ petitioners-respondents, it was directed that the petition be listed for final disposal in January 1993. The Ministry of Environment and Forest, in the meanwhile, vide its letter dated 25th May 1993 conveyed its approval in principle for diversion of 4.44 hectares of forest land from Potrem village subject to several conditions which were statedly complied with by the appellant and a final

decision allowing the diversion was also conveyed to the appellant on 7th November 1997. Writ Petition No.113 of 1992 came up for final disposal before the Goa Bench on 21st July 2000 and was duly allowed and writ of certiorari was issued quashing the lease agreement dated 1st November 1989. It was, inter-alia, held that the various approvals/sanctions granted to the appellant by the Industries Department or by the Collector could not, by any stretch of imagination, be construed as permission for deforestation of the forest area, as envisaged by section 2 of the Act as the said Act required prior approval of the Central Government after the procedure given in Rules 4, 5 and 6 of The Forest (Conservation) Rules 1981 (hereinafter called the "Rules") had been followed. The plea of the appellant that the area concerned was not a forest was also repelled with the observations that an average of 250 trees per hectare were growing on the land, as was clear from the affidavit filed by the Deputy Conservator of Forest, R.Nagbhushan Rao and that the entire area was heavily forested with

3000 trees and was in addition contiguous to the Government forests. The Bench also observed that merely because the land had been described as "Dry Crops Land" would not change the nature of the land as it was apparently a wrong description more particularly as Section 2 ibid referred not only to forests but to forest land as well. For arriving at its decision, the Division Bench relied upon the decision of this Court in **T.N.Godavarman Thirumulkpad vs. Union of India & Ors. (**1997) 2 SCC 267 in which it was held that the term 'forest' was to be given an extended meaning so as to cover all statutorily recognized forests whether designated as reserved, protected or otherwise for the purpose of section 2 of the Act. Having held as above, the Division Bench observed that the 12 hectares being forest land, prior permission under section 2 of the Act was the sine qua non for the execution of the lease deed dated 1st of November 1989 and finally concluded as under:

"Does the subsequent act of granting permission communicated by letter of 18th May 1993 enable respondent No.4 to carry on with those development activities on the 4.44 hectares? The letter of 8th July 1997 seeks prior approval of Central Government. In the instant case as we have been there is no prior approval for entering into a lease deed any of the term of lease can be set out. Condition No.1 shows that the legal status of the forest land shall remain unchanged. The permission is co-terminus with lease granted by the State Government with effect from 1st November 1989. Therefore, it proceeded on the footing that prior approval is being sought. In the instant case the records show that prior approval was not taken. In that context mere permission granted for development will be of no consequence. It is true that the petitioner has not challenged the subsequent permission granted. However, what is material to notice is that the area was a forest. In spite of that, without prior permission, the respondent No.1 granted the lease in favour of the respondent No.4. The lease was contrary to law. Once the lease was contrary to law, the question of the State Government applying at the behest of respondent No.4 for permission would not arise.

Even otherwise the land is situated to an adjacent Government forest and the land is sought to be used for setting up of a beneficiation plant which involves dust and water pollution and consequent destruction of the adjoining forest. It will substantially affect the environment and ecology of the area. This, in fact, would affect the right to life. The petitioners in the petition have averred that the cutting of trees without obtaining

> permission was resorted to. In matters of ecology and environment and considering the principle of sustainable development, no person or organization, however, high and mighty they may be, can be permitted to flout the law of the land.
> Considering that, in our opinion, the lease granted in favour of respondent No.4 is still born, null and void. Respondent No.1 is directed to restore the land to its original use.
> Rule made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs."

It is these circumstances that the appeal is before us.

3. Mr. Shrivastava, the learned senior counsel for the appellant has raised several arguments during the course of hearing. He has first and foremost pointed out that there had been no violation of the provisions of Section 2 of the Act in the background that the Government of India had given its post-facto approval to the project and that the State Government had accorded its approval on 21st December 1988 and that the Government of India had also conveyed its approval in principle for the diversion of 4.44 hectares of the land subject to several conditions which had been complied

with and in this view of the matter, any flaw, which may have been present at the initial stage, had been rectified. It has been submitted that the aforesaid arguments were further fortified from the letters of the Ministry of Environment and Forest, Government of India dated 18th May 1993 and 7th November 1997 for the use of 4.44 hectares of forest land in Porterm village in favour of the appellant subject to the condition, inter-alia, that compensatory afforestation would be carried out over non-forest land at the cost of the project. It has, accordingly, been submitted as the lease deed has been executed for an area of about 15 hectares and was as per record not a forest area, the entire area ought to be left for the use of the appellant-company and that the 4.44 hectares which had been cleared not only by the State Government but by the Ministry of Environment and Forest, Government of India should in any case be left out for the benefit of the appellant. The learned counsel has relied upon (1985) 3 SCC 643 **(State of Bihar vs. Banshi Ram Modi & Ors.)** and AIR 1990 Andhra

Pradesh 257 **(Hyderabad Abrasives & Minerals, Hyderabad vs. The Govt. of A.P. Forest Department, Hyderabad & Anr.** in support of his case.

4. Mr. Sanjay Parekh, the learned counsel for the respondents has, however, submitted that as a matter of fact, the benefication plant had already been shifted from the proposed site and that this fact had been withheld from the High Court as well as from this Court during the course of the protracted hearings. It has also been strongly urged that Section 2 of the Act and the Rules pre-supposed a prior approval of the Central Government as per the prescribed procedure before the dereservation of forest land and formal approvals granted by any other agency or by the Central Government ex-post facto, would not cure any defect in the dereservation. It has been submitted that even as per the appellant's case, the lease deed for 12 hectares had been executed on 1st November 1989, but the approval for the diversion of 4.44 hectares of land had

been accorded in the year 1997 and would, therefore not operate retrospectively even for this limited area. It has also been argued that the appellant's undertaking to cause afforestation in an area equivalent to the one leased out as per the stipulation of the Central Government in the afore referred documents, was also not acceptable in the light of the fact that the lease deed itself was contrary to law. It has also been pointed out that the finding of fact recorded by the High Court was that the area in question was indeed a forest and that the judgments cited by the appellant's counsel had been clarified by the Supreme Court in a series of subsequent judgments reported in (1987) 1 SCC 213 **(Ambica Quarry Works vs. State of Gujarat & Ors.),** 1989 Suppl. (1) SCC 504 **(Rural Litigation & Entitlement Kendra vs. State of U.P.,** (1997) 2 SCC 267 **(T.N.Godavarman Thirumulkpad vs. Union of India & Ors.)** and (2004) 12 SCC 118 **(M.C.Mehta vs. Union of India & Ors.)**.

5. We have considered the arguments advanced by the learned counsel for the parties. It is evident from the record and what has been recorded earlier that the primary issue is with regard to the permission granted by the Central Government for the diversion of the forest area. Section 2 of the Act and the relevant Rules are reproduced below:

> "Sec. 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 expression '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 purpose;
>
> (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 re-afforestation.

Rules.

Rule 2(b). "Committee" means the Committee constituted under Section 3.

2A.(1)Composition of the Committee:- The Committee shall be composed of the following Members:-

i. Inspector General of Forests,Ministry of Environment & Forests – Chairman.
ii. Additional Inspector General of Forests, Ministry of Environment and Forests – Member.
iii. Joint Commissioner (Soil Conservation), Ministry of Agriculture – Member.
iv. Three eminent environmentalists (non-officials) – Member.
v. Deputy Inspector General of Forests, (Forest Conservation), Ministry of Environment and Forests – Member-Secretary.

4.Procedure to make proposal by a State Government or other authority:-

(1) Every State Government or other authority seeking the prior approval under section 2 shall send its proposal to the Central Government in the form appended to these rules:

Provided that all proposals involving clearing naturally grown trees in forest land Or portion thereof for the purpose of using it for

reafforestation shall be sent in the form of Working Plan/Management Plan.

(2) Every proposal referred to in sub-rule (1) shall be sent to the following address, namely:-

Secretary to the Government of India
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex
Lodi Road, New Delhi – 110003

Provided that all proposals involving forest land up to twenty hectares and proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall be sent to the Chief Conservator of Forests/Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.

5. Committee to advise on proposals received by the Central Government:-

1. The Central Government shall refer every proposal received by it under sub-rule (1) of rule 4 to the committee for its advice thereon if the area of forest land involved is more than twenty hectares.Provided that proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall not be referred to the Committee for its advice.

2. The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under sub-rule (1), namely :-

a. Whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

b. Whether the use of any forest land is for agricultural purpose or for the rehabilitation or persons displaced from their residences by reason of any river valley or hydro-electric project;

c. Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

d. Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.

3. While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose which, in its opinion, would minimize adverse environmental impact.

6. Action of the Central Government on the advice of the Committee – The Central Government shall, after considering the advice of the committee tendered under rule 5 and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same."

6. A bare perusal of the aforesaid provisions would show that prior approval is required for the diversion of any forest land and its use for some other purpose. This is further fortified by a look at Rule 4 which provides that every State Government or other authority seeking prior approval under Section 2 of the Act shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulates that the proposals would be examined by a committee appointed under Rule 2-A within the parameters and guidelines postulated in Rule 5. There is nothing on record to suggest that this procedure had been adopted. Admittedly also the approval for 4.4 hectares had been obtained long after the lease deed had been executed on 1st November 1989 and there is no suggestion that even for this limited area the procedure envisaged under Rules 4, 5 and 6 had been followed. We are, therefore, of the opinion even assuming that some approval was granted with respect to 4.44 hectares of land in the year 1997, it would not amount to prior approval in terms of the Act and the Rules afore quoted. Mr. Shrivastava has, however, pointed out that in the light of the

judgment in Banshi Ram Modi's case (supra), as the 4.44 hectares of land were to be utilized for the purpose of an existing and adjoining mining activity, the prior approval envisaged under section 2 was not required. We find, however, that the aforesaid judgments do not apply to the facts of the present matter as it is nobody's case that any mining activity was going on near the land which is now sought to be leased out. In the above cited cases, the primary question was as to whether in the case of a lease granted prior to the coming into force of the Act, the provisions of Section 2 would apply at the time of the renewal of the lease after the Act had become operative. Concededly this is not the case before us and on the contrary in Hyderabad Abrasives case (supra) it has been specifically observed that the material date "for the purpose of the Act is not the date of the lease is granted, but the date on which the State Government or other authority permits the breaking up, or clearing of the forest land or any portion thereof", the implication being that the initial lease deed could be granted earlier to the promulgation of the Act, but for renewal, the provisions of the Act would be

operable. We also find that the observations in Ambica Quarry Works, Rural Litigation & Entitlement Kendra, T.N.Godavarman Thirumulkpad and M.C.Mehta cases (supra), would indicate that after the coming into force of the Act, the renewal of a pre-existing mining lease in a forest area can be granted only if the requirements of Section 2 are satisfied. It is therefore obvious that the claim of the appellant confined only to 4.44 hectares is also untenable for the reasons given above and that in any case, the benefication plant to which this area was to be attached had been shifted from its earlier proposed location.

7. It has finally been submitted by Mr. Shrivastava that the land in question was not a forest and was, therefore, not subject to the provisions of the Act and that in any case, the appellant was willing to reforest an identical area if the lease was permitted to operate. We find from a perusal of the High Court judgment that this question of fact had been adequately dealt with based on the affidavits filed in Court and also on a perusal of the Revenue record. Some argument has been made by Mr. Shrivastava on the discordance between the

affidavits filed by the two Forest Officers, T.Ramaswamy and R. Nagbhushan Rao. We however discern no difference with regard to the basic factum as to the nature of the land in question and the only difference, if at all, is with regard to the number of trees per hectare said to be growing on the land. We, thus, have no hesitation in confirming this finding of fact. In T.N.Godavarman Thirumulkpad case (supra), this Court expressed its dissatisfaction with some of the State Governments in the implementation of the provisions of the Act and observed thus:

> "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for

> the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works vs. State of Gujarat, Rural Litigation and Entitlement Kendra vs. State of U.P. and recently in the order dated 29.11.1996 (Supreme Court Monitoring Committee vs. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi has, therefore, to be understood in the light of these subsequent decisions.We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority."

8. We are, therefore, of the opinion that in the light of the aforesaid emphatic and clear cut observations, and findings of fact, there can be no doubt that the land leased out to the appellant was indeed a forest.

9. Some arguments have flown during the course of the hearing that the appellants were willing to reforest an identical area in case the lease was allowed to be effectuated. In this connection, some observations need to be made. The basic question is as to what is implied by the terms afforestation or re-forestation. Is it merely the replacement of

one tree with another or does it imply some thing a little more complex? "Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past". In the present case, we are concerned with afforestation and the promise of the appellant to plant trees in an equivalent area. We, however, find from experience and observation that the re-forestation or afforestation that is being carried out in India does not meet the fundamentals and the planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced by alien and non-indigenous but fast growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. It must be borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and

which are suitable to the area in question. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the eco system dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover. A small but significant example is the destruction of plantations alongside the arterial roads in India. 30 years ago all arterial roads had huge peripheral forest cover which not only provided shade and shelter to the traveller but were a haven to a large variety and number of birds and other wild life peculiar to that area. With the removal of these plantations to widen the roads to meet the ever growing needs of the traffic, and their replacement by trees of non-indigenous varieties, (which are often not eco or bird friendly) in the restricted and remaining areas bordering the widened roads, the shelter for birds has been destroyed and where thousands of birds once nested and bred, there has been a virtual annihilation of the bird life as well. Those who live in North India would do well to

remember that a drive along the Grand Trunk Road, National Highway No.1, northwards of Delhi, particularly during the hours of dawn or dusk, was as if through an aviary with thousands of birds representing a myriad of species with their distinctive calls reaching a crescendo during early evening and gradually fading into silence as darkness set in. Sadly, all that can now be seen are crows feeding on the decaying and mutilated carcasses of dogs and other animals killed by speeding vehicles. Equally disturbing is the decrease in the reptilian population as the undergrowth in which it lived and prospered has been destroyed, and with the concomitant increase in the rodent population, colossal losses and damage to the farmer and in the storage of food grains.

10. We are, therefore, of the opinion that there is no merit in the appeal. It is accordingly dismissed. No order as to costs.

.....J.
(Tarun Chatterjee)

.....J.
(Harjit Singh Bedi)

New Delhi,
Dated: August 18, 2008