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ITEM NO.32 COURT NO.11 SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9837-9838/2011

(From the judgement and order dated 22/02/2011 and 10/3/2011 in WP No.6887/2010 and SA No. 161/2011 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

ISHWAR CHANDRA GUPTA Petitioner(s)

VERSUS

STATE OF U.P.& ORS. Respondent(s)  
(With appln(s) for exemption from filing O.T. and prayer for interim relief and office report)  
WITH  
SLP(C) NO. 10081-10082 of 2011  
(With appln(s) for exemption from filing O.T. and prayer for interim relief and office report)  
SLP(C) NO. 10115-10116 of 2011  
(With appln(s) for exemption from filing O.T. and prayer for interim relief and office report)  
SLP(C) NO. 10117-10118 of 2011  
(With appln(s) for exemption from filing O.T. and prayer for interim relief and office report)

Date: 18/04/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Amit Mahajan, Adv.  
Mr. Manik Dogra, Adv.  
Mr. Navin Chawla, Adv.

For Respondent(s) Mr. P.N. Mishra, Sr. Adv.  
Mr. T.N. Singh, Adv.  
Mr. Rajeev Dubey, Adv.  
Mr. Kamendra Mishra, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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These petitions are directed against order dated 22.2.2011 passed by the learned Single Judge dismissing the writ petitions filed by the petitioners against orders dated 29.6.2010 and 29.9.2010 passed by the Prescribed Authority and the Appellate Authority respectively in the proceedings initiated under Section 61-B of the Indian Forest Act, 1927 (as amended) and Section 34-A of the Wild Life (Protection) Act, 1972 (as amended). They have also prayed for setting aside order dated 10.3.2011 vide which the Division Bench of the High Court dismissed the special appeals as not maintainable.

In the year 1994, Forest Officer filed a complaint before Sub-Divisional Officer, Lakhimpur Kehri under Section 61-B of the Indian Forest Act, 1927 (as amended) for eviction of the petitioners by

alleging that they had unauthorisedly occupied portion of the reserved forest and had opened shops. The petitioners objected to the jurisdiction of the Sub-Divisional Officer, who accepted their plea and passed order dated 13.4.2006 for transfer of the proceedings to the Prescribed Authority. After considering the documents produced before him, the Prescribed Authority passed order dated 29.6.2010 for the eviction of the petitioners on the premise that they had unauthorisedly occupied the area which was declared as reserved forest and form part of the restricted area of Dudhwa National Park.

The appeals preferred by the petitioners were dismissed by the Appellate Authority vide order dated 29.9.2010. The Appellate Authority noted that the petitioners were operating shops within the reserved forest without any permission and such activities were

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prohibited under the Indian Forest Act, 1927 the Wild Life (Protection) Act, 1972 and the Forest (Conservation) Act, 1980.

The petitioners challenged the orders of the Prescribed Authority and the Appellate Authority by filing writ petitions under Article 226 of the Constitution and claimed that in terms of the provisions contained in the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short "2006 Act"), they were entitled to regularisation of their possession. The learned Single Judge dismissed the writ petitions by observing that the petitioners are not covered by the provisions of the 2006 Act.

The Division Bench of the High Court dismissed the special appeals by relying upon the judgment of the Full Bench in Sheet Gupta vs U.P. & ors. [(2010) 1 UPLBEC 1], wherein it was held that an appeal is not maintainable in such matters.

Shri Mukul Rohtagi, learned senior counsel appearing for the petitioners, argued that the orders passed by the Prescribed Authority and the Appellate Authority are liable to be quashed because the former did not have the jurisdiction to order eviction of the petitioners ignoring the mandate of the 2006 Act which has the effect of overriding the provisions contained in the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980. Shri Rohtagi relied upon the definition of 'other traditional forest dweller' contained in Section 2(o) of the 2006 Act and argued that the direction given by the Prescribed Authority for eviction of the petitioners should be set aside because their occupation of the reserved forest is protected under Section 4 of that Act.

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We have considered the arguments of learned senior counsel but have not felt convinced. The definition of the expression 'other traditional forest dweller' on which reliance has been placed by Shri Rohtagi reads as under:

"2(o)"other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood need."

A cursory reading of the above reproduced definition makes it clear that only that person or community is

entitled to the protection under the 2006 Act who has for at least three generations prior to 13.12.2005 primarily resided in and depends on the forest or forest land for bona fide livelihood. The petitioners have neither pleaded nor any document has been produced before the Court to show that their three generations have been residing in the forest prior to 13.12.2005 and their livelihood needs are dependent on forest or forest land.

With the above observations, the SLPs are dismissed.

However, it is made clear that if the petitioners make representation(s) to the competent authority for grant of licences to operate in a notified market area, then their representations shall be sympathetically considered and disposed of at the earliest.

The petitioners are also allowed four weeks' time to vacate the forest or forest land possession to the competent authority. and handover If they fail to

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do so, the concerned authority shall be entitled to use force for securing possession of the forest land.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master