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serves a notice on him stating the quantity pre-empted and the time within which the supply is to be made. The clause, however, does not make it obligatory on Government to pre-empt any quantity of mineral or at all. There is no obligation to buy nor is there any compulsion on the part of the lessee to sell unless asked. In these circumstances, the clause does no more than to keep intact a right of the Government to obtain the minerals or their products as and when Government requires in preference to others. Till Government makes up its mind and serves a notice there is no obligation to make any deliveries and even though the word 'subsists' is a word of wide import, it cannot be said that a contract for the sale of goods subsists because a contract requires an offer and its acceptance and is not a mere reservation of a right.

Taking the most liberal view of the matter it is clear that cl. 21 did not bring into being a contract for the supply of goods. All that it did was to reserve to the Government the right to prior purchase of the minerals raised by the respondent. The reservation of such rights does not amount to a contract for the supply of goods which can be said to subsist between the parties. The High Court was, therefore, right in reversing the decision of the Election Tribunal. The appeal fails and is dismissed with costs.

Appeal dismissed.

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UNION OF INDIA

v.

ABDUL JALIL AND ORS.

(M. HIDAYATULLAH AND N. RAJAGOPALA AYYANGAR, JJ.)

Forest Act—"Reserved forest"—Tripura Act replaced by Indian Forest Act—No preliminaries prescribed under Tripura Act—Notification under it whether can be deemed to be under Indian Forest Act—Tripura Act and Indian Forest Act, object and purpose—Corresponding provisions—Indian Forest Act, 1927 (*Act* 16 *of* 1927),

Chs. II and IV, Tripura Forest Act, 1257 (1297?) *T.E.* (*Tripura Act 2 of* 1257 *T.E.* 1297?) *s.* 5.

The respondents in these appeals were convicted by Magistrates for offiences under s. 26(1) of the Indian Forest Act. Appeals were filed to the Sessions Judge, where the respondents raised the contention that the forest areas in which the alleged offences were committed were not "Reserve forests" within the meaning of the Act. For establishing that these "reserves" were "reserved forests" within the Indian Act, the appellant relied on two circumstances. First, there was a Forest Act promulgated by the Ruler of Tripura State (Act 2 of 1257 T.E. 1297 T.E. ?) which contained provisions somewhat analogous to those contained in the Indian Act. Next, s. 5 of the Tripura Act enabled the State Government to declare by notifications published in the State Gazette, the boundaries of the forest areas to be governed by the State Act. Such notifications were published by which the boundaries of the reserves of the forests in question were defined. The appellant urged that the Tripura Act was replaced by the Indian Forest Act by reason of legislative provisions upon the merger of the native State of Tripura with the Dominion of India, and that the notifications under the Tripura Act which were continued in force by these same provisions rendered these reserves "Reserved forests" under the Indian Forest Act. The Sessions Judge held that by reason of these notifications the forest areas became "reserved forests" under the relevant provisions of the Indian Forest Act and dismissed the appeals. Thereafter, revisions were filed before the Judicial Commissioner, who differing from the Sessions Judge held that they were not "reserved forests" and directed the acquittal of the respondents. On appeal by special leave:

HELD: (i) From the provisions of the Indian Forest Act, it would be seen that it is the notification under s. 20 after complying with the procedure prescribed by the other sections of Chapter II commencing with s. 4 that constitutes a forest area "a reserved forest" within the Act.

(ii) The fact that under the Tripura Act there were no preliminaries prescribed before a forest could be notified as a reserved forest does not detract from such a notification being a notification under the Indian Forest Act.

(iii) In substance the object and purpose of the Tripura Act was the protection of particular trees—the seven types of trees specified in s. 4. The notification under s. 5 is for the purpose of constituting areas where these types would be protected. The penal provisions enacted are for ensuring the protection of these trees.

(iv) The prime purpose of Chapter II of the Indian Forest Act is the constitution of reserved forests in which (1) all private rights within the reserved area are completely eliminated by their being bought up where these are ascertained to exist by payment of compensation, (2) the entire area being devoted to siviculture, every tree in the forest being protected

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from injury and within the scope of the penal provision contained in s. 26. In other words, the reservation here is to the "forest area" as such and not the protection of the particular specified trees or species of trees in such a forest.

(v) The object of Ch. IV of the Indian Forest Act is the protection of particular trees and the setting apart of particular areas as protected forests for the purpose of ensuring the growth and maintenance of such trees. The object sought to be achieved by the reservation in Ch. IV is exactly similar to that which is sought to be achieved by the Tripura Act. Only the Tripura Act makes the cutting of protected trees even outside a forest an offence, whereas there is no such provision under the Indian Forest Act.

(vi) The notification under s. 5 of the Tripura Act would constitute the area in question only as a "protected" forest under Ch. IV of the Indian Forest Act and not as a "reserved" forest under s. 20 contained in Ch. II of the Act.

(vii) The Judicial Commissioner was right in considering that the provision in the Indian Forest Act "corresponding" to the Tripura Forest Act under which the notifications fixing the boundaries of these forests in question were issued was that as regards "a protected forest" under Ch. IV and not "reserved forest" within s. 20 contained in Ch. II.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 39, 49 of 1962.

Appeals by special leave from the judgment and order dated August 26, 1960 of the Court of Judicial Commissioner of Tripura at Agartala in Criminal Revision Nos. 9, 8, 16, 22, 21, 32, 23, 18, 20, 24 and 17 of 1960.

C. K. Daphtary, Attorney-General, D. N. Mukerjee and *R. H. Dhebar,* for the appellant (in all the appeals).

P. K. Chatterjee, for the respondents (in Appeals Nos. 39, 42, 23, 46, 43 and 49 of 1962).

May 5, 1964. The Judgment of the Court was delivered by:

Ayyangar J.

AYYANGAR, J.—The respondents in these several appeals were prosecuted before Magistrates in Tripura for offences under s. 26(1) of the Indian Forest Act, 1927 and were convicted and sentenced to terms of imprisonment and fine. Their appeals to the learned Sessions Judge, Tripura having been dismissed, they preferred Criminal Revision Petitions to the Judicial Commissioner, Tripura. The learned Judicial

Commissioner allowed their revisions by a common judgment and directed their acquittal. From these orders of acquittal the Union of India has filed these appeals by virtue of special leave granted by this Court under Art. 136 of the Constitution.

Before proceeding to narrate the facts which have led to these appeals it is necessary to mention that three of these 11 appeals—Criminal Appeals 40, 41 and 45 of 1962 have become infructuous. The notices issued to the respondents in Appeals 40 and 45 of 1962 of the filing of the appeals could not be served on them as it was reported that they had left for Pakistan. The appeals could not accordingly prosecuted. In regard to Criminal Appeal 41 of 1962 it is reported that the accused died pending the hearing of the appeals and hence the appeal has abated. We are, therefore, concerned only with the other 8 appeals.

The material clauses of s. 26(1) of the Indian Forest Act, 1927 for contravention of which the respondents in the several appeals were prosecuted read:

"26. (1) Any person who—

(a) makes any fresh clearing prohibited by section 5,

or who, in a reserved forest—

(d) trespasses or pastures cattle, or permits cattle to trespass;

(e) .....

(f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

(g) .....

(h) clears or breaks up any land for cultivation or any other purpose;

.....

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such com-

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pensation for damage done to the forest as the convicting Court may direct to be paid."

The magistrate convicted some of the accused respondents of offences under cls. (a) and (d) others of offences under cls. (d) & (h).

It is common ground that in order to constitute an offence under s. 26(1) the acts specified in the clauses of the sections should be committed in an area which is a "reserved forest" under the Act. We might point out that if the area concerned was a reserve forest, the guilt of the respondents would practically be made out and their conviction by the Magistrates, confirmed by the Sessions Judge, Tripura might have to be upheld. The principal, if not the sole question for consideration in the appeals, however, is whether the forest area where the respondents were held to have committed the acts alleged against them was such a "reserve forest".

Before, however, dealing with that question, it would be convenient to set out very briefly the facts which have given rise to these prosecutions. The forests wherein the several respondents are stated to have committed the offences set out in the clauses of s.26(1) of the Act quoted above are comprised in three distinct areas in the former Indian State of Tripura. These three areas are known, respectively, as the Garjichhera reserve, Chandrapur reserve and the North Sonamura reserve. In April, 1958 an officer of the Forest Department went on circuit duty in these forest areas and found that the several accused had cleared the forests, reclaimed some land and had dug tanks for the purpose of cultivation and had made homesteads there. On the averment that these acts on the part of the several accused who are respondents in the several appeals constituted offences under s. 26(1)(a) and (h) and in some cases under s. 26(1)(a), (d) and (h) and in still some others under s. 26(1)(d), (f) and (h), the accused were produced in the courts of the Magistrates having jurisdiction. The accused admitted that they had made homesteads and were living in structures constructed at the places where they were found and the only defence then raised was that they were entitled

to do so under a claim of jote rights on the lands. No evidence was, however, produced by any of the accused to substantiate their claim to trespass on and plough-up and cultivate and erect homesteads on the lands on which they were found squatting and the learned Magistrates holding that while the prosecution had made out their case, the accused had not established their defence, found the accused guilty and passed appropriate sentences on them. Appeals were filed against these convictions by the several accused to the learned Sessions Judge of Tripura. At that stage the accused raised the contention that the forest areas comprised in the Garjichhara, Chandrapur and North Sonapura reserves were not "Reserve forests" within the meaning of the Act. For establishing that these three "reserves" were "reserved forests" within the Indian Act, the prosecution relied on two circumstances. First, there was a Forest Act promulgated by the Ruler of the Tripura State (Act 2 of 1257 TE 1297 T.E.?) which contained provisions somewhat analogous to those contained in the Indian Act. Next, s. 5 of the Tripura Act enabled the State Government to declare by notifications published in the State Gazette, the boundaries of the forest areas to be governed by the State Act. There were three such notifications published in the Tripura State Gazette in 1346 and 1349 T.E. corresponding to 1936 and 1938 by which the boundaries of the three reserves of the Garjichhera, Chandrapur and North Sonamura forests were defined. The contention urged by the prosecution was that the Tripura Act was replaced by the Indian Forest Act by reason of legislative provisions to which we shall advert later and that the notifications under the Tripura Act which were continued in force by these same provisions rendered these three reserves "Reserved forests" under the Indian Forest Act. We shall have to set out the terms of the Act as well as of the notifications later but it is sufficient to mention at this stage that the places where the respondents cleared the forests and built their homesteads were admittedly within one or other of these three reserves. The respondents in Appeals 39, 43, 47 and 49 had trespassed into the Garjichhera reserve, while those concerned in appeals 42, 46 and 48 had trespassed into the Chandrapur reserve, and the respondent in appeal 44 was found to have

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committed a similar offence in respect of the forest described as the North Sonamura reserve. When these three notifications were produced before the learned Sessions Judge he held that by reason of these notifications the three forest areas became "reserved forests" under the relevant provisions of the Indian Forest Act and he therefore upheld the order of the Magistrate convicting the accused and dismissed the appeals of the several accused. Thereafter revisions were filed to the Judicial Commissioner, Tripura. The same question of law *viz.*, whether having regard to the terms and provisions of the Tripura Forest Act, the notifications setting out the boundaries of the three reserves constituted these "reserves" "reserve forests" within the Indian Forest Act, was again debated before the learned Judicial Commissioner, the learned Judicial Commissioner differing from the Sessions Judge held that they were not, and on this finding, directed the acquittal of the several accused. It is the correctness of this conclusion of the learned Judicial Commissioner that is challenged in these appeals.

It would be seen from the above narrative that the question for consideration is whether the areas where the offences are said to have been committed were within "reserve forests" within the meaning of the Indian Forest Act.

On the terminology employed by the Indian Forest Act, "reserve forests" are those areas of forest land which are constituted as "reserve forests" under Ch. II of the Act. Chapter II comprises ss. 3 to 27 and is headed "Of Reserved Forests". Section 3 empowers the State Government to constitute "any forest land or waste land which is the property of Government or over which the Government has proprietary rights or to the whole or in part of the forest produce to which the Government is entitled, a reserved forest in the manner hereinafter provided". Section 4 requires that the State Government, when it has decided to constitute any land as a "reserved forest", should notify by the issue of a notification in the Official Gazette specifying the situation, limits, etc. of that land and declare its decision to constitute the land as "a reserved forest". Section 6 makes

provision for a proclamation of the notification issued under s. 4 by publication in several places, so that persons who might be affected by the issue of the notification may prefer objections thereto. Section 7 directs an enquiry by a Forest Settlement Officer of all claims made by persons in response to the publication of the notification under s. 6. Section 9 provides generally for the extinction of rights in respect of which no claim has been preferred under s. 6. Where claims are preferred and are found to be made out s. 11 provides for the acquisition of such rights or of lands in respect of which the rights are claimed in the manner provided by the Land Acquisition Act. The next succeeding provisions of the Act enable appeals to be filed against the orders and for their hearing by the appellate authorities. These are followed by s. 20 under which, after the stage of enquiry and decisions on claims made is completed, the State Government is directed to issue a notification in the Official Gazette "specifying definitely, according to boundary-marks erected or otherwise the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification. Sub-section (2) of the section enacts:

> "20.(2) From the date so fixed such forest shall be deemed to be a reserved forest."

Section 21 provides for the translation of the notification and its publication in every town or village in the neighbourhood of the forest. The next relevant provision is s. 26 which prohibits the doing of certain acts in "a reserved forest" and provides for punishment for these contraventions the material parts of which we have already set out. From these provisions it would be seen that it is the notification under s. 20 after complying with the procedure prescribed by the other sections of the Chapter commencing with s. 4 that constitutes a forest area "a reserved forest" within the Act.

The forests in the former State of Tripura were not declared "reserved forests" under a notification issued under s. 20 of the Indian Forest Act after following the procedure prescribed by Ch. II. We have, therefore, to examine the steps by which this result is said to have been reached. We have already referred to the existence of the Tripura Forest

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Act 1257 (1297?) T.E. enacted by the Ruler of Tripura under which certain provisions were made for the preservation of Forest areas in the State and the notifications issued thereunder constituting the three areas as "reserve forests" for the purpose of that Act. It would be necessary to examine the details of these provisions, but this we shall defer till we complete the narration of the constitutional changes which brought the State of Tripura into the Indian Union and the legislation which accompanied and accomplished these changes. Tripura was a native State and the ruler by a merger agreement with the Governor-General of India merged his State with the Dominion in the year 1949. By para 5 of the Tripura Administration Order, 1949 issued on October 15, 1949 under the powers conferred in that behalf by the Extra Provincial Jurisdiction Act, 1947 all the laws in force in the State of Tripura immediately before the commencement of the said Order were continued in force until they were repealed or amended by a competent legislature or authority. Then came the Constitution which was operative from January 26, 1950 and under it Tripura became a Part C State of the Union of India. By virtue of Art. 372 of the Constitution the laws in force in the territory of India which would have included the Tripura Forest Act in so far as it applied to the territory of the former Tripura State, were continued in force until repealed or amended by competent legislation. Next, came the Part C States (Laws) Act, 1950 enacted by Parliament. By its s. 3 the Acts and Ordinances specified in the Schedule to the Merged States (Laws) Act, 1949 were extended to and directed "to be in force in the State of Tripura.....as they were generally in force in the territories to which they extended immediately before the commencement of that Act". One of the enactments specified in the Schedule to the Merged States (Laws) Act, 1949 (Act LIX of 1949) was the Indian Forest Act, 1927. The Indian Forest Act was thus extended to the Tripura State. Section 4 of the Part C States (Laws) Act, 1950 provided that "any law which immediately before the commencement of the Act (April 15, 1950) was in force in any of the States which included Tripura and corresponded to an Act extended to that State by the Act was thereby repealed". The operation of the repeal was subject to two

provisos and it is the second of these provisos that calls for construction in these appeals. This proviso ran:

> Provided further that, subject to the preceding proviso, anything done or any action taken, including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation, form, bye-law or scheme framed, certificate, patent, permit or licence granted or registration effected, under such law shall be deemed to have been done or taken under section 2 or, as the case may be, under the corresponding provision of the Act or Ordinance as now extended to the State by section 3, and shall continue in force accordingly, unless and until superseded by anything done or any action taken under the said section 2 or, as the case may be, under the said Act or Ordinance."

Shortly stated, the question for consideration in these appeals is whether as a result of the operation of ss. 3 and 4 of the Part C States (Laws) Act read in the light of the proviso above-quoted the three reserved forests which were notified under the Tripura Act of 1257 (T.E.) could be deemed to be "reserved forests" under Ch. II of the Indian Forest Act, 1927.

Stopping here, it would be convenient to notice a few matters. In the first place, when the Indian Forest Act, 1927 was extended to the State of Tripura in 1950 it would have been open to Government to have taken steps to constitute "reserved forests" within the State by following the procedure prescribed by Ch. II to which we have already adverted. But this was not done and the Government seem to have proceeded on the basis that the areas notified as "reserved forests" under the Tripura Act were "reserved forests" under the Indian Forest Act. Next, it is common ground that the Tripura Act which was continued by the Tripura Administration Order, 1949 did not survive

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the Part C States (Laws) Act, 1950 because the Indian Forest Act being "a corresponding law" to the Tripura Forest Act stood repealed by the operation of s. 4 of that enactment. Besides, the provisions of the Tripura Forest Act under which the notifications constituting these forests as "reserved forests" were issued were under the proviso to s. 4 "deemed to have been done under *the corresponding provision of the Act* as now extended to the State by s. 3". The position, however, is that the Indian Forest Act whose extension to the Tripura area effected the repeal of the Tripura Act, contains provisions of two distinct types or kinds for the exercise of control over forests and forest areas and the question then arises as to which of the provisions of the Indian Act, *"correspond"* to those of the Tripura Act, to enable one to say that the notifications under the latter Act should be deemed to have been issued. On a consideration of the relevant provisions of the Tripura Forest Act the learned Judicial Commissioner held that at the most the corresponding provision of the Indian Forest Act to which the Tripura notification could be related was as a "protected forest" under Ch. IV of the Indian Forest Act and not a "reserved forest" under Ch. II of the Act. He, therefore, decided that as the offence for which the accused were being prosecuted was one under s. 26 the accused could not be held guilty since there was no legal or effective notification of the forest area as a "reserved forest" within s. 20 of the Indian Forest Act and accordingly directed the acquittal of the accused. The appeals challenge the correctness of this last conclusion.

The principal submission of the learned Attorney-General who appeared for the Union of India in support of the appeals was directed to establish that the notification constituting the three forests as reserved forests under the repealed Tripura Forest Act II of 1257 (1297?) T.E. must be deemed to have been taken under Ch. II of the Indian Forest Act, 1927 which, it was contended, was the provision corresponding to the repealed Tripura Act. It is the validity of this submission that now calls for consideration. Before entering on a discussion of this question we might dispose of a minor consideration which might be urged in

order to show that the notification under the Tripura Act could not be deemed to be a notification under s. 20 of the Indian Forest Act. One of the submissions under this head, and this was one of the points that appears to have appealed to the learned Judicial Commissioner, was that Ch. II of the Indian Forest Act prescribes an elaborate procedure which is mandatory and is required to be complied with, before any land could be constituted into a "reserved forest" under that Act. The Tripura Act admittedly does not make provision for any such procedure being followed before an area is notified as "a reserved forest" or is constituted into one. The argument based on this was that in the absence of identity between the procedural requirements of the two Acts, a notification under the repealed Act could not be deemed to be one under a "corresponding provision" of the Act extended to the territory, the emphasis being on the words "corresponding provision". We are unable to accept the correctness of this submission.

The scheme of the Part C States (Laws) Act is this. In the first place, by reason of s. 3 certain enactments are extended to these States. If there is no law in that State which was in force on the date of the extension of a particular enactment under s. 3 which is in *pari materia* and covers the same field as the law that is extended, s. 4 does not come into play and consequently there is no question of the repeal of any pre-existing law. If such were the case the law in force in the native State of Tripura would have first continued by reason of the provision contained in s. 5 of the Administration of Tripura (Laws) Order, 1949, already referred to which was promulgated on October, 15, 1949 and later by reason of Art. 372 of the Constitution. To the extent to which there was no repeal by virtue of s. 4 of the Part C States (Laws) Act, 1950 the Tripura law would have continued in force. It is only on the basis that the Indian Forest Act whose operation was extended to that territory by s. 3 was "a corresponding law" that the Tripura Act can stand repealed. For the purpose of effecting the repeal under s. 4 the only consideration is whether any existing law of that State "*corresponded*" to a law which was extended by reason of s. 3.

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As stand earlier, it is common ground that the Tripura Forest Act "corresponded" to the Indian Forest Act, 1927 and that the former therefore stood repealed on the extension to Tripura of the latter enactment. If then the extension of the Indian Forest Act to the State effected a repeal of the Tripura Forest Act we have next to consider whether the notification under the Tripura Act could be deemed to be a notification under "the corresponding provision" of the Indian Forest Act. For that purpose the preliminaries to the notification or the procedure which must precede a notification are not of any relevance but only whether the particular notification could be held to be under a corresponding provision under the extended enactment, *viz.*, the Indian Forest Act. If the notifications had been issued after complying with the formalities prescribed by the State law and they are kept alive by the proviso to s. 4, the notifications would necessarily have to be deemed to have validly been made under the latter Act. Judged by this test it appears to us that the fact that under the Tripura law there were no preliminaries prescribed before a forest could be notified as a reserved forest does not detract from such a notification being a notification under the Indian Forest Act, 1927.

We have next to consider whether the notification under the Tripura Act could be deemed to be a notification under Ch. II or under s. 20 of the Indian Forest Act for that is the basis upon which the entire prosecution case rests. For this purpose it is necessary to analyse the provisions of the Tripura Act and also examine the corresponding provisions of the Indian Forest Act. We shall first take up the Tripura Act. Its preamble, after reciting that some classes of trees are regarded as protected ones from times immemorial, goes on to state that it was expedient to consolidate the law with a view to bring order in the matter of the supervision of the protected trees and also to place the same on a sound footing. This would appear to indicate that the Act was designed for the protection of particular trees as distinguished from the reservation of an area as a forest for the purpose of protecting all the trees within that forest. We shall in due course have to refer to the provisions of Ch. IV of the Indian

Forest Act headed "Of Protected Forests" under which also the aim of the law is to afford protection to certain trees in particular areas. To revert to the Tripura Act, its s. 3 provides for the repeal of the earlier laws and saves only rules or customs not inconsistent with the Act. Section 4 is one of the key provisions of the Act and under it are specified seven classes of trees which shall be deemed to be protected within the independent State of Tripura. The Act is divided into seven chapters of which the first one is headed "Of protection of Rakshita Bana" which, as stated earlier, has been translated as "Protected Forests". Section 5 under which the three notifications to which we have already referred were issued reads:

> "The boundaries of 'Rakshita Bana', shall be fixed and publication of the same shall be made in all police stations, offices, markets, ports and other public places within this independent State".

Section 6 runs:

> "No person shall be entitled to carry out any 'Jhum' cultivation (shifting cultivation) within half a mile radius of a Rakshita Bana".

Sections 9 to 11 specify the acts which are prohibited in the notified forest areas. These enact:

> "9. No person shall set fire to the hills in such a manner which may cause damage to a Rakshita Bana in any way".
>
> "10. No person shall enter into a Rakshita Bana carrying fire."
>
> "11. No person shall enter into a Rakshita Bana carrying axe or other weapons which may be used for cutting trees without permission."

Chapter II with which s. 12 opens is headed "Of Gradual Development of Rakshita Banas." The relevant sections of this Chapter are ss. 12 to 17 and they read:

> "12. In each year protected trees like sal etc. and other valuable trees shall be grown either by sowing seeds or otherwise.

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"13. In order to give effect to the provisions of section 12, suitable sites will be selected at regular intervals after taking sanction for the same."

"14. If there are other trees in a Rakshita Bana than those mentioned in section 4, and if it is considered expedient that such other trees are harmful to the growth of the protected trees, then such trees shall be cut."

"15. In case any old tree referred to in section 4 is cut, then a new tree shall be grown in its place."

"16. No person on any account shall be allowed to cut any tree within the reserved forest in a manner which might cause any damage to the block."

"17. If there be dense growth of any specific type of tree as mentioned in section 4 and if such growth is mutually detrimental to the general growth of the trees then to facilitate growth of the species some may be cut according to necessity."

Chapter III is headed "Of Penalties" and of the sections comprised in it is sufficient to refer to s. 18 under which any person kindling fire in a forest is made punishable with imprisonment, s. 19 on which much stress was laid which ran:

"Whoever fells any tree within the limits of a Rakshita Bana shall be punished with rigorous imprisonment which may extend to three months or with fine which may extend to Rs. 500|- or with both".

and s. 20 which ran:

"20. Any person who cuts any tree as specified under section 4 outside the limits of a reserved forest shall be punished with rigorous imprisonment which may extend to two months or with fine which may extend to Rs. 200/- or with both."

In this connection it is necessary to point out that under s.20 the cutting of the protected trees specified in s. 4 is made an offence even if the cutting were to take place beyond the limits of the forest notified under s. 5. The only point of difference brought in by the cutting being within the boundaries of the forest is that in that case the punishment is heavier.

The other chapters relate to the officials and the manner in which they should perform their duties and have not much relevance for the purposes of these appeals.

From the above summary of the provisions it would be seen that in substance the object and purpose of the Tripura Act was the protection of particular trees—the seven types of trees specified in s.4. The notification under s. 5 is for the purpose of constituting areas where these types of trees would be protected. The penal provisions enacted are for ensuring the protection of these trees. No doubt, s. 16 enacts a ban against the cutting of any tree within a forest so as to cause damage to any block and s. 19 penalises the cutting of any tree within the area of a forest, but it is obvious that in the context of the other provisions of the Act and the purpose which the enactment is intended to subserve, these prohibitions under penal sanctions were designed primarily and essentially to ensure more effective protection to the trees specified in s.4.

Now, let us see whether Ch. II of the Indian Forest Act could be said to be a provision which corresponds to the Tripura Act, so that the notification under s. 5 of the latter enactment could be deemed to be a notification under Ch. II or s. 20 of the Indian Forest Act. We have set out the several provisions of Ch. II and their object. The prime purpose of that Chapter is the constitution of reserved forests in which (1) all private rights within the reserved area are completely eliminated by their being bought up where these are ascertained to exist by payment of compensation, (2) the entire area being devoted to siviculture, every tree in the forest being protected from injury and within the scope of the penal provision contained in s. 26 In other words, the reservation here is to the "forest area" as such and not the protection of particular specified trees or species of trees in such a forest.

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In this connection some point was sought to be made from the terms of the notification under s. 5 of the Tripura Act by which the boundaries of the several forests were specified. The three notifications were substantially in the same form and it is, therefore, sufficient to set out the one setting out the boundaries of the Garjichhera reserve. The relevant conditions are:

> "2. Jhum cultivation will not be permissible in this forest area.
>
> 3. The land previously settled within this forest area shall remain valid. Plough cultivation will be permissible in that area.
>
> 4. The fallow Taluka land falling within this area shall be deemed as not being within this reserve.
>
> 5. Until further orders, cutting of all kinds of trees are prohibited within this Reserve. Cutting and export of unclassified forest products..... will be permissible.
>
> 6. Except in the settled area, grazing of all kinds of animals elsewhere within this Reserve will be prohibited.
>
> 7. All kind of hunting within this Reserve is prohibited."

In regard to these conditions stress was laid principally on condition no. 5 under which all cutting of trees was forbidden. The provision here appears to be a reproduction of s. 16 of the Act and to have no further or more extended operation. We are therefore unable to accept the submission that by reason of this clause the area which is notified as the reserved forest is constituted a reserved forest of the same type as under Ch. II of the Indian Forest Act. In the first place, as the notification was issued under the Tripura Act it would be reasonable to construe it with reference to the prohibition against cutting of trees contained in the Act itself and we have already adverted to the terms of s. 16 which we have held was designed for the purpose of protecting the trees set out in s. 4. But that apart, clause 5

itself permits the cutting of certain forest produce which it was evidently thought would not interfere with the functioning of the forest as a place for the protection of the protected trees. The other two notifications do not permit the cutting of Bamboo etc. without Government permit, but this in our opinion makes no difference.

If one now turns to the provisions of Ch. IV of the Indian Forest Act the correspondence between the Tripura Act and the provisions of Ch. IV would become clear. Section 30, corresponding to s. 4 of the Tripura Act, in Ch. II enables the State Government by notification in the Official Gazette—

> (a) to declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
>
> (b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or
>
> (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest."

Section 31 provides for the publication of a notification under s. 30 and s. 32 for the regulations which may be made for protected forests *i.e.*, areas in which particular trees are protected and s. 33 provides for penalties for acts in contravention of a notification under s. 30 or of rules under s. 32. This section enacts:

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"33. (1) Any person who commits any of the following offences, namely:—

(a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under section 30, quarries any stone or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce;

(c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(d) sets fire to such forest, kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest;

(e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(g) permits cattle to damage any such tree;

(h) infringes any rule made under section 32;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

It would thus be clear that the object of Ch. IV is the protection of particular trees and the setting apart of particular areas as protected forests for the purpose of ensuring the growth and maintenance of such trees. The object

sought to be achieved by the reservation in Ch. IV of the Indian Forest Act is thus seen to be exactly similar to that which is sought to be achieved by the Tripura Act. Only the Tripura Act makes the cutting of protected trees even outside a forest an offence, whereas there is no such provision under the Indian Forest Act. If, therefore, one has to seek a provision "corresponding" to the repealed Tripura Forest Act that provision will be found not in Ch. II of the Indian Forest Act but only in Ch. IV. As the present prosecutions have been launched for offences under s. 26 the learned Judicial Commissioner was right in holding that the prosecution has not been able to establish that the accused had committed an offence in respect of the provision under which they were charged since the three forests were not notified as reserved forests under a provision corresponding to Ch. II of the Indian Forest Act.

We, therefore, hold that the learned Judicial Commissioner was right in considering that the provision in the Indian Forest Act "corresponding" to the Tripura Forest Act under which the notifications fixing the boundaries of these three forests were issued is that as regards "a protected forest" under Ch. IV and not a "reserved forest" within s. 20 contained in Ch. II. The order acquitting the several respondents was therefore right and the appeals fail.

In the view that we have taken of the main question argued before us, we do not find it necessary to consider whether there were any other legal defences open to the several accused. For instance, it will be noticed that the accused in these cases were held guilty of offences under s. 26(1)(a), (d) and (h). As regards the offence under cl. (a) the learned Attorney-General conceded that it was a prerequisite for a person being held guilty of an offence under that clause that there should be a notification under s. 4 because s. 5 which is referred to in s. 26(1) (a) reads:

> "5. After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom

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such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf."

In the absence, therefore, of such a notification the accused could not have been held guilty of a contravention of s. 26(1)(a). Coming next to cls. (d) and (h), the question for consideration would be whether if these were not offences under the Tripura law, the accused could be prosecuted by reason of (a) the extension of the Forest Act to the Tripura State and (b) the notification under the Tripura law being "deemed to be a notification" under the corresponding provision of the Indian Act. We consider it unnecessary to examine this problem or to express any opinion on this matter in view of the conclusion that we have reached that the notification under s. 5 of the Tripura Act would constitute the area in question only as a protected forest under Ch. IV of the Indian Forest Act and not as a "reserved" forest under s. 20 contained in Ch. II of that Act.

The appeals fail and are dismissed. The appellant had undertaken to pay the costs of the respondents at the time of the admission of the appeals. In accordance with that undertaking the appellant will pay the costs to the respondents. One hearing fee.

Appeals dismissed.

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May 5

POONA CITY MUNICIPAL CORPORATION

v.

DATTATRAYA NAGESH DEODHER

(P. B. GAJENDRAGADKAR, C. J., M. HIDAYATULLAH, K. C. DAS GUPTA, J. C. SHAH AND RAGHUBAR DAYAL, JJ.)

Octroi—Tax on refund—Imposition if valid—Tax, if becomes fee—Who can claim refund—Suit for recovery—Limitation—Availability of