Mulamchand

Vs

State of Madhya Pradesh

Civil Appeal No. 393 of 1965

(V. Ramaswami JJ)

20.02.1968

JUDGMENT

RAMASWAMI, J.

This appeal is brought by certificate on behalf of the plaintiff from the judgment of the High Court of Madhya Pradesh dated March 21, 1961 in First Appeals Nos. 34 and 64 of 1958.

The appellant had purchased a right to pluck, collect and remove the forest produce like lac, tendu leaves etc. from the proprietors of the different Malguzari jungles for the years 1951, 1952 and 1953 as detailed in Sch. A attached to the plaint. This right he had acquired before the proprietary rights in those forests came to vest in the State of Madhya Pradesh under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act No. 1 of 1951), hereinafter called the 'Abolition Act', and the right was to be enjoyed by the appellant after April 1, 1951 on which date the proprietary rights came to vest in the State of Madhya Pradesh. It was alleged by the appellant that the Deputy Commissioner of Balaghat acting under s. 7 of the Abolition Act took charge of the entire Malguzari jungles on April 1, 1951 and prevented the appellant from enjoying the rights he had already acquired. In the month of April, 1951 the Deputy Commissioner auctioned the forest produce of villages covered under the purchases of the appellant. Out of the forest produce only the tendu leaves crop for the year 1951 was allowed to be enjoyed by the appellant on his depositing a sum of Rs. 3,000 in the Government Treasury, Balaghat under a written permit dated April 30, 1951. The deposit was made by the appellant to save the tendu leaves crop of 1951 from being sold to others by the Deputy Commissioner of Balaghat. The case of the appellant was that he was entitled to the refund of the amount as the right to collect tendu leaves for the year 1951 had already been purchased by him. Similarly, the appellant claimed refund of the amount of Rs. 10,000 which he was required to deposit towards the right to collect lac from those forests for the years 1951, 1952 and 1953. The refund was claimed on the basis that there was no valid contract between the appellant and the State of Madhya Pradesh as the provisions of Art. 299 of the Constitution were not complied with and the contract was void. The respondent contested the suit mainly on the ground that the Deputy Commissioner, Balaghat had validly taken charge of the Malguzari jungles under the provisions of the Abolition Act and the appellant having removed lac from the jungles on the basis of the contract, was not entitled to any refund. The trial Judge held that the appellant was not entitled to claim the refund of the sum of Rs. 10,000, firstly, on the ground that the contract was good even though not in conformity with Art. 299 of the Constitution, and secondly, because the appellant was allowed to enjoy the right of collecting lac and the appellant actually availed himself of that right. As regards the appellant's claim for damages for breach of contract, the trial court was of the view that the contracts were mere licences and enforceable against the State of Madhya Pradesh even after vesting of the proprietary interests under the

Abolition Act. Acting in accordance with the view expressed by this Court in Chhotabhai Jethabhai Patel & Co., v. The State of Madhya Pradesh [[1953] S.C.R. 476.] the trial court held that the appellant was entitled to enforce the contracts against the State of Madhya Pradesh and was consequently entitled to damages for breach of the contracts. The trial court accordingly gave a decree in favour of the appellant to the extent of Rs. 57,281 and dismissed the rest of the claim of the appellant. The State of Madhya Pradesh took the matter in appeal to the High Court of Madhya Pradesh. The appellant also preferred an appeal to the High Court with regard to the claim which was disallowed by the trial court. By its judgment dated March 21, 1961, the High Court allowed the first appeal of the respondent and set aside the decree of the District Judge in Civil Suit No. 24-B of 1954 and dismissed the entire suit. The appeal preferred by the appellant was also dismissed. The High Court took the view that the decision of this Court in Chhotabhai Jethabhai Patel & Co. v. The State of Madhya Pradesh [[1953] S.C.R. 476.] was overruled in a later decision of this Court in Mahadeo v. The State of Bombay [[1959] 2 Supp. S.C.R. 339.], and in contracts similar to those of the present case it was held that there was a transfer of proprietary rights in the estates to the grantees and the effect of the Abolition Act was that all such proprietary rights vested in the State with effect from April 1, 1951 free from all encumbrances and the State could therefore lawfully exclude the grantees from enjoying any such rights secured to them under the contracts.

Section 3 of the Abolition Act states :

> "3. Vesting of proprietary rights in the State. - (1) Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the area specified in the notification, vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances.
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> (2) After the issue of a notification under sub-section (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State and no fresh clearing 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.
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Section 4(1)(a) provides :

> "4. Consequences of the vesting. -
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> (1) When the notification under Sec. 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter setforth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely :-

(a) all right, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, serub jungle, forest, trees, fisheries, wells, tanks, ponds, water channels, ferries, pathways, village sites, hats, bazars and melas; and in all subsoil, including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge on any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act;"

Section 5 is to the following effect :

"5. Certain properties to continue in possession of proprietor or other person. - Subject to the provisions in Secs. 47 and 63 -

(a) all open enclosures used for agricultural or domestic purposes and in continuous possessions for twelve years immediately before 1948-49; all open house-sites purchased for consideration; all buildings places of worship; wells situated in and trees standing on lands included in such enclosures or house-sites or land appertaining to such buildings or places of ownership; within the limits of a village-site belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person, as the case may be; and the land thereof with the areas appurtenant thereto shall be settled with him by the State Government on such terms and conditions as it may determine;

(b) all private wells and buildings on occupied land belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person;

(c) all trees standing on land comprised in a homefarm or homestead and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person;

(d) all trees standing on occupied land other than land comprised in home-farm or homestead and belonging to or held by a person other than the outgoing proprietor shall continue to belong to or held by such person;

(e) all tanks situate on occupied land and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or other person;

(f) all tanks, belonging to or held by the outgoing proprietor which are situate on land other than village site or occupied land and in which no person other than such proprietor has any rights of irrigation, shall belong to or be held by such proprietor;

(g) all tanks and embankments (bandhans) belonging to or held by the outgoing proprietor or any other person which are situate on land other than village site or occupied land and the beds of which are under cultivation of such proprietor or such other person shall belong to or be held by such proprietor or such other person and the land under such tanks and embankments shall be settled with such proprietor or

such other person on such terms and conditions as the State Government may determine;

(h) all groves wherever situate and recorded in village papers in the name of the outgoing proprietor or any other person shall continue to belong to or be held by such proprietor or such other person and the land under such groves shall be settled with such proprietor or such other person by the State Government on such terms and conditions as it may determine."

Section 6(1) states :

"6. Certain transfers to be void. - (1) Except as provided in sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March, 1950 shall, as from the date of vesting, be void."

It was contended, in the first place, on behalf of the appellant that the contracts did not confer settlement of any interest in immovable property and as such the appellant could not be equated with a person having interest in the proprietary right falling within the purview of the Abolition Act. It is not possible for us to accept this argument. The question has already been the subject-matter of consideration by this Court in State of Madhya Pradesh v. Yakinuddin [[1963] 3 S.C.R. 13.]. In that case also, the respondents, by grants from and agreements with the proprietors, acquired the right to propagate lac, collect tendu leaves and gather fruits and flowers of Mahua leaves in certain estates. It was held by this Court that whatever rights the respondents had acquired from the proprietors ceased to have effect by the operation of s. 4(1)(a) of the Abolition Act. It was further held that the rights claimed by the respondents were in the nature of proprietary rights falling within s. 4(1)(a) of the Abolition Act and upon the issue of a notification under s. 3 of the Abolition Act the rights of the respondents had passed and became vested in the State of Madhya Pradesh. It was further pointed out that the rights created by the transactions between the respondents and the grantors did not come under s. 5 of the Abolition Act. In the course of this judgment the previous judgment of this Court in Chhotabhai Jethabhai Patel & Co. v. The State of Madhya Pradesh [[1953] S.C.R. 476.] was expressly overruled. In our opinion the present case falls directly within the ratio of the decision of this Court in State of Madhya Pradesh v. Yakinuddin [[1963] 3 S.C.R. 13.]. It follows that the argument of the appellant on this aspect of the case must be rejected.

We proceed to consider the next question raised on behalf of the appellant, viz., whether he was entitled to a refund of the deposit of Rs. 10,000 which he had made towards the right to collect lac from the forests for the years 1951, 1952, and 1953. The contention put forward on behalf of the appellant is that the contracts were not in conformity with Art. 299 of the Constitution and were consequently void and had no effect. It was claimed that the appellant was entitled to compensation under s. 70 of the Indian Contract Act which is applicable to the case. It is not disputed on behalf of the respondent that there was no formal compliance of the provisions of Art. 299 of the Constitution but it was said that the bids were accepted by the Deputy Commissioner Balaghat and were communicated to the appellant who worked the contracts and actually collected lac in the forests in question. The trial court refused to grant a decree to the appellant in this case with regard to this claim on the ground that the contract was not void and although there was no conformity with the provisions of Art. 299 of the Constitution there was nothing to prevent the ratification of such contracts if they are for the benefit of the Government. The trial court further observed that the appellant had performed his part of the contract and worked and collected lac from the jungles in

pursuance of the agreement and was therefore not entitled to refund of the amount in deposit. The finding of the trial court on this point has been affirmed by the High Court which also came to the conclusion that the appellant had worked for some time on the basis of the contracts granted to him but the appellant abandoned the contracts of his own accord and the State cannot therefore be held liable for, the refund of the amount of deposit.

In our opinion, the reasoning adopted by the trial court and by the High Court for rejecting the claim of the appellant is not correct. It is now well-established that where a contract between the Dominion of India and a private individual is not in the form required by s. 175(3) of the Government of India Act, 1935, it was void and could not be enforced and therefore the Dominion of India cannot be sued by a private individual for breach of such a contract (See the decision in Seth Bikhraj Jaipuria v. Union of India [[1962] 2 S.C.R. 880.]. It was stated in that case that under s. 175(3) of the Government of India Act, 1935, the contracts had (a) to be expressed to be made by the Governor-General, (b) to be executed on behalf of the Governor-General and (c) to be executed by officers duly appointed in that behalf and in such manner as the Governor-General directed or authorised. The evidence in the case showed that the contracts were not expressed to be made by the Governor-General and were not executed on his behalf. It was held by this Court that the provisions of s. 175(3) were mandatory and the contracts were therefore void and not binding on the Union of India which was not liable for damages for breach of the contracts. The same principle was reiterated by this Court in a later case - State of West Bengal v. M/s. B. K. Mondal and Sons [[1962] 1 Supp. S.C.R. 876.]. The principle is that the provisions of s. 175(3) of the Government of India Act, 1935 or the corresponding provisions of Art. 299(1) of the Constitution of India are mandatory in character and the contravention of these provisions nullifies the contracts and makes them void. There is no question of estoppel or ratification in such a case. The reason is that provisions of section 175(3) of the Government of India Act and the corresponding provisions of Art. 299(1) of the Constitution have not been enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in s. 175(3) of the Government of India Act and Art. 299(1) of the Constitution on the ground of public policy - on the ground of protection of general public - and these formalities cannot be waived or dispensed with. If the plea of the respondent regarding estoppel or ratification is admitted that would mean in effect the repeal of an important constitutional provision intended for the protection of the general public. That is why the plea of estoppel or ratification cannot be permitted in such a case. But if money is deposited and goods are supplied or if services are rendered in terms of the void contract, the provisions of s. 70 of the Indian Contract Act mat be applicable. In other words, if the conditions imposed by s. 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something to him; the second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, s. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. The important point to notice is that in a case falling under s. 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another under s. 70 it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not

founded upon any contract or tort but upon a third category of law, namely, quasi contract or restitution. In Fibrosa v. Fairbairn [[1943] A.C. 32, 61.] Lord Wright has stated the legal position as follow :

> "..... any civilised system of law is bound to provide remedies for cases of that has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generally different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

In Nelson v. Larholt [[1948] 1 K.B. 330, 343.] Lord Denning has observed as follows :

> "It is no longer appropriate to draw a distinction between law and equity. Principles have now to be state in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."

Applying the principle to the present case, it is manifest that the appellant would have been entitled to compensation under s. 70 of the Indian Contract Act if he had adduced evidence in support of his claim, but the trial court has examined the evidence on this point and reached the conclusion that the appellant did collect lac in the jungles in the year 1951 but later on abandoned the working of his own accord. It is well-established that a person who seeks restitution has a duty to account to the defendant for what he has received in the transaction from which his right to restitution arises. In other words, an accounting by the plaintiff is a condition of restitution from the defendant (See 'Restatement of the Law of Restitution', American Law Institute, 1937 Edn., p. 634). The appellant did not produce sufficient evidence to show to what extent he worded the contract and what was the profit made by him in the year 1951 and the succeeding year. In the absence of reliable evidence on this point the appellant was not entitled to restitution or refund of the deposit he had made. The case of the appellant with regard to this part of his claim was therefore rightly disallowed both by the trial court and the High Court and the respondent is therefore not liable to refund the amount of deposit.

For these reasons we hold that there is no merit in this appeal which is accordingly dismissed with costs.

> # Appeal dismissed.##

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