

Badri Prasad

Vs

The State of Madhya Pradesh and Another

Civil Appeal No. 18 of 1966

(R. S. Bachawat. S. M. Sikri JJ)

11.10.1968

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment and decree of the Madhya Pradesh High Court allowing the appeal of the State of Madhya Pradesh and dismissing the suit brought by the appellant, Badri Prasad - hereinafter referred to as the plaintiff.

2. The relevant facts for determining the points raised before us are these. On December 27, 1950, a contract was entered into between Kumar Bharat Shah, minor, through his guardian, and the plaintiff, in respect of forests in Maua Sunderpani Jagir. The terms were reduced to writing and an agreement was signed on January 21, 1951. It is necessary to reproduce the agreement in extenso as it would be necessary to interpret it carefully :

"Deed of agreement executed by Shri Kumar Bharat Shah minor, guardian Shrimati Rani Umarmar Sahiba, Jagirdar of Mouza Sunderpani.

Conditions of contract, area, forest, Mouza Sunderpani :

(1) Out of the area of 1704.46 acres of Mouza Sunderpani Jagir contract of all the teak trees of more than 12 inches girth standing in the 1,000 acres of the forest of big trees and excluding those teak trees which have girth up to 12 inches is given to contractor Badri Prasad Moolchand firm of Timarni for a sum of Rs. 17,000/- (Seventeen thousand rupees) on payment of the amount in a lump sum.

(2) In respect of the teak trees mentioned in Paragraph No. 1 contractor Shri Badri Prasad deposited with me the total amount of Rs. 17,000/- (Seventeen thousand rupees), as under -

Rs. 6,000/-, (six thousand rupees) on 27-12-1950.

Rs. 11,000/- (eleven thousand rupees) on 21-1-1951.

Receipts have been passed for depositing the above amount.

(3) The transfer of the forest shall not be done without consent of the owner. The contractor shall have to pay Rs. 100/- (one hundred rupees) for transfer.

- (4) For the proper execution of work of the forest the felling of the forest shall have to be done from one side. Excluding the teak trees up to the girth of 12 inches the cutting of those teak trees which are above that girth shall have to be serially done.
- (5) After felling, the stumps of teak trees should be 3 inches high from the ground and slanting so as to drain the water off. It shall be necessary to prepare the stumps within a week. Till the stumps are passed the wood cannot be removed. Only the pairing can be done. The coupe guard shall make a hammer mark of passing on the stump and end of the paired wood.
- (6) The contractor shall have to get the transit of goods done by the coupe guard. The contractor shall have to do the transit of goods through the licence book and submit the monthly accounts. Without licence no goods shall be transported out of the forest.
- (7) The contractor shall have to take care of the teak trees of 12 inches girth standing in the forest. If damage is caused proper penalty shall be charged.
- (8) The contractor can appoint an agent with permission.
- (9) The contractor shall have to deposit Rs. 100/-, (one hundred rupees) for properly preparing the stumps of the teak trees of the forest before starting the work. This amount shall be returned on completion of the work if the stumps are properly prepared otherwise the expenses which may be incurred shall be deducted.
- (10) The contractor shall be responsible for any damage caused to the forest by the contractor or his agent and he shall have to pay the penalty.
- (11) The period of the contract shall be 3 years, i.e., from 27-12-1950 to 27-12-1953.

Hence the agreement in execution and the same is genuine. The contractor and the owner of the forest shall be bound by this."

On January 22, 1951, the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act 1 of 1951) - hereinafter referred to as the Act - received the assent of the President and was published in the Gazette on January 26, 1951. The plaintiff started working under the contract in March, 1951. On March 31, 1951, a notification was issued vesting the estates in the State and the State Government prohibited the plaintiff from cutting timber in exercise of the rights under the contract. Apparently negotiations took place between the State Government and the plaintiff, and on February 1, 1955, the Divisional Forest Officer wrote to the plaintiff as follows :

"Subject :- Contract of big trees of Sunderpani village of Makrai State.

Reference : Memo No. 5424-4339-11, dated 21-10-1954 of the Forest Department of Madhya Pradesh Government.

Kindly inform whether you are ready to pay further Rs. 17,000 (seventeen thousand rupees), for the contract of big trees of Sunderpani village of Makrai Circle which (contract) is under dispute at present. This contract can be given to you on this compromise only. If you do not wish to pay this amount you may, in future, take any action you deem fit.

(2) You may express your desire within seven days of the receipt of this letter. If you fail to do this it will be presumed that you are not inclined to make a mutual compromise.

(3) On receipt of your reply the State Government will be informed."

It is this letter which the plaintiff contends was an offer and which he accepted by the following letter dated February 5, 1955:

"Subject : Contract of sale of teak-trees in Sunderpani Forest in Makrai Range.

Reference : Your letter No. 180, dated 1-2-1955.

Dear Sir,

I am ready to pay Rs. 17,000 provided my claim to have the refund of Rs. 17,000 already paid, from Shri Bharatshah, the owner of the village or any other relief consequential of the judgment of that case remains unaffected. I reserve my right to claim the said or like amount. Subject to those conditions I shall pay Rs. 17,000 as required in your above referred letter."

By memorandum dated October 24, 1956, the Government wrote to the plaintiff as follows :

"Reference : Your application dated 12-9-1956, addressed to the Minister for Forest, Madhya Pradesh.

Government regret that the request made in your application under reference cannot be acceded to. Your application has, therefore, been rejected."

This application dated September 12, 1956, is not included in the printed record but the plaintiff states that it is by this memorandum that the Government finally repudiated its obligations under the contract.

Thereupon the plaintiff filed the suit praying for a declaration that the rights granted to the plaintiff under the licence dated January 21, 1951, had not been affected by the vesting of the estates in the States under the Act. In the alternative he prayed that he was entitled to specific performance and delivery of the contract which was completed on February 5, 1955. He further prayed that in case he was not entitled to these reliefs, Rs. 50,000 damages be awarded against the State.

3. Three points have been raised before us :

(1) that the forest and trees did not vest in the State under the Act;

(2) that even if they vested, the standing timber having been sold to the plaintiff did not vest in the State under the Act;

(3) that a new contract was completed on February 5, 1955 and the plaintiff was entitled to specific performance of the contract.

4. The Act and the rights of persons holding contracts to cut and take away timber and fruits of the trees have been the subject-matter of consideration by this Court on several occasions. But the learned counsel for the plaintiff contends that none of those cases cover the case of the plaintiff because, according to him none of those cases dealt with standing timber. He says that the plaintiff's contract is a contract for the sale of goods and the property in the goods had vested in him and, therefore, it stands on a different basis from the contracts construed in the earlier cases. The learned counsel for the respondents, on the other hand, maintains that the plaintiff's case is covered by the earlier decisions and all the arguments which he has advanced have been rejected by this Court in those cases.

5. The relevant statutory provisions of the Act are these :

"Section 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.

(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 .....

Section 4. Consequences of the vesting :

(1) When the notification under Section 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 set forth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely :

(a) all rights, 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), grassland, shrub jungle, forest, trees, fisheries, wells, tanks, ponds, water channels, ferries, pathways, village sites, Hats, Bazars and Melas; and in all sub-soil, 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 or 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. Certain properties to continue in possession of proprietor or other person -

Subject to the provisions in Sections 47 and 63 -

(a) all open enclosures used for agricultural or domestic purposes and in continuous possession for twelve years immediately before 1948-49; all open house-sites purchased for consideration; all buildings, places of worship, well 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 home-farm or home-stead and belonging to or held by the outgoing proprietor or any other person shall continue to belong to or 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 be 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 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 (Bandhana) 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. Certain transfer to be void. (1) Except as provided in sub-section (2), the transfer of any rights in the property which is liable to vest in the State under this Act made by the proprietor at any time after the March 16, 1950, shall, as from the date of vesting, be void."

Let us now look at the decision of this Court and see what has been laid down therein. In *Chhotabhai Jethabhai Patel v. State of Madhya Pradesh*, 1953 SCR 476 at pp. 479, 481, 483 : (AIR 1953 SC 108 at pp. 109-110) which we may mention has since been overruled, the contract was in respect of the right to pluck, collect and carry away Tendu leaves, to cultivate culture and acquire lac, and to cut and carry away teak and timber and other species of trees and bamboos.

The Court observed;

"It is clear from the provisions in the impugned Act that only those rights of the proprietor vest in the State which the proprietor had on the specified date ..... The scheme of the Act as can be gathered from the provisions referred to above makes it reasonably clear that whatever was done before March 16, 1950, by the proprietors by way of transfer of rights is not to be disturbed or affected, and that what vests in the State is what the proprietors had on the vesting date. If the proprietor had any rights after the date of vesting which he could enforce against the transferee such as a lessee or a licensee those rights would no doubt vest in the State. In all these petitions, the several contracts and agreements were before the date of vesting and many of them were prior even to the March 16, 1950. The petitioners had taken possession of the subject-matter of the contracts namely, Tendu leaves, lac palsadies, teak, timber and hardwood, bamboos and miscellaneous forest produce."

The Court construed the contracts in that case thus :

"The contracts and agreements appear to be in essence and effect licences granted to the transferees to cut, gather and carry away the produce in the shape of Tendu leaves, or lac or timber, or wood."

The Court further held that the rights of the petitioners were not encumbrances within the meaning of the expression 'free from encumbrances' in Section 3(1) of the Act. The Court accordingly issued a writ prohibiting the State from interfering in any manner with the enjoyment of those rights by the petitioner. It may be mentioned that in that case the Court was dealing with an application under Article 32 of the Constitution.

6. *Chhotabhai's case*, 1953 SCR 476 (AIR 1953 SC 108) was distinguished in *Ananda Behera v. State of Orissa*, (1955) 2 SCR 919 (AIR 1956 SC 17) which again dealt with a petition under Article 32 of the Constitution. In (1955) 2 SCR 919 : AIR 1956 SC 17 the subject-matter of licence was fishery rights and the Act which was construed was the Orissa Estate Abolition Act, 1951. The Court held that the rights ought to be acquired by the petitioner by their several purchases was not in respect of any future goods as claimed by them by was a licence to enter on the land coupled with a grant to catch and carry away the fish, in other words, a profit a prendre which is immovable property within the meaning of the Transfer of Property Act read with Section 3(25) of the General Clauses Act. The Court further held that as it was on oral licence it contravened Section 54 of the Transfer of Property Act, and therefore, no title or interest therein passed to the petitioners in that case. The Court distinguished *Chhotabhai's case*, 1953 SCR 476 : AIR 1953 SC 108 on the following ground :

"It is necessary to advert to 1953 SCR 476 : (AIR 1953 SC 108) and explain it because it was held there that a right to 'pluck, collect and carry away' Tendu leaves does not give the owner of the right any proprietary interest in the land and so that

sort of right was not an 'encumbrance' within the meaning of the Madhya Pradesh Abolition of Proprietary Rights Act. But the contract there was to 'pluck, collect and carry away' the leaves. The only kind of leaves that can be 'plucked' are those that are growing on trees and it is evident that there must be fresh crop of leaves at periodic intervals. That would make it a growing crop and a growing crop is expressly excepted from the definition of 'immovable property' in the Transfer of Property Act. That case is distinguishable and does not apply here."

7. In *Mahadeo v. State of Bombay*, 1959 Supp 2 SCR 339 : AIR 1959 SC 735 which was again a petition under Article 32 of the Constitution, *Chhotabhai's case*, 1953 SCR 476 : AIR 1953 SC 108 was not followed. In this case some of the proprietors had granted to the several petitioners rights to take forest produce, mainly Tendu leaves, from the forests included in the Zamindaris belonging to the proprietors. The agreements conveyed to the petitioners in addition to the Tendu leaves other forest produce like timber, bamboos, etc., the soil for making bricks, and the right to build on and occupy land for the purpose of their business. These rights were spread over many years but in the case of a few the period during which the agreements were to operate expired in 1955. This Court held that the agreements required registration and pointed out that some aspects had not been brought to the notice of the Court in *Chhotabhai's case*, 1953 SCR 476 : AIR 1953 SC 108. Hidayatullah, J., as he then was, speaking for the Court observed :

"But what was the nature of those rights of the petitioners ? It is plain, that if they were merely contractual rights, then as pointed out in the two later decisions, in 1955-2 SCR 919 : AIR 1956 SC 17, *Shantabhai's case*, 1959 SCR 265 : AIR 1958 SC 532 the State has not acquired or taken possession of these rights but has only declined to be bound by the agreements to which they were not a party. If, on the other hand, the petitioners were mere licensees, then also, as pointed out in the second of the two cases cited, the licences came to an end on the extinction of the title of the licensors. In either case there was no question of the breach of any fundamental rights of the petitioners which could support the petitions which were presented under Article 32 of the Constitution."

8. The Court then construed the agreements in question and came to the conclusion that the agreements could not be said to be contracts of sale of goods simpliciter. Then the Court examined the provisions of the Central Provinces Land Revenue Act and came to the following conclusion :

"From this, it is quite clear that forests and trees belonged to the proprietors, and they were items of proprietary rights. The first of the two questions posed by us, therefore, admits of none but an affirmative answer :

If then the forest and the trees belonged to the proprietors as items in their 'proprietary rights' it is quite clear that these items of proprietary rights have been transferred to the petitioners. The answer to the second question is also in the affirmative. Being a 'proprietary right' it vests in the State under Sections 3 and 4 of the Act. The decision in *Chhotabhai's case*, 1953 SCR 476 : AIR 1953 SC 108 treated these rights as bare licenses, and it was apparently given per incuriam, and cannot therefore be followed."

It seems to us that this decision concludes the controversy before us. This decision was followed in *State of Madhya Pradesh v. Yakinuddin*, (1963) 3 SCR 13 : AIR 1962 SC 1916. Various agreements

were constructed in that case : one agreement was to propagate lac, another agreement was to collect Tendu leaves, and another agreement was with respect to a right to collect fruits and flowers of Mahua trees. It was contended that these rights were saved in view of the provisions of Section 6 of the Act, but this contention was negated. Sinha, C. J. speaking for the Court, observed that the distinction between a bare licence and a licence coupled with grant of profit a prendre was irrelevant because "whatever may have been the nature of the grant by the outgoing proprietors in favour of the respondents, those grants had no legal effect as against the State, except in so far as the State may have recognised them. But the provisions of the Act leave no manner of doubt that the rights claimed by the respondents could not have been enforced against the State, if the latter was not prepared to respect those rights and the rights created by the transactions between the respondent and their grantors did not come within any of the saving clauses of Section 5.

Earlier he had observed that -

"any person claiming some interest as a proprietor or as holding through a proprietor in respect of any proprietary interest in an estate has got to bring his interest within Section 5, because on the date of vesting of the estate, the Deputy Commissioner takes charge of all lands other than occupied lands and homestead, and of all interest vesting in the State under Section 3. Upon such taking over of possession, the State becomes liable to pay the compensation provided for in Section 8 and the succeeding sections. The respondents have not been able to show that their interest comes under any of the clauses aforesaid of Section 5."

9. The last case in which this Act was construed was *Mulamchand v. State of Madhya Pradesh*, Civil Appeal No. 393 of 1965, decided on 20-2-1968 : (reported in AIR 1968 SC 1218). In that case *Mulamchand* had purchased a right to pluck, collect and remove forest produce like lac, Tendu leaves, etc. from the proprietors of the different *Malguzari* jungles. This Court followed (1963) 3 SCR 13 : AIR 1962 SC 1916 and negated the claim of *Mulamchand* to exercise his rights under the agreement.

10. In view of these cases it is too late in the day to contend that the forest and the trees did not vest in the State under the Act.

11. There is no force in the contention of the learned counsel that under the contract the plaintiff had become owner of trees as goods. It is true that trees which are agreed to be severed before sale or under the contract of sale are "goods" for the purposes of the Sale of Goods Act. But before they cease to be "proprietary" right or interest in proprietary rights within the meaning of Sections 3 and 4(a) of the Act they must be felled under the contract. It will be noticed that under Clause 1 of the contract the plaintiff was entitled to cut teak trees of more than 12 inches girth. It had to be ascertained which trees fell within that description. Till this was ascertained, they were not "ascertained goods" within Section 19 of the Sale of Goods Act. Clause 5 of the contract contemplated that stumps of trees, after cutting had to be 3 inches high. In other words, the contract was not to sell the whole of the trees. In these circumstances property in the cut timber would only pass to the plaintiff under the contract at the earliest when trees are felled. But before that happened the trees had vested in the State.

12. This brings us to the last point, namely, whether a new contract was concluded between the Government and the plaintiff. It is extremely doubtful whether the letter dated February 1, 1955, is an offer. It seems to be an invitation to the plaintiff to make offer. Be that as it may, even if it is

treated as an offer there was no unconditional acceptance by the letter, dated February 5, 1955. The plaintiff expressly reserved his right to claim a refund of Rs. 17,000. According to the letter of the Divisional Forest Officer, dated February 1, 1955, the plaintiff had to give up his claim to Rs. 17,000 which he had already paid and had to pay a further sum of Rupees 17,000. The High Court, in out opinion, rightly held that the alleged acceptance of the offer made on February 1, 1955, was conditional and qualified.

13. In the result the appeal fails and is dismissed with costs.

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