

The Divisional Forest officer

Vs

Mool Chand Sarougi Jain

Civil Appeal No. 595 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

06.01.1971

JUDGMENT

SHAH, C. J. -

1. The Divisional Forest Officer, Kamrup Division, Assam, invited tenders for the purchase of monopoly rights to quarry stone from certain areas, including Narengi Stone Quarry Mahal, for the period July 1, 1963 to June 30, 1964. Mool Chand Sarougi hereinafter called 'the respondent' submitted a tender accompanied by the requisite deposit of Rs. 100/- as earnest money, and offered the rate of Rs. 5.25 per rupee of royalty. The tender submitted by the respondent was accepted and for the minimum quantity of 1,25,000 c. ft. of stone allotted to the respondent out of the quarry he was to pay Rs. 31,250/-. Intimation of acceptance of the tender was given to the respondent on July 13, 1963.

2. One Baputi Ram, a member of a scheduled tribe, appealed against the order of the Divisional Forest Officer accepting the tender, to the Government of Assam and obtained a stay order. After about three months he declined to prosecute the appeal and his appeal was dismissed. The respondent then declined to accept the settlement of the quarry.

3. The Divisional Forest Officer invited fresh tenders. The offers made were not however accepted and tenders were invited again. On January 10, 1964, a settlement was made for a minimum quantity of 50,000 c. ft. for the period from January 25, 1964 to June 3, 1964, for Rs. 10,000/-.

4. The Divisional Forest Officer thereafter, sought to recover the amount of Rs. 31,250/- for which the tender of the respondent was accepted as arrears of land revenue in the manner provided by Section 75 of the Assam Forest Regulation VII of 1891. The respondent then moved a petition in the High Court of Assam for an order quashing the proceeding for recovery of the amount demanded. The High Court held that the amount claimed was not recoverable under the provisions of the Assam Forest Regulation VII of 1891 and passed an order quashing the proceeding for recovery and issued a mandamus to the Divisional Forest Officer, Kamrup Division not to proceed with the recovery. The State of Assam has appealed to this Court with certificate granted by the High Court.

5. Section 75 of the Assam Forest Regulation VII of 1891, provides :

"All money, other than fines, payable to Crown under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce, or of expenses incurred in the execution of this Regulation in respect of any forest

produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue."

The amount claimed to be due from the respondent is not on account of the price of any forest produce, or of expenses incurred in the execution for recovery of any forest produce. The amount is also not due in the execution of the Regulation. So far there is common ground. It was claimed, however, that the amount was due under Rule 10 promulgated in exercise of power under the Regulation and on that account it was recoverable as an arrear of land revenue. Rule 10, provides :

"No lease for any fixed period giving the right of removing India rubber, cane, Kutchha or cutch, lac, Agar, ivory, or any other forest produce shall be given otherwise than in accordance with the general or special orders of the conservator who is empowered to authorise sales in respect of such leases, by auction, tender or any other method at such rates as he may decide in his discretion."

6. The Rule in our judgment does not apply to recovery of the amount alleged to be due for failure to carry out the obligations of the tender by proceedings under the Assam Forest Regulation, 1891. It is again difficult to hold that "stone" is forest produce within the meaning of the Act. In any event the Rule does not give rise to any liability to pay a sum of money. It merely imposes a limitation upon the power of the officers of the Forest Department to grant leases in respect of certain forest produce. The lease may not be granted except in accordance with the general or special orders of the conservator who alone is empowered to authorise a sale in respect of such a lease. It is a rule relating to the exercise of power to grant leases. The High Court was, in our judgment, right in observing that the amount of damages for breach of the terms of the sale notice is not an amount due under the Regulation or Rule 10, made thereunder.

7. The appeal accordingly fails and is dismissed with costs.

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