

Bachan Singh and Others

Vs

State of Punjab and Others

Civil Appeal No. 3418 of 1979

(R. S. Sarkaria, R. S. Pathak JJ)

11.01.1980

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave is directed against an order dated May 15, 1979, whereby the High Court of Punjab and Haryana summarily dismissed the appellants' writ petition filed under Article 226 of the Constitution, although the case involved important questions of law.
2. Mr. F. S. Nariman, appearing for the appellants has taken us through the affidavits of the parties and the documents on record. According to his narration the facts are as follows :
3. Village Mirzapur has approximately 15,731 bighas of Shamlat land, Petitioners 3 to 74 claim to be right-holders in and co-owners of that land, the measure of right being Hasb Rasd Khewat.
4. On September 23, 1914, the local government of the then Punjab issued a notification under Section 3 of the Punjab Land Preservation (Chos) Act, 1900, covering the areas of several villages, including village Mirzapur, Kharar Tehsil. This notification was followed by Notification 459 of the same date issued by the local government under Section 4 of the said Act, whereby the felling of trees in the areas specified in the notification was prohibited for a period of 15 years. The prohibition against cutting of trees or timber was again effected by a subsequent notification, dated May 14, 1942, issued by the Punjab Government under Section 5 in respect of the aforesaid areas, including village Mirzapur, for a period of 15 years. Again, by a Notification 5424-ft-III-57/2411, dated October 10, 1957, issued under Section 5 of the said Act, the Punjab Government prohibited for a further period of 20 years with effect from the date of the notification, the cutting of trees or timber. Thus, for a continuous period of more than 35 years, the prohibition against felling of trees or cutting timber for the purpose of sale (other than for domestic purposes) on the area of village Mirzapur remained in force.
5. After the expiry of the period of this prohibition on October 12, 1957 (sic 1977), no further notification continuing such prohibition (excepting the notification dated March 9, 1979) was issued.
6. On October 9, 1975, the Punjab Government issued a notification in exercise of its powers under Section 4 of the said Act, whereby the Notification 459 dated September 23, 1914 was amended by adding a proviso where under the owners and the right-holders in the area mentioned in the schedule annexed to the said notification which included the area of village Mirzapur, the right-holders could sell trees or timber after obtaining a permit from the Divisional Forest Officer, Rupar. The

amendment further provided that such permit will be issued in accordance with the marking of trees, approved by the Chief Conservator of Forests, Punjab, subject to such conditions for sale as may from time to time appear necessary to him in the interest of forest conservancy.

7. On July 19, 1972, the land-owners of village Mirzapur, including petitioners 3 to 74, entered into an agreement, whereby the former sold the right to cut trees from the said land to petitioners 1 and 2 for a consideration of Rs. 75,500. This agreement was renewed by the right-holders from time to time on receiving further consideration. The last agreement is dated July 31, 1977 (Annexure P-5). This agreement has been renewed for a further period of one year ending March 31, 1980.

8. On August 16, 1977, the land-owners of village Mirzapur made an application to the Forest Minister, Punjab, requesting that no new notification under Section 5 of the aforesaid Act be issued and the right-holders be granted permission to cut and sell the trees standing on their lands. They further prayed that an order for provisional marking of the trees by the Forest Department may be issued.

9. By an order, dated January 3, 1978, the Chief Conservator of Forests provisionally approved the marking of the trees for sale out of the area of village Mirzapur, wherein the felling of trees had remained prohibited for a period of more than 35 years. According to the Ten Years Felling Programme, this village was due for felling trees in 1976-77. On January 16, 1978, the land-owners of village Mirzapur made an application to the Divisional Forest Officer, stating that the marking of all the trees in the area is likely to take a long time and that in view of the impending close of the felling season, a part-felling permit be granted to them for cutting the trees which had already been marked and after completion of the remaining marking, the final permit may be granted. By that time, 7165 trees had actually been marked, while the rest could not be marked.

10. On February 3, 1978, a decision was taken by the Punjab Government that permission to fell all trees in the areas of village Mirzapur may be granted as the area had remained closed for sufficient time. It was further decided that the marking of trees for felling should be done in blocks to ensure better supervision.

11. On March 10, 1978, the Chief Conservator of Forests wrote to the Divisional Forest Officer, directing him not to make further marking and to frame a working scheme and management plan for the said area. It was further stated in that letter that the government had ordered that auction of the trees be done by the Department and, as such, the consent of the land-owners be sent immediately to the government for approval of the auction. By the time this memo dated March 10, 1978 of the Chief Conservator reached the Range Officer, marking of the remaining 9518 trees had already been completed.

12. On March 17, 1978, a felling permit was granted for specified trees, totalling 7165, in specified khasra nos. in the area of village Mirzapur subject to the various conditions including that the felling and conversion of trees will be completed by the contractor up to April 15, 1978. (This is Annexure P-7 to the petition). Accordingly, petitioners 1 and 2 who were the contractors, cut 4400 marked trees within that period which expired on April 15, 1978. As the felling of all the marked trees could not be completed within this very short period specified in the permit, the petitioners applied for extension of time, but received no reply.

13. Certain documents from the correspondence which passed from the Chief Conservator and the Deputy Secretary to the Government in Punjab Government, which have been annexed to the

petition, show that approval for making further trees for sale in Mirzapur was also sanctioned. The petitioners made further representation for extension of the time for felling and removing the remaining trees, but nothing came out of it.

14. According to the averments in para 22 of the petition, on December 12, 1978, Shri Balwinder Singh, Agriculture and Forest Minister, Punjab, along with some officers of the Forest Department went to village Mirzapur, summoned the right-holders of that village in the Rest House and advised them that they should not press for the issuance of a permit and allow the agreement with petitioners 1 and 2 to lapse as the same could be enforced only within the time stipulated in the agreement deed, expiring on March, 31, 1979. The Minister, it is alleged, further suggested to the right-holders to sell their trees to Shri Bhagat Singh son of S. Lachhman Singh, Minister in Haryana State, who, according to the Minister, would give them more money for their trees. The Minister further promised that if the right-holders enter into an agreement for sale of trees with the said Bhagat Singh, he would get the permit issued immediately. The right-holders, however, did not agree and informed the Minister that they had already received the entire sale consideration from petitioners 1 and 2 and they would not dishonour the agreement. It is further alleged that the Minister left the place threatening the right-holders that he would see how they would get the permit to sell. It is also stated that this Bhagat Singh was a rival bidder in an auction of Bhojpalara Forest (Haryana) and competed with Shri Ranjit Singh, brother of petitioners 1 and 2, on October 10, 1978. The said Ranjit Singh, however, outbid Bhagat Singh at that auction. For this reason, it is alleged, Bhagat Singh had a grudge against petitioners 1 and 2. The State has controverted some of these allegations.

15. In his counter-affidavit, Shri Balwinder Singh, Forest Minister admitted that he had visited village Mirzapur on December 12, 1978, but denied the rest of the allegations.

16. It is further alleged that on January 20, 1979, the petitioners made a representation to the Chief Minister, complaining of delay in not issuing the permit, though the felling season was running out.

17. Ultimately on February 14, 1979, the petitioners moved the High Court by a petition under Article 226 of the Constitution, praying for issuance of a writ, order or direction in the nature of mandamus requiring the respondents to issue a final permit in favour of the petitioners. The High Court issued notice of motion to the respondents for February 27, 1979. On that date, counsel for the respondents appeared and prayed for time to file a counter-affidavit. At his request, the respondents were granted time to file the counter-affidavit by March 15, 1979. Before that date, however, on March 9, 1979, the Punjab Government issued a notification under Section 5 of the said Act prohibiting for 20 years the cutting of trees or timber or brush wood for any purpose from village Mirzapur, only. Thereupon, the petitioners amended the writ petition and challenged this notification, also, inter alia, on the ground that it amounted to an unreasonable restriction on their Fundamental Right under Article 19(1)(g) of the Constitution.

18. It is contended by Mr. F. S. Nariman, appearing for the appellants, that the time for felling trees specified in the permit has been validly issued by the respondents to the petitioners and since time for felling the trees was not the essence of the matter, the permit already issued for felling 7165 trees, in any case ought to have been honoured, and the time of the permit extended. Petitioners had already paid the entire sale consideration to the right-holders; that the impugned notification issued by the respondents during the pendency of the writ petition suffered from arbitrariness and unreasonableness because the felling of trees in the area of village Mirzapur had remained prohibited for a period of more than 35 years under successive notifications issued under the said Act, and the

absolute ban on cutting trees and timber for a period of another 20 years was manifestly an unreasonable restriction, offending the petitioners' Fundamental Right under Article 19(1)(g) of the Constitution. Counsel further submitted that he does not want to elaborate or develop his arguments further in this Court and that his purpose of enumerating all these facts and making these short submissions is that important questions of law based on undisputed facts had arisen for decision in this case and in the circumstances, it was not fair and proper for the High Court to summarily dismiss his writ petition without dealing with the question raised on merits. It is maintained that since the felling season is of short duration and the time granted by the right-holders under the agreement to petitioners 1 and 2 for completing the felling and removal of trees was about to expire shortly, the remedy by way of a suit was not an efficacious and speedy remedy.

19. We have heard the arguments of Shri Hardev Singh, also. Without giving any finding on the questions raised or the reliefs sought in the writ petition, we think, that important questions of law had been raised in this case which could properly be determined by the High Court in the exercise of its special jurisdiction under Article 226 of the Constitution.

20. It was, therefore, not proper for the High Court to dispose of this matter in the summary manner, it did. We will, therefore, allow this appeal on this short ground, set aside the order of the High Court and send the case back to it with the direction that it should rehear the parties and dispose of the matter by a speaking order on merits in accordance with law preferably within six weeks from today. If for any good reason, the High Court is unable to dispose of the matter within this period, it shall pass suitable interim order in accordance with law directing extension of the permit for such further period as it may deem fit. Costs to abide the result.

</html