Divisional Forest Officer

Vs

Bishwanath Tea Co. Ltd.

Civil Appeal No. 218 of 1970

(D.A. Desai, R.B. Misra JJ)

05.05.1981

JUDGMENT

DESAI, J. –

1. This appeal by special leave arises out of a writ petition filed by the respondent Bishwanath Tea Co. Ltd., in the Assam & Nagaland High Court questioning the action of the appellant, the Divisional Forest Officer, Darrang Division, of recovering Rs. 7069.37 as royalty for cutting and felling trees from Tezalpatty Grant 1 held under lease dated September 27, 1932, and for a mandamus directing the appellant to issue permits without insisting upon payment of royalty for the trees cut and felled from the area under lease.

2. Respondent Bishwanath Tea Co. Ltd. ('company' for short), took on lease land admeasuring 1107.26 acres from the government. The lease was executed between the Company and the Secretary of State for India. The lease in the first instance was for a period of 15 years commencing from April 1, 1932. The lease was to be exploited for cultivation and raising tea-garden. The lease was subject to conditions set out therein and generally to Assam Land and Revenue Regulation and the rules made thereunder. On February 15, 1966, manager of the company approached the appellant seeking permission to cut 7000 cubic feet of timber from grant N.C. Tezalpatty 1 of Nagshankar Mouza, for utilising the same for building of staff and labourer's houses. By the reply dated April 4, 1966, the appellant noted that the timber was to be cut for constructing houses in Partabghur and Dekorai Tea Estates and that it was necessary to ascertain whether any of the aforementioned two tea estates was situated within the grant evidenced by lease of N.C. Tezalpatty 1. It was made clear that if it was not so, full royalty will be payable by the company for cutting, felling and removing timber. The manager by his letter dated April 23, 1966, informed the appellant that as the lessee is Bishwanath Tea Co. Ltd., it can cut and fell timber from any of its leased area to be utilised for its purposes in any other division. Therefore, the manager suggested that the permit must be issued without insisting on payment of royalty. The appellant by his letter dated May 12, 1966, informed the manager that as the timber was required for use in Partabghur and Dekorai Tea Estates which were not within N.C. Tezalpatty Grant 1 of Nagshankar Mouza from which timber was to be felled and cut, full royalty will be payable on timber so cut and removed because it was to be utilised for the purpose unconnected with the grant. For this assertion the appellant relied upon a portion of Clause 2 of Part IV of the lease deed dated September 27, 1932. Correspondence further ensued between the parties and ultimately the respondent-company paid an amount of Rs. 7069.37 as and by was of royalty under protest and then filed a petition under Article 226 of the Constitution in the High Court alleging that upon a true construction of the relevant clause of the grant as also proviso of Rule 37 of the Settlement Rules as the timber was required for the purpose connected with the exploitation of the grant, the company as lessee was entitled to cut and remove timber

without payment of royalty and, therefore, the recovery of royalty being unsupported by law, the appellant was liable to refund the same. The company also prayed for a mandamus directing the present appellant who was respondent in the High Court for issuing permits without insisting on payment of royalty whenever timber was to be cut from the leased area for the purposes connected with the exploitation of the grant.

3. The appellant filed his return to the rule issued by the High Court. A preliminary objection was raised that the right claimed by the respondent flowed from the contract of lease and such contractual rights and obligations can only be enforced in civil court. It was contended that apart from the fact that interpretation of the contract of lease is generally not undertaken by the High Court in exercise of its extraordinary jurisdiction under Article 226, it was further contended that even if interpretation of the relevant clause of the lease as alleged on behalf of the respondent finds favour with the court, yet facts will have to be investigated before any refund could be ordered or a blanket injunction could be granted for all times to come against the appellant from performing his duty, namely, of granting permit and recovering royalty.

4. The High Court overruled the preliminary objection observing that the court was not called upon to decide any complicated question of fact and the question for decision before the court was whether the company was entitled to enforcement of its legal right under the proviso to Rule 37 of the Settlement Rules. The court further observed that even though part of the proviso of Rule 37 of the Settlement Rules was incorporated in the lease itself, nonetheless what the court had to consider was the interpretation of a statutory rule and that is the function of the court under Article 226. On merits the High Court held that as the grant N.C. Tezalpatty 1 was in favour of M/s. Bishwanath Tea. Co. Ltd., the company was entitled to cut and fell timber from N.C. Tezalpatty grant area for its use in other tea-gardens, namely, Partabghur and Dekorai and even if the letter two gardens were outside N.C. Tezalpatty Grant 1, yet they being under the ownership and management of the company, felling of trees from the area of one grant for utilisation at other places would fall within the second part of the proviso to Rule 37 in that the felling and removal of timber was for use not unconnected with the exploitation of the grant and, therefore, the company was entitled to fell and remove timber in the aforesaid situation without payment of royalty. In accordance with this finding the High Court made the rule absolute, directed refund of the amount paid under protest and issued a mandamus directing the appellant to issue permits to the respondent-company without payment of royalty for removal of timber for Tezalpatty Grant 1 for use in tea-garden of Dekorai Division for exploitation of tea plantation. Hence this appeal by special leave.

5. Unquestionably, the rights and obligations between the parties to this appeal are governed by the terms of the lease dated September 27, 1932. Specifically, the respondent who was a petitioner in the High Court claimed the right to relief under Clause 2 of Part IV of the indenture of lease which reads as under :

> The lessee shall pay to the lessor as provided by rules for the time being in force under the Assam Land and Revenue Regulation for all timber (if any) on the demised lands cut down, removed or utilised by the lessee during the period of the lease.
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> Timber valuation at reduced rates estimated at Rs. 12472/7 (rupees twelve thousand four hundred and seventy-two and annas seven only) was credited into the treasury by Challan Nos. 43 dated February 24, 1932 and 8 dated March 3, 1932. The lessee shall be liable to pay timber valuation at full rates on all timber sold or removed for sale and on all timber removed for use unconnected with exploitation of the grant

during the period of his lease or renewed lease.

According to the respondent, it would be entitled to remove timber cut and felled from the leased area without liability to pay royalty for its own use irrespective of the fact whether such timber was to be used outside the leased area, because such use would be in connection with the exploitation of the grant and there is such a reservation in the grant evidenced by the lease. True it is that if the timber is felled and removed for purpose connected with the exploitation of the grant, there would be no liability to pay the royalty. Such a positive right is claimed from a negative covenant in the lease. Clause 2 provides that the lessee had paid timber valuation at the reduced rate at Rs. 12472/7 on February 24, 1932 and March 3, 1932. The lessee according to the respondent would be liable to pay timber valuation at full rates on all timber sold or removed for sale, on all timber removed for use unconnected with exploitation of the grant during the period of the lease or renewed lease. The implication of the negative covenant would be that if timber is removed from the leased area connected with the exploitation of grant, there would be no liability to pay royalty on such timber. The respondent claimed to remove timber without the liability to pay royalty in exercise of the right reserved under Clause 2 thus interpreted. In para 5 of the writ petition filed by the respondent in the High Court, a reference has been made to the aforementioned term in the lease deed. It was further stated that the respondent paid the royalty under protest which it was not liable to pay as the timber was urgently required for the purpose of the business of the company in connection with the grant. These averments in the petition would show that the respondent claimed the right to remove timber without the obligation to pay royalty as flowing from the grant evidenced by the lease. Anticipating a possible contention about the jurisdiction of the High Court to entertain a writ petition for enforcement of contractual obligation, the respondent contended that the levy of royalty had no authority of law and that this was an unreasonable restriction on the fundamental right of the respondent to carry on its trade. This camouflage of contending that the levy of royalty was not supported by law and that this was an unreasonable restriction on the fundamental right to carry on trade successfully persuaded the High Court to entertain the petition.

6. Shorn of all embellishment the relief claimed by the respondent was referable to nothing else but the term of the lease viz. Clause 2, Part IV. Maybe, that this term is a mere reproduction of proviso to Rule 37 of Assam Land and Revenue and Local Rates Regulations, but that by itself is not sufficient to contend that what the respondent was doing was enforcing a statutory provision. Proviso to Rule 37 is an enabling provision. The relevant portion of the proviso reads as under :

Provided that if any person taking up land for special cultivation is unwilling to pay the full royalty valuation of the timber as estimated, he shall have the option of paying a reduced valuation representing only the profit which he is likely to derive from the use of the timber for the purposes connected with the exploitation of the grant. If he exercises such option, he shall be liable to pay royalty at full rates on all timber sold, bartered, mortgaged, given or otherwise, transferred or removed for transfer and on all timber removed for use unconnected with the exploitation of the grant during the period of his lease or renewed lease.

A bare perusal of Clause 2 of Part IV of the indenture of lease extracted hereinbefore

and the proviso to Rule 37 would at a glance show that the proviso enables a grantee to take benefit of it by fulfilling certain conditions namely by paying a reduced valuation representing only the profit which it is likely to derive from the use of timber for purposes connected with the exploitation of the grant. It is thus an enabling provision and the grantor of the lease may permit this option to be enjoyed by the grantee. But whether that has been done or not is always a question of fact. If the pre-condition is satisfied, the benefit can be taken. That again is a matter to be worked out by the parties to the indenture of lease. In fact, Clause 2 of the indenture of lease would show that the respondent grantee paid Rs. 12472/7 being timber valuation at reduced rates. The respondent having made the payment, whereupon the grantor of the lease agreed that the grantee will have to pay timber valuation at full rates on all timber sold or removed for sale and on all timber removed for use unconnected with exploitation of the grant during the period of his lease or renewed lease but the grantee will not have to pay royalty for timber felled and removed for purpose connected with the grant. It thus can be demonstrably established that the respondent was trying to enforce through the writ petition the right to remove timber without the liability to pay royalty not under the proviso to Rule 37 which was merely an enabling provision, but the specific term of lease agreed to between the parties. Proviso to Rule 37 may not be incorporated in an indenture of lease. If incorporated after fulfilling pre-condition it becomes a term of lease. The High Court, in our opinion, therefore, was in error in posing a question to itself as to whether the applicant (respondent herein) was entitled to the enforcement of legal right under the proviso to Rule 37 of the Settlement Rules. The camouflage successfully worked, but once this cloak is removed, it unmistakably transpires that the respondent was trying to claim benefit of Clause 2 of the lease having fulfilled its pre-condition and obtaining the inclusion of its latter part in the contract of lease. The question, therefore, really is whether such contractual obligation can be enforced by the writ jurisdiction ? How dangerous it is, can be demonstrably established in this case.

7. But we would first address ourselves to the question of law. Article 226 confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. Undoubtedly, the respondent contended that its fundamental right under Article 19(1)(g) to carry on trade has been violated. The High Court overlooked the well-settled legal position that a juristic person such as a Corporation is not entitled to any of the freedoms guaranteed by Article 19. The respondent was the sole petitioner in the High Court. It is a company incorporated under the Companies Act. The fundamental right claimed under Article 19(1)(g) is to practise any profession or carry on any occupation, trade or business. The respondent (company) contended that it had a right to carry on its trade or business of cultivating and raising a tea-garden and as part of it to cut timber and remove the same from the leased area without the payment of royalty and that insistence upon payment of royalty unsupported by law is an unreasonable restriction denying the fundamental right guaranteed to the respondent. Article 19(1)(g) guarantees the fundamental freedom to a citizen. The respondent not being a citizen was not entitled to complain of breach or violation of fundamental right under Article 19(1)(g) (see State Trading Corporation of India Ltd. v. Commercial Tax Officer ((1964) 4 SCR 99 : AIR 1963 SC 1811) and Tata Engineering and Locomotive Co. Ltd. v. State of Bihar ((1964) 6 SCR 885: AIR 1965 SC 40 : (1964) 34 Com Cas 458. See also Chiranjit Lal Chowdhuri v. Union of India, 1950 SCR 869 : AIR 1951 SC 41). However, the shareholders of a company can complain of

infringement of their fundamental rights (see Bennett Coleman & Co. v. Union of India ((1972) 2 SCC 788 : (1973) 2 SCR 757 : AIR 1973 SC 106)). Such is not the case pleaded. Therefore the writ petition on the allegation of infringement of fundamental right under Article 19(1)(g) at the instance of respondent-company alone was not maintainable.

8. It is undoubtedly true that High Court can entertain in its extraordinary jurisdiction a petition to issue any of the prerogative writs for any other purpose. But such writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is a denial of equality before law or equal protection of law. The Corporation can also file a writ petition for enforcement of a right under a statute. As pointed out earlier, the respondent (company) was merely trying to enforce a contractual obligation. To clear the ground let it be stated that obligation to pay royalty for timber cut and felled and removed is prescribed by the relevant regulation. The validity of regulations is not challenged. Therefore, the demand for royalty is unsupported by law. What the respondent claims is an exception that in view of a certain term in the indenture of lease, to wit, Clause 2, the appellant is not entitled to demand and collect royalty from the respondent. This is nothing but enforcement of a term of a contract of lease. Hence, the question whether such contractual obligation can be enforced by the High Court in its writ jurisdiction.

9. Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the civil court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a civil court where a suit for specific performance of contract or for damages could be filed. This is so well settled that no authority is needed. However, we may refer to a recent decision bearing on the subject. In Har Shankar v. Deputy Excise & Taxation Commissioner ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), the petitioners offered their bids in the auctions held for granting licences for the sale of liquor. Subsequently, the petitioners moved to invalidate the auctions challenging the power of the Financial Commissioner to grant liquor licences. Rejecting this contention, Chandrachud, J. (as he then was), speaking for the Constitution Bench at page 263 observed as under : (SCC p. 746, para 16)

> Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.
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> Again at page 265 there is a pertinent observation which may be extracted : (SCC p. 747, para 21)
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> Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.

This apart, it also appears that in a later decision, the Assam High Court itself took an exactly opposite view in almost identical circumstances. In Woodcrafts Assam v. Cheif Conservator of Forests (AIR 1971 Ass. 92 : LR 1970 Ass 183) a writ petition was filed challenging the revision of rates of royalty for two different periods. Rejecting this petition as not maintainable, a Division Bench of the High Court held that the complaint of the petitioner is that there is violation of his rights under the contract and that such violation of contractual obligation cannot be remedied by a writ petition. That exactly is the position in the case before us. Therefore, the High Court was in error in entertaining the writ petition and it should have been dismissed at the threshold.

10. In substance, this was a suit for refund of a royalty alleged to be unauthorisedly recovered and that could hardly be entertained in exercise of the writ jurisdiction of the High Court.

11. As the High Court has also disposed of the case on merits after overruling the preliminary objection, it is but meet that we may examine the case on merits and that itself would demonstrably show the dangerous course adopted by the High Court in examining rights and obligations claimed under the contract without proper or adequate material or evidence to reach a conclusion, more so when the petition raised disputed questions of facts which needed investigation.

12. Respondent I had entered into a lease dated September 27, 1932 with the Secretary of State for India. Part II of the lease describes the land leased to the respondent. The description is as under :

> N.C. Tengalbasti Village in Sootea Mauza in the Tezpur Sadar Sub-Division of Darrang District. Block No. 1 Field No. 2-1804 B. 4 K-12L Block No. 2 Field No. 3-1544 B. 2 K-13L Total - 1107.26 Acres on 3349 B. 2K-5L

This land was taken on lease for cultivation and raising tea-garden. Under the relevant Clause 2 extracted above, the lessee was to pay timber valuation on full rate for all timber sold or removed for sale and on all timber removed for use unconnected with exploitation of the grant during the period of lease or renewed lease. From this negative convenant in the indenture of lease, the respondent says that where timber is cut and felled and removed for a purpose or use connected with exploitation of grant during the period of lease or renewed lease, royalty shall not be payable. Assuming the respondent is right in its construction of Clause 2 of the indenture of lease, in order to obtain relief, namely, to cut and remove timber from the leased area for purpose connected with the exploitation of the grant, it must show that the timber is being felled and cut from an area covered by the lease in which Clause 2 finds its place and that such timber is being removed for a purpose connected with the exploitation of the grant. To be more specific, following facts will have to be proved for obtaining relief :

> (i) The area covered by the grant.
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> (ii) Felling of the trees from the area covered by the grant.
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> (iii) Use to which the felled timber was to be put to.
>
> (iv) Such use will have to be one connected with the exploitation of the grant.
>
> (v) What is meant by the exploitation of the grant ?

Could these facts be assumed without evidence ? Was the High Court justified in observing that it was not called upon to decide complicated question of facts ? Some averments in the petition were

disputed. The appellant contended that Clause 2 of the indenture of lease only means that if there is some use of timber which is being felled and removed from the area covered by the grant for the purpose connected with the exploitation of that very grant, then and only then the relief can be claimed under Clause 2. The High Court found as a fact that the timber was sought to be removed for the purpose of constructing quarters for the workmen employed in Partabghur Garden is not situated in Tezalpatty Village. At any rate, Partabghur Garden where the houses for the workmen were to be constructed was situated outside the area covered by the grant, as also outside the Revenue Division in which the leased area is located. The High Court got over this difficulty by observing that the grant being in favour of an incorporated company, it can cut and remove timber from leased area for use at any place which is owned, managed or controlled by the company and it is immaterial whether one is directly connected with the other or not. If the timber is being felled from the area of one grant to be used at some other place where the company is carrying on its operation, the benefit of the removal of timber without payment of royalty would be available to the company anywhere in the world. To stretch this logic a little further, it would mean that if the respondent (company) is to set up a tea-garden outside India, it can as well cut and remove timber from N.C. Tezalpatty Grant 1 in Assam to the place outside India without the obligation to pay royalty. The fallacy underlying the approach of the High Court becomes self-evident. It is immaterial that the grantee was the company. The specific provision is that the grant is for a purpose of cultivation and raising tea-garden and that from the area covered by the grant, if timber is felled for purpose connected with the grant itself, namely, cultivation and raising tea garden in that area, then alone the benefit of removal of timber without payment of royalty can be availed of. It is admitted that Partabghur Tea Garden is outside the area covered by the grant, in fact in an altogether different division. In such a situation upon a true construction of Clause 2, Part IV of indenture of lease, the respondent-company was not entitled to remove timber without payment of royalty. Therefore, even on merits, the High Court was in error in granting relief.

13. Accordingly, this appeal is allowed and the judgment of the High Court is quashed and set aside and the writ petition filed by the respondent in the High Court is dismissed with costs throughout.

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