

Jogendra Lal Saha

Vs

State of Bihar and Others

Civil Appeal No.232 of 1974

(CJI Ranganath Misra, M.H. Kania, Kuldip Singh JJ)

06.11.1990

JUDGMENT

1. Appellant had entered into a contract with the State of Bihar in the year 1968 for a period of three years in the matter of appropriating Tendu Leaves from certain forests of the State of Bihar in the Dumka division stipulating to pay the price in three instalments spread over the three years for which the contract was valid. There is no dispute that the first annual instalment had been paid. Nor is there any dispute that the other two had not been paid. At a point of time when the third one had not become due and in regard to the second there had been default, proceedings under the Bihar Public Demands Recovery Act, 1914, were initiated for recovery of the two instalments on the requisition of the forest officer after adjustment of the security deposit and the price obtained at a re-auction. The appellant challenged the action taken in a proceeding under Article 226 of the Constitution before the Patna High Court. The Patna High Court by the impugned decision, AIR 1973 Pat 98, dismissed the petition and upheld the action. That has led to this appeal by special leave.

2. The main stand taken in support of the appeal before us is that once the contract was rescinded, as would appear from the order dated 18th April, 1969, (Annexure 'D') and the notice demanding the payment having not been complied with, the claim was actually for damages and not the balance of the sale price. Therefore, Section 82 of the Forest Act, 1927 which authorises recovery of the amount as a public demand was not attracted and at the most the respondents were entitled to institute civil action with reference to the provisions of the Sale of Goods Act, 1930 and the summary procedure adopted was unauthorised and without jurisdiction.

3. Support for this stand is sought by learned counsel from a series of decisions of different High Courts. He has placed before us the view indicated by the Allahabad High Court in *Firm Gobardhan Das v. Collector of Mirzapur*, AIR 1956 All 721, *Dewan Chand v. State of U. P.*, AIR 1971 All 200, *State of U. P. v. Deewan Chand*, 1973 All LJ 309, *Nanak Singh v. State of U.P.*, 1987 All LJ 183, *Bala Datt v. Union of India*, AIR 1963 Madh Pra 205, *J. A. Dalmat v. State of Mysore*, AIR 1965 Mys 109 and in 1981 Pun LJ 14. There are cases where reliance has been placed on authorities dealing with recovery of damages on the assumption that the situation is covered by the Sale of Goods Act, 1930. We find that there is reference in the Allahabad decision, AIR 1980 All 100, to the provision of Section 83 of the Forest Act but though the provision has been quoted full implication of it has not been brought out.

4. As a result thereof the legislative purpose in providing Section 83 in the Forest Act has really

been overlooked.

5. The two Sections in the Forest Act, 1927 may now be extracted:

"Section 82:

"All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such 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.

83.(1) When any such money is payable for or in respect of any forest-Produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-Officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-Officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government."

6. Section 83 in clear terms makes the liability of Government the first charge on the forest produce sold. Sub-section (2) authorises the Forest-officer to sell the produce by public auction and the proceeds of such sale to be applied first to satisfy the debt for which the charge is provided. Sub-section (3) makes clear stipulation that if there be higher amount obtained in the public auction, that would be payable to the contractor. If the scheme under Sections 82 and 83 of the Act are put together and kept in view, it clearly follows that the entire situation had been provided for by special legislation and there is no need to fall back upon the provisions of the Sale of Goods Act to deal with the claim. There is no quarrel that a special provision would keep away the application of the general law and contracts for the sale of forest produce have, therefore, to be covered by the provisions contained in these two Sections.

7. The contract in question is in fact contrary to the scheme of this Act. It tries to take away the right of the contractor to be paid excess money earned on subsequent sale, though Section 83(3) of the Act authorises the contractor to claim the excess amount within the time stipulated. Some of the other terms under the contract also run counter to the provisions. When Parliament provides a special statute to cover a given situation, there is an obligation on the State while entering into contracts with citizens in regard to matters so covered, to follow the special procedure and obtain the protection which the law intends to confer in regard to such transactions instead of allowing its activities to run in a different direction.

8. In the view we have taken of the matter it must be held that the consideration which has weighed with the different High Courts in the decisions referred to above while dealing with the recovery of unpaid forest contract money to which Sections 82 and 83 apply must be taken not to be good law.

9. It is not disputed that learned counsel for the appellant is right in his submission that the instalment relating to third year was not due when the requisition was sent or the certificate was

signed. Therefore, the demand for that amount could not be included in the certificate. We might at this stage refer to the observations of the Privy Council in *Baijnath Sahai v. Ramgut Singh*, (1895-96) 23 Ind App 45, where it had been pointed out that the certificate proceeding is of an extraordinary nature and compliance of the requirements of the statute should be meticulously done. At the foot of the certificate in Form No. 1 prescribed under the Act the Certificate Officer has to certify in the following terms "I further certify that the above mentioned sum of Rs.* is justly recoverable and its recovery by suit is not barred by law." In view of the fact that the third instalment had not fallen due by the date, the question of including that amount in the certificate did not arise. Therefore, the proceeding as taken was non est in law in terms of the decision referred to above. * amount not given

10. Since, this appeal arises out of a proceeding under Article 226 of the Constitution, we do not propose to interfere in this, matter in such a way as would unnecessarily benefit the appellant. The State's dues have got to be recovered on the admitted facts and if the certificate proceeding is quashed on technical grounds which are advanced in this appeal, the interest of the State would be prejudiced. We, therefore, dismiss the appeal relying upon Sections 82 and 83 of the Forest Act, 1927 and would make it clear that the liability of the appellant shall be confined to two instalments which were due for the second and third years in terms of the contract after setting off the security deposit and the amounts that have been recovered being Rs. 2200/- and Rs. 28,000/- respectively. The Certificate Officer before proceeding further shall apply his mind to the facts and if necessary hear the certificate debtor, ascertain the exact due, make an appropriate amendment in the certificate as required under Section 11 of the Act and proceed to recover the amount that he finds is still recoverable under law. The appellant shall not be burdened with any claim of interest or other charges until the Certificate Officer. modifies the certificate and liability for interest under Section 17 would run only from that date provided any amount has remained unpaid. Parties are directed to bear their own costs throughout.

Appeal dismissed.

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