

ALLAHABAD HIGH COURT

Deewan Chand

Vs.

State of U. P

Civil Misc Writ No. 164 of 1969
(G.C. Mathur, J.)

11.02.1970

ORDER

G.C. Mathur, J.

1. An auction for the grant of leases in respect of certain lots was held in 1967 by the Forest Department. The petitioner purchased two lots Nos. 39 and 55. Lot No. 39 consisted of 202 acres of land and Lot No. 55 consisted of 125 acres of land. The auction in favor of the petitioner was confirmed on July 12, 1967. Thereafter there was some dispute between the parties and, ultimately, the lease in respect of Lot No. 55 was cancelled on October 7, 1968, and the lease in respect of Lot No. 39 was cancelled on October 28, 1968. Subsequently, the lots were re-auctioned but they fetched a much lower price than that which the petitioner had agreed to pay. The Forest Department called upon the petitioner to pay a sum of Rs. 1,72,423/-, being the difference between the amount agreed to be paid by the petitioner and the amount which the lots fetched at the re-auction after giving credit for the payments already made by the petitioner. The petitioner not having paid this amount, a certificate was issued to the Tahsildar to recover the amount as arrears of land revenue. It is these recovery proceedings which have been challenged by the petitioner.

2. The contention of the petitioner is that the sum of Rs. 1,72,423/-, which is sought to be recovered as arrears of land revenue, is an amount claimed by the Government by way of damages which cannot legally be recovered as arrears of land revenue. There is considerable force in this argument. Section 82 of the Indian Forest Act, 1927, provides for the recovery of money due to Government under the Act in the following terms :-

"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". The learned Standing Counsel has not been able to show me that the amount sought to be recovered from the petitioner is payable under any provision of the Act or of any rule

made there under. In the present case, the leases had been granted for cultivation of land and not for taking any forest-produce from the forest. The dues, therefore, cannot be said to be on account of the price of any forest-produce. Even in respect of loss occasioned on a re-sale in respect of forest-produce, this Court held in *Firm Gobardhan Das v. Collector of Mirzapur*¹, that such loss was not included in the term 'price' and, thereafter, it could not be recovered under Section 82 as 'price of any forest-produce.' The dues are not covered by Section 82 and cannot be recovered as arrears of land revenue by virtue of this section.

3. The learned Standing Counsel then placed reliance upon condition 3-A of the agreement between the parties which is annexed as Annexure 'C' to the counter-affidavit. Condition 3-A provides that, if, on account of the failure of the purchaser to carry out the terms of the agreement, a fresh auction has to be held, then the purchaser will be liable for the loss caused to the Government by the re-sale and the amount will be recoverable as arrears of land revenue. It is contended that, in view of this condition, the amount due for loss or damage caused to the Government on account of the re-sale could be legally recovered as arrears of land revenue. It is not possible to accept this contention. Section 82 of the Act, on its terms, is inapplicable to the amount claimed in the present case. By the agreement of the parties the scope of Section 82 cannot be enlarged; nor can any jurisdiction be conferred upon the Collector to recover the amount as arrears of land revenue. Clause 3-A of the agreement cannot have the effect of making Section 82 applicable to the present dues. Learned counsel for the petitioner referred to a decision of C. B. Capoor, J. C. (as he then was) in *Bala Dat v. Union of India*², where also a similar term was contained in the agreement. Capoor, J. C. held that this term could not avail the Government and the loss accruing to the Government on account of the re-sale could not be recovered as arrears of land revenue. The learned Standing Counsel has, in this connection, referred to a Full Bench decision of the Madhya Pradesh High Court in *K. P. Choudhary v. State of Madhya Pradesh*³. In this case also, there was a condition under which the contractor had made himself liable for recovery of the deficit amount on re-sale as arrears of land revenue. The Full Bench held that the deficit amount could be recovered as arrears of land revenue by virtue of the provisions of Section 155 (b) of the Madhya Pradesh Land Revenue Code, 1959. This section provided that all moneys falling due to the State Government under any contract, which provides that they shall be recoverable as arrears of land revenue, may be recovered as arrears of land revenue. No similar provision has been pointed out either in the U. P. Zamindari Abolition and Land Reforms Act or in any other enactment applicable to this case. The Madhya Pradesh case is clearly distinguishable. In view of what has been said above, I am of opinion that the sum of Rupees 1,72,423/- could not legally be recovered from the petitioner as arrears of land revenue.

4. The writ petition is accordingly allowed and the recovery proceedings against the petitioner are quashed. The respondents are restrained from recovering the sum of Rs. 1,72,423/- from the petitioner as arrears of land revenue. The petitioner is entitled to his costs of this petition from the respondents.

Petition allowed.

¹ AIR 1956 All 721

³ AIR 1962 Mad Prad 102 (FB)

² AIR 1960 Him Pra 30