

ALLAHABAD HIGH COURT

Virendra Kumar

Vs.

State, (Allahabad)

C.M.W. No. 3499 of 1977

(K.C. Agarwal and K.M. Dayal, JJ.)

30.07.1979

JUDGEMENT

K.C. Agrawal, J.

1. In this petitioners under Article 226 of the Constitution the petitioner prays for quashing the citation dated 30th August, 1977 and for a writ of mandamus directing the respondents 3 and 6 not to realise the forest-dues from the petitioner as arrears of land revenue.

2. The facts relevant for our purposes are as follows :-

The petitioner is a forest Contractor. At an auction held on August 20, 1968, the petitioner purchased lot No. 8 of the Pithoragarh Forest Division for a sum of Rs. 1,08,000/-. The sale money was to be paid by the petitioner in two instalments. These instalments were :-

1. Ist instalment Rs. 36,000/- on 1-11-1969.
2. 2nd instalment Rs. 72,000/- on 1-4-1970

3. The petitioner did not pay the instalments as mentioned above. Instead, he paid the amount in small bits. The total amount which had been paid by him by March, 1975 was Rs. 55,334.85p. After deducting the aforesaid amount from the total sum payable, the amount which remained to be paid was Rs. 52,665.15 p.

4. After the auction had been finalised in favour of the petitioner, an agreement was executed between the petitioner and the State of U.P. and as per the agreement and terms of sale, the petitioner was entitled to export all the

purchased materials in proportion to the payment made by him from time to time. Since the petitioner failed to make the payment, in spite of various reminders, sent to him, the material not exported by him was detained by the forest Department. Apart from detaining the materials, the Forest Department also started proceedings for recovery of Rupees 52,665.15 p. Consequently, a recovery certificate of the said amount was sent to the Collector, Nainital for recovery of the amount as arrears of land revenue, under the U.P. Moneys (Recovery of Dues) Act as amended by U.P. Act No. 19 of 1975. Through this petition the petitioner has sought quashing of recovery proceedings of the aforesaid amount.

5. The petitioner also purchased two mote lots of timber being lots Nos. 22 and 16. These 2 lots were of the forest and were in respect of forest situated in west Almorah Forest Division, Ranikhet, district Nainital. Lot No. 22 was sold on 23rd November, 1967 for Rs. 71,000/- and lot No 16 was sold on 21-8-1968 for Rs. 1,56,000/- As per the terms of the sale and the agreement between the petitioner and the forest department the payment of sale money was to be made as under :-

| | |
|--|---|
| Lot No. 22/67-68 | |
| 1st instalment Rs. 23,700 on 1-10-1969 | 2nd instalment Rs. 47,400 on 1-2-1970 |
| Total Rs. 71,100/- | |
| Lot No. 16/68-69 | |
| Ist instalment Rs. 52,000/- on 1-11-1969 | 2nd instalment Rs. 1,04,000/- on 1-4-70 |
| Total Re. 1,56,000/-. | |

6. The petitioner did not pay the instalments as mentioned above. Consequently, the agreements of the sale of the aforesaid lots viz., 22 and 16 were rescinded and the aforesaid two lots were put to sale. The two lots were sold for Rs. 43,200/- in an auction held on 25-2-1975. The balance recoverable in respect of these two lots was Rupees 30,343.69 p. The recovery of this amount was also

started by way of arrears of land revenue. A recovery certificate of the amount of Rs. 30,343.69p. was sent to the Collector, Nainital. The petitioner challenged the aforesaid recovery as well.

7. From the facts stated above, it would be seen that the total amount which is being recovered for the non payment of dues of the three lots., viz. 8, 16 and 22 is Rs. 83008.84p.

8. The main ground of challenge was that since the deficit on resale could not be termed as 'price', the recovery of the same under Section 82 of the Forest Act was illegal. The petitioner's case was that the real character of the amount was "damages" and as under Section 82 only "price" can be recovered as arrears of land revenue, the proceedings are liable to be quashed.

9. For appreciating the point it would be relevant to refer to Sections 82 and 83 of the Forest Act. Section 82 provides that :-

"All money payable to the Government under this Act, or under any rule made under this Act, or on account of 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". Section 83 provides -

"(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)".

10. Before we proceed to consider the point, we may note here that there were two types of recoveries in the present case. The first was in respect of lot No. 8, in the case of lot No. 8, the forest produce sold to the petitioner was not resold,

the recovery was of the balance of the sale price which had not been paid by the petitioner. In respect of this lot, out of total amount of Rupees 1,08,000/- the petitioner had paid Rupees 55,334.85p. The balance was Rupees 52,665.15p. It is this amount which was being recovered from the petitioner as an arrear of land revenue. The case of lots Nos. 16 and 22, is, however, different. These two lots had been resold and the recovery was being made of the deficit. Thus there was a difference in the nature of the sum recoverable in respect of lot No. 8 and the amount recoverable in respect of lots 16 and 22. Under Section 82, what is recoverable is "price". "Price" is a sum of money at which an article is sold. It is something which one ordinarily accepts voluntarily in exchange for something else. There is very important distinction between an action for the price and an action for damages. This distinction is of considerable importance.

11. In legal contemplation the term "damages" is the sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction for an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or a tortious act. Expressed in other terms, damages are pecuniary consequence which the law imposes for the breach of some duty or the violation of some right (see American Jurisprudence Vol. 22, page 30).

12. It would be seen that damages consisting of compensation for loss sustained, which has an accepted technical meaning in law; it may be recovered by a person in a court who has suffered loss, detriment, or injury to his person, property, or rights, through the unlawful act or omission or negligence of another.

13. In a case of deficit, what is recovered is damages occasioned due to resale. But in the case of price, such is not the case. P.S. Atiyah in his Book on "The Sale of Goods" Vth Edition page 269 says :-

"The resale, therefore, amounts to a rescission, of the contract, property reverts in the seller and the buyer is no longer liable for the price".

Thus resale results in rescission of the contract. Rescission, as said by Cheshire at page 573 in his Book "Law of Contract" Edition 1972 says that :-

"Rescission means the retrospective cancellation of a contract ab initio.

In such a case the contract is destroyed as if it had never existed, but its discharge by breach never impinges upon rights and obligations that have already matured".

14. Even if it is true that there is failure to pay the amount, the recovery of price is not the same thing as that of damages. In the event, the sale price is not paid the seller may have a right to recover the sale price as well as damages for the loss which occur to him due to detention of the same but so long as he only recovers the balance of the price not paid, the essential character of the recovery would be that of the price. But however a case of recovery of deficit is different. In such a case, the property reverts in the seller and the buyer is no longer liable for the price. The result of this will be that even if the property had originally passed to the buyer it will now revert in the seller and an action for the "price" will no longer lie.

15. Reverting to Section 82 of the Forest Act, it may be noted that what can be recovered as an arrear of land revenue is the "price". The remedy provided by Section 82 cannot be availed for recovering damages. It is not possible to say that the word "price" should be interpreted to include damages.

16. In *Gobardhan Das Kailashnath v. Collector of Mirzapur*,¹ a Division Bench of this court held that if a contract for sale of a forest is cancelled and then the forest is re-auctioned, the claim for the deficit is in its true nature, a claim for damages upon the resale. It cannot be held to be a claim for unpaid price. And if a claim cannot be termed as price then deficit on resale will not be recoverable as an arrear of land revenue under Section 82. This decision was followed in *State of U.P. v. Deewan Chand*² In this case also the difference between the price fetched and the price for which the contractor had purchased was being recovered. The High Court quashed the proceedings of recovery on the view that since the claim could not be termed as price, it could not be recovered as an arrear of land revenue either under Section 82 of the Forest Act or under Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972. In *J.A. Dalmet v. State of Mysore*,³ a Division Bench held that since the sale in petitioner's favour had been cancelled and certain amount was claimed against him as damages, Section 82 did not apply.

17. In the case of recovery of deficit, the basis is that the contractor was liable to make up the loss incurred by the State which was occasioned by reselling the forest produce. A case of that nature falls under Section 54(4) of the Sale of Goods Act (1930). Inasmuch as after the cancellation of sale the relationship between the State and the contractor ceased to be that of a seller and buyer. There was no existing sale, and therefore, no price was due.

18. It may be noted here that under clause 3 of the Agreement entered into between the petitioner and the State of U.P., the latter had the power to realise from the purchaser the balance amount by reselling of the forest produce. The amount realised as a result of resale was liable to be credited to the account of the purchaser. It appears to us that lots 16 and 22 were put to sale in exercise of the power conferred on the State Government under clause 3 of the aforesaid agreement.

19. The next question that arises for consideration is about the recovery of the price in respect of lot No. 8. The forest department did not resale the aforesaid lot. The amount which was being recovered from the petitioner was the price not paid. In terms, Section 82 applies, the recovery cannot be categorised as damages.

20. Learned counsel for the petitioner referred to the decisions of this court reported in *Gobardhan Das Kailashnath v. Collector of Mirzapur*,⁴ and *State of U.P. v. Dewan Chand* (1973 All LJ 309) (supra) and contended that the principles of law laid down in the aforesaid cases would apply to the case of recovery of price as well. The submission made is not correct. In the aforesaid two cases, contracts had been cancelled and the amount was claimed as "damages", the basis of the claim be that under the terms of the contract which the petitioner had accepted, they were liable to make up the loss incurred by the State. In the instant case, the position was different. The State Government was not recovering any loss which might have occurred on account of a resale. It was recovering the price. To such a case, the principles, laid down in the aforesaid two decisions, would not apply. The claim was of the price of forest produce which had not been paid. In *Jogendra Lal Saha v. State of Bihar*,⁵ a similar controversy arose. In that case, by an agreement the petitioner agreed to pay Rs. 41,667/- for the first year, Rs. 41,667 for the second year, and Rs.

41,667/- for the third year of the lease for collecting Kendu leaves. He paid Rs. 41,667/- only. The State Government thereafter started recovery proceedings for the second instalment of Rs. 41,667/-. The argument advanced was that since the nature of the claim was "damages", the same could not be recovered. In support of this submission, the petitioner of that case had relied upon the decisions of our court stated above. The Patna High Court distinguished those cases and held that as the claim before it was for the price of forest produce the arrears could be claimed as arrears of land revenue. We respectfully agree with this view. In our opinion, also, the principles laid down in the aforesaid two cases do not apply in the case for recovery of price. The claim of unpaid money was nothing else but the "price" and as such the same could be recovered as arrears of land revenue.

21. Counsel for the petitioner further contended that as the Forest department had exercised its power conferred by Section 83 of the Forest Act, and had, stopped the removal of the forest produce, it had no right to realise the amount due in respect of lot No. 8 as an arrear of land revenue. He urged that out of the two modes of recovery of forest dues, one under Section 82 and the other under Section 83 the State Government could adopt only one, and that having resorted to Section 83, it could not recover the amount under Section 82 as an arrear of land revenue. He contended that interpretation places that the two modes are mutually exclusive and as such could not be resorted to simultaneously.

22. The submission made is devoid of substance. Sections 82 and 83 are not mutually exclusive. Two modes are supplementary to each other and can be adopted simultaneously. Section 83(1) creates a lien on forest produce. A charge can be created by act of parties or by operation of law. A charge created by operation of law, comes into existence on certain facts happening without any intervention of the parties. Under Section 83(1), a charge is created automatically due to the rule of law. The State Government has under the contract and by virtue of the State, even though the property in the goods has passed to the contractor, the right to stop removal of the goods and take possession thereof till the amount is paid.

23. The use of the word "such" in Section 83 is very material. It is a word of relation used to refer to the antecedent noun - that is the price dealt with in

Section 82. Section 83 means that price payable is in respect of forest produce, the amount shall be deemed to be that first charge. It demonstrates that even in respect of money recoverable under Section 82, a charge is created under Section 83. Section 82 is however wider in its scope than Section 83. Under Section 83 in respect of the money payable for any forest produce, the amount due is deemed to be a first charge on such produce. But Section 82 does not confine itself to the dues payable for or in respect of forest produce.

24. It, therefore, appears to us that whereas Section 83 can be applied for a limited purpose, the scope of Section 82 is a wider. There is nothing in the phraseology of either of the two Sections which could lead us to hold that the State Government could not resort to two modes of recovery simultaneously. In fact, the charge created by Sub-Section (1) of Section 83 is automatic and no action is required to be taken by the State Government for availing the benefit conferred by it.

25. Counsel for the petitioner contended that since the interpretation placed above is likely to cause hardship, the same should not be accepted. He urged that the desirable construction to be made under Sections 82 and 83 would be that this court should hold that the two proceedings for recovery cannot go simultaneously. We are unable to agree with this submission. To do so would, in our opinion, blur the distinction which, undoubtedly, exists between Sections 82 and 83 and we add, with respect that placing the interpretation suggested, by the learned counsel for the petitioner would be doing a violence to well understood English words used in Sections 82 and 83. It is the well settled rule of construction that this should be sparingly done and only done when the intention of Parliament is obvious and would be thwarted if such an interpretation was not placed. Such is not the case here.

26. The view taken by us that the two modes are supplementary to each other and can be adopted simultaneously is supported by a decision reported in *State v. Boota Singh*,⁶

27. Interpreting Section 83 of the Forest Act, the Supreme Court held in *State of Madh Pra v. Kalu Ram*, that :-⁷

"The right conferred by Section 83 of the Forest Act and under the terms of the contract to prevent removal and right to sale the goods for non-payment of the price, coupled with the charge on the goods constituted the security of the State,"

28. The observations make it clear that the purpose of Sub-Section (1) of Section 83 is to secure the interest of the State and that the goods over which a charge is created constitute its, security.

29. Counsel next contended that if a charge had been created in favour of the State under Section 83(1), the law requires that the State Government should proceed to recover the amount as against the property charge. He contended that the right of the government to recover the money is from the charge created on the property. If the charge falls short of the liability only then the State Government will have a right to proceed to recover the balance by way of arrears of land revenue. It is no doubt true that the sole purpose of creating a charge is to create the interest of the creditor. In such a case the creditor will have to proceed against the property charge. A charge can be created by agreement or by the operation of law. In our case, the charge had been created by operation of law. The charge is on the forest produce for the purpose of security for the payment of money. But it is not correct to say that the right of the State Government is confined to the recovery of the amount as against the property charge. Section 82 of the Act conferring the power to recover the amount as an arrear of land revenue is not subject Section 83. We have already stated above that the two Sections can operate simultaneously. Even in the case of an ordinary charge, the right of a creditor on the original cause of action to recover money due from the personal property is not lost. A loan *prima facie* involved a personal liability. This how ever, is subject to the terms of the security. It is possible that documents, executed, may be of a type, that negative any personal liability.

30. In the case of forest dues, however, the rights and obligations of the parties ought to be governed by the provisions of the Forest Act. The legislature did not provide for the proceedings first as against the property charged, and to proceed to recover the price as an arrear of land revenue only on the charge property failing to satisfy the demand. Apart from the fact that the forest contracts are of

a peculiar nature, the State even otherwise occupies a different position than an ordinary creditor. Dues or money is payable to the public. Accordingly, special facility has been given to the State to recover the "price" as an arrear of land revenue despite the fact that a charge has been created under Section 83(1), we should not forget that there can be cases where the value of the property charged may be less than what is payable under the contract, and therefore if the right to recover is to be exercised first as against the charged property the State may have to wait long for proceeding under Section 82.

31. As more may not be read in the judgement than intended, it appears necessary to point out that on the proceedings for recovery of price being taken the contract would stand repudiated or rescinded, but that does not mean that the State Government would not be entitled to get damages to which it may be entitled to otherwise, under the law. The claim for price due would not defeat its right of damages if it is otherwise entitled to it under the law.

32. For the reasons given above, we find that the State of U.P. could not recover Rs. 30,343.69p. as an arrear of land revenue. The recovery proceedings to the extent of the said amount is liable to be quashed. However, there is nothing illegal about the recovery proceedings for the balance of the amount viz. Rs. 52,665.15 p. in respect of lot No. 8 as an arrear of land revenue. The petitioner is not entitled to any relief in respect of this item.

33. For the reasons given above, the writ petition succeeds partly and is allowed to the extent indicated in other respects, it is dismissed. In the circumstances, parties shall bear their own costs.

Petition partly allowed.

Cases Referred.

1. AIR 1956 All 721
2. (1993 All LJ 309)
3. AIR 1965 Mys 109
4. AIR 1956 All 721
5. AIR 1973 Pat 98

6. AIR 1972 Mad Pra 116

7. AIR 1967 SC1105