JAMMU AND KASHMIR HIGH COURT

Abdul Samad

Vs.

State of J. and K

Writ Petn. No. 97 of 1968

(S. Murtaza Fazl Ali, C. J. and Jaswant Singh, J.)

27.08.1968

JUDGMENT

Jaswant Singh, J.

1. This is an appeal under Clause 12 of the Letters Patent from the order dated 27-1-1968, made on the original side of this court by Hon'ble Gurtu, J. vacating the temporary injunction restraining the defendant-respondent from realizing the balance of royalty said to be due on the basis of the agreements (dated 17th Katik 2008 and 9th January, 1961) for sale and purchase of the right of conversion and removal of timber from the trees marked for felling in compartments Nos. 22 (Rest) South Lolab B Coupe, 94, North Lolab B Coupe, 51, 52a, 52b, and 53 (a) South Lolab and 86 North Lolab of Kamraj Forest division Kashmir North Circle. The temporary injunction which has been vacated appears to have been issued on 30-11-1967 on plaintiff-appellant's application in Civil Suit No. 33 of 1967 for recovery of ₹ 2256541 (claimed as loss alleged to have been suffered by the appellants on account of the failure of the Government to fulfill an implied warranty of soundness in respect of trees and timber) and permanent injunction restraining the defendant from realizing the royalty in regard to the aforesaid compartments.

2. During the pendency of this appeal, the plaintiffs-appellants filed additional grounds of appeal on 30th July, 1968 challenging the constitutionality of Sections 91 and 92 of the Land Revenue Act as also Section 52 of the Forest Act. By order dated 31-7-1968, the appellants were permitted to raise the questions relating to the validity of Section 52 of the Jammu and Kashmir Forest Act and Sections 59, 60, 61, 72, 90 and 91 of the Jammu and Kashmir Land Revenue Act subject to the maintainability of the Letters Patent Appeal. A few days earlier i. e. on 27-7-1968, the appellants also filed a writ petition contending inter alia that the amount of rupees fifteen lacs claimed as royalty in respect of compartments Nos. 51 to 53 of South Lolab Range Kamraj Division was not due from them as there was an implied warranty of soundness in respect of the trees and timber which was not fulfilled by the respondent. The appellants also challenged the constitutionality of Sections 59, 61, 62 and 72 of the Land Revenue Act as also Section 52 of the Forest Act on the ground that these provisions were violative or Articles 14, 19 and 31 of the Constitution of India. On the following day i. e. 31st July, 1968, the appellants filed another

application styled as application for amending the writ petition contending inter alia that they had been arbitrarily discriminated in the matter of grant of remissions in respect of rot trees/timber as against large number of persons similarly situate. It was further contended in the petition by the appellants that there is no rationale behind such discrimination, that the Government had arbitrarily failed to adjust the remissions against the amount of royalty sought to be realized from them, that the provisions of Sections 90 and 92 of the Land Revenue Act which made the provisions of Chapter VII including Sections 59, 61, 62 and 72 thereof applicable to the recovery of other demands are also ultra vires as being violative of Articles 14, 19 and 31 of the Constitution of India.

3. As desired by the respondent and as agreed to by the appellants the writ petition of which notice was taken by the respondent on 31-7-1968, subject to all just exceptions, was taken up along with the aforesaid Letters Patent Appeal.

4. This judgment shall dispose of both the Letters Patent Appeal and the Writ Petition.

5. On behalf of the respondent a preliminary objection had been taken as to the maintainability of the appeal. It has been contended that the order appealed against is not a judgment within the meaning of Clause 12 of the Letters Patent of the High Court of Jammu and Kashmir and consequently no appeal lay. While elaborating his preliminary point Mr. Garg has contended that the term "judgment" has been used in the aforesaid Clause 12 of the Letters Patent in the sense of a final order or decree and not in the sense of an order giving directions in the nature of interim relief i. e. it has not been used in the sense of an order which does not adjudicate the lights of the parties and that in any case it cannot cover a preliminary or an interlocutory order. He has further argued that as the impugned order does not finally decide the rights of the parties and is merely in the nature of an interim order, the appeal is not competent.

6. Mr. Sen, the learned counsel, for the appellants, has on the other hand urged that the word "judgment" as used in the aforesaid clause of the Letters Patent cannot be given a narrow meaning, that it is not synonymous with the word "decree" and that it is not the same thing as a final order.

7. The learned counsel have in support of their respective contentions relied on a number of rulings of the various High Courts in India, who have held divergent views with respect to the connotation of the word "judgment".

8. I have given my earnest consideration to the preliminary objection raised by the learned counsel for the respondent, but I am of the view that it cannot be allowed to prevail.

9. The word "judgment" was interpreted in Justices of the Peace for the *Town of Calcutta v. Oriental Gas Co*[1]*.,* to mean a decision which affects the merits of a question between the parties by determining some right or liability. Sir Richard Couch, the then Chief Justice of that court, delivering the judgment for the court observed :-

[1] (1872) 8 Beng LR 433

> "We think that 'judgment' in clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary or interlocutory, the difference between them being that a final judgment

determines the whole cause or suit and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

In Tuljaram Row's case, (1912) ILR 35 Mad 1 (FB) Sir Arnold White observed :-

"I think too, an order on an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment but with a view to rendering the judgment effective, if obtained) namely - an order on an application for an interim injunction or for the appointment of a receiver is a judgment within the meaning of the clause........"

In the same judgment Krishnaswami Ayer, J. observed :-

"The question still remains whether the order in incidental proceedings for attachment or arrest before judgment for a temporary injunction or for appointment of receiver are judgments within the meaning of the term as used in Clause 15. Such proceedings are not natural steps for the determination of the cause and they are remedies, though provisional in character and the judicial determination of those proceedings may well be deemed to be analogous to the disposal of the original petition which determines the right of the parties. The decisions in such cases may well be treated as interlocutory judgments." In *Firm Shaw Nari Dial and Sons Madras, v. Sohna Mal Beli Ram, reported in*[2] it has been held that the word "judgment" in Clause 10 is not synonymous with decree.

10. In *Manohar Damodhar v. Bali Ram Ganpat*[3], their Lordships of the Nagpur High Court, after reviewing the entire case law, held as under

"A judgment in Clause 10 of the Letters Patent means a decision in an action whether final, preliminary, or interlocutory which decides either wholly or partially but conclusively in so far as the court is concerned, the controversy which is the subject of the action. It does not include a decision which is on a matter of procedure, nor one which is ancillary to the action even though it may either imperil the ultimate decision or tend to make it effective. The decision need not be immediately executable per se but if left untouched, must result inevitably without anything further, save the determination of consequential details in a decree or decretal orders, that is to say an executive document directing something to be done or not to be done in relation to the facts of the controversy. The decision may itself order that thing to be done or not to be done or it may leave that over till after the ascertainment of some details but it must not be interlocutory having for its purpose the ascertainment of some matters or details prior to the determination of the whole or any part

[2] AIR 1942 Lah 95 (FB)

[3] AIR 1952 Nag 357 (FB)

of the controversy."

The question was left open by the Supreme Court in a riding reported in AIR 1953 SC 198.

11. In *Mansata Film Distributors Calcutta v. Sorab Merwanji Modi*[4], it was held as follows :-

> "It is well settled that interlocutory orders can also be judgments and it is not necessary that a court should pass a final decree or a final order in order that an appeal should lie. Now, when you have an interlocutory order which is purely procedural in character, or as it has been said, which is nothing more than a step towards obtaining a final adjudication in the suit then undoubtedly such an order would not constitute a judgment within the meaning of Clause 15. But if an interlocutory order determines the right of a party even "pro tanto" then the party whose right has been affected would have the right to appeal against that order.

In *Standard Glass Beads Factory v. Shri Dhar*[5], their Lordships observed as follows :-

> "Judgment in Clause 10 includes a "final Judgment", a "preliminary judgment" and an "interlocutory judgment" all of which expressions are used in the Letters Patent. The term "judgment" does not necessarily exclude an order. An order of a single Judge of the High Court dismissing an appeal against an order granting a temporary injunction is an order which finally determines the right of a party to a specific temporary relief. It stems from a suit and its purpose is to make the judgment if obtained, fully effective. It is neither an order which merely regulates procedure nor an order made on an application which is merely a step towards obtaining a final adjudication. Such an order is neither a final judgment nor a preliminary judgment which had been assumed to mean a judgment which determined the right to the relief claimed but which requires further proceedings to be taken before the suit or appeal is finally disposed of. The order should be held to be an interlocutory judgment. Such an order is a judgment and consequently appealable under Clause 10."

In AIR 1960 Calcutta 582, it has been held :-

> "A judgment within the meaning of Clause 15 cannot be construed as a decree under the Civil Procedure Code The test of judgment as laid down in (1912) ILR 35 Mad 1 (FB) is only a variant of the one laid down in (1872) 17 Suth WR 364. The test laid down in the latter case is not exhaustive."

12. In a division bench ruling of this court, reported in AIR 1965 Jammu and Kashmir 118, it was held that the word "judgment" used in the Letters Patent should be given a liberal construction.

[4] AIR 1955 Bom 266

[5] AIR 1960 All 692 (FB)

13. On a careful consideration of the aforesaid authorities, we think that the tests laid down by the Nagpur and Bombay High Courts in the aforesaid rulings are sound and should serve as

useful guides for determining the right of appeal under Clause 12 of our Letters Patent. Respectfully agreeing with and following the enunciation of law in those rulings, we find that the order, in the instant case, though it does not finally dispose of the suit pro tanto determines the rights of the parties and amounts to a judgment as contemplated by Clause 12 of the Letters Patent.

14. That apart we think that there are more compelling reasons for holding that an order like the one in the present case is appealable. This would be evident presently. The meaning of the term "judgment" was also considered by their Lordships of the Rangoon High Court in *Arumugam Chettyar v. Kanappa Chettyar*[6], where it was held as follows :-

> "where an appeal from an order is allowed by the Civil Procedure Code the court will construe such an order as a judgment within the meaning of Clause 13 of the Letters Patent."

This test appears to accord with the provisions contained in Section 60 of our erstwhile Constitution Act, 1996, which provided as follows.

> "Except as provided by any enactment for the time being in force an appeal from the original decree or from any order against which an appeal is permitted by any law for the time being in force passed or made by a Single Judge of the High Court shall lie to a bench consisting of two other judges of the High Court."

15. It is noteworthy that the jurisdiction exercised by the High Court in relation to the administration of justice in the court before the commencement of the Constitution of Jammu and Kashmir has been preserved by Section 102 thereof. The above quoted Section 60 of our erstwhile Constitution (which has to be taken as supplemental to the Letters Patent) when read with Section 117 and Order 49 of the Civil Procedure Code makes applicable the provisions of Section 104 and Order 43, Rule 1 of the Civil Procedure Code to orders passed by a Single Judge on the original side of the High Court. Reference in this connection may be made to the following passage occurring in *Kumar Gangadhar Bagla v. Kanti Chander*[7],

> "I would point out that it is clear from Section 117 of the Code of Civil Procedure and still clearer from Order 49, Rule 3, Civil Procedure Code that both section 104 and Order 43, Rule 1 do apply to the High Court."

16. The legal position that emerges, therefore, is that orders of the character specified in Section 104 and Order 43, Rule 1, Civil Procedure Code excepting clause (JJ) thereof, would be construed as judgments and an appeal against any one of such orders would lie to the .... Division Bench of the High Court notwithstanding the fact that it is passed by one of the judges of the High Court sitting on the original side.

[6] AIR 1927 Rang139

[7](1936) 40 Cal WN 1264

17. For the foregoing reasons, the preliminary objection raised by the learned counsel for the respondent cannot be sustained and is overruled.

18. After debating the preliminary point Mr. Sen appearing for appellants has urged that the writ of Demand for ₹ 15 lacs issued to his clients by the Collector at the request of the forest authorities should be quashed as it suffers from various legal and constitutional vices. He has in support of his plea raised the following main contentions :-

1. That the Writ of Demand issued by the Collector is incompetent as neither Sections 90 and 91 of the Land Revenue Act nor Section 52 of the Forest Act is attracted in the instant case.

2. That Section 52 of the Forest Act does not apply to the present case as no money is due from the appellants.

3. That Section 52 of the Forest Act and Sections 90 and 91 of the Land Revenue Act according to which the amount is sought to be realised as arrears of land revenue are unreasonable and are hit by Article 14 of the Constitution as the Certificate of the officer whose duty it is to realise an arrear is to be treated as final and as the said provisions permit the use of coercive machinery without affording an opportunity of challenging the correctness of the amount which is determined unilaterally by the forest authorities.

4. That Sections 59, 60, 61, 72, 90 and 91 of the Land Revenue Act are unconstitutional and void under Article 13 (1) of the Constitution of India being repugnant to Articles 19 and 21 thereof.

5. That there has been discrimination in the matter of remissions.

19. I shall now take up seriatim the various points urged by the learned counsel for the appellants.

20. Elaborating his first ground of attack Mr. Sen has contended that the money claimed from his clients is not recoverable as it cannot be said to be payable on account of the price of the forest produce. This contention of the learned counsel for the appellants appears to be wholly misconceived. The term "price" in the aforesaid expression - 'forest produce' - has been used in its ordinary accepted connotation of consideration or amount for which a thing is bought and sold. The term "sale" has been defined in Section 54 of the Transfer of Property Act, as meaning of transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

21. In *Ananda Behera v. State of Orissa*[8], their Lordships of the Supreme Court, described the grant of a license to enter on land and carry away fish as a sale of a right to carry away fish in specific portions of the lake over a specified future period, that is to say a sale of a profit a prendre.

[8] AIR 1956 SC 17

22. In *Mulamchand Ratilal Asathi v. State of Madhya Pradesh*[9], following the dictum laid down in AIR 1956 SC 17, it has been held that the right to propagate and collect lac in some of the forests of Balaghat district is sale of forest produce and the amount due on that account to be the price of the forest produce within the meaning of the Forest Act.

23. The indenture in the instant case between the Government on the one hand and the appellants

on the other is headed as Agreement for Purchase of Standing Trees on lump sum basis and the tenor of the agreement shows that the right of extraction of timber from the trees and their removal was by way of sale to the appellants. In ground No. 6 of the Memo of the Letters Patent appeal also, it has been admitted by the appellants that the timber was sold to them. In the circumstances, it cannot be denied that there was sale of timber by the Government in favour of the appellants on a lump sum basis and that the amount settled for extraction and removal of timber by the appellants with the Government was the price of the timber.

24. Now let us see as to whether the timber the right of extraction and removal of which was given to the appellants by the aforesaid indenture fails within the definition of the term "forest produce." This term has been defined in Section 2 (b) of the Forest Act to include :

> (a) The following whether found in or brought from a forest or not that is to say :
> (i) Timber, charcoal, trees, and leaves, flowers and fruits and all other parts of produce not herein before mentioned of trees.
> (ii) Plants not being trees (including Kuth, grass, Creepers, reeds, and moss) and all parts of produce of such plants.
> ....

A cursory perusal of the above definition would make it clear that the term "forest produce" includes timber.

25. Reference in this connection may also be usefully made to *Gajjan Mal Mohan Lal v. State of Himachal Pradesh*[10], where it was held that the expression "forest produce" would include timber.

26. As already stated both the agreement executed by the appellantts in favour of the Government in respect of right of conversion and removal of timber from the aforesaid compartments and the grounds of appeal filed by the appellants in this court show that the trees in question were purchased by them for a price specified in the agreement.

27. I am, therefore, unable to accede to the submission of the learned counsel for the appellants that the money claimed by the Government cannot be considered to be on account of the price of the forest produce as conceived by Section 52 of the Forest Act. The first ground of attack accordingly fails and is repelled.

[9] AIR 1960 Mad Prad 152
[10] AIR 1957 Him Pra 1

28. I next pass on to the second ground of attack namely that Section 52 of the Forest Act does not apply as moneys claimed are not due. The attack made under this head is two pronged namely that the amount is not actually due and secondly, that the amount cannot be claimed and the appellants cannot be made liable as the timber sold to them turned out to be rot, unsound, and unmarketable. Regarding the first part of the contention it may be stated that I need not go into it in any great detail as this is a disputed matter and has to be gone into in the course of the suit. Suffice it to say that according to the affidavit filed by the Secretary to the Government Forest department, more amount than that acknowledged by the appellants in the suit is due to the Government and no document in the form of any receipt etc. has been produced before us by the

appellants to show that payments in excess of the admitted ones have been made to the Government, and that the amount claimed is incorrect. Prima facie, therefore, it appears that the money are due from the appellants on account of the price of the forest produce. Any observation made herein is, however, purely for the purpose of the disposal of the contention raised by the learned counsel for the appellants and shall not deter the learned trial Judge from coming to a contrary conclusion if on the evidence adduced before him, it is established that no amount by way of price of the forest produce is due to the Government from the appellants. The other part of the contention that the amount is not recoverable as it represents the price of the trees, which turned out to be unsound and unmarketable, has not been seriously pressed before us. Moreover, it may be stated that the point has (for the purpose of disposal of the application for grant of temporary injunction) been gone into with great care by the learned Single Judge and there is no reason to come to a conclusion different from that arrived at by him. The second ground of attack, therefore, also fails.

29. This takes me to the third ground of attack. The contention of Mr. Sen in this behalf is that Article 14 of the Constitution is involved in three ways firstly, that Section 52 of the Forest Act confers an unguided discretion on the officer whose duty it is to realise the amount due as arrears of land revenue and leaves him free to discriminate between two defaulters similarly situate, secondly, that the certificate issued by the Recovery Officer is to be treated as final and no opportunity of being heard in the matter of ascertainment of the amount due or challenging the correctness of the amount which is unilaterally determined by the officer is afforded to the alleged defaulter and thirdly, that the coercive machinery provided for the realization of the arrears as land revenue is very harsh and there is no right of appeal against any of the coercive orders that may be passed. All these contentions are in my opinion without any substance. It is well settled*that Article 14 of the Constitution forbids unjust or class legislation but permits reasonable classification for purposes of Legislation. The demand on account of the price of the forest produce being a public demand and its expeditious realization being necessary in public interest, I think the provisions for recovery of the demand as arrears of land revenue are based on intelligent differentia or reasonable classification having a clear nexus to the object sought to be attained. The contention that Section 52 of the Forest Act gives uncanalised discretion to the officer, whose duty it is to recover the amount to discriminate between the two defaulters similarly situate is not well founded as the Section merely confers on the officer an additional power to recover the amount in an effective and expeditious manner. The duty of a Recovery Officer being to act in the interests of public revenue, to prevent its evasion and to exercise his power for its efficient collection the presumption is that he will act honestly and it is hardly likely that he would discriminate between a defaulter and a defaulter in the matter of application of the provisions of Section 52 of the Forest Act. ?? See *R. K. Dalmia v. S. R. Tendolkar*[11],

30. In *Kedar Nath v. State of West Bengal*[12], where the point for determination was whether Section 4 of the West Bengal Criminal Law Amendment (Special) Courts Act, 1949, which provided for allotment by the State Government in its discretion to the special courts particular cases for trial, it was held that there is no violation of the right to equality before law enshrined in Article 14 of the Constitution.

31. Again in *Kangshari Haldar v. State of West Bengal*[13], it was held that an Act giving the executive an option for sending a case for trial to a Special Court is not necessarily violative of Article 14 of the Constitution.

32. Then again in *Shanti Prashad Jain v. Director of Enforcement*[14], it was held that an Act giving power to an administrative Tribunal trying an offence to send a case to a court for trial if the case demands more severe punishment is not violative of Article 14 of the Constitution.

33. Section 52 of the Forest Act cannot also be held to infringe Article 14 of the Constitution merely because it gives the authority an option of realizing the arrear of price of the Forest Produce either by bringing a suit or realizing it as arrears of land revenue. Article 14 of the Constitution does not at all limit the choice of remedies. It hardly stands to reason that a conscientious recovery officer would resort to the lengthy and arduous remedy of a suit when speedy and effective method of recovery of the arrear dues is possible under Section 52 of the Forest Act read with Sections 90 and 91 of the Land Revenue Act.

34. The contention of the learned counsel for the appellants that no opportunity of challenging the correctness of the amount claimed is afforded to the alleged defaulter is also devoid of substance. The contention seems to overlook Section 72 of the Land Revenue Act which provides that the person against whom proceedings for recovery of an arrear are taken may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

35. The further contention of the learned counsel for the appellants that the remedy by way of suit under Section 72 of the Land Revenue Act is very arduous and vexatious as the alleged defaulter has to deposit the amount claimed from him before bringing a suit is also untenable. In a modern welfare State the necessity of realizing public dues expeditiously and swiftly being very urgent, the provision cannot but be held to be in public interest. If it were not so, the clever scheming and recalcitrant defaulters would evade the dues for years to come and thus would not only impede but paralyse the efficient functioning of the machinery of the Government by bringing it to the brink

[11] AIR 1958 SC 538
[12] AIR 1953 SC 404
[13] AIR 1960 SC 457
[14] AIR 1962 SC 1764 : (1963) 2 SCR 297

of financial disaster. It is well known that payment of tax was a condition precedent to the maintainability of appeal against an order under Section 46 (1) of the Income-tax Act (1922) but that provision has never been held to be invalid as being hit by Article 14 of the Constitution.

36. The last contention that the machinery provided for realization of the arrears of land revenue is harsh is equally devoid of force. It is worthwhile to refer in this connection to *Purshottam Govindje Halai v. B. M. Desai*[15], where after considering the coercive machinery provided by various States for realizing the arrears of land revenue it was observed as follows :-

> "On looking round the Union one finds that there is machinery in every State for recovery of land revenue which are State demands. Each State in its wisdom has devised a machinery which it has considered appropriate and suitable for the recovery of its own public demand. As was laid by the Supreme Court of *America in Middleton v. Taxas Power and Light Co*[16]., "There is a strong presumption that a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems

made manifest by experience and its discriminations are based upon adequate grounds."

37. It is conceded that each State is well within its rights to devise its own machinery for the recovery of its own public demand and that no person belonging to one State can complain that the law of his State is more rigorous than that of the neighbouring State. The reason is obvious for the people of one State are not similarly situated as people of another State. Their needs as understood by their own legislature, are different from those of the people of other State. If in the matter of recovery of arrears of land revenue defaulters of one State cannot complain of denial of equal protection of the laws on the ground of the differences in the modes of recovery prevailing in other States, can it be said to be reasonable for the Union to adopt for the recovery of its public demand from defaulters of each State the same mode of recovery of public demand prevailing in that State?

38. Here the defaulters are classified on a territorial or geographical basis and this basis of classification has precisely the same correlation to the object of the Indian Income Tax as it has to the object of the different Public Demands Recovery Acts. The object of the two Acts in this behalf are in 'pari materia' and the same considerations must apply to both. People of each State are familiar with and used to the coercive processes which each State finds it necessary to impose on its own people for the recovery of public demand and the re can be no hardship and consequently no objection to their being put to the same processes for the recovery of the Public demand of the Union."

39. The contention that the Land Revenue Act does not make a provision for appeal against a coercive order is also misconceived as Section 11 provides for appeal from every order made by a Revenue Officer under the Act.

[15] AIR 1956 SC 20

[16](1918) 249 US 152 at p. 157

40. The contention of the learned counsel for the appellants would also be found to have been effectively answered by the observations made by their Lordships of the Madras High Court in *Kuppuswamy Gramani v. State of Madras*[17], where while examining the provisions of Section 52 of the Madras Revenue Recovery Act, (Act 2 of 1864) it was observed :-

> "The contention of the learned counsel for the petitioner may be briefly stated thus. The sums payable to the Government are amounts payable in respect of commercial transactions which are similar to those that are entered into between two persons. The clause makes an unreasonable discrimination between the Government and a person other than the Government.

In the case of the Government they can decide for themselves whether and what amount is due from the other party. They can recover that amount by resorting to the coercive process under the Revenue Recovery Act. In the case of any other person he files a suit for the ascertainment of the amount due, obtains a decree and executes that decree through Court. This discrimination in favor of the State and against other persons which enables the State to decide its own cause and recover the amount by summary procedure offends the principle of equal protection of the Laws enshrined in Article 14 of the Constitution. Alternatively, it is contended that the operation of the impugned clause should be confined at least to admitted debts. There cannot be any doubt that

the impugned clause discriminates the State from any other person in the matter of realizing a debt. But the question is whether the said act of discrimination can be justified on the basis of a reasonable classification. What is the object and purpose of the classification in this case ? Is there any reasonable basis for it, having regard to the difference between the persons classified? The purpose of the classification is apparent. The modern democratic State is not a police State. It is within a Welfare State or one attempting to become a welfare State. Its activities are manifold permeating the daily life of society. It taxes on hand many social and ameliorative activities and to implement the same enters into commercial transactions with other persons. The present one is one of such transactions entered into by the State in discharge of the duties of the Welfare State. If it is the duty of the State to implement such policies, it is equally its duty, if it should function effectively, to realize the amounts spent on such activities as early as possible. Public interests demand that such dues should be collected expeditiously. In this context no private individual can be put on a par with the State. Nor does the impugned clause finally preclude the affected party from getting his rights decided in a court of law. Section 59 of the Act saves such a right. The provisions of Sections 52 and 59 in my view attempt to reconcile the paramount interests and duties of the State with the just rights of private individuals. The classification, therefore, is not arbitrary. There is reasonable basis for the classification having regard to the obvious differences between the State and the private individual in their relations to the object underlying the impugned Legislation. I, therefore, hold that the classification is not arbitrary but is based upon difference pertinent to the subject in respect of and for the purpose for which it is made." Bearing in mind the ratio decidendi of the above cases, I am of the view that the provisions contained in Section 52 of the Forest Act and Sections 90 and 91 of the Land Revenue Act are not hit by Article 14 of the Constitution of India.

[17] AIR 1957 Mad 23

41. Apart from all this, it passes my comprehension as to how the method employed for recovery as arrears of land revenue of the amount claimed on account of the price of the forest produce, can be challenged by the appellants when in Clause 10 of the agreement dated 9th January 1961, which is not alleged to have been illegally procured, they themselves have agreed that all outstanding under the agreement may be recovered as arrears of land revenue. The said clause of the agreement is reproduced below for facility of reference : -

> "For failure to pay any installment of the purchase money or any part thereof on the date fixed, the movement of the purchaser (s') timber shall be stopped at the discretion of the Conservator of Forests. All the outstanding of this lease including compensation and penalty under the agreement will be recovered as arrears of Land Revenue." Let me now consider (he fourth contention of the learned counsel for the appellants namely that Sections 59, 60, 61, 72, 90 and 91 of the Land Revenue Act are void being repugnant to Articles 19 and 21 of the Constitution of India. There is no question of the infringement of Articles 19, 21 and 31 as both the property and personal liberty are to be taken away lawfully. Reference in this connection may be made with advantage to the following observations made in *Collector of Malabar v. Erimmal Ebrahim Hajee*[18], where their Lordships of the Supreme Court dealing with the question of the validity of Section 46 (2) of the Income-tax Act (1922) and Section 48 of the Madras Revenue Recovery Act (Act 2 of 1864) observed as follows :-
>
> "What we have to consider in this appeal at the outset, is whether either Section 48 of the

> Act or Section 46 (2) of the Indian Income-tax Act or both offend Articles 14, 19, 21 and 22 of the Constitution. The decisions of this court in Gopalan's case, AIR 1950 SC 27, in *State of Punjab v. Ajaib Singh*[19], are to be borne in mind in deciding this question.

It was held by the majority of the learned Judges in Gopalan's case, AIR 1950 SC 27 that the right "to move freely throughout the territory of India" referred to in Article 19 (1) (d) of the Constitution was but one of the many tributes included in the concept of the right to "personal liberty" and when a person is lawfully deprived of his personal liberty without offending Article 21 he cannot claim to exercise any of the rights guaranteed by sub-clauses (a) to (e) and (g) of Article 19 (1) for those rights can only be exercised by a free-man. In that sense therefore, Article 19 (1) has to be read as controlled by the provisions of Article 21 and the view that Article 19 guarantees the substantive right and Article 21 prescribes a procedural protection is incorrect. The decision in Gopalan's case AIR 1950 SC 27 has been followed in this court in a series of cases and that decision must now be taken as having settled once for all that the personal rights guaranteed by sub-clauses (a) to (e) and (g) of Article 19 (1) are in a way dependent on the provisions of Article 21 just as the right guaranteed by sub-clause (f) of Article 19 (1) is subject to Article 31. If the property itself is taken lawfully under Article 31 the right to hold or dispose of it perishes with it and Article 19 (1) (f) cannot be invoked. Likewise if life or personal liberty is taken away lawfully under Article 21, no question of the exercise of fundamental rights under Article 19 (1) (a) to (e) and (g) can be raised. Under Article 21 "procedure

[18] AIR 1957 SC 688

[19] 1953 SCR 254: AIR 1953 SC 10 and in 1955-2 SCR 887 : AIR 1956 SC 20

established by law" means "procedure enacted by a law made by the State, that is to say the Union Parliament or the Legislature of the States". Again in *J. V. Krishnaiah v. Sub-Collector Gudur*[20], while examining Sections 5 and 13 of Madras Revenue Malversation Regulation (9 of 1822) it has been held as follows :-

> "Articles 21 and 22 of the Constitution are not attracted when a citizen is detained or kept in custody in accordance with the procedure established by law. As such where arrests are made under the Madras Revenue Malversation Regulation only to recover government dues, tine arrest and detention cannot be regarded as coming within Articles 21 and 22 and the Articles do not apply to such a case."

The following observations made in *Konduri Buchi Rajalingam v. State of Andhra Pradesh*[21], may also in this connection be reproduced with advantage :-

> "There is no doubt that the restriction is clearly a reasonable restriction within the meaning of the Article 19 (5) of the Constitution and having regard to the view taken in Kuppuswamy's case, AIR 1957 Madras 23, the power of the Government to bring property to sale under Section 52 of the Act cannot be construed as infringing the fundamental right of the petitioner under Article 19 (1) (f) of the Constitution. Whatever deprivation of the property may result from the proposed action under Section 52 it would be under an authority of law, the law being Section 52 of the Act. It is open to the petitioner to seek redress in a civil court under Section 59 of the Act which is a proper and effective remedy if the petitioner is aggrieved by the action taken by the State under

Section 52 of the Act."

Judging the matter in the light of the above principles, I hold that deprivation of property or personal liberty, if any, resulting from an action under Section 52 of the Forest Act read with Sections 90 and 91 of the Land Revenue Act is in accordance with the procedure established by law.

42. The fourth ground of attack also, therefore, fails.

43. Regarding the fifth and the last contention of the learned counsel for the appellants that there has been discrimination in the matter of remission of royalty, it would be observed that the averment made by the appellants is very vague and does not give details of the circumstances in which the various defaulters were situate or in which they were discriminated. Moreover, it has not been shown by the appellants that in making the alleged discrimination any law or rule having the force of law has been violated. This contention must also, therefore, be rejected. The appellants may, if so advised, approach the Government for relief on equitable grounds.

44. For the foregoing reasons, both the appeal and the Writ Petition

[20] AIR 1968 And Prad 83 (FB)

[21] AIR 1968 AndPra 156