

MYSORE HIGH COURT

J.A. Dalmet

Vs

State of Mysore

Writ Petn. No. 2503 of 1963

(K.S. Hegde and G.K. Govinda Bhat, JJ.)

03.07.1964

JUDGMENT

K.S. Hegde, J.

1. In this petitioner under Article 226 of the Constitution the petitioner prays that this Court may be pleased to issue a writ of certiorari quashing the notice dated 18-2-1963 issued by the Divisional Forest Officer, Dharwar.

2. The facts relevant for our present purpose are as follows : The petitioner is a Forest Contractor. The Divisional Forest Officer, Dharwar invited, tenders for sale of forest coupes specified in the tender notice dated 5-6-1962. The petitioner was one of the tenderers and his tender was accepted in respect of some coupes. One of the terms stipulated in the tender notice is that 25 per cent, of the price should be deposited by the successful tenderer within 30 days from the date of intimation of the acceptance of the tender or before the signing of the contract and the balance amount should be paid in three installments as set out in the letter of Divisional Forest Officer, Dharwar dated 26-7-1962. The petitioner was also required to deposit the security amount as mentioned in that letter. The petitioner deposited the security amount, but, failed to deposit the 25 per cent of the price. Therefore, his tender was cancelled and the coupe re-sold. It is said that as a result of that re-sale the Government suffered a loss of ₹ 22,358/-. The petitioner was asked as per the letter of the Divisional Forest Officer dated 18-2-63 to pay up this loss within seven days from the date of the receipt of that letter. He was informed that if the said amount is not paid within the time fixed, steps will be taken to realize the same as if it were an arrear of land revenue. We are informed that papers have now been sent to the Revenue Department for realizing the amount in question as if it were an arrear of land revenue.

3. In the counter affidavit, filed on behalf of the respondents it is asserted, that Section 82 of the Indian Forest Act empowers the State to collect the arrears in question as if it were an arrear of land revenue. The question for decision is whether the State can legally collect the amount in question 'as if it were an arrear of land revenue' ? Section 82 reads :

"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".

4. The respondents' case is that the amount due is really the price of the forest produce sold and therefore they can take the aid of Section 82. No other alternative case is put forward. Hence we have only to see whether the claim relates to the price of the coupes sold.

5. No forest produce was sold to the petitioner.

6. As seen earlier the sale in his favour has been cancelled. In truth the amount of ₹ 22,358/- is claimed as damages the basis of the claim being that under the terms of the tender notice, which the petitioner had accepted, the petitioner is liable to make up the loss incurred by the State by reselling the coupes for which he had successfully tendered". A case of this nature falls under Section 54(4) of the Sale of Goods Act. After the cancellation of the sale the relationship between the State and the petitioner is not of a seller and buyer. There is no existing sale and consequently no price due from the latter to the former. What is claimed by the State is merely damages, for the loss occasioned by breach of contract. Our view in this regard finds support from the decision of the Allahabad High Court in *Firm Gobardhan Das Kailasnath v. Collector of Mirzapur*¹, and the decision of the Madhya Pradesh High Court in *State of Madhya Pradesh v. Nagarmal Uhagwandas*²,

7. For the reasons mentioned above, we hold that the claim in question does not fall within the ambit of Section 82 of the Indian Forest Act, and therefore, the same cannot be recovered "as if" it were an arrear of land revenue. Hence, we allow this petition and direct the respondents not to collect the amount mentioned in the impugned notice as if it were an arrear of land revenue.

8. No costs.

Petition allowed.

¹ AIR 1956 All 721

² AIR 1963 Madh. Pra 203