
(1956) 12 CAL CK 0004
In the Calcutta High Court
Case No : Civil Revn. Case No. 2937 of 1955

Ajit Kumar Bagchi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-12-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Sales of Goods Act, 1930 — Section 2(7)
Transfer of Property Act, 1882 — Section 105, 3
West Bengal Estates Acquisition Act, 1953 — Section 5

Citation : AIR 1957 Cal 350 : 61 CWN 576 : (1958) 1 ILR (Cal) 55

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Binayak Nath Banerjee and Nani Coomar Chakravarty, for the Appellant; S.M. Bose, General, N.C. Chakravartty and S.K. Rai Choudhury, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows : The Respondent No. 3, the Maharajadhiraj of Darbhanga, was at the material time, owner of a large tract of forest in the District of Bankura. He used to lease out the forest to contractors. Although the word "lease" has been generally used, the transaction was of a special nature as will be discussed presently. In this case we are concerned with portions of the forest lying in Mouza Barapacha and Mitha, Am, situated in Thana Ranibundh, in Paragana Shyamsundarpur, District Bankura. The forest situated in these Mouzas used to be leased out for stated periods by public auction. Sometime in the year 1945, there was a proclamation for sale by public auction. The proclamation of sale declared that there would be a public auction of certain kinds of jungle wood within the aforesaid Mouzas. Thus it is not a lease of the ordinary sort. On the 22nd of December, 1945 the petitioner was declared to be the highest bidder for the sum of Rs. 26,240/-, which bid was accepted. At first there was no written agreement but subsequently a written document was executed in which the transaction was described as sale of jungle wood ? ^taxysj

dk"B [kjhns* ?- It appears that the petitioner having been declared as the highest bidder at the public auction, he was allowed to commence the cutting and removal of wood without the execution of any formal document. The West Bengal Private Forests Act (Act XIV of 1948) came into operation on or about the 23rd April 1948. This Act was primarily intended to stop denudation of private forests by the reckless cutting of trees. It contains a variety of schemes intended to serve this end, one of which is that before cutting away trees in a particular area, a working plan has to be submitted to the Governmental authorities and it is only after this plan has been sanctioned that the cutting of trees is permitted, in terms of the sanctioned plan. The scheme is really intended to limit the cutting of trees within a particular period to a particular zone, and also to control the cutting so that the entire forest may not be denuded. I have already stated that the petitioner was allowed to operate in the forest without any written document having been executed. There can be little doubt that the coming into operation of the Said Act impelled the parties to have a formal document brought into existence. Even before this, the Respondent No. 3 had submitted a working plan or "lease statement" as it has been called, and sometime in September, 1948 the working plan was sanctioned by the Divisional Forest Officer, Bankura Division. On or about the 29th December, 1950 a document was executed by the petitioner in favour of Respondent No. 3 a copy whereof is annexed to the petition and marked with the letter-"A". The document is described as an agreement for the purchase of jungle wood ? ^taxysj dk"B [kfjnsj ,dj kj ukek* ?- It is also described as an instalment bond in respect of the consideration money ? ^fdfLrca/kh re"q[k i=* ?. It has been recited in the document that there was a public auction, that the petitioner had been declared as the highest bidder, and that by the time the document came to be executed the petitioner had already finished the cutting of wood, in 417.61 acres, which had reverted to the khas possession of Respondent No. 3. The position therefore was as follows : The original acreage which was the subject-matter of the transaction consisted of 1085.8 acres in Mouda Barapacha and 194.86 acres in Mouza Mitha Am. By the time the document came to be executed, the petitioner had already paid Rs. 21,000/- out of the total consideration of Rs. 26,240/- and had cut and removed wood from a considerable portion of the total area which was the subject-matter of the sale, leaving only 862.33 acres to be operated upon. It was agreed that this area would have to be operated upon, within a total period of 6 years and 10 months, between the Bengali years 1357 and 1363. The total acreage was divided into zones, each zone to be operated upon within the specified period mentioned in the document. The document further stipulated that the petitioner would not be entitled to cut fruit-bearing or valuable trees, e. g., Mango, Jack-fruit, Sagoon etc. With regard to Sal trees, it was stipulated that the petitioner would not be entitled to cut such trees as have a girth of 3 ft. at a height of 3 ft. from the ground, nor such trees as have a girth of less than two inches. With the exception of the above, the petitioner would be entitled to cut such trees like Sal, Parashi etc., which were not used as timber but as fuel ? tkykuh?-. There were limitations imposed in the manner of cutting the trees. For example, the

petitioner was forbidden to uproot trees in a manner which would prevent the trees from growing and he would have to clear the area of decayed wood which might fall to the ground in the course of the operations. Finally, it was stipulated that the petitioner, after cutting the trees, would be entitled to remove the wood and to use the same in any manner he liked or to sell the same according to his desire. As I have stated above, at the time the agreement came to be executed the major portion of the instalment money had been paid and only Rs. 5,240/- remained due. By the 13th of April 1951, the petitioner Paid to the Respondent the entire balance due under the agreement. On or about the 12th February 1954, the West Bengal Estates Acquisition Act (1 of 1954) came into operation u/s 5 of the said Act, upon the due publication of a notification u/s 4, the estates and rights of intermediaries, in such estates to which the declaration applied, vested in the State free from all incumbrances. It is further provided that the rights so vested include rights in hats, bazars, ferries, forests, fisheries, tolls and other sairati interests. Originally the Act did not contain any definition of the word "forest". By the West Bengal Estates Acquisition (Amendment) Act, 1955 (XXXV of 1955), the word "forest" has been defined to mean any land recorded in the record-of-rights prepared or revised for the Purposes of the Act, under the classification jhari, jhati, jangal, ban, salmon or other similar terms. I am informed that no record-of-rights has been prepared or reviewed as yet, for the purposes of the said Act. The final position therefore is as follows : The petitioner has paid the entire consideration under the agreement mentioned above. He has cut and removed a portion of the wood which he was entitled to do under the agreement, but a small area in the forest still remains to be operated upon. Meanwhile, the West Bengal Estates Acquisition Act, 1953 (hereinafter referred to as "the Act") having come into operation, the respondents are claiming that not only the bare land but also the forest had vested in the Government and therefore the petitioner was not entitled to remove any further wood. At first, only verbal objections were raised. On the 16th June, 1955 the petitioner addressed a letter to the Divisional Forest Officer for Permission to continue the cutting, but this application was formally rejected on or about the 22nd June, 1955. The petitioner stated that he had purchased standing forest wood at an open auction in December, 1945 and that he had been working the same, the working plan having been sanctioned in 1948 in accordance with the provisions of the West Bengal Forests Act. He asked for permission for working during the year 1362. By his letter dated the 23rd June, 1955 the Divisional Forest Officer, Bankura Division, informed the petitioner that the forest had already vested in the State under the said Act and therefore the petitioner could not be allowed to fell any trees or continue his operations in any manner.

2. This Rule was taken out by the petitioner on the 5th September, 1955, calling upon the Respondents to show cause why the Respondents Nos. 1 and 2 should not be directed to rescind, withdraw or recall the order dated the 23rd June, 1955 and/or forbear from giving effect to it and why the petitioner should not be allowed to carry on the felling operations, and for other reliefs.

3. The dispute between the parties appears to be within a very short compass. According to the Respondents, the estates of the Maharajadhiraj of Darbhanga, including the forest in question, have vested in the State by virtue of the said Act, and the notifications published thereunder. It is argued that the vesting is by Operation of law and therefore the contractual rights of the petitioner had vanished, and not only the land upon which the forest stood had vested in the State, but also the trees growing thereon, it is contended that the petitioner had lost all his rights and could not be permitted to cut or remove any further wood. It is urged on behalf of the petitioner that the agreement in question is not a transfer of any interest in land. The petitioner had purchased certain wood standing in the forest and had completely paid the price thereof. He says that he has no quarrel with the fact that the land or forest has vested in the State, but the wood that he had already purchased had long ago vested in him, and by agreement of parties there was only a specific method formulated for the payment of the price and the removal of the goods. In any event, the entire price has now been paid and had been paid before the estate or the forest or the land had vested in the State. It is contended that the Act made no difference to the rights of the petitioner to carry away the wood which belonged to him and which he has already paid for in full. The issue to be decided in this application is as to which of these contentions is the correct one. The learned Advocate-General appearing for the Respondents has refused to go into the complicated questions as to whether the trees growing in the forest were to be considered as "immovable property", or whether in view of the agreement, the trees in the forest which the petitioner was going to cut were to be considered as "Fructus industriales". He says that his stand is simple. The word "estate" is not defined in the Act. It is laid down however in Section 2(p) of the Act that expressions used in the Act and not otherwise defined have in relation to the areas to which the Bengal Tenancy Act, 1885 applies, the same meaning as in that Act, and in relation to other areas, meaning as similar thereto as the existing law relating to land tenures applying to such areas, permits. This is an area to which the Bengal Tenancy Act, 1885 applies: Under the Bengal Tenancy Act, an estate means land included under one entry in any of the general registers of revenue paying lands and revenue free lands, prepared and maintained under the law for the time being in force by the Collector of a District, and includes Government khas mahals and revenue free lands not entered in any register. It is argued that the word "land" has not been defined. In fact there is no definition in any of the Acts save and except the Land Acquisition Act. In various Acts, viz., the Transfer of Property Act, the Registration Act, and the General Clauses Act, the expression "immovable property" has been defined. The learned Advocate-General says that these definitions are of too use because it is evident that different kinds of definitions have been made for the purposes of different Acts. He argues that since "land" has not been defined for the purposes of either the Bengal Tenancy Act or the Estates Acquisition Act, it should have its ordinary dictionary meaning and not only includes bare land but everything standing on it or attached to it. Mr. Banerjee appearing on behalf of the petitioner says that the agreement itself

will show us the nature of the interest that had passed to the petitioner under it. The petitioner purchased a quantity of wood standing in the forest. Under the agreement he had to pay the price in instalments and to cut away the wood in instalments. The property in the goods however had completely passed to the petitioner upon the execution of the document or at least upon payment of the price. He argues that there is no necessity in this case to consider the definitions of the words "land" or "estate". The petitioner has not purchased any interest in land and therefore nothing has vested in the State so far as the petitioner is concerned. The petitioner is not an intermediary and therefore there is no question of any estate belonging to the petitioner vesting in the Government by virtue of the Estates Acquisition Act, As an alternative line of argument Mr. Banerjee has argued that the trees which his client was going to cut and remove did not become immovable property by virtue of the fact that the wood which was to be cut and removed was "Fructus industriales". In other words, it was produced after human labour and ingenuity had been expended, and applying the principle laid down in *Marshall v. Green*, (1875) 1 CPD 35 (A) it could not be said to have become Part of the land, and did not constitute immovable property. He points out that under the agreement itself the trees had to be cut in a particular manner and the rotten wood had to be cleared. So far as the Maharajadhiraj of Darbhanga is concerned he had to appoint forest guards to protect the forests and expend a large sum of money in cutting creepers. It is further in evidence that the income of the forest was treated by the Maharajadhiraj as agricultural income and taxes were paid under the Agricultural Income Tax Act.

4. I think that it will be eminently useful to consider a decision of this Court viz., *Maharajadhiraja Bahadur of Darbhanga Vs. Commissioner of Agricultural Income Tax, West Bengal*, . Fortunately, Chakravartti, C. J., was considering there, a document in respect of this very forest, and couched almost in identical terms. The learned Chief Justice had to consider the question as to the kind of interest which devolved on the contractor who took the lease. The learned Chief Justice stated as follows :

"The deed begins by describing itself as an agreement for the purchase of jungle wood and also an instalment bond for the payment of Rs. 8,261-4-0, which is stated to be the balance of the purchase money. It is noticeable that the transaction is referred to as a purchase and the subject-matter, as specified, is not land, nor even trees, but only jungle wood (Jungler Kasto). The document proceeds to recite that there had been a proclamation for sale by auction of jungle wood from the jungles of the Mouzas mentioned in the Schedule and the highest bid of Rs. 11,015, offered by the executant, had been accepted. In the Schedule, a number of jungle plots, situated in the District of Bankura, are mentioned in groups and in the case of each group, particulars of the plots, together with their area, are first given, the total area is mentioned next, then the zemindary right of the assessee is recited and lastly the subject-matter of transfer is prescribed in the carefully limited words, "only the wood over

it" (Oparistoo kasto mathro). In the body of the deed, the "wood" is further specified and it is stated that out of the jungle mentioned in the Schedule and excluding all fruit-bearing and valuable timber trees (of which 21 varieties are particularly mentioned), as also sal trees of a girth of more than 3 feet at 3 feet from the ground the executant is purchasing sal, parashi and jhanti trees for a period of two and a half years from a certain date to a certain date. The consideration of Rs. 11,015 is described as the "price of the wood of the jungle purchased by me" (Amar koretha jungler kastir Mullo) and a scheme of graduated payment and graduated appropriation of the trees is set out, The jungle and the price are both divided into three parts and it is provided that the initial payment, which has already been made, will entitle the executant to cut down trees only from the first part of the jungle described in Schedule "A", that he will be entitled to cut trees from the second part (schedule B) only on payment of the second instalment of the price and that similarly before he can cut down trees from the third part (Schedule C), he will have to pay the third instalment of the price fixed. There are a number of other undertakings which embody the duties of the purchaser and the restrictions imposed on him. He must not cut trees at a height of more than 5 inches from the ground and must not disturb the roots of the stems. He must not cut any tree a second time and must not cut any tree at all from the end or Jaistha to Sraban, He must remove an trees cut down by him within the month of Jaistha subsequent to the cutting & thereafter will have no right to enter the area, from which the trees have been cut, again. He must complete the cutting and removal of all trees within the period of the deed and if he fails to do so he will not be entitled, after the expiry of the period, to cut any trees or even to remove trees already cut down, such trees, cut or uncut, will pass to the khas possession of the assessee. After the expiry of the period of the deed, the whole jungle will revert to the khas Possession of the assessee and even during that period the excepted trees will remain in his khas possession I am entirely unable to hold that the parties to the deed, the terms of which, have been set out above, ever contemplated a lease, or that, in spite of themselves, they created one by the "form of the words used or that they agreed to terms which created a lease in law. The document is plainly what it purports to be, viz., an agreement embodying the terms and conditions of an auction sale of certain trees and also an instalment bond regarding Payment of the balance of the price. It conveys no interest in the land, save and except the right to enter upon particular areas for the purpose of cutting down and removing trees therefrom, but that also after the portion of the consideration assigned to the particular area sought to be entered upon has been Paid. Neither exclusive possession of the land, nor a right to all the trees is conferred. The various restrictions imposed on the executant of the document and the reservations in favour of the executant, are entirely inconsistent with the notion of a lease, apart from the fundamental feature, apparent on the face of the document and every part of it, that the subject-matter is only certain specified varieties of trees and the transaction is a sale".

I have set out the above extract from the well-considered judgment of the learned Chief Justice in extenso, because the document in this case is almost in identical terms, and the same conclusion must be reached in respect of the incidences thereof. If I may say so with respect the learned Chief Justice has correctly come to the conclusion that the transaction was a sale of the wood and the document did not create any interest in land. The learned Chief Justice pointed out that the scheme of the payment & the manner & time of the cutting & removal of the trees was fixed only for the sake of convenient Payment & convenient appropriation, which the seller took care to hedge in with suitable safeguards & penalties, and that it was not the intention to convey an interest in the trees as such. Reference was made to the Case of "Rajindra Bahadur Singh v. Malhoo Khan 112 Ind Cas 156: AIR 1929 Oudh 93 (C), where also the deed was in similar terms, and where also it was held that there was no conveyance of any interest in land. The intention in giving the purchaser time for cutting and removing the trees was not that the trees should continue to stand for such period so that he might enjoy them as such. In substance, it was a case of sale with immediate effect and the time allowed was only for convenient clearance of the goods and payment of the pries in convenient instalments. The sale was a bare sale of the wood and the consideration received from the contractor was not a premium for the right to enjoy the land but the price of the wood.

5. I have already stated above that the learned Advocate-General simply argued that by virtue of the Estates Acquisition Act, the "land" had vested in the State and as such the forest also vested, viz., the trees growing thereon. He argues that the word "land" not being defined, should bear its ordinary dictionary meaning. I do not see however how the dictionary meaning of land necessarily includes trees standing thereon. If We are going to consider land without ascribing to it any special meaning then we ought to consider it as bare land. However, two decisions of the Supreme Court have been cited which I must now proceed to consider. The first case is Firm Chhotabhai Jethabai Patel and Co. and Others Vs. The State of Madhya Pradesh, . Several petitioners in that case entered "into contracts and agreement with the Previous proprietors of certain estates & mahals in the State, under which they acquired the rights to pluck, collect & carry away tenduleaves, to cultivate, culture & acquire lac and to cut and carry away teak and timber and miscellaneous species of trees called hardwood & bamboos. The contracts and agreements were in writing, some of them being registered. The petitioners contended that the rights acquired by them under these contracts and agreements devolved upon them before the passing of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, and that the legislation therefore did not affect them. It was urged next that they were toot proprietors within the meaning of the Act, and consequently the Act did not apply to them. Lastly, they questioned that the Act itself was ultra vires as it offended against their fundamental rights guaranteed under the Constitution. As regards the point of ultra vires, Aiyar J., pointed out that the validity of the Act was questioned in The State of Bihar Vs. Sir Kameshwar

Singh, , and the Act was held to be valid; that point was therefore not open. The learned Judge proceeded to say as follows :

"We have to consider only the other two points raised on behalf of the petitioners. It is clear from the provisions in the impugned Act that only those rights of the proprietor, vest in the State which the proprietor had on the specified date. Section 3 provides that on and from a date to be specified by a notification by the State Government, all proprietary rights in an estate or mahal vesting in a proprietor shall pass from him to and vest in the State. The consequences of vesting are given in Section 4 of the Act, and it is provided that the vesting will take place, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force and save as otherwise provided in this Act. But this again deals only with the rights existing on the date of the notification ; the section is not retrospective".

The learned Judge then considers the provisions of the impugned Act and proceeds to say as follows :

"The scheme of the Act as can be gathered from the provisions referred to above makes it reasonably clear that whatever was done before 16-3-1950 by the proprietors by way of transfer of rights is not to be disturbed, or affected, and that what vests in the State is what the proprietors had on the vesting date. If the proprietor had any rights after the date of vesting which he could enforce against the transferee such as a lessee- or a licensee, those rights would no doubt vest in the State. In all these petitions, the several contracts and agreements were before the date of vesting, and many of them were prior even to 16-3-1950. The petitioners had taken possession of the subject-matter of the contracts, namely, tendu leaves, lac palsadies, teak, timber & hardwood, bamboos and miscellaneous forest produceThe contracts and agreements appear to be in essence and effect licenses granted to the transferees to cut, gather and carry away the produce in the shape of tendu leaves, or lac, or timber, or wood. There is nothing in the Act to affect the validity of the several contracts and agreements. The petitioners are neither proprietors within the meaning of the Act nor persons having any interest in the Proprietary right through the proprietors. There is no provision in the Act which extinguishes then rights in favour of the State The goods covered by the Present petitions are goods which have a potential existence. Then can be a sale of a present right to the goods as soon as they come into existence. Whether title passes on the date of the contract itself or later is really dependent on the intention of the parties, and as already stated, in these petitions the stipulated consideration has passed from the transferees to the proprietors, and possession also has been taken. We hold that the respondent has no right to interfere with the rights of the several petitioners under the contracts and agreements in their favour set out in their petitions and we hereby issue a writ prohibiting the State from interfering in any manner whatsoever with the enjoyment of those rights by the petitioners".

In my opinion, the facts of this case are similar to the present case and the

principles laid down should be followed. The learned Advocate-General argues that the decision turned on the particular wordings of the Madhya Pradesh Act, wherein it was laid down that only those rights of a proprietor vest in the State which the proprietor himself had on the specified date. I take the argument as meaning that the West Bengal Act is not in part with the Madhya Pradesh Act upon this point. It is argued that whereas in the Madhya Pradesh Act, the rights of the proprietor vested in the State, in the West Bengal Act, the estate itself-vested. In my opinion, this distinction creates no difference. There is nothing in the West Bengal Act to the effect that the sale of goods prior to the vesting would in any way be affected by the provisions of the Act. It is true that the estates and rights of intermediaries in such estates vest in the State free from incumbrances, but the estate that vests is the estate of the intermediary. I cannot also see that the rights of the petitioners can in any way be called "incumbrances", nor has it been argued before me that it is so. As has been pointed out in the decision cited above, by Chakravartti J., the so-called lease is not a lease of the land in the usual sense, but it is really a sale of goods, and not a transfer of any interest in land. What was sold was the wood standing in a certain forest, for a specified price. It must be borne in mind that in the above-mentioned case decided by the Supreme Court the contract not only included growing things like leaves, but also teak, timber, hardwood and bamboos. Aiyar J., pointed out that under the Sale of Goods Act "Goods" include growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, notwithstanding the definition of "immovable property" in Section 3(25), General Clauses Act, 1897. The learned Judge also referred to a decision of the Judicial Committee of the Privy Council in AIR 1949 311 (Privy Council) , where a similar contract giving right to the grantee to pick and carry away leaves was held not to be a grant of any interest in land and no interest in the trees or plants themselves. It was even held that a small right of cultivation given in the forest was merely ancillary and had no significance. There is nothing in the contract in [the present case to show that the wood that was sold was not already standing It is true that as a result of the subsequent enactment of the Private Forests Act, the cutting had to be in specified zones, but there is nothing to show that the parties did not intend to treat the contract as a contract of wood that already existed. But even if it was a sale of wood that would come into existence within a specified date, even so, it cannot, in the light of the decision quoted above, be considered as transfer of any interest in the trees themselves or the forest or the land. The learned Advocate-General has referred me to a subsequent decision of the Supreme Court in Ananda Behera and Another Vs. The State of Orissa and Another, . The dispute in that case was about a fishery right in the Chikla lake, which was once the estate of the Raja of Parikud. This estate vested in the State of Orissa under the Orissa Abolition Act, 1951 (Orissa Act 1 of 1952), on the 24th September, 1953. The Act had come into force on the 9th February, 1952. The petitioners in that case carried on the business of catching and selling fish, particularly from fisheries within the said lake. Before the vesting of the estate, the petitioners

had entered into contracts with the ex-proprietor and had obtained from the latter, on payment of heavy sums, licenses for catching and appropriating all the fish from the fisheries in the Chilka lake, then the estate of the Raja of Parikud, and had obtained receipts on payment, in accordance with the prevailing practice. The State of Orissa refused to recognise these licenses and were about to re-auction the rights when the petitioners filed petitions before the Supreme Court. Bose J., said as follows :

"There can be no doubt that the lake is immovable property and that it formed part of the Raja's estate. As such it vested in the State of Orissa when the notification was issued under the Act and with it vested the right that all owners of land have, to bar access to their land and the right to regulate, control and sell the fisheries on it.....

If the petitioners' rights are no more than the right to obtain future goods under the Sale of Goods Act, then that is a purely personal right arising out of a contract to which the State of Orissa is not a party and in any event a refusal to perform the contract that gives rise to that right may amount to a breach of contract but cannot be regarded as a breach of the fundamental right. But though that is how the matter is put in the petition, we do not think that is a proper approach to this case.....

The fact disclosed in para 3 of the petition make it clear that what was sold was the right to catch and carry away fish in specific sections of the lake over a specified future period. That amounts to a license to enter on the land coupled with a grant to catch and carry away the fish, that is to say, it is a "profit a prendre" (see 11 Halsbury's Laws of England (Hailsham Edition) pages 332 and 383)".

6. The learned Judge proceeds to say that in England this was regarded as an interest in land because it was a right to take some profit of the soil for the use of the owner of the right. In India it was regarded as a benefit that arose out of the land and as such it was immovable property. The learned Judge also referred to Section 3(26) of the General Clauses Act which defined "immovable property" as including benefits that arise out of the land. The Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. As fish did not come in that category the definition in the General Clauses Act applied as a "profit a prendre" is regarded as a benefit arising out of the land it followed that it was immovable property within the meaning of the Transfer of Property Act. It was then pointed out that if it was a sale of immovable property it required writing and registration. Reference was made to the case of *Firm Chhotabhai Jethabhai Patel & Co. v. State of Madhya Pradesh*, (D) (supra). The learned Judge pointed out that the right to pluck, collect and carry away tendu leaves meant that it was a sale of growing crop and a growing crop was expressly exempted from the definition of immovable property in the Transfer of Property Act. Mr. Banerjee has strongly argued that Bose J., overlooked that the contract in *Chhotabhai*

Jethabhai's case (D), was not only for the plucking of leaves but also of the sale of teak, timber, hardwood and bamboos. It is not for me to consider as to whether the learned Judge would have come to a different conclusion if this aspect of the matter was pointedly drawn to his attention. It seems to me however that the case that was being considered by Bose J., is not at all in pari with the facts of this case. Firstly, the point about want of registration went to the root of the matter and perhaps it was not necessary to consider the other aspect of the matter at all. In any event, the fish which would be available in a lake in future cannot be considered on the same footing as wood standing in a forest which is sold to a contractor. As I have stated above, there is nothing to show that there was any sale of growing trees. The Maharajadhiraj of Darbhanga had a certain quantity of wood in his forest and he sold it, This particular kind of disposal of property has been considered in detail by Chakravartti J., in the Appellate Court judgment mentioned above and he has shown how the sale was of the wood and did not create any interest in land.

7. There is also another aspect of the matter. If it is immovable property belonging to the contractor then has that property vested in the State ? The case of the State is that the private forest belonging to Respondent No. 3 has vested in the State. NO proceedings under Sections 10, 12, 13 etc., of the said Act have been taken against the petitioner. As I have already mentioned above, no record-of-rights has been made of the forest in this area showing that the petitioner is the owner of any forest. The permission to continue the cutting of the trees was rejected on the ground that the estate of the Maharajadhiraj had vested in the Government and so the petitioner could not be allowed to fell any trees. It is nobody's case that any estate belonging to the petitioner has vested in the State. It is impossible upon a construction of the agreement in this case to hold that the wood that the petitioner purchased was a purchase of a mere "profit a prendre". Thus, in my opinion, it is governed by the decision in the case of Firm Chhotabhai Jethabhai Patel & Co. v. State of Madhya Pradesh (D) (supra) and not by the case of Ananda Behera v. State of Orissa (G) (supra). As pointed out in the first named case, "goods" according to the definition given in the Sale of Goods Act means every kind of movable property and include things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. In the agreement we were considering in this case, there was no sale of trees. What was sold was the wood to be cut from trees and taken away. I cannot see how such, an agreement can be construed otherwise than as sale of goods. It is not denied that if it is considered as sale of goods then the property had passed before the Act came into operation, inasmuch as the entire consideration had been paid, and of course the petitioner was in possession actually removing the wood he purchased. Apropos, the argument of the learned Advocate-General that "land" not being defined in the Act, we must take the dictionary meaning, I have failed to find out why the dictionary meaning should be, or should include, forest or standing trees. "Land" has been defined in most of the dictionaries as the ground or soil or the solid substance composing the

material part of the earth. As pointed out by Sulaiman J., in *In re, C. P. & Berar Sales of Motor Spirit and Lubricants Taxation Act* AIR 1939 1 (Federal Court) , it is not always safe to look into dictionary meaning because in the nature of things a dictionary meaning has to include all possible uses to which a word is put. We must consider the meaning of an expression used in an Act by taking into account the background of it and as to what it was intended to achieve or what evils it intended to remedy. See *Heydon's Case* (1584) 3 Co Rep 7. I do not go so far as to say that it was the intention merely to vest the bare land only, but nor am I prepared to hold that it was intended that goods existing on the land, which had already been sold, that is to say, in respect of which the Property had already passed to a stranger, was also intended to be acquired by the State. Once we arrive at the conclusion that the sale in this case was a sale of wood standing in the forest, and not of an interest in land, it must follow that no such interest has vested in the State by virtue of the Estates Acquisition Act. I have already" referred to the argument of the learned Advocate-General that *Chhotabhai Jethabhai's case* (D) (supra), may be distinguished, inasmuch as under the Madhya Pradesh Act it was the right of the proprietor that vested in Government whereas under the Estates Acquisition Act, it was the estate which vested. He argues that if the right of the proprietor only vested then the rights of others would not be attracted, but if the" estate, vested then anything which forms part of the estate, to whomever it belonged, will be attracted. This however seems to be an over-simplification of the issue. It is true that in our Act the estate, vests, but it is the estate of the intermediary. I find no reason to find that while providing for the vesting of the estate of the intermediary, it also intended to vest the estates of those who were not intermediaries. But even assuming that this was so, the question remains as to whether the property of the petitioner can be called an estate. We therefore come back to the original point as to whether an estate which includes land, must include trees standing thereon and also of the wood which resulted in the trees being cut down, which wood had already been sold to strangers. The question, however, in reality is not whether land includes standing trees but whether the Petitioner in this case can even be said to have purchased standing trees. As I have stated above, and as decided by Chakravarti J., in the case cited above, the transaction is not a sale of the trees or any interest in the trees nor of any interest in land, but is a sale of a certain quantity of wood which originally belonged to the Maharajadhiraj of Darbhanga & which he sold to the contractor, who having paid the price has the right to cut the same and remove it. I cannot see how, however we approach the case, can it be said that the petitioner had an estate and that estate has vested in the Government, taking away his right to remove the goods which he had purchased and paid for.

8. Lastly, comes the question as to what relief can be granted in the application of the petitioner. The learned Advocate-General argues that even if some rights of the petitioner have been affected, an application for a high prerogative writ was not the proper remedy. He points out that in *Ananda Behera's case* (G)

(supra), Bose J., held that if the State was wrong in its attitude, that might give rise to a suit against it for damages for breach of contract or possibly to a right to sue for specific performance. That of course presupposes that the right claimed by the petitioner was in respect of anything in the nature of a "profit a Prendre". in Chhotabhai Jethabhai's case (D) (supra), the Supreme Court granted a writ prohibiting the State of Madhya Pradesh from disturbing the right of the petitioner thereto. In fact, when this application was first opened, the learned Government Pleader, who was then "appearing for the State, informed me that the State was opposing this application because the position of contractors of the description of the petitioner was not quite clear, and the Government liked an authoritative pronouncement because a wide tract of forest and the interest of a number of contractors were involved. I have no reason to think that, if the petitioner is entitled to certain goods, the Government would appropriate such goods and compel the petitioner to take action for damages or otherwise. Really speaking, the Respondents have been proceeding upon a misconstruction or misappreciation of the Estates Acquisition Act, and are proceeding to take Possession of things which have not vested in the Government.

9. In my opinion, the same order should be made as in Chhotabhai Jethabhai's case (D) (supra) and this Rule should be made absolute and there will be a writ in the nature of mandamus and/or an appropriate writ directing the Respondents not to prevent the petitioner from cutting or removing the wood which he is entitled to do under the agreement mentioned above, dated the 29th December, 1950. It is made clear however that this can only be done in accordance with the provisions of the Private Forests Act and in accordance with the plan sanctioned or that may be sanctioned thereunder. There will be no order as to costs.