
(1986) 09 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 575 of 1986

Barkat and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 27-09-1986

Acts Referred:

Forest Act, 1927 — Section 2(4)

Citation : AIR 1987 MP 162 : (1986) 31 MPLJ 704

Hon'ble Judges : P.D. Mulye, J;K.K. Verma, J

Bench : Division Bench

Advocate : Anil Trivedi, for the Appellant; Kulshreshtha, for the Respondent

Final Decision : Allowed

Judgement

R.K. Varma, J.

This is a petition under Article 226 of the Constitution of India filed by 16 petitioners who are adivasis and residents of forest village Chainpura in the reserved forest area and who are engaged in rearing and grazing cattle. The petitioners have challenged the action of the respondents whereby the petitioners have been restrained from making collection of "Gobar" (dung) excreted by the cattle, grazed by them and moving the collected quantity of such excrement of domestic cattle from the reserved forest for disposing of the same.

It is the case of the petitioners that they have been carrying on the job of collection of excrement dropped by the cattle while grazing in the reserved forest area where the petitioners were permitted to graze the cattle since generations and that never before they were prevented from making the collection of the dung and disposing of the same as manure. The activity of collection and sale of the dung constituted a means of their livelihood.

As per the return filed on behalf of the respondent No. 2 (The District Forest Officer, Khargone), (he petitioners and others, had collected 48 heaps of Gobar (dung) in forest compartments outside the village Chainpura and the petitioners

were prevented from taking it away because the excrement dropped by cattle in the reserved forest area constituted forest produce within the meaning of the inclusive definition provided in Clause (iii) and (iv) of Section 2(4)(b) of the Indian Forest Act. Section 26(2) of the Act prohibited removal of any Forest Produce unless permitted in writing by the Forest Officer or under any Rule made by the State Government. It is also asserted in the return that the excrement of domestic cattle being a forest produce, cannot be transported outside the forest village Chainpura by the petitioners without obtaining a transit pass. Whereas the excrement collected inside the area of forest village Chainpura in which the petitioners reside is conceded to be the property of the petitioners, the excrement collected in the , forest outside the village area is claimed to be the property of the Forest Department on the ground that the excrement droppings from the cattle in the forest by the petitioners partook the character of forest produce.

The real controversy in this petition is, therefore, whether the excreta dropping from the cattle grazed by the petitioners in the area of reserved forest where they are admittedly licensed to graze their cattle becomes forest produce which the department is entitled to claim as their property. The petitioners have averred that the dung droppings have been collected by them from the "Gwadies" (cattle camps) where the cattle are kept during night in the licensed forest area meant for grazing the cattle. In the Return it has been stated that the Collector and the Commissioner having been contacted by the petitioners, an offer of payment at the rate of Rs. 80/- per truck was made to the petitioners towards the collection charges of the dung collected in heaps. It is further averred that this offer was made keeping in view the fact that the ignorant Adiwasies should be duly compensated for their labour of collecting the dung in heaps.

The definition of forest produce given in Clauses (iii) and (iv) of Section 2(4)(b) of the Indian Forest Act referred to above, is as follows : --

"2.(4) "forest produce" includes.-

(b) the following when found in, or brought from, a forest, that is to say.-

(i) and (ii) ... (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax and all other parts of produce of animal, and (iv) peat, surface soil, rock and minerals (including limestone, taterite, mineral oils and oil products of mines or quarries);

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(The Underlining is ours)

The learned Government Advocate appearing for the respondents, has contended that the dung excreted by the cattle which are kept in the reserved forest area for the purpose of grazing under licence, would constitute forest produce, being parts of produce of animal in clause (iii) or surface soil under Clause (iv)

aforesaid.

Having heard the learned counsel, we are of the opinion that the dung droppings from the cattle grazed in the forest area licenced for the purpose, as in the present case, is not covered within the definition of forest produce, as has been submitted by the learned counsel for the respondents. The grazing cattle are domestic animals which are not naturally found in the forest and as such the dung excreted by the cattle grazed in the forest area under licence, cannot form part of produce of animal, found in or brought from forest. Also it cannot be said that the dung droppings from the cattle grazed in the forest are under a licence assumed the character of "surface soil found or brought from a forest. In our opinion, each of the two expressions "all other parts of produce of animal" and the "surface soil", found in or brought from the forest" refers to natural occurrence in the forest. As such dung excreted by the domestic cattle which are taken in the forest area for grazing under licence by petitioners, is not included within the meaning of "forest produce". The collection of the dung of the grazing cattle by the petitioners into heaps, therefore, cannot vest in the forest department as "forest produce".

It is averred in the Return filed by the respondent No. 2 that so far as the collection of dung within the area of forest village Chainpura is concerned the petitioners are at liberty to collect the same within that area and to dispose it of according to their will after obtaining the transit pass but the petitioners cannot claim extension of this right by entering into the reserve forest area outside the area of forest village Chainpura. It is, however, not disputed in the instant case that the domestic cattle enter the reserved forest area under licence and the petitioners are entitled to graze their cattle in the area in question. As such, there is no violation u/s 26 of the Indian Forest Act and the act of grazing the cattle by the petitioners has been permitted u/s 26(2) of the said Act.

Learned Government Advocate has referred to a Gazette Notification No. F-7-1-84-X-3, dated 30th June, 1986 which publishes the rules for the regulation of grazing in the government forest, made by the State Government in exercise of the powers conferred by Clause (a) of Sub-section (2) of Section 26, Clause (1) of Section 32 and Section 76 of the Indian Forest Act. These rules provide for grant of grazing facilities in consideration for nominal annual grazing fee. No annual grazing fee for the domestic cattle viz. cows, bulls, bullocks and buffaloes belonging to an agriculturist, agricultural labour and rural artisan is prescribed up to the extent of first ten units and a nominal fee of 25 paise and 50 paise per unit have been prescribed for a number exceeding 10 and 14 units respectively. Learned counsel for the petitioners referred to an earlier notification No. F-7-29-78-3-1-X dated 28th June, 1979 which provided for grant of grazing facility free of cost, for the said domestic cattle.

However, nothing has been pointed out in the provisions for grazing facilities or any other provisions which would indicate that the graziers are supposed to give up their claim to the dung excreted by their cattle while kept in the forest area

for grazing under licence.

In view of the discussion aforesaid, this petition is allowed. It must be held that the cow-dung droppings from the cattle of the petitioners in the forest area where the petitioners were permitted to graze their cattle, do not constitute forest produce and as such the petitioners are entitled to collect and carry the same out of the forest area without any necessity of obtaining the transit pass.

In the instant case the respondents have deposited the price of the seized manure (dung) which had been collected by the petitioners in the reserved forest area the rate of Rs. 120/- per truck under orders of this Court dated 29-4-86 and 12-6-86. In view of the fact that this petition is allowed the petitioners shall be entitled to be paid the price so deposited in this Court. The security deposit, if any, shall be refunded to the petitioners after verification.