
(1999) 08 MP CK 0056
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4747 of 1996

Chhamadhar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 241

Madhya Pradesh Land Revenue Rules, 1956 — Rule 3(1), 3(2), 4

Citation : AIR 2000 MP 126 : (1999) 2 MPLJ 694

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : T.S. Ruprah, for the Appellant; T. Tandon, for the Respondent

Final Decision : Partly Allowed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India challenging the order dated 25-10-1996 (Annexure P-1) of the respondent No. 2 by which he has directed the respondent No. 3 to seize the timber trees on the land belonging to the petitioner.

The petitioner is Bhumiswami of Khasra No. 20 area 7.16 acres in village Kohantya, Tehsil Begamganj, District Raisen. He made an application u/s 241 of the M.P. Land Revenue Code, 1959 (hereinafter to be referred to as the Code) to respondent No. 2 Collector, Raisen for permission to cut 492 timber trees standing on this land. This application was submitted by him in the prescribed form A on 24-10-1995. The Collector called the report of the respondent No. 3 Divisional Forest Officer and the S.D.O. (Civil). They submitted their reports on 13-4-1996. But no order was passed by the Collector. The petitioner informed the Collector by the letter dated 8-7-1996 that he has started cutting trees from that date. He gave the same information to the D.F.O. on 13-9-1996. The petitioner logged these trees at stump site. On 17-10-1996 he requested the D.F.O. in

writing as required by the rules to get these logs hammer-marked and issue the transit pass for transportation of these logs. That has not been done. The Collector wrote to the D.F.O. on 25-10-1996 to seize these logs. The seizure has been done on 30-10-1996 and the logs are on supratnama of the petitioner.

The petitioner's case is that the Collector is required by Rule 3(2) to communicate his decision to the applicant within three months of the date of his application. That was not done by him. On 31-3-1996 the petitioner through his counsel submitted an application before the Collector as required by Rule 4 calling his attention to this matter but he did not give any reply within a period of three months, therefore, it would be deemed that the permission for cutting the trees has been granted. In view of this deemed permission the petitioner started felling the trees from 8-7-1996 and he informed the Collector again on that date that he has started doing so. The petitioner has sought the relief that the seizure of the logs be quashed and the respondents be directed to get the logs hammer-marked and to issue the transit pass.

The respondents' case is that the counsel for the petitioner did not submit the application dated 31-3-1996 before the Collector. It does not find place in the order-sheet of the case. It does not bear endorsement of presentation. It is also not stamped. It is, however, on record. It has been stealthily and surreptitiously kept in the record. The attention of the Collector was never invited to this application. Therefore, there could not be any deemed permission. The petitioner has cut the trees without permission and that is illegal.

The points for determination are (a) whether the petitioner has got "deemed permission" to cut the trees and (b) what is the effect of the failure of the Collector to pass any order.

Point (a)

A copy of the order-sheets of the case pending before the Collector is Annexure P-6. According to this order-sheet the original application was made by the petitioner on 24-10-1995 but no decision was taken by the Collector within three months as required by Rule 3(2) of the Rules framed u/s 241 of the Code. The petitioner is said to have made another communication to the Collector on 31-3-1996 as required by Rule 4 of the Rules. The case was not fixed on 31-3-1996. There were three dates in the case thereafter, i.e. on 4-3-1996, 16-4-1996 and 28-5-1996 but on these dates the petitioner and his counsel were absent. The reports of the S.D.O. and the D.F.O. were not received. The report of the S.D.O. is dated 2-7-1996 and the report of the D.F.O. is dated 21-6-1996 (Annexure P-9 and P-10). It does not appear from the order-sheet that the application dated 31-3-1996 (Annexure P-10A) was actually made on that date as it does not bear stamp or the endorsement of presentation. It does not find place in the order-sheet also. It was necessary on the part of the counsel for the petitioner to "call the attention of the Collector" as required by Rule 4 to this application. Therefore, it is apparent that the Collector had no knowledge of this

second application within three months of 31-3-1996.

It is argued on behalf of the petitioner before this Court that Rule 4 requires only a "written communication" to the Collector and therefore even if the application was not stamped or it did not bear the endorsement of presentation or it was not mentioned in the order-sheet it was still a communication and the Collector could take decision within three months thereof. It is also argued that the "communication" is not required to be stamped and the endorsement of the presentation and the mention of this communication in the order-sheet were the acts to be done by the Collector or his clerk; the petitioner had done what he was required to do under the rules and therefore the permission would be deemed to have been granted. This argument is not acceptable. The three circumstances mentioned above are a pointer in the direction that the application was actually not made on 31-3-1996 or if it was made it remained lying with the office and it was not brought to the notice of the Collector. The counsel for the petitioner could bring it to the notice of the Collector by calling his attention to that application on 31-3-1996 when it is said to have been made and to get it mentioned in the order-sheet. The counsel could further bring it to the notice of the Collector on 4-3-1996, 16-4-1996 and 28-5-1996 when the case was fixed but the petitioner and his counsel chose to remain absent on these three dates. Thus the application dated 31-3-1996 never came to the notice of the Collector within three months. The attention of the Collector was never called to this application. The object of the rule is that the Collector should be made aware or conscious that the second communication has been made and if he still does not take any decision within three months of this communication the permission would be deemed to have been granted. The Collector cannot be caught unawares. The manner in which the application, came on record without the notice of the Collector does not satisfy the requirement of Rule 4 or the object behind that rule. It appears that the petitioner by playing a trick wanted to have the deemed permission and that is no permission. There was no deemed permission to the petitioner. It was the duty of the counsel for the petitioner to have invited the attention of the Collector to the application dated 31-3-1996 and not having done so the petitioner cannot contend that right to have deemed permission has accrued in his favour.

Point (b)

Section 241 of the Code is as under :--

"Measure to prevent theft of timber from Government forest-- (1) If the State Government is satisfied that in order to prevent the theft of timber from any Government forest it is necessary in the public interest to regulate the felling and removal of timber in the villages comprised in any area adjoining such forests, the State Government may, by an order published in the Gazette, declare such area to be a notified area for purpose of this section.

(2) Every order published under Sub-section (1) shall be proclaimed in the

prescribed manner in all the villages comprised in the notified area.

(3) Notwithstanding anything contained in Section 179 but subject to the provisions of Sub-section (5), when an order has been proclaimed in any village under Sub-section (2), no person shall in pursuance of a transaction of sale or for purposes of trade or business fell any timber trees in any holding in such village or remove the corpus of any such tree from any such holding except in accordance with such rules as may be made in that behalf,

(4) Any person who contravenes or attempts to contravene or abets the contravention of the provisions of Sub-section (3) or of any rule made thereunder, shall, without prejudice to any other action that may be taken against him, be liable on the order in writing of the Collector, to pay a penalty not exceeding one thousand rupees as may be imposed by him and the Collector may, further order confiscation of any timber trees felled in contravention of the provisions of this sub-section.

(5) Nothing in Sub-sections (3) and (4) shall apply to the felling or removal of timber trees by any person from his land for his bona fide agricultural or domestic purposes, if such felling or removal is otherwise in accordance with the other provisions of this Code.

Section 179(1) of the Code declares that subject to Sections 240 and 241 "all trees standing in the holding of a Bhumiswami shall belong to him". Thus the Bhumiswami is the owner of the trees standing on his land. Sub-section (1) of Section 241 of the Code as it appears from the heading and the words used therein indicate that it has been inserted in the Code "to prevent theft of timber from Government forest". If the State Government is satisfied that for this purpose it is necessary in the public interest to regulate the felling and removal of timber in the villages comprised in any area adjoining such forests, it may by an order published in the Gazette declare such area to be notified area for the purpose of this Section. It is further provided in Sub-section (3) that no person shall fell any timber tree in any holding in such village or remove the corpus of any such tree from any such holding except in accordance with such rules as may be made in that behalf. The violation of these rules invites the penalty under Sub-section (4). The law has conferred ownership rights in the trees on the Bhumiswami of the land. Section 241 and the rules framed thereunder regulate the felling and removal of the trees for an incidental object, that is, "to prevent the theft of timber from any Government forest". Section 241 or the rules framed thereunder do not adversely affect the ownership right of the Bhumiswami in the trees.

Rule 3 of the Rules framed u/s 241 of the Code provides that on receipt of the application the Collector shall immediately send the duplicate copy to the Divisional Forest Officer for his information. He shall then ascertain which timber trees from among those applied to be cut, "require to be retained on public interest" or "which are required for preventing erosion of soil". He shall permit

the cutting of all timber trees in the holding other than those which he orders to be retained. Thus keeping in view the ownership rights of the Bhumiswami a reasonable restriction is Imposed upon his right to cut the trees and that restricted area is in respect of those trees which the Collector (a) requires to be retained in public interest or (b) which are required for preventing erosion of soil. It is only in these two categories of cases that the permission can be rejected and for the remaining a duty is cast on the Collector to grant the permission and communicate it to the applicant within three months of his application.

It will thus appear from the above discussion that u/s 241 of the Code and the Rule 3 framed under Sub-section (3) thereof the application of the Bhumiswami for permission to cut the timber trees standing on his holding can be rejected with a view to prevent theft of timber from the Government forest in public interest and for preventing erosion of soil. Except in such cases the applicant is as of right entitled to have the permission to cut the trees. The decision in this respect must be taken by the Collector within three months. If that is not done and the applicant fulfils the requirement of Rule 4 of making a communication in writing calling the attention of the Collector and if no reply is given within a further period of three months the permission is deemed to have been granted.

In the present case there was no deemed permission as held earlier. But the Collector has not taken the decision required by Rule 3(1) whether the case is covered by the limited area where the application can be rejected and if so in respect of how many trees. That decision was to be taken and communicated to the applicant within three months. Now the Collector will take decision as required by Rule 3(1) before proceeding further in the matter by passing a reasoned order.

The petition is partly allowed. It is held that there was no deemed permission to the applicant to cut the trees. The respondent No. 2 is directed to decide the application of the petitioner now as per Rule 3(1) if any and if so how many timber trees standing on the land of the petitioner were required to be retained in public interest or for prevention of erosion of soil. He will pass a reasoned order in this respect within two months after hearing the petitioner. In case the permission to cut the trees is granted the consequential steps to get the logs hammer-marked and issue of the transit pass shall be taken.