

(2001) 08 OHC CK 0035
In the Orissa High Court
Case No : First Appeal No. 43 of 1992

Collector, Kalahandi and Others

APPELLANT

Vs

Pawan Kumar Gupta

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Orissa Forest Act, 1972 — Section 45
Orissa Forest Contract Rules, 1966 — Rule 7

Citation : AIR 2002 Ori 1

Hon'ble Judges : R.K. Patra, J;L. Mohapatra, J

Bench : Division Bench

Advocate : Addl. Standing, for the Appellant; N. Jain and N.R. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This appeal at the instance of the defendants is directed against the decision of the learned Subordinate Judge, Nawapara, Kalahandi decreeing the respondent's suit for Rs. 5,30,210/-with interest @12% per annum from the date of institution of the suit till payment.

2. The respondent filed the suit for a direction to the appellants to pay the loss allegedly sustained by him in respect of the standing trees and felled trees (unpassed) numbering 253 and 727 respectively, with interest @12% per annum.

Case of the plaintiff-respondent is that a sale notice was published by the defendant No. 2 in the Orissa Gazette dated 1-8-1980 for sale of timber, firewood and other minor forest produce of it's Division by auction sale which was scheduled to be held at Divisional Officer, Khariar on 18-8-80 and 19-8-80. In response to the sale notice plaintiff-respondent took part in the auction and being the highest bidder in respect of Gandhamardhan S.W.C. No. 11, Lot No. 11, Divisional Lot No, 10 of 1980-81 and the bid was knocked in his favour for a consideration of Rs. 4,01,000/-. The aforesaid sale of the lot was ratified by the Government on 20-11-1980. The plaintiff-respondent paid the entire

consideration money in between 31-3-1881 and 30-4-1982 as well as compensation of Rs. 12,434 on 16-3-1983, 21-2-1983 and 4-3-1983. The working period of the Coupe was from 28-11-1980 to 21-12-1982. During the said period the plaintiff-respondent could not work out the entire coupe and applied for extension of time and time was extended for a period of three months from 31-3-1983 to 30-6-1983. During the extended period also the plaintiff-respondent could not complete the work of the coupe and as on 20-10-1983 there were 253 numbers of standing trees and 727 felled (unpassed) trees to be removed. After 30-6-1983 i.e. expiry of the extended period the Range Officer of defendant No. 2 took over charge of the standing and felled trees of the above coupe from the plaintiff-respondent who also returned the conversion register and permit to the office of defendant No. 2. Since the plaintiff could not complete the work within the extended period also he applied for another extension which was allowed for a period of two months in respect of the Divisional Lot No. 10 of 3980-81 of similar Division. After receipt of the order of extension from the State Government the plaintiff-respondent deposited the requisite fees for such extension, but he was not allowed to work. Finding no way the plaintiff-respondent filed a writ application before this Court in O.J.C. No. 2857/1985. Since there was a talk of compromise with the defendants the said writ application was withdrawn with permission of the Court on 24-3-1987. After withdrawal of the writ application negotiation was held but it failed and the plaintiff again approached this Court in O.J.C. No. 2343 of 1987 and in the said writ application this Court directed the defendant No. 2 and other Government officials to allow the plaintiff to work out the forest coupe. Even after the order was passed by this Court, the plaintiff was not allowed to work as the standing trees and felled trees as they were available on 20-10-1983 had already been removed. Therefore, the plaintiff filed a suit for recovery of the loss sustained by him in respect of the standing trees as well as felled trees along with interest.

3. Defendants-appellants in their written statement did not dispute the averments of the plaintiff that he had been awarded the work of carrying out the coupe but disputed the initial period of operation and according to the defendants-appellants the original period of contract was from 28-11-1980 to 30-11-1982, it was further contended on behalf of the defendants-appellants that as per Rule 7 of the Orissa Forest Contract Rules, 1966 time shall be the essence of contract and on completion of the specified period the plaintiff's right under the contract ceases and any forest produce not removed by him during the period of contract shall become the absolute property of the Government. After completion of the extended period on 30-6-1983, the Forestor, Padampur inspected the coupe on 20-10-83 and drew up final inspection report No. 45 dated 20-10-83 showing balance of 253 standing trees and 727 felled (unpassed) trees in the coupe. It is also stated in the written statement that after completion of the extended period the plaintiff-respondent had returned the coupe permit and conversion register.

So far as the second extension period is concerned, it is the case of the

defendants-appellants that application of the plaintiff-respondent for the second extension was forwarded by the defendant No. 2 to the Conservator of Forests, Koraput circle on 11-4-1984 and the latter recommended the same to the Chief Conservator of Forests, Orissa on 19-4-1984 with copy to the State Government and while the matter was under correspondence the State Government granted two months extension of time. On receipt of such order the Chief Conservator of Forests sought clarification from the State Government in his letter dated 24-6-85 and thereupon the State Government issued a stay order on 5-7-85 and subsequently superseded the order issued and rejected the application filed by the plaintiff for grant of extension of time. Further stand of the defendants-appellant of the written statement is that in O.J.C. No. 2343/87 this Court directed that the plaintiff should be allowed to work out the coupe, subject to the condition that the coupe has not been worked out or settled in the meantime with some other persons rendering it impossible for the plaintiff to work out the coupe and the trees which were then marked for felling and removal by the plaintiff are identifiable. After disposal of the writ application when inspection was made it was found that the claim of the plaintiff with regard to the standing trees and felled trees were no more available in the coupe. This fact was also intimated to this Court by defendant No. 2 by way of an affidavit dated 12-2-1988.

4. Considering the averments made by both the parties, learned Subordinate Judge, Nawapara framed 12 issues and found that time was no essence of contract and had the plaintiff been allowed to work out the coupe during the second extension period which had been allowed by the State Government for two months, he could have removed the standing and felled trees as found available on the date of inspection, i.e. 20-10-83 and as such sustained a loss;

5. Shri Routray, learned Additional Government Advocate appearing for the appellants submitted that as provided in Rule 7 of the Orissa Forest Contract Rules, 1966 time is the essence of the contract and once the period expires the contractor loses his right to work in the coupe any further. He challenges the finding of the learned Subordinate Judge who held that in view of the grant of extension of time, time was not the essence of the contract. Shri Routray, further submitted that the State Government have no authority to extend time as per the proviso to Rule 7 of the said Rules and therefore extension granted by the State Government is of no consequence and therefore rightly it was later superseded. According to Sri Routray, the plaintiff-respondent had been allowed to work out the coupe during the contract period, but he could not complete the work and prayed for extension of time. On the basis of the application the period was extended by three months i.e. till 30-6-1983, but the plaintiff-respondent could not complete the work and again applied for extension. Though second extension was granted by the State Government for a period of two months, a clarification was sought for by the Chief Conservator of Forests and on the basis of such letter of clarification, order granting extension by the State Government was recalled. Therefore, there was no extension as claimed by the plaintiff-

respondent in the eye of law. He further submitted that the plaintiff-respondent having not been able to complete the work by 30-6-83 and there being no further extension in the eye of law, claim of the plaintiff-respondent that had he been allowed to work out the coupe during the second extended period he could have removed the balance standing and felled trees and could not have sustained a loss, is not sustainable.

6. Shri M. Jain, learned counsel for the respondent submitted that in view of the extension granted by the defendant No. 2, it can never be said that the time was the essence of the contract. Had time being the essence of the contract, there was no scope for granting extension. He further submitted that as admitted by the defendants-appellants as on 20-10-83 there were 253 standing trees and 727 felled trees for removal. It is also admitted that the plaintiff-respondent had not been allowed to operate the coupe after 20-10-83. He further submitted that there is no dispute that the State Government had granted two months extension on the application of the plaintiff-respondent and had the plaintiff been allowed to work out the coupe during the said extended period, he could have removed the above mentioned standing and felled trees. The defendants-appellants having not been allowed the plaintiff-respondent to work out the coupe during the second extended period, the plaintiff sustained loss as claimed and therefore the Subordinate Judge was right in allowing the claim. He further submitted that Orissa Forest Contract Rules, 1966 are not the statutory rules and the provisions contained therein are not mandatory. The State Government was competent under Rule 37-A to grant extension.

Rule 7 of the aforesaid Rules prescribes that where by the terms of any forest contract, it is agreed that the extraction of the forest produce purchased under the contract may be carried out only during a specified period, time shall be deemed to be the essence of such contract, and upon the completion of the specified period, the contractor's right under the contract shall cease, and any forest produce not removed across the boundaries of the contract area shall become the absolute property of Government. Proviso to the said rules prescribes that Chief Conservator of Forests and the Divisional/District Forest Officer, as the case may be, for special reasons, grant an extension of time on such terms, as he may decide, for a total period not exceeding the period for which he is empowered to sanction contracts. This rule clearly provides that where a contract is required to be carried out only during a specified period, time shall be the essence of the contract. However, the officers as mentioned in the proviso for special reasons to be recorded in writing "grant extension of time for a total period not exceeding the period he is empowered to sanction. Therefore, prima facie, it appears that time is the essence of the contract. It also appears from the said rules, the Chief Conservator of Forests and the Divisional/District Forest Officer, as the case may be, is empowered to grant extension by recording special reasons for the same. Rule 57-A of the aforesaid rules empowers the State Government to consider any representation against the decision of the Chief Conservator of Forests in any appeal relating to a forest contract. The State

Government under the said rule having been vested with the powers of the appellate authority, it cannot be said that the State Government has absolutely no jurisdiction to grant extension.

7. The question as to whether these rules are mandatory or not is immaterial for the purpose of this case. Therefore, we have not referred the decision cited by Sri Jain reported in (1978) 46 Cut LT 38 (R.S. Bhatia v. State of Orissa), on the basis of which Sri Jain claimed that the rules are neither statutory nor mandatory. We are not referring to the decision because this case can be decided on its own facts and circumstances. Admitted case is that the plaintiff had been awarded with the contract for removal of forest produce and an agreement was entered into between the State Government and the plaintiff-respondent in Ext. 2. In clause (2) of the agreement the plaintiff was allowed to extract forest produce during the period from 28-11-1980 to 30-11-1982 (both days inclusive). Admittedly, the plaintiff could not complete the work during the period specified in the agreement. Having not been able to complete the work, the plaintiff applied for extension of time and time was extended for a period of three months, i.e. from 31-3-1983 to 30-6-83. There is also no dispute that the plaintiff could not complete the work during the extended period, i.e. by 30-6-83. There is also no dispute that as on 20-10-83 when inspection was made, the Forestor, Padampur drew up final inspection report No. 45 dated 20-10-83 showing balance of 253 numbers of standing trees and 727 numbers of felled (unpassed) trees in the scope. There is also no dispute that after expiry of the extended period 30-6-83 the plaintiff had returned the coupe permit and conversion register to the department. From the aforesaid undisputed facts, it is clear that the plaintiff in spite of extension granted to him for a period of three months could not complete the work and after an inspection was made on 20-10-83 by the Forestor, Padampur he accepted the contract as closed and returned back the permit and conversion register to the department. From the Ext. 7 notice u/s 80, C.P.C., it appears that though inspection was done by the Forestor, Padampur on 20-10-83, the plaintiff had not applied for extension for more than one year and only on 16-3-1985 he applied for another extension for a period of six months. Said application was allowed by the State Government granting extension for a period of two months in Ext. B. Ext. B was issued by the Forest, Fisheries and Animal & Husbandry Department on 12-4-1985. However, the State Government in the Department of Forest, Fisheries and A.H. by letter dated 5-7-1985 (Ext. C) stayed the operation of the said extension in Ext. B and subsequently in Ext. D. the letter dated 15-11-85 superseded the letter dated 12-4-85. In view of the aforesaid documents, it is clear that though extension for a period of two months had been granted by the State Government, subsequently operation of the same was stayed and later on such extension was cancelled. Therefore, there is no extension in the eye of law. Since there was no extension of time as observed by us, there is no question of sustaining any loss on the ground that had the plaintiff been allowed to operate the coupe by virtue of Ext. B, he could have removed the standing and felled trees as found existing

in the coupe on 20-10-83. The order passed by the State Government dated 15-11-85 in Ext. D superseding the earlier order granting extension was challenged before this Court in O.J.C. No. 2343/87 and this Court disposed of the writ application with a specified direction that the plaintiff shall be allowed to work out the coupe subject to the condition that the coupe has not been leased out or settled in the meantime with some other persons rendering it Impossible for the plain- tiff to work out the coupe and the trees which were then marked for felling and removal by the plaintiff are identifiable. After disposal of the said writ application, inspection was done and it was found that not a single tree in the coupe, as claimed by the plaintiff, was identified. Therefore, by order of this Court in the aforesaid writ application the plaintiff culd not have work out the coupe as the trees which were then marked for felling and removal, were not identifiable by the officers of the Department. The order of this Court being a conditional one as stated above and no standing or felled trees having been found on inspection, the plaintiff-respondent cannot get any advantage of the order.

8. In view of the discussions made above, we do not find any merit in the claim of the plaintiff-respondent. We, accordingly, set aside the impugned judgment and decree passed by the Subordinate Judge, Nawapara and dismiss the suit.

The appeal is accordingly allowed. No cost.

R.K. Patra, J.

9. I agree.