

(2001) 07 JH CK 0060

In the Jharkhand High Court

Case No : CWJC No. 2077 of 1999 (R)

Conservator of Forest and Ex-officio General Manager, Reeva
Circle, Reeva, Madhya Pradesh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Forest Regulation — Section 75
Forest Rules, 1927 — Rule 10
Revenue Recovery Act, 1890 — Section 3

Citation : AIR 2002 Jhar 25 : (2001) 1 JLJR(Jhar) 84

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : R.K. Choudhary, for the Appellant; N.N. Tiwari and R.R. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the parties.

2. The question falls for consideration in this writ application is whether the amount claimed by the petitioners for loss and damages can be recovered through the process of certificate proceeding under the provisions of Revenue Recovery Act, 1890.

3. Petitioner No. 2. Madhya Pradesh Minor Forest Produce (T & D) Co-operative Federation Ltd. invited tenders for collection and sale of stored tender's leaves for 1992 season, in pursuant to which respondent No. 3. M/s. Shukla Construction submitted his tender which was opened on 22.1.1993 and it was knocked down in his favour in respect of lot No. 00590 Gajari for 4178.060 standard bags at sanctioned rate of Rs. 807=00.

4. Petitioners' case is that respondent No. 3 vide letter dated 8.2.1993 was informed about the acceptance of tender and purchase agreement was

accordingly executed by respondent No. 3 on 5.3.1993. According to clause 5 of the agreement respondent No. 3 deposited the 1st instalment i.e. 1/4th of total purchase price for delivery of 1044.516 standard, bags of Kendu leaves. 2nd instalment was to be deposited on 20.4.1993. 3rd instalment on 1.6.1993 and 4th instalment on 10.7.1993 but the said respondent deliberately did not deposit the said instalments on agreed dates and therefore petitioner No. 1 issued show cause notice for cancellation of agreement and forfeiture of security deposit. In the meantime, it is stated that respondent No. 3 deposited 2nd instalment and delivery order was issued for 2nd instalment of Kendu leaves. But respondent No. 3 again failed to deposit 3rd and 4th instalments of the purchase price. Consequently petitioner cancelled the agreement and forfeited the security deposit. The petitioner invited another tender and auction sold the Kendu leaves to the highest bidder. Thereafter a notice was given to M/s. Shukla" Construction for the recovery of loss sustained by the petitioner on account of breach of agreement by the respondents. Petitioner then sent final notice to the respondents to deposit Rs. 8,70,901.81 being the loss sustained on account of re-sale of tender leaves in auction at lower rate. When the amount was not deposited, petitioner requested the Collector, Palamau to initiate proceeding against the respondents for the recovery of the aforesaid amount. A requisition was sent by the petitioner to the Certificate Officer through the Collector, Sidhi (MP). The Collector, Sidhi (MP) in his turn sent the certificate to the Collector, Palamau for recovery of dues from respondent No. 3. The Certificate Officer, Palamau accordingly initiated certificate proceeding under the provisions of Revenue Recovery Act, 1890 being Certificate Case No. 1/95-96. Respondent No. 3 entered appearance and filed his objection challenging the maintainability of the certificate proceeding on the ground that the Bihar and Orissa Public Demands Recovery Act is not applicable in the matter of Madhya Pradesh, The District Certificate Officer after hearing the parties, by order dated 9.6.1995 rejected the certificate proceeding mainly on the ground that the amount of loss and damages is not a land revenue which could be recovered through the process of aforesaid Act.

5. Mr. R.K. Choudhary, learned counsel appearing for the petitioners, assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel submitted that the loss and damages sought to be recovered by the petitioners is ascertained amount which the respondent is liable to pay to the petitioner in terms of the agreement executed by it. Learned counsel submitted that the amount of loss and damages could be recovered as land revenue and the certificate officer has totally erred in law in rejecting the certificate on the ground that damages can not be recovered. Learned counsel relied upon a decision of the Supreme Court in the case of State of Karnataka v. Rameshwara Rice Mills, Thirthahalli AIR 1987 SC 1359, and the Khadi and Village Industries Commission v. M.S. Srivastava and Ors. AIR 1974 Pat 3131

6. Mr. N.N. Tiwari, learned counsel appearing of the respondents, on the other hand, submitted that the amount sought to be recovered by the petitioner is an

unascertained amount of damages and without there being any adjudication whether the respondent is liable to pay such amount, the recovery proceeding is wholly without jurisdiction. Learned counsel submitted that such amount can not be recovered as land revenue. In this connection, learned counsel relied upon two decisions of the Patna High Court in the case of Lakshmi Prasad Sao v. Collector and Deputy Commissioner. Singhbhum 1979 BLJR 379 and in Budha Singh Vs. The State of Bihar and Others, .

7. Before appreciating the rival contentions made by the learned counsels for the parties, it would be useful to first look into some important and relevant facts of the case.

8. The respondent No. 3 entered into a purchase agreement with the petitioner on 3 whereby it has agreed to deposit the entire purchase price in four instalments of Rs. 8.42,924.82 paise. When the concerned respondent defaulted in payment of second instalment, a show cause notice was issued on 26.7.1993. However, the second instalment was deposited by the respondent No. 3 giving explanation for not depositing of the required instalment on the agreed date. The respondent again defaulted in depositing third instalment. The petitioner after giving a show cause notice cancelled the agreement and forfeited the security deposit. Thereafter vide notification dated 19.10.1993, a fresh tender was invited for re-sale of 2089.034 standard bags of tender leaves bearing lot No. 590. The auction tender was opened on 10.11.1993 and tender submitted by one M/s. Kannu Bhai Patel, Rahela District District Palamau was accepted. The petitioners alleged that the tender leaves were sold to the subsequent auction purchaser at a low bid amount. Accordingly the Forest Division Officer, West Sidhi was directed to take steps for realisation of loan from the respondent No. 3. The petitioners thereafter issued a show cause notice dated 21.1.1994 to respondent No. 3. Another notice dated 31.1.1994 was issued to the respondent No. 3 to deposit a sum of Rs. 8.70.901.81 paise being the amount of loss sustained on account of re-sale of tendu leave in auction at low rate. A reminder notice was also said to have been sent on 23.2.1994 but the respondent No. 3 neither filed show cause nor deposited the aforesaid amount. The Collector. Palamau was therefore, requested to initiate a proceeding against the respondent No. 3 for recovery of the aforementioned amount as arrears dues of land revenue.

9. As noticed above, the only question needs consideration by this Court is whether such amount of loss and damages could be recovered as land revenue under the Revenue Recovery Act. Before answering the question. I will first discuss some of the decisions cited by the learned counsels for the parties,

10. I shall first discuss the ratio decided by the Patna High Court in the case of Budha Singh (supra), as relying upon such decision the Certificate Officer rejected the certificate proceeding. In Budha Singh's case the fact was that the Forest Department auctioned Kendu leaves and the petitioner Budha Singh being the highest bidder, deposited the earnest money. However, he did not deposit the balance amount before the authority concerned. One of the condition as

mentioned in the advertisement was that if the petitioner did not deposit the balance amount in treasury, his contract shall automatically be cancelled by the Department and the loss incurred shall be recoverable from the contractor concerned. Accordingly the Forest Department sent a requisition to the Certificate Officer for realising the amount from the petitioner. A question arose whether such amount of damages can be realised by the Certificate Officer under the provisions of Bihar and Orissa Public Demands Recovery Act, 1914 or not? Their Lordships held that such amount is not recoverable under the said Act for the reason that there was no such agreement to that effect. The Court while holding that, observed :--

"3. On a perusal of item No. 9 of Schedule. 1 of the Act, it is clear that if a party agrees by written instrument to pay a certain amount to the Govt. or to the local authority, then in that case it shall be recoverable as a public demand. On a perusal of Annexure 1, it is clear that the amount of damages is not at all mentioned in Annexure 1. In absence of any specified amount, such money cannot be recovered under item No. 9. The word "money" mentioned in item No. 9 means the money specified in the agreement of the parties. In view of the fact that then amount of damages is not mentioned in Annexure 1; as such, amount of damages cannot be recovered by the Forest Department. Neither the agreement nor the Act or the rules made there under provides any machinery to ascertain the damages incurred by the Forest Department. Whenever any money is realised as public demand or arrear of revenue or arrear as land revenue, then in all these cases the specified amounts are mentioned by the authorities concerned. If the amount of damage is not mentioned, then it can be ascertained only by the Civil Court and not by the Forest Department itself."

11. In Lakshmi Prasad Sao's case (supra) a Bench of the Patna High Court held that for realising arrear of land revenue the provisions of Revenue Recovery Act, 1890 apply and the certificate can be transferred from one State to another for realising the same. It was further held that "arrear of revenue" can be realised within the State and the procedure for realisation of the same is mentioned in the Bengal Revenue Sales Tax Act, 1859 and Bihar and Orissa Public Demand Recovery Act. Their Lordships observed :

"11. The law raised in this case may be summarised thus :--

"Arrears of revenue" and "arrear of land revenue" are two distinct terms. For realising "arrear of land revenue", the provisions of Revenue Recovery Act, 1890 apply and the certificate can be transferred from one State to another for realising the same. "Arrears of revenue" can be realised within State and procedure for realisation of the same is mentioned in the Bengali Revenue Sales Act, 1859 and in Bihar and, Orissa Public Demands Recovery Act. A certificate for realising "arrear of revenue" shall not be sent outside the State as the provisions of the Revenue Recovery Act do not apply to it." 12. In the instant case, as noticed above, the respondent No. 3 entered into a purchase agreement with the petitioner agreeing, inter alia, to pay the amount in four instalments. A

copy of the agreement has been annexed as Annexure 2 to the writ application. The respondent No. 3, by the said agreement, agreed that in the event it violates the terms and conditions of the agreement and fails to deposit the instalment then the agreement shall be cancelled and the security amount shall be forfeited. It was further agreed specifically that in such event the article in question shall be re-auctioned and in the event the articles are sold at a low price then the loss sustained by the petitioner shall be recovered as "land revenue". In my view, "therefore the decisions referred hereinabove and relied upon by the respondents are not at all applicable in the facts and circumstances of the present case.

13. I further found that the loss claimed by the petitioner is an ascertained amount of money being the difference of the bid price held by the petitioner firstly with the respondent No. 3 and then with the subsequent purchaser. As noticed above, there is specific term in the agreement that any breach of the agreement will result in payment of loss: and damages as "land revenue."

14. In the case of State of Karnataka v. Rameshwara Rice Mills, Thirthahalli. (supra) the apex Court considering similar question held that damages for breach of conditions of the agreement can be recovered as "land revenue". Their Lordships held :--

"9. The further question, requiring consideration is regarding the power of the State to recover damages as arrears of land revenue under the Revenue Recovery Act. The Full Bench has taken the view that the State is not entitled to recover damages as arrears of land revenue because damages for breach of conditions will not amount to "money due under the contract." The Full Bench has relied upon a decision of this Court in The Divisional Forest Officer Vs. Mool Chand Sarougi Jain, in support of its view. This decision cannot be an authority for the view taken by the full Bench because it has been rendered with reference to facts which are entirely different. What fell for consideration in that case was whether a tender amount could be recovered from a defaulting forest contractor as arrears of land revenue when Section 75 of the Forest Regulation and Rule 10 of the Rules made thereunder did not provide for such realisation. We are however, concerned with cases where the agreement entered into between the Government and the private persons specifically provides for recovery of damages as arrears of land revenue. What the Full Bench has failed to notice is that even though the damages become payable on account of breach of conditions of the contract, the liability to pay damages does not fall outside the terms of the contract but within the terms of the contract. The words "any amount that may become due or payable by the first party to the second party under any part of this agreement" have to be read in conjunction with the earlier portion of the clause stipulating liability on the party contracting with the State to pay damages for breach of conditions. Therefore, it follows that though damages become payable on account of breach of conditions of the agreement they nevertheless constitute amounts payable under the contract i.e. under one of

the terms of the contract imposing liability to pay damages for breach of conditions. To illustrate the position if the agreement provides for a liquidated sum being paid as damages for breach of conditions instead of a sum to be assessed by the Deputy Commissioner, it cannot be said that the specified damages will not be money due under the contract and hence the damages cannot be recovered under the Revenue Recovery Act. What applies to specified damages will likewise apply to damages which are quantified after assessment. We, therefore, hold that the opinion of the Full Bench in so far as the recovery of damages as arrears of land revenue is concerned is not in accordance with law."

15. In course of argument Mr. N.N. Tiwari, learned counsel for the respondents, drawn my attention to Section 3 of the Revenue Recovery Act, 1890 and submitted that under the aforesaid provisions, the Collector of a district can send requisition to the Collector of another district within the same State and not in a district of different State for the recovery of the dues. In my opinion, the submission of Mr. Tiwari is wholly misconceived. The expression "district" or "another district" in this section do not mean only a district of the same State, as the one in which the demand originally arose but referred to its territory called district in entire India union demarcated for the purpose of revenue administration place Incharge of the district officer called Collector. A Collector of a District is empowered and authorised to send a requisition to the Collector of a District of another State for the recovery of the dues under the Revenue Recovery Act.

16. Having regard to the facts of the case and the law discussed hereinabove, I am of the opinion that the impugned order passed by the Certificate Officer rejecting the certificate on the ground that the damages could not be recovered through the certificate proceeding is illegal and not sustainable in law.

17. This writ application is, therefore, allowed and the impugned order passed by the Certificate Officer is" set aside. The matter is remitted back to the Certificate Officer to proceed in the matter in accordance with law.

18. Writ petition allowed.