

(1967) 06 DEL CK 0011
In the Delhi High Court
Case No : Second Appeal No. 149 of 1967

Jai Lal

APPELLANT

Vs

The Punjab State and Another

RESPONDENT

Date of Decision : 07-06-1967

Acts Referred:

Citation : AIR 1967 Delhi 118

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : Atma Ram, for the Appellant; Man Mohas Nath, for the Respondent

Judgement

(1) plaintiff Jai Lal a contractor, purchased certain trees in the forest In Shamalt - Deh of Village Jhajha of February 15, 1958 for Rs. 1,005, when the plaintiff went to remove the trees which had been cut the Forest Ranger Chail stopped him on the ground that the trees belonged to Punjab State and the Nagar Panchayat, the vendor of the trees, had no right to sell the same without the sanction and approval of the forest authorities. The plaintiff served a notice on the Panchayat but the latter assured him that it had such a right. The plaintiff again started the work of removal of trees on February 26, 1958, but the forest authorities did not permit him to do so. The said authorities ultimately on February 28, 1958. Confiscated the entire wood lying stacked on the road side.

The Panchayat then filed a writ petition in the High Court of Punjab challenging the act of the forest department which was allowed on October 16, 1958. The High Court of Punjab decided that Rule 10 framed u/s 76 of the Patiala Forest Act under which the forest authorities had prevented the plaintiff from cutting or removing the trees and confiscating the same was outside the scope of section 76 and Therefore ultra virus the Act so far as third class forests were concerned. In these circumstances the plaintiff filed the present suit against the State of Punjab and Nagar Panchayat. Jhajha claiming Rs. 1,200 from the first defendant being the loss suffered by him because of the illegal acts of the forest authorities. (2) On the pleadings of the parties, the following issues were

framed:

1. Is the suit within time?

1(A) Is the suit for damages on account of the action of the Range officer competent against the Punjab State?

2. Did plaintiff purchase by public auction 56 Kailoon and cheel trees along with 1,000 maunds fallen wood for Rs. 1,005 on February 15, 1958 from the Nagar Panchayat Jhaija? If so, on what conditions the auction was held?

3. Did the Forest Range officer stop the work of the plaintiff and confiscated wood under the circumstances mentioned in paragraphs 7 and 10 of the plaint? If so with what effect?

4. If issue No. 3 is proved, did plaintiff suffer any damages? If so to what extent and is he entitled to recover the same from defendant No.1?

5. To what relief, if any is the plaintiff entitled and against whom?

(3) By judgment dated October 19, 1962, the trial Court decided issue No. 1 against the plaintiff but all other issues in his favor. The plaintiff appealed and the appellate court by judgment dated October 10, 1963, upheld the decision of the trial Court on issue No.1 but did not decide the other issues:

(4) It is conceded on behalf of the defendants respondents that the forest in question was a third class forest, that the forest authorities, acted under the said rules 10 and that the said rule was ultra virus the act as the Act did not authorize framing of such rule which respect to third class forests.

(5) the controversy between the parties is very limited and is confined to the question whether article 2 of the Indian Limitation Act or article 49 thereof applies. Article 2 of the old Limitation act corresponds more or less to article 72 of the Limitation Act 1963 while Article 49 to Article 91 of the latter Act. It is not disputed on behalf of the respondents that if article 49 applies, the suit would be within time. It is appropriate to read the provisions of Article 2 and 49:

Article 2 " For compensation for doing or for omitting to do within Ninety days When the act or omission do an act alleged to be in pursuance of any law then in force or any enactment in force for the time being in India. Article 49 For other specific movable property or for Three years when the property is compensation for wrongfully taking or injuring wrongfully taken or or wrongfully detaining the same. injured, or when the detainer's possession becomes unlawful (6) Article 2 is directed to afford protection to persons acting in pursuance of an enactment, against stale claims and against consequences of committing illegal acts intended to be done under the authority of any law which by reason of some mistake or misapprehension are not justified or are not defensible by its provisions. The protection under article 2 can, Therefore, be claimed only when the act has been performed under colour of statutory duty. If a person acts with the full knowledge that he is not authorized to do so under a particular statute he cannot

shelter himself by pretending that the act was done with the intentions of carrying out the statute

(7) The lower appellate Court, following the decision of the Punjab high court in Sardarni Gurdial Kaur Vs. The State, , decided that an act done in pursuance of a rule, later held to be ultra vires, would still be covered by Article 2, In Sardarni Gurdial Kaur Vs. The State, it was held that the court's decision holding an act invalid did not render the Act non-existent from the very beginning. The question before the Punjab high Court was whether an Act declared invalid could be amended. I need not enter that 3 question for in my opinion, article 2 applies only if an act is alleged to be done in pursuance of any enactment in force at the time of the doing the Acct. It is not enough for the defendants to show that they honestly believed that the enactment was in force. It must in fact be in force.

Law reports abound in decision that rules contrary or repugnant to the statutes are void and of no effect. It is sometimes expressly stated in a statute, that the rule must conform to the statute but the absence .of such statement does not affect the matter. If the delegated authorities were permitted to frame rules repugnant to the Act, they would be trespassing into the legislative field. A rule repugnant to the Act would Therefore be a still-born law and it cannot be said that it was in force at the time of commission or omission. In that situation it must follow that the impugned act of the forest authorities was not in pursuance of any enactment in force and consequently article 2 was not applicable. In my opinion , the decision of the learned District Judge was Therefore, incorrect. (8) the appeal, is Therefore, allowed with costs and the judgment f the district Judge dated October 10,1963 set aside. Since the other issues the matter will go back for decision thereon.

(9) Appeal allowed: Case remanded.