

(1972) 09 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 119 of 1970

Jogendra Lal Saha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-09-1972

Acts Referred:

Forest Act, 1927 — Section 82

Citation : AIR 1973 Patna 98

Hon'ble Judges : U.N. Sinha, C.J; Akbar Husain, J

Bench : Division Bench

Advocate : Jaya Narayanand Indu, for the Appellant; Standing Counsel, No. 2 and Debeshwar Prasad Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has filed this writ application under Articles 226 and 227 of the Constitution of India, praying, that the order incorporated in Annexure 11, dated the 23rd July 1969, and a notice, dated the 4th November 1969 (Annexure 12), issued u/s 7 of the Public Demands Recovery Act, may be quashed. The further prayer is that, the connected certificate proceeding pending against the writ petitioner may also be quashed. Annexure 11 Was a letter issued by the Divisional Forest Officer, claiming Rs. 70,713 from the petitioner, said to have been due in consequence of the settlement by auction of lot No. 102 for collecting Kendu leaves for the years 1967 to 1970 for Rs. 1,25,000. It was stated in that letter that, the petitioner had paid the dues for the year 1967-68, but he had not deposited the second instalment of Rs. 41,667 due by the 15th January 1969. Thereafter, the letter gave further details of accounting, stating, that, the price for the years 1968-69 and 1969-70 was due amounting to Rs. 83,333 and after giving certain deductions Rs. 70,713 was claimed. A deduction of Rs. 10,420 was given on account of the security deposit and a credit of Rs. 2,200 was given for a re-sale. Naturally, by Annexure 12 a notice claiming Rupees 70.717.50 paise (inclusive of Rs. 4.50 paise for cost) was sent.

2. The relevant facts may now be stated. On 21st February, 1968 the right to collect Kendu leaves for a period of three years from 1967 to 1970 was sold by auction to the petitioner, who was the highest bidder. The total amount for which this auction was made for three years was Rs. 1,25,000 payable in three instalments. The first instalment of Rs. 41,667 was payable within twenty days from the date of receipt of the ratification letter. The second amount of Rs. 41,667 was payable on or before the 15th January 1969. The third amount of Rs. 41,666 was payable on or before the 15th January 1970. The petitioner had deposited the first amount of Rupees 41,667 for the dues of the year 1967-68 and an agreement had been entered into on the same day, that is 21st February 1968, which document was signed by the writ petitioner. In the original writ application, the petitioner tried to make out a case that, at no stage, acceptance of the three years' settlement by the authorities had been communicated to the petitioner, but this stand has now been abandoned, in view of the counter-affidavit filed in the case, along with the annexures appended thereto. In the writ application, it is accepted that the petitioner had been given possession of the settled lot and he had duly commenced the working, although some vague allegations were made to the effect, that, the petitioner had found, that, the area of the lot settled with him had not been defined, nor was delivery of possession made over to him by the Divisional Forest Officer, Dumka. This is clear from the allegation in the writ application to the effect, that, the petitioner was not able to work out properly the contract for the period ending June 1968 because of some agitations of the paharias and indifference of the local Forest authorities to help the petitioner. It appears, that, on 17th December 1968 the petitioner had received a demand from the Divisional Forest Officer, Dumka, saying that, in accordance with the agreement entered into the sale price for the second year had to be deposited by the 15th January 1969 and for the third year by the 15th January 1970 and these two amounts of Rs. 41,667 and Rs. 41,666 may be deposited in due course. Thereafter, it appears, that, communications had followed between the petitioner and the authorities in question, without the petitioner obtaining any relief. It is alleged in the writ application, that, the petitioner had made certain offers by a representation dated the 24th April 1969, A copy of this representation has been given as Annexure 8 and the last portion of the representation was in the following words :

"However, we pray before you that considering our actual position, you may allow us to deposit the 50 per cent of the total amount Rs. 41,667/- within the first week of May, 1969 and another 50 per cent by the first week of June, 1969 next."

Obviously, this paragraph had reference to the payment of the dues for the second year, namely, 1968-69. It is stated, that, the request made in this representation was not accepted and on 9th May 1969 an auction had been held for Rs. 2,200. This auction was only for one year, as is evidenced by Annexure D appended to the counter-affidavit filed by the respondents in this case. It appears. that, this amount of Rs. 2,200 realised by re-auction for one year on

the 9th May 1969 has been credited in favour of the writ petitioner, as indicated earlier. Thus, giving a credit for the security deposit of Rs. 10,420 and this re-auctioned price of Rs. 2,200, the amount of Rs. 70,713 is being claimed in the certificate case, together with costs.

3. A counter-affidavit has been filed on behalf of the respondents, in which it has been reiterated, that, a right claim has been made against the writ petitioner and the facts and circumstances under which this claim had been made have been given in detail. The accounting has been reiterated in paragraph 26 of the counter-affidavit showing that the claim is for Rs. 70,713. In the counter-affidavit reliance has also been placed on the agreement entered into on the 21st February 1968.

4. The contention raised by the learned counsel for the petitioner is that the certificate proceeding for the realisation of dues from the petitioner, if any, was not maintainable. Our attention has been drawn to Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914, and it is argued, that, in spite of the fact, that, there was a written instrument between the parties for payment of the dues for the settlement, dated the 21st February 1968, paragraph 3 of this Schedule will be attracted, by virtue of which. Section 82 of the Indian Forest Act, 1927 will be applicable. It is contended, that, if Section 82 is applicable, then, the only remedy that was available for the realisation of the balance due if any was a regular suit and a proceeding under the Public Demands Recovery Act could not have been instituted. In order to appreciate the contention raised by the learned counsel for the petitioner, paragraph 3 of Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914, and Section 82 of the Indian Forest Act, 1927, are quoted below :

Paragraph 3 of Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914.

"Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land revenue, or by the process authorised for the recovery of arrears of revenue or of the public revenue or of Government revenue".

Section 82 of the Indian Forest Act, 1927.

"All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue"

According to the learned counsel Section 82 of the Indian Forest Act states, that, all money payable to the Government under this Act or under any rule made under this Act, or payable on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, if not

paid, can be re-covered by taking recourse to the law for recovery of arrears of land-revenue, but the claim of the opposite party of the writ case does not fall under any of the items, and therefore, the only remedy available, if at all was the institution of a regular suit for any due from the writ petitioner. Reliance is placed on three reported decisions, two of which are of the Allahabad High Court and one of the Madhya Pradesh High Court. The second decision of the Allahabad High Court and the decision of the Madhya Pradesh High Court are really based on the principle which had been decided by the Allahabad High Court in the first reported case and therefore, we will refer now to the first case, namely, the case of Firm Gobardhan Das Kailasnath Vs. Collector of Mirzapur, . It will appear from the facts of Firm Gobardhan Das's case that, the instant case is distinguishable completely from the facts of the Allahabad case.

In Firm Gobardhan Das's case, some tenders had been accepted on the condition that 25 per cent. of the price shall be deposited on the acceptance of the tender and the balance was to be paid within one month. The appellant in the Allahabad High Court, had failed to de-posit one-fourth of the total price and, therefore, the Divisional Forest Officer wrote to the appellant, telling him, that, the lots will be re-sold, unless the balance of 25 per cent. of the price was deposited by a certain date. The amount not having been deposited, the lots, which were the subject-matter of the appellant's tender, were re-sold for a sum less than what had been offered by the appellant. The Divisional Forest Officer sent a demand certificate for the deficit for being recovered from the appellant as arrears of land-revenue. The appellant, thereafter, filed two writ applications in the Allahabad High Court and a learned single Judge dismissed the writ applications. Then, the appellant filed special appeals. In such circumstances, the Allahabad High Court held, on appeal, that, the Government was in the position of an unpaid seller in possession of the goods sold and as such, it was entitled to retain possession of the goods until payment or tender of the price u/s 47 of the Sale of Goods Act and it was, thereafter entitled u/s 54 of the said Act to give notice to the appellant of its intention to resell. This was done by the Government. On these facts, the Allahabad High Court held that, the amount in dispute could not be said to be either consideration or price of the original contract, as the real character was of damages for the loss which had been sustained by the seller on account of breach of contract by the buyer.

Thus, it is dear, that. Firm Gobardhan Das's case was decided on its particular facts, whereas there is no doubt, that, in the instant case, the writ petitioner was actually put in possession, after the agreement dated the 21st February 1968 was executed. There is no doubt, moreover, that, the deposit for the first year had been made on the very date of the agreement and there cannot be any doubt, that, the writ petitioner had conducted operations by virtue of the settlement made with him. The amount that the writ petitioner had to pay by virtue of the agreement, dated the 21st February, 1968, was, no doubt, the price of forest-produce amounting to Rs. 1,25,000/-. The credit that has been given to the petitioner, stated above, was based on the very terms of this agreement, a

copy of which has been given as Annexure 1. Therefore, the first decision of the Allahabad High Court can hardly assist the learned counsel for the petitioner on his contention. The second decision of the Allahabad High Court, in the case of *Deewan Chand Vs. State of U.P. and Others*, is a decision of a learned single Judge, who has followed the earlier Division Bench Judgment of the same Court. The facts of *Deewan Chand*'s case also indicate that, soon after an auction had been held, some disputes had arisen between the parties and the leases were cancelled and the lots were re-auctioned, fetching a lower price than that which the first lessee had agreed to pay. The Forest Department had called upon the first lessee in that case, to pay the difference between the amount agreed to be paid and the amount which the lots fetched at the re-auction. Therefore, no doubt, the principle enunciated by the Allahabad High Court in the first case was applicable.

The decision of the Madhya Pradesh High Court is in the case of *State of Madhya Pradesh Vs. Nagarmal Bhagwandas Marwari*. This decision was based also, more or less, on the same facts as were dealt with by the Allahabad High Court in *Firm Gobardhan Das Kailasnath Vs. Collector of Mirzapur*. In the Madhya Pradesh High Court case, the amount which was sought to be recovered by the Department was on account of deficiency in the price obtained on re-auction, consequent on failure of depositing the requisite part of the bid money which had been bid in the first auction. It was held by the Madhya Pradesh High Court, that, the deficiency sought to be recovered was nothing but loss suffered by the State in the second auction, consequent on failure on the part of the first lessee to perform his part of the contract in the first auction. Such a loss, it was held, did not come within the meaning of price of forest-produce contemplated by Section 82 of the Indian Forest Act and, therefore, the loss could not be recovered as arrears of land-revenue. In the instant case, we have indicated, that, by the agreement dated the 21st February 1968, the writ petitioner had agreed to pay Rs. 41,667 for the first year. Rs. 41,667 for the second year, and Rs. 41,666 for the third year of the lease for collecting Kendu leaves. He had paid Rs. 41,667 on the date of the lease and the present claim is of Rs. 41,667 plus Rs. 41,666, after giving some credit. It can hardly be held, that, what the respondents are claiming in the certificate case is damages for any loss sustained. The claim cannot but be of the price of forest-produce for the second two years of the lease, as had been agreed upon by the writ petitioner. Therefore, there is no doubt, that, the arrears of unpaid money could be claimed as arrears of land revenue. If that be the conclusion, then, the certificate proceedings under the Bihar and Orissa Public Demands Recovery Act, 1914, cannot be held to be, a wrong proceeding instituted against the petitioner, which ought to be quashed. During the course of argument, the learned counsel for the petitioner could not put forward any other contention except the one which has been dealt with above and, on hearing the learned counsel for the parties, we are of opinion, that, no point has been made out in the writ application for granting the reliefs, mentioned above. In such circumstances, the writ application must fail and is

dismissed, but there will be no order for costs.