
(1959) 12 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 72 of 1958

Kashiprasad Beharilal Shukla

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 14-12-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 299, 299(1)

Citation : AIR 1961 MP 364 : (1959) ILR (MP) 854 : (1961) 6 MPLJ 627

Hon'ble Judges : P.V. Dixit, C.J.; N.M. Golvalker, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; H.L. Khaskalam, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This is an application under Article 226 of the Constitution of India by a person, who, on 17th February 1950, entered into an agreement for working certain areas in the Malguzari forest of Goura, Basera, Gouri, Mahgaon and Bhandra in Sehora Tehsil with the then proprietor thereof, Raja Harbhagat Singh. On the coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act, 1950, the agreement ceased to be operative as against the State.

The petitioner's case is that after the enactment of the said Act he approached the State Government for recognizing his licence to work the forest areas as per the agreement concluded between him and Raja Harbhagat Singh on 17th February 1950; that on 5th January 1956 the State Government addressed him a letter saying that they had sanctioned the recognition of the forest lease granted in his favour by Raja Harbhagat Singh; and that "thereafter he approached the forest authorities for the marking of the tress in the forest area as stated in the letter of the Government conveying the sanction of the recognition of the lease,

but that the forest authorities failed to do so and later on prohibited him from" working the forest areas.

The petitioner prays that a writ of mandamus or any other appropriate writ be issued to the opponent restraining them from interfering with his right to work the forest areas leased out to him. The petitioner further prays that necessary direction incidental to the working of the forest areas be also issued to the opponent.

In our opinion, this is clearly not a case in which any order or direction can be made under Article 226 of the Constitution. It is now well settled that the remedy provided by Article 226 can be resorted to only for the enforcement of fundamental rights and other legal rights if the petitioner has no other remedy which is equally convenient, beneficial and effective. The petitioner founds his claim on the fact that he had first entered into an agreement with the then proprietor of the forest areas and worked the forest areas for some time till the coming into force of the Act mentioned above, and that thereafter there came into existence a new contract between him and the State and under that contract he was entitled to work the forest areas free from any interference.

It is quite true that the petitioner entered into an agreement with Raja Harbhagat Singh for the working of the forest areas. But the agreement, which created a bare licence, came to an end with the interest of the licensor, Raja Harbhagat Singh, in the forest (see *Mahadeo Vs. The State of Bombay*,). But the petitioner has not been able to show that thereafter the State entered into an agreement with him in the form required by Article 299 for the working of the forest areas. The provisions of Article 299(1) are mandatory, and if a contract on behalf of the Government does not satisfy the requirements of that article the contract is not binding on the Government and is unenforceable against it.

In *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, , it was observed by the Supreme Court that Article 299(1) of the Constitution was inserted in the Constitution not for the sake of mere form but for safeguarding the Government against unauthorized contracts and that if a contract does not satisfy the requirements of Article 299(1), it is not binding on the Government and is not enforceable against it. Here, admittedly, there was no contract in the form required by Article 299.

Learned counsel for the applicant said that the contract was to be found in the letter (Annexure-- 1) (page-8 of the Paper-Book), which the Government addressed to him on 5th January 1956 conveying to the petitioner their sanction to the recognition of the forest lease granted by Raja Harbhagat Singh. He pressed into service the observations of the Supreme Court in *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, that the contract is not void simply because the Government cannot be sued upon it by reason of Article 299, and sought to suggest that the agreement between the petitioner and Raja Harbhagat Singh, as recognized by the Government in their letter dated 5th

Janaury 1956, was valid and binding though it did not fulfil the requirements of Article 299(1). We are unable to agree with the petitioner's reading of the aforesaid observation of the Supreme Court.

In the context in which it was made, it does not mean that a contract on behalf of the Government, though it does not comply with Article 299(1), as yet binding on the Government. By that observation, the Supreme Court only emphasized the position that though on such a contract the Government could not be sued, there was nothing to prevent the Government from ratifying the contract and that the Government would be bound by the contract if it ratifies it. Now, here, is no contract between the petitioner and the State with regard to the working of the forest areas after the coming into force of the Act of 1950, There could, therefore, be no question of ratification of any contract between the petitioner and the Government which did not comply with Article 299(1) of the Constitution.

The letter dated 5th January 1956, which is the mainstay of the petitioner, embodies no more than an intention of the Government to recognize the forest lease granted by Raja Harbhagat Singh to the petitioner. That letter itself is clearly not a contract between the petitioner and the Government with regard to the lease, The applicant cannot therefore, on the basis of that letter alone, contend that he had a legal and an enforceable right under Article 226 to work the forest area. It may be that if Government allowed the petitioner to work the forest areas for some time after addressing the letter dated 5th January 1956 and later on stopped him from working the areas, the petitioner would be entitled to the relief of compensation and would be entitled to rely on the letter as a document from which the terms of the contract could be inferred. But that is a matter with which we are not concerned here. In the present case, the petitioner's claim is to enforce a contract to work the forest area. It is not shown to exist and which, even if in existence is admittedly unenforceable by virtue of Article 299(1). "That being so, the petitioner can have no legal right which can be enforced by any direction or writ under Article 226 of the Constitution.

For these reasons, this petition is dismissed with costs. Counsel's fee is fixed at RS. 75/-. The amount of security, after deducting the costs payable to the respondent, be refunded to the petitioner.