
(2010) 10 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No. 9353 of 2010 (Arising out of S.L.P. (C) No. 30319 of 2008)

Mahendra Pal

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Forest Act, 1927 — Section 2(2)

Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 — Section 4, 5

Citation : (2010) 11 JT 550 : (2011) 3 RCR(Civil) 738 : (2010) 11 SCALE 326 : (2010) 13 SCC 441

Hon'ble Judges : P. Sathasivam, J; B. S. Chauhan, J

Bench : Division Bench

Advocate : P.S. Patwalia and Ashok K. Mahajan, for the Appellant; Naresh K. Sharma, Sanjay Sarin and Manjusha Wadha, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Leave granted.

2. This appeal is directed against the judgment and final order dated 12.08.2008 passed by the High Court of Himachal Pradesh, Shimla in O.S.A. No. 13 of 2002 whereby the Division Bench of the High Court while affirming the judgment dated 02.07.2002 in Civil Suit No. 36 of 1998 passed by the learned Single Judge dismissed the appeal filed by the appellant herein.

3. Brief facts:

(a) Kutlehar was a small princely State in Kangra Hills having 16 Tapas (Tikas) as forests which were known as 'Kutlehar Forests'. These forests were managed by the Raja of Kutlehar subject to the terms and conditions specified by the then Government. Such management continued generation after generation. The appellant was appointed as a Forest Officer in the capacity of Superintendent of

Kutlehar Forests u/s 2(2) of the Forest Act by Notification dated 01.10.1958 issued by the then Government of Punjab before the formation of the State of Himachal Pradesh. The said forests were under the charge and management of the appellant and he was entitled to dispose of the forest produce such as resin, timber, bamboo, grass etc. in accordance with the working plans prepared by the Forest Department. As per the terms and conditions of the management, he was entitled to retain 3/4th share of the total income from the said forests and 1/4th share of the gross income was payable to the Government. The entire expenditure on the management and exploitation of the forests were to be incurred by the appellant. In the year 1992, the State Legislative Assembly passed the Himachal Pradesh Kutlehar Forests (Acquisition of Management) Act, 1992 (hereinafter referred to as 'the Act'). Pursuant to the provisions of Section 4 of the said Act, the management of these forests was taken over by the State Government. Challenging the constitutionality of the Act, the appellant filed Civil Writ Petition No. 707 of 1992 in the High Court whereby the High Court, by judgment dated 09.05.1994, upheld the constitutional validity of the aforesaid Act except Section 5.

(b) During the year 1995, when the management of the Kutlehar Forests was with the appellant, he offered 1,33,591 resin blazes to Divisional Manager, H.P. State Forest Corporation Ltd., Una (hereinafter referred to as 'the State Corporation')-respondent No. 3 herein, for resin tapping, but on 14.02.1995, the State Corporation took over the resin blazes so offered and invited tenders for undertaking the work of tapping. On 10.03.1995, the State of H.P. issued the notification and enforced the provisions of the Act w.e.f. 11.03.1995 and asked the appellant to hand over the management of the Kutlehar Forests. On 16.03.1995, the appellant filed Civil Writ Petition No. 127 of 1995 challenging the notification dated 10.03.1995 in the High Court. The High Court passed the interim order to the effect that the appellant would continue with the management of the forests.

(c) On 25.04.1995, the 'Pricing Committee' of the State Corporation decided the prices of resin blazes @ Rs. 25/- per blaze for the season 1995. On 09.08.1995, the High Court dismissed the writ petition observing that the disputed questions of fact could not be gone into in exercise of extraordinary jurisdiction under Articles 226/227 of the Constitution of India and the appellant was given liberty to resort to appropriate proceedings before the appropriate forum. On 05.01.1996, the appellant filed a SLP before this Court which became Civil Appeal No. 239 of 1996 and was dismissed by order dated 22.08.2000.

(d) On 07.02.1996, the management of the Kutlehar Forests was taken over by the State Corporation in absentia. In the year 1998, the appellant filed a suit being Civil Suit No. 36 of 1998 for recovery of Rs. 35,67,722/- along with interest @ 16.5% per annum with costs in respect of 1,33,591 resin blazes offered to Divisional Manager, Himachal Pradesh for resin tapping when the management of the Kutlehar Forests was with him in the 1995 season.

(e) By order dated 02.07.2002, the learned Single Judge of the High Court dismissed the Civil Suit No. 36 of 1998 stating that all rights, liabilities and obligations of the appellant in relation to the grant or management under any contract entered into before the appointed day and properties and rights stood vested in the Government w.e.f. 11.03.1995. Questioning the said order, the appellant filed Original Side Appeal No. 13 of 2002 before the Division Bench of the High Court which was dismissed by the impugned order dated 12.08.2008. Aggrieved by the said order, the appellant preferred this appeal by way of SLP before this Court.

4. Heard Mr. P.S. Patwalia, learned senior counsel for the appellant and Mr. Naresh K. Sharma, learned Counsel for the State.

5. It is the categorical claim of the appellant that Section 4 of the Act does not take away the vested right of the appellant which had accrued to him before the appointed day, i.e., 11.03.1995. The appellant, who was still in the management of the Kutlehar Forests, offered 1,33,591 resin blazes to the Divisional Manager of the State Corporation, respondent No. 3 herein, for resin tapping during 1995 vide his letter dated 03.02.1995. It was also highlighted that respondent No. 3 took over the blazes so offered and invited tenders for undertaking the work of tapping on 14.02.1995 and the tenders were opened on 01.03.1995 at 2.30 p.m. Respondent No. 3 acknowledged vide letter dated 22.03.1995 that the work on these blazes was in progress.

6. Before considering these factual aspects, it is useful to refer the earlier litigation and ultimate order passed by this Court between the same parties on 31.03.1999 in Civil Appeal No. 9495 of 1995. The erstwhile ruler, Raja Mahendra Pal approached the High Court for issuance of the command to the State Corporation by treating him equivalent to the Government of Himachal Pradesh with conferment of monetary gains which were permissible to the State Government on the basis of the decision of the Pricing Committee. The High Court granted the prayer sought for by Raja Mahendra Pal. By the said judgment of the High Court, Raja Mahendra Pal was held to have been equated with the Government and entitled to the relief claimed by him as according to the High Court he was found to have been deprived of the right to life as envisaged by Article 21 of the Constitution of India. By way of issuance of writ of mandamus, Raja Mahendra Pal was held entitled to the interest on the delayed payment of royalty, damages with respect to illicit felling plus 100% penalty for the illegally felled trees. He was further conferred with the grant of interest on interest and share in the levy of extension fee chargeable by the State from the Corporation under the terms of the agreement of the provisions of law applicable. The said judgment of the High Court had been assailed on various grounds before this Court in C.A. No. 9495 of 1995. By judgment dated 31.03.1999, the directions of the relief granted in favour of Raja Mahendra Pal have been set aside. However, certain details/materials mentioned therein are relevant for disposal of the present appeal. It is seen that by Notification No. 4531-FT(CH-58/523 dated

1.10.1958 issued u/s 2(2) of the Act, Raja Mahendra Pal was appointed as a Forest Superintendent and the employees working under him in the aforesaid forest declared as Forest Officers with respect to Kutlehar Forest. As per the terms of his appointment, he was held entitled to retain 3/4th of the income derivable from the forest where 1/4th of the gross income was payable to the Government. The conditions explicitly provided:

The Raja shall keep a register showing all the receipts from the sale of timber, bamboos and other forest produce whether to zamindars or to traders. Of this income, the Raja shall in case of Kutlehar, receive 3/4 and Government 1/4.

However, this practice was discontinued after the forests were nationalized by the State in the year 1974 when the State Corporation was incorporated under the provisions of the Companies Act, 1956. Produce of the government forests, thereafter, could be sold only to the State Corporation. Though several other details are available, we are not concerned with those details except the proceedings of the Pricing Committee. In the ultimate conclusion, this Court observed as under:

The respondent No. 1 as already noticed could not be equated with the State Government of Himachal Pradesh, and had no basis to claim the ownership in the trees grown in the Kutlehar forest after he accepted his appointment as a Forest Superintendant in the year 1958 u/s 2(2) of the Forest Act. The acceptance of his position as a Forest Superintendent in law, 'a forest officer' appointed u/s 2(2) of the Forest Act clearly established that the respondent No. 1 had accepted the State Government to be dominant owner of the property and that he was merely an officer appointed by the Government in exercise of its sovereign power. But for his position as a Forest Officer, he had no jurisdiction to deal with the forest or even enter into it. The arrangements made earlier in the form of conferment of rights upon his forefather stood extinguished and merged with his position as a Forest Officer of the State Government. He was entitled only to such benefits to which the Forest Officer is entitled. His entitlement in the present case was restricted only to the extent of sharing of the royalty and not for anything more.

Hence, it is clear that Kutlehar Forests were under the charge and management of the appellant and he was competent not only to maintain and preserve the said forests but was also entitled to his share in accordance with the working plans prepared by the Forest Department. It is also his claim that he took adequate steps for the protection of Fauna and Flora available in the forests in question. It is also his claim that according to the terms and conditions subject to which management of the said forests was entrusted to the appellant and his forefathers, they were entitled to retain 3/4th share of the total income derived or derivable from the forests whereas 1/4th share of the gross income was payable to the Government.

7. It is further seen that pursuant to the powers conferred by Clause 51 of the Memorandum and Articles of Association, the Government of Himachal Pradesh

vide Notification No. 10-26/72-SF, Shimla dated 18.05.1974 constituted a Committee of Officers to determine the price and terms and conditions for the supply of resin, resin blazes, standing trees and other forest produce to be handed over to the Himachal Pradesh Forest Corporation Limited from time to time. The appellant has also pointed out that the Pricing Committee vide its decision recorded in item No. 8 of the minutes of the proceedings of the meeting held on 16.05.1988 decided to apply decisions of the Pricing Committee to the Kutlehar Forests also. The relevant portion of the decision is reproduced hereunder:

Item No. 8: Charging of Royalty for Kutlehar forests.

It was decided and clarified that the royalty will be charged for Kutlehar Forests on the same lines as fixed for Government lots linked with the nature of trees and intensity of marking. No differential rates or system can be fixed for Kutlehar Forests.

That as per the decision of the Pricing Committee dated 25.04.1995 at Item No. 1 the price for 1995 season was fixed @ Rs. 26/- per blaze tentatively. Item No. 1 read as under:

Item No. 1 Royalty rates of resin blazes for 1994 season.

The royalty rate of resin blazes is fixed on the basis of percentage of increase, decrease of price of 'N' grade resin over a period of time during the year concerned. For the year 1994, a tentative rate of Rs. 25/- per blaze was fixed. There have been decrease of 11.90% in the average rate of 'N' grade resin during the period from 1.4.93 to 31.3.94. After deliberation, it was decided to fix the royalty of resin blazes @ Rs. 24/- (twenty four) per blaze for 1994 season and Rs. 26/- (twenty six) tentatively for 1995 tapping season.

In this way, the appellant made a claim for a sum of Rs. 34,73,366/- to be payable by the State Corporation towards the royalty of resin blazes relating to 1995 season.

8. Apart from his own evidence and other materials placed before the learned single Judge of the High Court, the appellant also relied on the statement of Shri Chander Bhusan Pandey, Divisional Manager, Forest Corporation, Una who was examined as PW-3. The appellant has pressed into service the following statement made by PW-3 in support of his claim:

On S.A. 7.3.2001

I am posted as Divisional Manger of the State Forest Corporation at Una since 8.12.2000. I have brought the summoned record. Letters copies of which are Ex. PW 3/A and Ex. PW 3/B were received from the plaintiff. A public notice with regard to auction/tender of labour supply mate and tapping of resin blazes for the year 1995 was issued on 14.02.1995. Copy of such public notice is Ex. PW 3/ C. In pursuance of this public notice, tenders were received and final tender was

accepted, and as per this final tender accepted, royalty to the extent of Rs. 34,73,366.00 was payable to the plaintiff as claimed by him. Letter dated 1.9.1995 copy of which is Ex. PW 3/D was also received from the plaintiff. Similarly, letter dated 18.10.1995 copies of which is Ex. PW 3/E was received from the plaintiff. On 5th September, 1995 and 6th September, 1995, letters were addressed respectively to the plaintiff and Managing Director, H.P. State Forest Corporation. Copies of the same are Ex. PW 3/F and Ex. PW 3/G. Ex. PW 3/H is the copy of the reminder dated 22.12.1995 addressed by the Divisional Manager of the Forest Corporation, Una to the Director (North) at Dharamshala.

XXXXXX X by defendants 1 and 2.

Presently, Kutlehar Forest is under the State Government. I am not aware since when it is under the State Government. I never participated on behalf of the Forest Corporation in the acceptance of tenders received in pursuance of public notice dated 14.2.1995. As per the record, the plaintiff was claiming royalty of Rs. 34,72,366.00 on the basis of acceptance of tenders. I do not have personal knowledge in this regard. I have stated about the claim of the royalty by the plaintiff on the basis of letters received from him which is available on the record brought by me today. However, complete record with regard to acceptance of tenders have not been brought by me today.

XXXX X by defendant No. 3.

Nil. Cross-examination by defendants 1 and 2 adopted.

9. The learned Single Judge and the Division Bench of the High Court basing reliance on Section 4 of the Act held that the right, title and interest of the plaintiff/appellant herein grantee/superintendent of Kutlehar Forests stood extinguished on the appointed day, i.e. 11.03.1995, therefore, he was under no obligation to continue with the management of the forests nor has any right to share in income arising out of the produce of the said forests on and after 11.03.1995. It is true that after 11.03.1995, the appellant cannot have any right over the forest produce. However, in view of the earlier order of this Court clarifying the position and his entitlement, there is no need to go into the vesting right etc. as claimed by the State Government. Admittedly, the appellant was asked to look after the forest produce as Superintendent of Forests and in lieu of salary he was assured grant of 3/4th of the price of resin blaze. It is specifically pleaded and the materials were also placed by the appellant about the work done such as maintenance, manuring protecting the trees etc. It is also specifically pleaded that before the appointed day, i.e. 11.03.1995, he was still in the management of Kutlehar Forests, offered 1,33,591 resin blazes to the Divisional Manager of the State Corporation at Una for resin tapping during 1995 vide letter dated 03.02.1995. It is also seen that the State Corporation-respondent No. 3 herein took over the resin blazes so offered and invited tenders for undertaking the work of tapping on 14.02.1995 and the tenders were opened on 01.03.1995 at 2.30 p.m. All these details are available in the letter of the State Corporation

dated 22.03.1995. Inasmuch as the appellant was continuing as Superintendent of Forests without a specific salary but with an assurance of 3/4th price of forest produce such as resin blazes etc. till the appointed day, i.e. 11.03.1995, we are of the view that the appellant is entitled for his legitimate dues till such date. Those aspects were not being correctly adverted to and appreciated by the learned single Judge as well as by the Division Bench of the High Court and mainly concentrated on the "vesting" of forests on or after 11.03.1995 in favour of the State Corporation by holding that the appellant was not entitled to claim anything thereafter. Even though the appellant placed relevant materials including the assertion and statement of PW-3 who is none else than the Divisional Manager for the State Corporation, Una, those aspects have not been properly appreciated. In those circumstances, we are of the view that ends of justice would be met by remitting the matter to the learned Single Judge for fresh disposal and quantifying the eligible amount.

10. Under these circumstances, we set aside the orders passed by the learned Single Judge as well as the Division Bench of the High Court and remit the matter to the learned Single Judge for fresh consideration with the available materials. Except pointing out the claim of the appellant, we have not expressed anything on the merits and it is for the learned Single Judge to determine the quantum of the amount till the appointed day, i.e. 11.03.1995 as per the materials placed by both parties in the form of oral and documentary evidence. Inasmuch as the matter is pending from 1999, we request the learned Single Judge to restore the suit to its original number i.e., Civil suit No. 36 of 1998 and dispose of the same within a period of six months from the date of receipt of this judgment.

11. The appeal is allowed to this extent. There shall be no order as to costs.