
(2002) 07 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : Civil sutis 36 of 1998

Mahendra Pal

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Forest Act, 1927 — Section 2(2)

Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 — Section 11, 11(1), 4, 5

Citation : (2002) 2 ShimLC 363

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Ramakant Sharma, for the Appellant; P.M. Negi, Assistant A.G. for Defendant No. 1 and 2 and Neel Kamal and R.R. Rahi for Defendant No. 3, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This is a suit for recovery of Rs. 35,67,722/- with costs and interest at the rate of 16.5% per annum from the date of institution of the suit till the payment.

2. The case of the Plaintiff as made out in the plaint is that Kutlehar was a small princely State in Kangra Hills having inter alia, 16 Tapas (Tikas) as forests, now forming part of Civil Districts of Una and Hamirpur. These forests were known as "Kutlehar Forests" and were managed by the Raja of Kutlehar subject to the terms and conditions specified by the then Government. Such management continued generation after generation and ultimately the Plaintiff 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 1-10-1958 issued by the Government of Punjab. The management of these forests was taken over by the Department of Forest Farming and Conservation pursuant to the provisions of the Himachal Pradesh Kutlehar Forest (Acquisition of Management) Act, 1992 as amended by

Act No. III of 1994 in absentia and the Plaintiff was informed on 6th and 7th of February, 1996 about it by a telegram and by sending him a copy thereof by post. Since the said forests were under the charge and management of the Plaintiff, he was competent not only to maintain and preserve the forests but was also entitled to dispose of the forest produce such as resin, timber, bamboo, bhabbar, grass etc. therefrom in accordance with the working plans prepared by the Forest Department. As per the terms and conditions of the management, the Plaintiff was entitled to retain 3/4th share of the total income derived or derivable 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 had to be incurred by the Plaintiff. However in case of departmental resin tapping since 1945, the net amount to be proportioned as aforesaid was to be worked out after deducting the expenditure incurred on extraction of resin.

3. Defendant No. 3 is wholly owned and controlled by the Government of Himachal Pradesh and is instrumentality of the State and is incorporated under the Companies Act. The functions of Respondent No. 3 includes exploitation of forests, taking forests on lease, sale of forest produce etc. Pursuant to Clause 51 of the Memorandum and Article of Association of Defendant No. 3, the Government of Himachal Pradesh 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 vide Notification dated 18-5-1974. This Notification was subsequently amended by Notification dated 28-11-1988. The said Committee, known as "Pricing Committee" in its meeting held on 16-5-1988 decided that royalty will be charged for Kulehar forests on the same line as fixed for Government lots. The resin tapping work is carried out as per the Technical Order. For the tapping season of 1995 when the management of the Kulehar forests remained in the hands of the Plaintiff, he offered 1,33,591 resin blazes to Divisional Manager, H.P. Forest Corporation, Forest Working Division, Una for resin tapping vide letters dated 3-2-1995 and 10-6-1995. Defendant No. 3 took over these blazes soon thereafter and tapped the same after actual formalities like inviting tenders. As per the decision of the Pricing Committee taken on 25-4-1995, price for 1995 season was fixed at the rate of Rs. 25/- per blaze tentatively. Calculated on the basis of said price, Defendant No. 3 was to pay a sum of Rs. 34,73,366/- to the Plaintiff towards royalty of resin blazes relating to 1995 season as was admitted by Defendant No. 3. This amount was payable in two instalments. First instalment was to be paid on or before 15-9-1995 and the second on or before 15-12-1995. In view of the decision of the Pricing Committee taken on 12-6-1991, Defendant No. 3 was liable to pay interest at the rate of 16.5% per annum with effect from the due dates till the date of actual payment. The due amount, however, was not paid by Defendant No. 3 despite communications requesting for payment. It is further claimed that the Plaintiff had spent a huge amount on the field work, supervision, watch and ward etc. etc. of the forests out of his own pocket. In these circumstances, the denial of payment of the due amount, as aforesaid, by

the Defendants is unwarranted. A notice was, therefore, served on the Defendants u/s 80 of the Code of CPC but of no avail.

4. It has also been averred in the plaint that the hostile and unjustified action on the part of the Defendants was challenged by the Plaintiff in this Court in C.W.P. No. 1758 of 1995 wherein the Defendants filed reply and admitted the factum of having taken over the resin blazes as aforesaid but raised frivolous pleas to defeat the claim of the Plaintiff. The Court observed that from the pleadings of the parties disputed questions of fact arose which were not to be gone into in exercise of extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India and the writ petition was dismissed with liberty to the Plaintiff to resort to appropriate proceedings before the appropriate forum. Hence this suit.

5. The Defendants contested the suit and filed written statements. Defendants No. 1 and 2 in their written statement under the caption "preliminary objections" referred to the factual aspects of the taking over of the management of the forests and claimed that the grant in favour of the Plaintiff stood extinguished with effect from March 11, 1995. On merits, it has been denied that the Plaintiff and his forefathers had inherited the rights in the jungles in suit and it has been claimed that the Plaintiff was simply acting as a Manager under the agreed terms and conditions of the management of the forests. It has further been averred that the provisions of the H.P. Kulehar Forests (Acquisition of Management) Act, 1992 were enforced by the H.P. Government, vide Notification dated 10-3-1995 and the Plaintiff was asked to hand over all the assets and complete charge of the forests which he failed to do and instead approached this Court with C.W.P. No. 127/95 wherein this Court on 16-3-1995 passed interim order that the Plaintiff would continue with the management of the forests as before. The said writ petition was dismissed on 9-8-1995 and thus the position stood relegated to 11-3-1995. But even after the dismissal of the writ petition, the Plaintiff did not hand over the management which was taken over by the Defendants on 7-2-1996 in absentia. After the dismissal of the said writ petition on 9-8-1995, the Plaintiff had no locus standi to continue with the management and was not legally bound to discharge the functions under the terms and conditions of the grant and thus there is no question of dividing the income for the period the Plaintiff was in wrongful management of the forests. It is also averred that the entire resin was produced during the period the management was in the hands of the Defendants and for this reason also there is no question of distribution of royalty between the Plaintiff and the State Government. It is further averred that due to the vesting of management of the Kulehar forests in the Government of Himachal Pradesh from the appointed date, i.e. 11-3-1995, the Plaintiff had no right or title to the resin blazes or its royalty. The grant stood extinguished and all rights, title and interest of the grantee stood vested in the Government free from all encumbrances. Therefore, the action of Defendant No. 3 in not releasing royalty to the Plaintiff is as a result of such vestment. Thus, Defendants No. 1 and 2 have denied the claim of the Plaintiff in toto.

6. Defendant No. 3 in its separate written statement raised the preliminary objections that the suit is not properly valued for the purposes of court fee and jurisdiction, that the plaint is not verified in accordance with law and that the suit has not been instituted by a person authorised to institute the suit. On merits, the averments regarding past history of the forests have been denied for want of knowledge and the averments made vide paras 7 to 11 of the plaint are not disputed and it has been averred that these are the matters of record. It is, however, admitted that 1,33,591 resin blazes were handed over to it by the Plaintiff for tapping in the year 1995. However, the position of the Kutlehar forests with regard to its management changed pursuant to the notification regarding vesting of the forest management in the State with effect from the specified date and also because of the decision dated 9-8-1995 in this Court in C.W.P. No. 127/95. The fixing of the tentative royalty of resin blazes at the rate of Rs. 26/- per blaze is admitted but it is claimed that Defendant No. 3 was directed by the Principal Chief Conservator of Forests, Himachal Pradesh not to release any payment to the Plaintiff till further orders. Hence, the payment was not released. It is admitted that according to the decision of the Pricing Committee interest at the rate of 16.5% is payable on the belated payment of royalty but it has been claimed that the payment has not been withheld by Defendant No. 3 but was not released because of the aforesaid instructions and thus the claim for interest has been denied. It has, therefore, been prayed that the suit may be dismissed.

7. The Plaintiff filed replications wherein the grounds of defence as taken by the Defendants in their respective written statements have been denied and the claim as made out in the plaint has been reiterated.

8. On the pleadings of the parties, the following issues were framed:-

1. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP.

2. Whether the plaint is not properly verified? OPD 3.

3. Whether the suit has been instituted by competent person? OPD-3.

4. Whether the Plaintiff is entitled to the suit amount or any other amount? If so, from whom? OPP.

5. Whether the Plaintiff is entitled to claim interest on the amount of the royalty? If so, on what rate? OPP.

6. Whether the Plaintiff has no cause of action as alleged? OPD.

7. Whether the Plaintiff is guilty of acts of suppressio-veri-suggestio falsi? OPD.

8. Relief.

9. The parties led evidence. Arguments were heard.

10. My issue-wise findings are as follows: ISSUE No. 1:

11. At the time of arguments, nothing has been pointed out by the learned Counsel for the Defendants as to how the suit is not properly valued for the purposes of Court fee and jurisdiction. The suit is for recovery of specific amount and the value of the suit for the purposes of Court fee and jurisdiction has been fixed in the sum as claimed in the suit. Thus, evidently there is nothing wrong in the valuation of the suit. This issue is accordingly held against the Defendants.

ISSUE No. 2:

12. At the time of the final arguments, nothing has been urged in support of this issue by the learned Counsel for Defendant No. 3. A bare perusal of the plaint reveals that the contents thereof are duly verified by the Plaintiff and apparently there is nothing wrong in the verification of the plaint. Therefore, this issue is held against Defendant No. 3.

ISSUE No. 3:

13. At the time of arguments, the learned Counsel for Defendant No. 3 had not addressed arguments on this issue and has not pointed out anything to show that the suit has not been instituted by a competent person. In view of the contents of the plaint, nature of the claim and the facts and circumstances of the case, the suit evidently has been instituted by a competent person. This issue is also, therefore, held against Defendant No. 3.

ISSUE No. 4:

14. To properly appreciate the claim of the Plaintiff, it is expedient to refer to the undisputed facts of the case. Kutlehar was a small princely State in Kangra Hills and was ruled by the forefathers of the Plaintiff. The State had 16 Tappas (Tikkas) as forests, now forming parts of Civil Districts of Una and Hamirpur of the State of Himachal Pradesh. These forests are called "Kutlehar Forests". These forests were managed by the forefathers of the Plaintiff in their capacity as Rajas of Kutlehar on the terms and conditions laid down by the then Government. Finally the Plaintiff inherited the rights in the forests. He was appointed as a Forest Officer in the capacity of a Superintendent of Kutlehar Forest u/s 2(2) of the Forest Act vide Notification No. 4531-5-Ft(CH)-58/523 dated 1.10.1958 issued by the Government of Punjab. As per the terms and conditions regarding management of the forests by the Plaintiff, he was entitled to 3/4th share of the total income derived from the forests whereas 1/4th share of the gross income was payable to the Government. The entire expenditure on the management and exploitation of the forests was to be borne by the Plaintiff except in case of departmental resin tapping. The share payable to the Plaintiff out of the income from resin tapping was to be worked out as per the rates of blazes fixed by Defendant No. 3.

15. The management of these forests was taken over by Defendant No. 1 through its Department of Forest Farming and Conservation by virtue of the provisions of the Himachal Pradesh Kutlehar Forest (Acquisition of Management)

Act, 1992, as amended by Act No. III of 1994 in February, 1996. The Plaintiff by way of writs challenged the vires of the said Act as also the amending Act. After the passing of Amending Act i.e. Act No. III of 1994, the challenge of the Plaintiff to the validity of the Act was rejected by the competent Courts of law. The Himachal Pradesh Kulehar Forest (Acquisition of Management) Act, 1992, was to come in force on such date as was to be appointed by the State Government by notification in the official Gazette. The date so appointed was 11.3.1995.

16. Before the appointed day i.e. 11.3.1995 the Plaintiff, who was still in the management of the Kulehar Forests, offered 1,33,591 resin blazes to the Divisional Manager of Defendant No. 3 at Una for resin tapping during 1995 vide letters dated 3.2.1995 and 10.6.1995. Defendant No. 3 took over the blazes so offered and invited tenders for undertaking the work of tapping which were opened on 1.3.1995 at 2.30 p.m. Defendant No. 3 acknowledged vide letter dated 22.3.1995 that the work on these blazes was in progress.

17. As per the decision taken by the Pricing Committee on 25.4.1995 price for 1995 season was tentatively fixed @ Rs. 26/- per blaze. Calculated on the basis of the said rate, the price of the blazes offered for sale works out to Rs. 34,73,366/-. This is the principal amount claimed by the Plaintiff in this suit as his share in the income of resin for the year 1995 season.

18. The main controversy between the parties now is that according to the Plaintiff he had offered the blazes to Defendant No. 3 and tapping v. of the resin had commenced pursuant to such offer before the appointed day and he continued in management of the forests till the management was taken over by the Department of Forest Farming and Conservation under the Himachal Pradesh Kulehar Forest (Acquisition of Management) Act, 1992, as amended by Act No. III of 1994 vide telegrams dated 6.2.1996 and 7.2.1996. Therefore, he is entitled to the amount claimed in the suit.

19. On the contrary, the stand of the Defendants is that since the right, title and interest of the Plaintiff as a grantee /Superintendent of Kulehar Forests stood extinguished on the appointed day i.e. 11.3.1995 by virtue of the provisions of Section 4 of the Himachal Pradesh Kulehar Forest (Acquisition of Management) Act, 1992, therefore, he was under no obligation to continue with the management of the forests nor has any right to share the income arising out of the produce of the said forests on and after 11-3-1995, therefore, the suit deserves to be dismissed.

20. Referring to Section 4 of the H.P. Kulehar Forest (Acquisition and Management) Act, 1992, the learned Counsel for the Plaintiff had contended that these provisions deal with the substantive right and are not procedural in nature, therefore, the Section does not take away the right of the Plaintiff which had accrued to him before the coming into force of the Act. To substantiate his contention, the learned Counsel has relied on *Amireddi Rajagopala Rao and Others Vs. Amireddi Sitharamamma and Others*, ; *State of Madras Vs. Lateef*

Hamid and Co., ; Parshotam and Ors. v. State of H.P. and Ors. 1990 (2) SLC 206; K.S. Paripoornan Vs. State of Kerala and Others, and Rajendra Kumar Vs. Kalyan (D) by Lrs.,

21. It was further contended for the Plaintiff that the right to receive the amount of his share in the royalty and the price of the blazes had accrued to the Plaintiff before the appointed day as the blazes had been delivered to Defendant No. 3 and tapping work stood allotted before the appointed day, therefore, the Defendants cannot escape the liability to pay the suit amount. It was also contended that in CWP No. 127 of 1995 a Division Bench of this Court vide order dated 16.3.1995 directed that the Plaintiff would continue to manage the forest in question as before and it was on the strength of this order that the Plaintiff continued in management of the forest till August 1995 and thereafter he continued to manage the forest till February 1996 when the management was taken over by the Defendant and in the meanwhile the Plaintiff spent huge amounts on the management of the forest by incurring expenses on field work, supervision, watch and ward etc. out of his own pocket. Therefore, he has a right to share the royalty as per the terms and conditions of the grant and is thus entitled to the suit amount.

22. I need not refer the case law cited for the Plaintiff in detail. Suffice to say that it is well settled that a statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive right is prima facie prospective, unless it is expressly or by necessary implications made to have retrospective effect. A statute is regarded as retrospective if it operates on cases or facts which were in existence before its commencement.

23. The fate of the suit in fact hinges on the effect of the provisions of the H.P. Kutehar Forest (Acquisition of Management) Act, 1992.

24. Section 4 of the H.P. Kutehar Forest (Acquisition of Management) Act, 1992 reads as under:

4. Vesting of the rights of grantee in Government and extinction of rights in grant.-Notwithstanding anything contained in any law for the time being in force, or in any contract or in any judgment, decree or order of any court, with effect from the appointed day,

(1) the grant shall stand extinguished and any service or obligation attached to such land shall stand abolished; and the grantee shall have no liability to perform any condition or obligation to render

any service/attached to such grant;

(ii) all rights, title and interest of the grantee in the forests or waste lands held by him, shall vest in the Government free from all encumbrances.

25. It is evident from a bare reading of the above provisions that the grant in

favour of the Plaintiff and his status as Superintendent of the Kutlehar Forest stood extinguished, any service or obligation attached to the said forest stood abolished and all rights, title and interest of the grantee, i.e. the Plaintiff, vested in the Government free from all encumbrances with effect from the appointed day, i.e. 11-3-1995, irrespective of any other law in force or any contract, judgment, decree or order passed by any Court. Since Section 4 supra begins with an abstante clause, therefore, it does not admit of any exception to the extinction of the grant, abolition of service and obligation of the grantee attached to the forest and vesting of all rights, title and interest of the grantee in the Government with effect from 11-3-1995. It is further evident that the Plaintiff could not remain in lawful management of the forest with effect from the appointed day as the management stood vested in the Government.

26. Section 11 of the Kutlehar Forest (Acquisition of Management) Act, 1992 which specifically deals with the effect of vesting u/s 4 supra, reads as follows:-

11. General effect of vesting.-(1) The property vested in the Government u/s 4 shall be deemed to include the properties rights, liabilities and obligations specified below, namely:- - \\

(i) all the fixed assets of the grantee in relation to the management of the Kutlehar Forest and all-documents relating thereto;

(ii) all rights, liabilities and obligations of the grantee in relation to the grant or management under any contract entered into bona fide before the appointed day, not being contract relating to the borrowing or lending money, or to the employment of staff.

(2) All the assets specified in Clause (i) of Sub-section (1) shall vest in the Government free from any debts, mortgages or similar obligations of the grantee or attaching to the management of the Kutlehar Forest: "Provided that such debts, mortgages or obligations shall attach to the amount payable under this Act to the grantee.

(3) It shall be lawful for the Government or any officer authorised by it, to take possession of the entire management or property or, as the case may be, the fixed assets and of all documents relating to such management, or property, which the Government may require for its management, after removing any obstruction, if any, that may be offered.

27. It is further clear from the provisions of Section 11 supra that all rights, liabilities and obligations of the grantee, i.e. the Plaintiffin relation

to the grant or management under any contract entered into before the appointed day and properties rights stood vested in the Government with effect from 11-3-1995. Thus, all the rights of the Plaintiff flowing from his being in management of the forest, stood extinguished with effect from 11-3-1995 and Section 5 of the H.P. Kutlehar Forest (Acquisition of Management) Act, 1992 as amended by Act No. III of 1994, makes adequate provisions to compensate the

Plaintiff in consideration of the vesting of such rights, title and interest in the Government.

28. It is pertinent to mention here that the Plaintiff's claim is for the tapping season of 1995. Para 13.38 of the H.P. Forest Manual (Vol. IV) provides that ordinarily resin tapping should begin on 15th of March and should continue for seven months ending on 15th of October and in warmer localities to 15th of November. It cannot thus be disputed that the tapping season 1995 was from 15th of March till 15th of October or 15th of November, depending upon the climatic conditions of the locality. Anything payable to the Plaintiff by virtue of the grant, had it been in force, was, thus, payable for the tapping season aforesaid commencing from 15th of March, 1995. However, the right, title and interest of the Plaintiff as a grantee/superintendent of the said forest stood extinguished on 11-3-1995, i.e. before the commencement of the tapping season for which the claim has been laid. Evidently, the claim of the Plaintiff for the season which commenced after vesting of the forest in the Government is not maintainable.

29. The contention that the Plaintiff continued to manage the forest till August 1995 by virtue of the order of the Court and thereafter till 7th of February 1996 when the management was actually taken over and spent huge amounts on the management of the forest, is also of no help to the Plaintiff. As already stated, the Plaintiff was under no obligation whatsoever to manage the forest after the appointed day when it stood vested in the Government. Even any judgment, decree or order of any Court could not clothe him with any obligation or right which stood extinguished by law. Therefore, if he did anything after the appointed day, that was entirely at his own risk and costs. Moreover, all those who were on or before 16-3-1992 appointed or employed in connection with the management of the forest and continued to be so appointed or employed on the appointed day, became employees of the Government on the appointed day and the Plaintiff, thus, was under no obligation to pay to such employees and to manage the forest after 11-3-1995. Even otherwise, he has not led any evidence whatsoever to prove that he spent any amount on the management of the forest on and after 11.3.1995.

30. The above discussion leads me to the conclusion that the Plaintiff has failed to prove that he is entitled to the suit amount or any other amount. This issue is accordingly held against the Plaintiff.

ISSUE No. 5:

31. In view of the findings on Issue No. 4, this issue is held against the Plaintiff.

ISSUE No. 6:

32. In view of the findings on Issue No. 4, this issue is decided against the Plaintiff.

ISSUE No. 7:

33. At the time of arguments, nothing has been urged in support of this issue nor do I find any material on record on the basis of which this issue may be held as proved. Accordingly, this issue is decided against the Defendants.

RELIEF:

34. In view of the findings of Issue Nos. 4, 5 and 6, this suit merits dismissal and is accordingly dismissed. Parties, however, are left to bear their own costs.