

(1958) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Rev. Appeal No. 9/XXXIII-7/57

Mohanlal Hiralal Sharma (Contractor)

APPELLANT

Vs

Saradhoo Bijoo Gond and Others (Tenure-holders)

RESPONDENT

Date of Decision : 31-03-1958

Acts Referred:

Madhya Pradesh Protection of Aboriginal Tribes (Interest in Trees) Act, 1956 — Section 4(3), 6

Citation : (1958) MPLJ 701

Hon'ble Judges : R.D. Shukla, Member

Bench : Single Bench

Advocate : R.S. Bajpai, for the Appellant; N.D. Jha, for the Respondent

Final Decision : Allowed

Judgement

R.S. Shukla, Member

This order will govern Second Appeals Nos. 9 and 40 to 58 /XXXIII-7/57, in all 20 appeals, arising out of a common order passed by the Commissioner in his Rev. Case No. 31 /XXXIII-7 /56-57.

The preliminary order passed u/s 4 (3) of the M. P. Protection of Scheduled Tribes (Interest in Trees) Act, 1956 (hereinafter called the Act) by the Collector, Bastar, in these cases was challenged before the Commissioner on various grounds. The learned Commissioner found no force in the appeals and dismissed them summarily. The order of the Commissioner is now challenged on a large number of grounds, all of which need not be gone into at this stage for reasons recorded below.

The main contention of the appellant is that they were not given any opportunity to be heard by the Collector before passing the preliminary order in question. Vide section 6 of the Act, in conducting the proceedings under the Act the procedure laid down in the M. P. Land Revenue Code has to be followed. Under the M. P. Code and the rules made thereunder, it is incumbent on the revenue

officer to hear the parties before passing any order affecting their interest. In other words, the parties have a right to be heard before the pronouncement of such an order. In the instant cases, the enquiry was entrusted to the Sub-Divisional Officer before whom the proceedings against the appellant were conducted ex parte as he failed to appear on the various dates fixed for the purpose. For instance, order-sheet dated 3-12-56 reads as follows :

3-12-56.

Non-applicant absent though he was asked to remain present. He sent a wire on 1-12-56 requesting for an adjournment. Order passed rejecting his request (vide Case No. 178 /XXXIII-7 /5S-56 of Timrikuhi).

I will proceed against him ex parte u/s 32 (2), M. P. Land Revenue Code.

On 6-12-56 the opposite party, namely, the respondents were examined and the case was fixed for hearing before the Collector on 8-12-56 to whom the report was submitted on the same date 6-12-56. The Collector made the following order-sheet entry on 8-12-56.

8-12-56.

None present though the S. D. O. had fixed the case for hearing before me today. Preliminary order passed. Case to S. D. O., Ranker, for further action.

From the above it is clear that the learned Collector did not notice the appellant to appear before him before passing his order dated 8-12-56. The appellant had a right to be heard by the Collector u/s 4 (3) of the Act and the failure to notice him was against the express provision of law as also against the principle of natural justice. It was a statutory duty of the Collector to notice the appellant and hear him irrespective of the fact that he was absent during the inquiry conducted by the Sub-Divisional Officer. In a case in which the Collector did not hear a petitioner before passing order, because the petitioner had remained absent at the enquiry stage, but in which the petitioner was heard by the Revenue Board at length at the first appellate stage, the High Court in M. P. No. 321 /58 dated 31-1-58, held that the defect made in the original proceedings could not be made good by giving him a hearing at the appellate stage. The order of the Board passed on merits was consequently set aside by the High Court and the case was remanded for a rehearing by the Collector. For similar reasons as given by the High Court in that case, the order of the learned Collector in the instant cases was bad in law and should have been set aside by the learned Commissioner.

The only observations that the learned Commissioner has made in this respect is that "the grievance that his case has been prejudiced is without foundation". Quite apart from the question of prejudice it is a case in which a legal right was ignored and a statutory duty was overlooked. It is also not correct to say that by the Collector's failure the appellant's case had not been prejudiced. It has to be noted that because of the defect in procedure the appellant was prevented from

explaining the nature of the amount of Rs. 5"received from the respondents. His contention is that this amount was only an earnest money and was not the price of the trees as held by the Collector. If the appellant had succeeded in substantiating his contention the final amount that he would have been entitled to receive from the respondents under the Act would have been different. In this way, the failure to hear the appellant did result in prejudicing his interest and I am unable to agree with the aforesaid observations of the learned Commissioner.

The order of the Collector shows that it is not exactly a "Preliminary Order" as contemplated u/s 4 (3) of the Act. It is something more inasmuch as the Collector has recorded his findings under sub-sections (4) and (5) and has, in his order, also fixed the time within which the amount has to be paid to the Contractor under sub-section (6). As I read section 4 of the Act, a preliminary order is to be passed if it is shown that the contract in question was subsisting on the date of the commencement of the Act and the consideration therefore is alleged to be inadequate. Thus the inquiry before passing the preliminary order has to be limited to ascertaining the subsistence of the contract and the adequacy of the consideration. If the Collector is satisfied on these two points the preliminary order allowing the application is to be passed u/s 4 (3) *ibid*. After this is done, the Collector has to record his finding determining the amount that has to be paid by the tenure-holder to the contractor in the light of the provisions of sub-section (4) and has also to fix the time within which this amount so fixed by him has to be deposited for payment to the contractor. The final order has to be passed after the expiry of the period fixed by the Collector for depositing the above amount. According to sub-section (7) if the amount is not deposited the application of the tenure-holder is to be rejected. But if the amount is deposited in time the contract shall have to be cancelled. Thus the entire proceedings contemplated u/s 4 consist of the following steps:

- (i) A preliminary order is to be passed allowing the application if the contract is subsisting, and the consideration is adjudged inadequate [sub-section (3)].
- (ii) After passing the preliminary order, the Collector has to determine the amount to be deposited by the tenure-holder for payment to the contractor [sub-sections (4) & (5)].
- (iii) The final order cancelling or refusing to cancel the contract depending on whether the amount fixed by the Collector is deposited or not in time [sub-section (7)].

The recognition of these three distinct steps or stages is necessary in view of the provisions of section 7 (2) *ibid* which deals with appeals. This sub-clause (2) lays down that "an appeal against the final order under sub-section (7) of section 4 shall be confined to matters determined after the preliminary order under subsection (4) of that section". The phrase "under sub-section (4) of that section" obviously governs the word "matters" and not the words "preliminary order". This is so because a preliminary order is not passed under sub-section

(4) but under sub-section (3). In other words, against the final order an appellant would be entitled to agitate only such points as may relate to the determination of the amount calculated under the provisions of sub-sections (4) and (5) for payment to the contractor. He cannot be allowed to attack the preliminary order, i. e. to say, in an appeal against the final order the appellant cannot raise any objections against, either the inadequacy of the consideration, or the subsistence of the contract. As already explained, these two factors form the basis of the preliminary order, while the subsequent proceedings relate to further steps after the preliminary order is passed.

In this view, it would be seen that the learned Collector should not have-fixed the final amount payable to the contractor in the course of his preliminary order. He should have allowed the tenure-holders' application as soon as, after hearing the parties, he was satisfied that the contract was subsisting and the consideration was inadequate. He should then have fixed the date calling upon the parties to tender their accounts or other evidence so as to come to a finding on matter referred to in sub-section (4). This would have given a reasonable opportunity to the parties for putting forward their respective claims with regard to the various items and the Court would have been able to determine the deposit amount correctly. In the instant case, since this was not done the appellant can justly complain that the scope of the preliminary order was wrongly extended by the learned Collector which resulted in prejudicing his interest.

For reasons above, the preliminary order dated 8-12-56 cannot be supported. It is, therefore, set aside and all the cases are remanded to the Collector for hearing the appellant and for passing a fresh preliminary order in accordance with the law. All the 20 appeals are, therefore, allowed accordingly.

Appeal allowed.