(1996) 06 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 43159 of 1993

Muninagaiah APPELLANT

Vs

State of Karnataka and others RESPONDENT

Date of Decision : 11-06-1996

Acts Referred:

Citation : (1996) ILR (Kar) 2637 : (1997) 42 KarLJ 129

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Judgement

G.C. Bharuka, J.—The petitioner is a forest contractor. He has come up before this Court for a declaration that the contract entered into between him and the Forest Department, "to collect, remove and dispose of "tamarind" is not one of sale but is that of a grant of right in the nature of profit a prendre and therefore the respondents had no authority in law to collect sales tax on the amounts paid under the said contract. Prayer is also for quashing the order dated December 13, 1993 (annexure J) passed by the respondent-Deputy Conservator of Forests, whereunder he has rejected the application filed by the petitioner for refunds of the amounts collected as sales tax by the Forest Department.

2. Now, some of the admitted facts. The Forests Department, on regular basis sells right to collect tamarind in specified forest areas through public auction as per the provisions of the Karnataka Forest Act, 1964 (For short "the Forest Act") and the Rules framed thereunder. Mr. R. I. D''Sa, learned Additional Government Advocate, has placed on record the specimen of one of such agreements, which according to him is the standard form which is adopted by the department in case of all such auction sales. This specimen agreement is for the years 1993-95. I am adopting the terms and conditions of this agreement for the purpose of weighing the rival contentions and to ascertain the true intent and purport of the transaction, i.e., whether the agreement is one for sale of tamarind or it is merely a sale of right to collect tamarind from the forest lands ?

3. The recital of the agreement opens with the sentence "whereas the contractor

has bid for a right to collect tamarind for the years 1993-95 in the forest (hereinafter referred to in the Schedule hereto annexed) in the public auction sale held in the Office of the Deputy Conservator of Forests.......and such bid has been approved".

4. Now, some of the important conditions incorporated in the agreement may be summarized. Under condition No. 2(a) the purchaser has to pay the outstanding dues in three equal instalments on or before December 31, 1993, March 31, 1994 and June 31, 1994. Under condition No. 6 the contractor is to submit from time to time, to the Deputy Conservator of Forests, the name and address of every person whom he may employ as his agent superintending the work of the contract who has to be provided a written authority by the contractor for the same. Under condition No. 90(a) the contractor has been prohibited from sub-letting or assigning his contract or any portion thereof, or share of interest therein, to any person, whatsoever, without the previous permission of the Conservator of Forests. Under condition 10(a) the contractor is stopped from interfering with any villager or villagers who may be permitted by a forest officer to collect and remove any produce which he is entitled to remove by virtue of any right or privilege under the provisions of the Forest Act, etc. Condition No. 11 provides that in the collection of produce, no damage shall be done to the trees by the lopping or breaking of branches or otherwise except in so far as it is necessitated by the nature of the produce collected; and no immature produce shall be collected.

5. Condition No. 12(b) which has a material bearing on the issue involved reads thus :

"12(b) The contractor shall remove the produce from the leased area before the expiry of the lease period. In the event of the expiry of the lease period, such produce shall be forfeited and shall revert to and became the absolute property of the Government and the contractor shall not by reason of such forfeiture, be entitled to any return or abatement of the amount payable or due by him under the contract. However, if any forest produce which has been removed from the forest in accordance with the terms of the agreement remains in his possession at the end of the contract period, he shall furnish a list of such produce and a statement showing where it is stored on the last day of the contract period to the Deputy Conservator of Forests. If such information in not supplied the Deputy Conservator of Forests, will not be bound to issue passes for the transport of any such material."

6. Similarly, condition No. 13 also needs to be noticed. It reads as under :

"13(a) In case of any question arising with regard to or any objection being taken by any person to the contractor''s right to collect or to store or to remove the produce collected in any part of the said lands, or to remove the produce collected along any routes or through any part of the said lands or to collect any of the said products the Range Forest Officer acting under the orders of the

Deputy Conservator of Forests, may if and whenever any such question may arise, serve the contractor with a notice prohibiting, his collecting or storing or removing in any such part of the said lands or collecting such produce or regulating the storing or removal thereof and, on the service of any such notice, the orders and directions contained therein shall, until the same or varied by the Deputy Conservator of Forests, be taken as part of conditions of the contract, notwithstanding anything contrary that may be contained, and shall be observed and performed by the contractor.

(b) In the event of any forest area included in the lease area is not cleared due to any public cause during the lease period no compensation whatsoever will be paid to the lessees nor any representation thereof will be entertained by them to remove the available quantity of tamarind use fruits crops.

(c) The contractor shall have no claim for compensation for any loss he may incur by carrying out the provisions of any such notice nor for any loss caused to him by being prevented or obstructed by a zamindar or land-owner or other person on plea of right of ownership of right of enjoyment or otherwise from collecting, storing or removing any of the said produce.

SCHEDULE -- 1. Sl. No. : 2. Name of the unit : Name of the taluk : 3. Name of the highest tender/bidder : 4. Tender/bid amount : Rs. .... -- NOTE. - 1. Includes the produce of all Government uncoupling lands, Amrith Mahal Kaval, Plantation and S.F. and excludes the produce of Inam Jodi Kayamgutta, Sarvasamanya Kandayam and other lands which are in the occupancy of private individuals.

2. The Government will not make any extra demand for lands regained from the occupants and lessee shall not be entitled to any rebate on account of lands taken up for cultivation during the currency of the lease."

7. The recitals of the agreement referred to above and the terms and conditions contained therein on their very face show that by the agreement in question the Forest Department had in truth and substance intended to confer a right to collect tamarind for a period of two years from the trees situated within a specified area. The consideration for the conferment of this right was required to be paid in installments as set out in condition 2(a) of the agreement. The consideration so payable was not made dependent on the quantity of tamarind which the contractor like the petitioner could have collected under the said agreement. Rather, it was to be paid irrespective of the fact whether for one reason or other he was unable to collect the produce. It has also been specifically provided that even if the contractor was unable to collect the tamarind from the assigned area or part thereof, even for no fault of his, he was refrained from claiming any remission or compensation. Therefore, the consideration for which tie agreement was entered into with the contractor had no nexus or relationship

with any goods either in existence or future. The agreement was pure and simple of conferment of a right to be exercised in the forest lands accompanied with a right to appropriate the forest produce, namely, tamarind. On examining from the said angle, it has to be held that the agreement in question is that of a grant of a profit a prendre, i.e., grant of a benefit arising out of the land.

8. The Supreme Court in the case of State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, , while considering a similar contract, whereunder the Government of Orissa had permitted the grantee to "cut, remove and carry away" bamboos from a given area for a certain length of period, after reviewing the entire gamut of statutory law and judicial pronouncements on the subject has held that (at page 294) :

"(15) The bamboo contract is a grant of a profit a prendre which in Indian law is a benefit to arise out of land and thus creates an interest in immovable property.

(16) Being a benefit to arise out of land, any attempt on the part of the State Government to tax the amounts payable under the bamboos contract would be not only ultra vires the Orissa Act but also unconstitutional as being beyond the State''s taxing power under entry 54 in List II in the Seventh Schedule to the Constitution of India.

(17) The case of Chhotabhai Jethabai Patel and Co. Vs. The State of Madhya Pradesh, is not good law and has been overruled by decisions of larger Benches of this Court as pointed out by this Court in State of Madhya Pradesh Vs. Yakinuddin, .

(18) The case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., is also not good law as that decision was given per incuriam and laid down principles of interpretation which are wrong in law.

(19) The real nature of a document and the transaction thereunder have to be determined with reference to all the terms and clauses of that document and all the rights and results flowing therefrom."

9. In the said view of the matter it is held that the respondent-officers of the Forest Department had no authority in law to collect any amount in the guise of sales tax from the grantees of the right "to collect, remove and carry away" the tamarind fruits from the assigned forest areas under the agreement like the one referred to above.

10. The reliance placed by the third respondent on the Division Bench judgment of this Court in Gurusiddappa''s case reported in [1982] 49 STC 192, is wholly misplaced for two reasons, namely, (i) it pertains to interpretation of section 98A of Karnataka Forest Act, 1964, wherein forest development tax was permitted to be levied in respect of forest produce disposed of by the State Government by sale or otherwise; but sales tax can be levied and collected only if goods are disposed of by sale and not otherwise, and (ii) in Gurusiddappa Nurandappa Uppin and Others Vs. The State of Karnataka and Another, the agreements like

the present one was held to be an agreement for sale, keeping in view the judgment of the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., , which is no more a good law.

11. Accordingly, it is held that the Forest Department or its authorities were neither authorised to collect any amount as sales tax from the contractors like the petitioner not they can retain or refuse to refund the amounts so collected. Accordingly, the order No. A-3/SAS/CR-242/93-94 dated December 13, 1993, at annexure "J", is quashed with a further direction to the respondents to refund the entire amounts collected from the petitioner as sales tax within two months from today with interest at 12 per cent per annum to be calculated from the date of such collections. The writ petition is accordingly allowed with costs assessed at Rs. 1,500 to be paid along with the aforesaid amounts.

12. Writ petition allowed.

