

(1969) 07 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition No. 10 of 1963

Nripendra Chandra Dutta Majumder and others	APPELLANT
Vs	
Administration of Tripura and others	RESPONDENT

Date of Decision : 21-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 07 GAU CK 0005

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : M.R. Choudhury and R.L. Chakraborty, for the Appellant; H.C. Nath, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Bindra, J.C.

1. In this writ petition, under Article 226 of the Constitution, the petitioners allege that they are owners and in occupation, as jotedars, of certain lands situate in the villages of Charilam and Chasrimai and that a large number of trees of various varieties are standing on those lands. It is complained that though the Government has no claim or right to those trees, yet the forest officials at Charilam object to the petitioners' felling the trees and utilizing them for their personal requirements. The forest officials, it is alleged further, demand royalty from the petitioners respecting those trees and threaten them with dire consequences in case the trees are felled and removed without transit pass secured from them or without payment of royalty. Aggrieved by such illegal demands made by the local forest officials, it is stated, the petitioners addressed a number of representations, including the one dated 30th of March, 1963, to the Chief Forest Officer of the Union Territory of Tripura, but the latter without giving any hearing to them rejected the last one on 24-4-1963. The prayer made by the petitioners is for issuance of a Writ of mandamus directing the respondents to desist from claiming royalty from them and not to insist on their securing the

transit pass before removing from their lands the trees after they are felled. Another prayer made is that the respondents be directed not to act upon Notification No. 12 issued under the Tripura Forest Act and Forest Rules as that Notification, it is pleaded, has no sanction behind it and so is illegal. It is also prayed that the aforementioned order dated 24-4-1964 of the Chief Forest Officer rejecting the representation dated 30th of March, 1963, of the petitioners should be quashed.

2. The respondents resist the prayers made by the petitioners on the assertions that the forest officials are within their rights in demanding the royalty from the petitioners, the trees being in the ownership of the Government, and also in insisting that the petitioners must arm themselves with the transit pass before removing the trees from the place at which they are felled, this being in accordance with Notification No. 12, dated 29-4-1952, issued by the Government under the Tripura Forest Act. It is vehemently denied that the Notification or any part of it is illegal. The correctness of the stand taken by the Chief Forest Officer in his order dated 24-4-1963, it is urged, is perfectly valid in law and sound in principle.

3. The first point canvassed by Shri M. R. Choudhury, representing the petitioners, is that the officials of the forest department are not justified in law in claiming royalty from the petitioners respecting the trees standing on the lands of which they happen to be jotedars. Shri H.C. Nath, the learned Government Advocate, does not challenge the fact that the petitioners are jotedars of the lands mentioned in the writ petition, though he did not concede that the petitioners have absolute right to the user of the trees standing on those lands or that they are not liable to pay the royalty claimed by the forest officials. The expression "jotedar", it is commonly admitted, is synonymous with the expression "raiyat" used in the Tripura Land Revenue and Land Reforms Act of 1960 (hereinafter called the Act). In clause (s) of Section 2 of the Act, "raiyat" is defined to mean "a person, who owns land for purposes of agriculture paying land revenue to the Government and includes the successors-in-interest of such person". The rights which "raiyats" hold in the land are precisely defined in Section 99 of the Act which runs as under:--

99. (1) For the removal of doubts, it is hereby declared that subject to the other provisions of this Act.--

(a) the rights of a raiyat in his land shall be permanent, heritable and transferable;

(b) the raiyat shall be entitled by himself, his servants, under-raiyats, agents or other representatives to erect farm buildings, construct wells or tanks or make other improvements thereon for the better cultivation of the land or its convenient or profitable use;

(c) the raiyat is entitled to plant trees on his land, to enjoy the products thereof and to fell, utilise or dispose of the timber of any trees on his land.

(2) Nothing in sub-section (1) shall entitle a raiyat to use his land to the detriment of any adjoining land which is not his or in contravention of the provisions of any other law for the time being in force applicable to such lands.

According to clause (c) of sub-section (1), the raiyat is given the right to fell and utilize or dispose of the timber of any tree on his land. Hence, if clause (c) has been enforced in the region in which the petitioners' lands are situate, then the petitioners are justified, in my opinion, in advancing the contention that they are not liable to pay any royalty to the Government. From the definition clause (s) of Section 2 of the Act it can be safely spelled out that the Parliament has given the status of owner to the raiyat respecting the land in his occupation for purposes of agriculture. The only obligation imposed on him respecting such land is that he shall have to pay the land revenue to the Government. By cls. (a) and (b) of sub-section (1) of Section 99 of the Act, it is declared that the rights of raiyat in his land shall be permanent, heritable and transferable, and that the raiyat shall be entitled by himself, his servants, under-raiyats, agents or other representatives to erect farm buildings, construct wells or tanks or make other improvements thereon for the better cultivation of the land or its convenient or profitable use. How a person is clothed with the title of raiyat, as defined in cl. (s) of Section 2, is made clear by clause (d) of Section 135 of the Act.

It is stated therein that notwithstanding anything contained in any law for the time being in force or in any agreement or contract, express or implied, with effect from the vesting date (specified by the Administrator by a Notification issued u/s 134 (1) of the Act) but subject to the other provisions of the Act, "every tenant holding any land under an intermediary shall hold the same directly under the Government as a raiyat thereof and shall be liable to pay to the Government land revenue equal to the rent payable by him to the intermediary on the vesting date". The expression "tenant" is defined in clause (d) of Section 133 of the Act to mean "a person who cultivates or holds the land of an intermediary under an agreement, express or implied, on condition of paying therefor rent in cash or in kind or delivering a share of the produce and includes a person who cultivates or holds land of an intermediary under the system generally known as "bhag," "adhi" or "barga."

It clearly follows from these statutory provisions that after the Government had acquired the rights, title and interest of intermediaries in the estates in terms of Section 134 (1) of the Act, it (the Government) passed on all the rights in the lands to the tenants of those lands and such tenants were given the nomenclature of riyats. The bundle of rights given to riyats, as gathered from clauses (a) and (b) of Section 99 (1) of the Act, are virtually the plenary rights of ownership and what detracts, if at all, from their ownership is the designation "raiya". Otherwise, the riyats have all the attributes of ownership, e.g., their rights in the land are permanent and those rights are heritable and transferable. The riyats are referred to as owners in clause (s) of Section (2) of the Act and they are liable to pay, like an ordinary owner, only land revenue to the

Government and nothing more.

4. In Section 12 (1) of the Act, it is stated that the right to all trees, jungles or other natural products growing on land set apart for forest reserves, and to all trees, brush wood, jungle or other natural product, wherever growing, except in so far as the same may be the property of any person, vests in the Government, and such trees, brush wood, jungle or other natural product shall be preserved or disposed of in such manner as may be prescribed, keeping in view the interests of the people in the area with regard to the user of the natural products. The underlined (here in " ") words indicate unmistakably that the trees and other natural products do not vest in the Government if they happen to be the property of any individual. Clause (c) of S. 99 (1), as reproduced above, enacts that the raiyat is entitled to fell, utilize or dispose of the timber of any tree standing on his land. It is obvious that if the petitioners can take benefit of this clause, then the trees standing on their jote lands shall be their property and in such an event the question of payment of royalty respecting those trees would not arise. The concept of ownership militates against the claim of royalty respecting the property owned. Hence, if the petitioners are owners of the lands as also of the trees standing thereon, it would be fantastic to suggest that the Government can claim royalty respecting those trees.

5. Sub-section (3) of Section 1 of the Act provides that the Act shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas and for different provisions of the Act. On 12th of May, 1966, the Administrator issued the Notification No. F.39(60)-Rev/63 stating that in exercise of the power conferred on him by sub-sec. (3) of Section 1 of the Act, he had appointed 15th of May, 1966, as the date on which clause (c) of sub-section (1) of Section 99 of the Act shall come into force, inter alia, in Bishalgarh Police Station of Sadar Subdivision. Shri H. C. Nath, the learned Government Advocate, was fair in admitting that the land in dispute is situate in the Bishalgarh Police Station as mentioned in Para 1 of the writ petition.

In fact, the allegation made in that para had not been challenged by the Government in the counter-affidavit. Therefore, cl. (c) of Section 99 (1) of the Act is very much in force respecting the lands in dispute with the result that the petitioners are at present the full-fledged owners of the trees standing on their lands with the right to fell, utilize or dispose of them in the manner desired. Hence, the petitioners can legitimately contend, as at present, that the respondents be restrained by suitable writ or direction from claiming royalty respecting the trees standing on the lands mentioned in the petition. It is correct that clause (c) was not in operation on 28th of June, 1963, when the writ petition was filed. However, it is well settled that the Courts can take notice of the developments which take place pendente lite. Here, again, Shri H. C. Nath did not contest the validity of this proposition of law. I would therefore hold that the petitioners being the owners of the trees as also of the land on which those trees

stand, the demand of royalty from them respecting those trees cannot be countenanced and so the respondents have to be restrained from making such a claim.

6. This brings us to the consideration of the second contention raised by Shri Choudhury on behalf of the petitioners. He submitted that the forest officials have no authority to insist that the petitioners cannot remove the timber of the trees standing on their lands without a transit pass. It was vehemently urged by Shri Choudhury that the Notification dated 29th of April, 1952, issued by the Chief Commissioner, Tripura, under Sections 41 and 42 of the Indian Forest Act prescribing Transit Rules respecting timber and other forest produce is ultra vires. He was particularly critical of para 11 of the Notification which bears the heading "Removal of forest produce of private forests and lands". Shri H. C. Nath contended, on the other hand, that the Chief Commissioner is possessed of a statutory authority to issue such a Notification and in consequence the contention put forth by Shri Choudhury is without any merit or substance. I think the stand taken by Shri H.C. Nath can withstand legal scrutiny and so must prevail. The Indian Forest Act came into force in the Union Territory of Tripura 16-4-1950 when simultaneously the Tripura Forest Act was repealed. Section 41 (1) of the former Act gives power to the State Government to make rules to regulate the transit of all timber and other forest produce, while Sec. 42 arms the State Government with authority to provide in the rules formulated u/s 41 the penalties to which the person contravening the provisions of the rules shall be subject to.

The expression "forest produce" is defined in clause (4) of Section 2 of the Indian Forest Act to include timber whether found in, or brought from, a forest or not. Hence, it can be stated without demur that the Chief Commissioner is possessed ample powers to make rules relating to the transit of all timber and other forest produce whether found in or brought from reserved forests or private lands. Hence, the proposition canvassed by Shri Chaudhury has to be negated. Towards the close of his argument, I may mention, Shri Chaudhury realised that there was no substance in the submission made by him and so he did not seriously press it. However, he wanted, this Court to give the definition of the expression "transit". I am not inclined to do so because the question what constitutes transit in terms of the rules formulated by the Chief Commissioner does not arise in a pointed manner in the instant case. Moreover, this point was emphasised by Shri Choudhury during the course of his reply to the arguments addressed by Shri H. C. Nath and so the latter had no opportunity to make his submissions respecting that point. It would, therefore, be unfair to the Government Advocate if I were to express my opinion on what constitutes "transit". Shri Choudhury had some justification for making the request. He represented that the lands of his clients are adjacent to their homesteads and so it would mean real hardship to them if the forest officials were to insist on their securing a transit pass before they can move the trees felled on their lands even to their homesteads. For reasons already stated, I leave the matter open.

7. As a result of the conclusions recorded above, I allow the writ petition in part and direct the respondents not to claim royalty from the petitioners respecting the trees standing on the lands mentioned in para 1 of the writ petition. However, I reject the petitioners' prayer that the respondents should be restrained from insisting on their securing a transit pass in connection with the transit of the timber of trees standing on those lands. In view of the partial success of the parties I leave them to bear their own costs. Advocate's fee Rs. 507.