

(2009) 06 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 262 of 2008

Smt. Shanti Rani Mistry

APPELLANT

Vs

The Lieutenant Governor and Others

RESPONDENT

Date of Decision : 16-06-2009

Acts Referred:

Forest Act, 1927 — Section 40, 41

Citation : (2009) 06 CAL CK 0014

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Ananda Halder, for the Appellant; H.R. Bahadur and Rakesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Kalidas Mukherjee, J.—The petitioner is the recorded tenant of land bearing survey No. 505/2 and 505/3 situated at Sitanagar Village under Diglipur Tehsil having occupancy right granted in the year 1982. The land bearing survey No. 505/3 is a house site and survey No. 505/2 is a hilly land. There is the existence of padauk tree on the said land endangering human life and also causing an obstruction to construct a residential house. The petitioner got the land in question from the original recorded tenant Shri Shyamal Mitra by purchase through Power of Attorney made in favour of the husband of then petitioner on full payment of consideration of money.

2. It is the contention of the petitioner that she could not be able to use the entire land for raising plantation because of the commercial trees standing on the said land and for that reason she sustained much loss. It is the further contention of the petitioner that as per the provision of Section 156 of Andaman and Nicobar Island Land Revenue and Land Reforms Regulation 1966, (hereinafter called "the Regulation") the forest authority has to remove the commercial trees from the land within the period of six years from the date of acquisition of occupancy right and in case of failure to remove the trees, the

tenant will get ownership of the trees. The petitioner obtained the right of occupancy in the year 1982 and the commercial trees having not been removed by the forest authority within the said period, the petitioner claims that she has become the full owner thereof.

3. The petitioner applied to the Sub Divisional Magistrate, North and Middle Andaman, Mayabunder with the request to permit her to cut the trees standing on her land having occupancy right, but, instead of according permission, the Sub Divisional Magistrate passed the impugned order dated 20.2.2007 and 24.5.2007 directing the Divisional Forest Officer, Diglipur to fell and remove the trees within 20 days from the date of service of the order and also illegally directing to take the logs into the stock of forest department. The forest authority did not take any action to fell the trees and subsequently, the petitioner engaged some labours at her own cost and fell the trees converting the same into logs on 14.10.2008. As soon as the trees were felled and converted into logs, the Range Officer, Diglipur came to the land of the petitioner along with some labours to remove the logs and take the same into the stock of the forest department. The petitioner submitted a representation on 17.10.2008 to the Divisional Forest Officer, Diglipur requesting him to stop the cutting of trees.

4. Mr. Haldar, learned Advocate appearing on behalf of the petitioner submits that as per the provisions contained in Section 156 of the Regulation, petitioner is the owner of the land as well as the trees standing thereon having occupancy right. Mr. Haldar, submits that the petitioner has become the owner by purchase from the original tenant Shyamal Kumar Mitra through Power of Attorney. It is contended that under the provisions of Sections 156 (4) and (5) of the Regulation, petitioner has become the rightful owner of the trees after the completion of six years from the inception of occupancy right. Mr. Haldar contends that previously a notification was issued by the Lt. Governor for realization of royalty which was declared to be ultra vires by the Hon''ble Division Bench and the SLP preferred by the respondent was dismissed by the Hon''ble Apex Court affirming the judgment of the Hon''ble Division Bench. Mr. Haldar submits that the impugned orders passed by the learned Sub Divisional Magistrate are illegal and the logs can neither be taken to the stock of the forest department nor can any royalty be claimed by the forest department. Mr. Haldar contends that all these questions were elaborately discussed and decided in the judgment of the Hon''ble Division Bench being MAT No. 008 of 2006 which is annexure P-4 to the writ petition.

5. Mr. Bahadur refers to the provision contained in Section 38 of the Regulation and submits that all the lands in the union territory of Andaman and Nicobar Islands vested absolutely in the Government and no person shall be deemed to have acquired any property therein.

6. Mr. Bahadur has referred to a decision reported in AIR 1963 page 46. Mr. Bahadur contends that in view of Sections 40 and 41 of the Indian Forest Act, the Forest Department has the right to claim royalty from the forest produce. It

is contended that the regulation relates to the land, but, so far as the trees standing thereon are concerned, the provisions of Forest Act will apply. It is contended that the petitioner cannot remove the trees and she has to obtain permission for felling of trees from the forest department on payment of royalty.

7. Mr. Bahadur has referred me to the judgment in W.P.No.149 of 2000 and submits that the forest department has the right to claim royalty. In the earlier judgment of the Hon''ble Division Bench bearing MAT No. 008 of 2006, it was held that the letter containing the order issued by the Lt. Governor was wholly ultra vires of the provision contained in Section 156(5) of the Regulation and the Lt. Governor was incompetent to issue such order. The respondents'' claim of royalty rests on such order issued by the Lt. Governor which has already been declared ultra vires and the appeal preferred by the forest department was dismissed by the Hon''ble Apex Court affirming the judgment of the Hon''ble Division Bench. It has also been held in the aforesaid judgment that the provisions of the Forest Act have no manner of application in such a case. Mr. Bahadur contends that the facts of the said case being MAT No. 008 of 2006 before the Division Bench are different, inasmuch as, in the aforesaid case the petitioner paid royalty and after the felling of trees the logs were lost due to tsunami and, as such, the ratio of the said decision would not be applicable in the facts of the instant case. I am unable to accept such contention of Mr. Bahadur. In the instant case the classification of land has been noted as house site and, as such, royalty cannot be claimed either on the basis of the order issued by the Lt. Governor or on the basis of the provisions of the Indian Forest Act. The land in question does not come within the purview of the Indian Forest Act. The decision of the case in WP No. 149 of 2000 and the decision of the case reported in AIR 1964 page 46 were also cited in the earlier case before the Division Bench and elaborate discussion was made in that judgment to the effect that those judgments were not applicable. I find that the ratio of the decision in MAT No. 008 of 2006 before the earlier Division Bench as referred to above is squarely applicable in the facts of the instant case.

8. The provisions contained in Section 156(1)(2)(4)(5) of the Regulation are quoted hereunder:

156 (1). Subject to the provisions of this section all trees standing in the holding of an occupancy tenant shall belong to him.

(2) The transfer by an occupancy tenant of any trees standing in any land comprised in his holding except the produce of such trees shall be void unless his interest in the land itself is transferred.

(4) All commercial tress standing in the holding of an occupancy tenant shall belong to the Government and it shall be the duty of the Government to remove or cause to be removed such trees from the holding within a period of five years from the commencement of this Regulation of the acquisition of the occupancy right by the tenant, whichever is later:

Provided that where the Chief Commissioner is of opinion that it is not practicable to remove such trees within the said period of five years, he may, by notification, extend the said period of five years generally or in relation to any specified holding or class of holding by such further period or period as he thinks fit; so however that the total period so extended shall not, in any case exceed one year.

(5) If any such trees are not removed within the aforesaid period or the period so extended, such trees shall, on the expiry of that period, belong to the occupancy tenant.

9. Admittedly, the trees in question are commercial trees. Now, under the provision of 156 (4) if the trees are not removed within the extended period of six years, the trees shall on the expiry of such period, belong to the occupancy tenant. In the instant case, the petitioner acquired occupancy right in the year 1982 and the mutation was also done. So, the petitioner became the full owner of the trees as the respondents failed to remove the trees within the stipulated period of six years. I am, therefore, of the considered view that in view of the provisions of 156(4) and (5) of the Regulation and the decision of the Hon''ble Division Bench cited above, the respondent authorities can neither remove the trees from the land of the petitioner nor can claim any royalty towards the felling of trees by the petitioner.

10. The provisions contained under Sections 38(1) and (2) of the Regulation are quoted hereunder:

38(1) All land in the Union Territory of the Andaman and Nicobar Islands is vested absolutely in the Government, and, save as provided by or under this Regulation, no person shall be deemed to have acquired any property therein or any right to or over the same by occupation, prescription or conveyance or in any other manner whatsoever except by a conveyance executed by, or under the authority of the Government.

(2) The right to all trees, brush-wood, jungles or other natural product whatever growing except in so far as the same may be the property of any person, vests in the Government and such trees, brush-wood, jungles 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 the area with regard to the user of the natural products.

11. The objection with reference to Section 38(1)(2) of the regulation as raised by Mr. Bahadur has also been discussed in the earlier decision of the Division Bench which may be quoted as hereunder.

...Mr. Mandal however wants to dispute this vesting event contending that ownership of trees order Clause (2) of Section 38 of the said Regulation Administration can not be touched by the Clause 5 of Section 156 of the said Regulation. We can not accept his contention for the simple reason that Clause

(2) of Section 38 of the said Regulation itself has excepted the trees belonging to private individual.

12. In view of the observation made by the Hon''ble Division in the earlier case, the contention of Mr. Bahadur, can not be accepted. It is, therefore, clear that the provision contained in Section 38 cannot stand in the way of or cannot curtail the rights conferred upon the occupancy tenant u/s 156 of the Regulation.

13. Having heard the learned Counsels of both sides and after considering the materials on record and settled position of law, I find that the orders passed by the learned Sub Divisional Magistrate are not sustainable. Accordingly, the judgment and order dated 20.02.2007 and 24.05.2007 passed by the learned Sub Divisional Magistrate, North and Middle Andaman, Mayabunder are set aside.

14. The writ petition is thus allowed. There will be no order as to costs.