

(1961) 01 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 22 of 1960

Smt. Vijey Kumari Thakur

APPELLANT

Vs

H.P. Administration and Others

RESPONDENT

Date of Decision : 09-01-1961

Acts Referred:

Evidence Act, 1872 — Section 115
Forest Act, 1927 — Section 41, 42
Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 11, 2
Himachal Pradesh Private Forests Act, 1954 — Section 11(2), 11(3)
Mahasu District Timber Transit (Land Routes) Rules, 1958 — Rule 14, 5

Citation : AIR 1961 HP 32

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : M.L. Aukta, for the Appellant; Kedar Ishwar, Government Advocate and K.C. Pandit, for the Respondent

Final Decision : Allowed

Judgement

C.B. Capoor, J.C.

1. This petition under Article 226 of the Constitution of India has been filed by Smt. Vijey Kumari Thakur against the Himachal Pradesh Administration, the Divisional Forest Officer and Shri Parmodh Chauhan.

2. The allegations giving rise to the aforesaid petition are as below.

3. Mrs. L.C. Thompson held Dakoni estate situate in revenue Chak Chhabra, Pargana Dharti Tehsil Kasumpti under a Qabuliat executed by her predecessor in interest in favour of the Government. On 26th of October, 1954, she sold the aforesaid estate to the petitioner who made an Application u/s 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act hereafter to be referred as the Abolition Act for the acquisition of the proprietary rights in the aforesaid land.

On 3rd of May, 1956, that application was allowed and a sum of Rs. 342.78 nP adjudged to be the compensation for the acquisition of proprietary rights, was paid by her to the credit of the State Government. The petitioner had purchased the aforesaid estate for the plantation of an orchard and she applied to the Administration for permission to remove and cut the standing trees in order to enable her to convert the land into an orchard.

On 27th of October, 1956, the Administration, vide Order No. Ft: 45-311/56 accorded sanction to the petitioner for the felling of trees upon payment of 15 per cent, of the sale price of the trees as required by Sub-sections (2) and (3) of Section 11 of the Himachal Pradesh Private Forests Act, 1954. On 8th of May, 1958 an agreement was entered into between the petitioner and respondent No. 3 for the sale of the trees standing on the aforesaid land for a sum of Rs. 12,000.

A sum of Rs. 4,000/- was paid to the petitioner by way of advance and the balance was agreed to be paid at the time of the lifting of the timber. The petitioner requested the Divisional Forest Officer to issue an export Permit on payment of fees at the rate of 15 per cent of Rs. 12,000/- the price agreed upon between her and respondent No. 3. The Divisional Forest Officer has not issued the export permit so far, as a result of which damage is being caused to the petitioner and respondent No. 3.

4. The petitioner's prayer is that a writ in the nature of mandamus or any other writ or order as may be found or deemed necessary be issued so that on payment of Government fees she may exercise her right of disposition of property.

5. The petition has been resisted by respondents Nos. 1 and 2. The main grounds alleged are that Mrs. L.C. Thompson was not a lessee of the trees standing on the disputed land and as such the petitioner also did not acquire any right in trees under the sale deed obtained by her, that the relationship of landlord and tenant did not exist between the Government and the petitioner, that u/s 11 of the Abolition Act, the Compensation Officer could not grant any proprietary rights in the trees to the petitioner and that as a matter of fact he did not confer any rights on the petitioner in respect of the trees standing on the disputed land.

It was further pleaded that the petitioner acted illegally in felling the trees standing on the disputed land without obtaining the permission of the appropriate authority as required by Section 11 of the Himachal Pradesh Private Forests Act, 1954, and as such was not entitled to a permit for the export of timber etc. Respondent No. 3 supported the petitioner.

6. The first question that arises for decision is as to whether the petitioner had acquired any right in the trees under the sale deed executed in her favour by Mrs. L.C. Thompson. A copy of the Qabuliat under which the predecessor in interest of Mrs. L.C. Thompson held the disputed land is on the record, vide Annexure "B" to the written-statement, and it appears therefrom that the lessee

was prohibited from cutting any trees standing on the demised land without the permission of the landowner and without payment of the price therefor. The lessee thus did not acquire any right in the trees standing on the demised land and Mrs. L.C. Thompson was incompetent to transmit any right in the trees to the petitioner.

7. On behalf of respondents Nos. 1 and 2 it has been urged that the trees standing on the disputed land were not land within the meaning of the word "land" as defined in Section 2 of the Abolition Act, that the Compensation Officer, was not competent to and did not confer proprietary rights in the trees on the petitioner, and that in any case no application u/s 11 of the aforesaid Act could have been filed against the Government which is not bound by Statute unless there is a provision to that effect either specifically or by necessary implication. I, however, do not propose to go into those questions as in my opinion, respondents Nos. 1 and 2 were estopped from putting forward those pleas.

8. Annexure "A" to the petition is a letter issued by the Assistant Secretary Forests to the Himachal Pradesh Government to the Chief Conservator of Forests. A copy of it was endorsed to the petitioner for information with reference to her applications dated 24th of August, 1955 and 15th of May, 1956, for the felling of trees from the Dakoni Estate.

9. It has been stated in the aforesaid letter that as the petitioner has been declared as the owner of the property in question by the Compensation Officer. Government has accorded sanction to her to fell the trees without payment of price therefor, for the development of the orchard, that if the petitioner sells the trees or timber obtained after felling the provisions of Section 11 Clauses (2) and (3) of the Himachal Pradesh Private Forests Act, 1954 shall be applicable and she will be liable to pay to the Government as fee 15 per cent of the sale price.

In pursuance of the aforesaid sanction the petitioner entered into an agreement with respondent No. 3 for the sale and removal of the trees standing in the Dakoni estate and has also accepted from him a sum of Rs. 4,000/- as advance. Most of the trees have been felled and converted into charcoal or timber. The petitioner has thus acted to her prejudice relying on the aforesaid order of Government and the doctrine of changed situation has come into play. Section 115 of the Indian Evidence Act reads as below :

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing".

10. Like all other individuals the Crown may be, brought: within the grip of estoppel. There may be estoppels against the Government (See Toolseemoney v. Maria Cornelius 11 Beng LR 144; In re Purmanandas 7 Born 109 . 117 : Dadoba v. Collector of Bombay ILR 25 Bom 714.

11. On the question of estoppel by representation the rulings reported in *Sunderabai Deshpande and Another Vs. Devaji Shankar Deshpande, and Govindsa Marotisa v. Ismail* AIR 1950 Nag 22 may be usefully referred to.

12. It was urged on behalf of the respondents Nos. 1 and 2 that as required by Sub-section (i) of Section 11 of the Himachal Pradesh Private Forests Act, 1954, the petitioner did not obtain a licence from a Forest Officer for the felling of trees she was not entitled to fell the trees and ex hypothesi to any relief. The contention is a misconceived one for more reasons than one. First of all there was no necessity for obtaining a licence from a Forest Officer when the permission to fell the trees had been accorded by the State Government. Secondly by the Government order she was not required to obtain a licence before felling the trees.

The only condition that was imposed upon her was to pay to the Government 15 per cent of the sale price as fees, as required by Sub-sections (2) and (3) of Section 11 of the Himachal Pradesh Private Forests Act, 1954. It is significant that subsection (i) of Section 11 of the aforesaid Act which required the obtaining of the licence was not mentioned in the Government order. Thirdly the provisions of the aforesaid Forest Act cannot apply unless a notification u/s 4 is made by the State Government. In the instant case such a notification was made on 23rd of November, 1959. The petitioner was thus not bound to comply with the provisions of Sub-section (i) of Section 11 of the aforesaid Forest Act prior to that date.

13. Rules 4 and 5 of the Mahasu District Timber Transit (Land Routes) Rules 1958 made by the Lieutenant Governor Himachal Pradesh in exercise of the powers conferred by Sections 41 and 42 of the Indian Forests Act of 1927 as applied to Himachal Pradesh run as below:

"4. No forest produce other than that conveyed by the railway or river shall be imported into, exported from or transported within the limit of Mahasu District by land routes for purposes of trade without a Transit Pass issued by the Forest Officer or any other Officer duly authorised by him in this behalf or otherwise than in accordance with these rules and conditions of the Transit Pass".

"5. The Transit Pass shall be issued by the Forest Officer in charge of the Forest Division having territorial jurisdiction over the place of export of the forest produce in question from or its import into Mahasu District as the case may be. The Transit Pass shall contain full particulars of the forest produce with regard to its kind, quantity, property mark or marks in the case of timber and its source and destination. It shall also specify the route or routes along which the said forest produce shall be transported together with check posts through which it shall pass for examination en route".

14. The gravamen of the petitioner is that in spite of repeated requests on her behalf the Forest Authorities have not issued a Transit Pass. On behalf of the respondents the matter is stated to be under consideration. A matter cannot

remain under consideration indefinitely and has to be disposed of finally within a reasonable time. In the instant case the Government has taken a very long time in considering the matter and has not yet come to a decision.

15. It will have been noticed that Rule 5 referred to above is couched in mandatory language and the conjoint effect of that rule and Rule 14 is that a Forest Officer is bound to issue a Transit Pass on an application being made to that effect, provided that he has no reasons to believe that the forest produce has not been lawfully obtained by the applicant. In the instant case the permission to fell the trees had been accorded by the State Government. The only conditions imposed were compliance with Sub-sections (2) and (3) of Section 11 of the Himachal Pradesh Private Forests Act. The petitioner has expressed her willingness to comply with those provisions.

16. In the case reported in *Y. Mahaboob Sheriff and sons, Y. Mahaboob Sheriff and Others and S. Shamsoddin and Others Vs. Mysore State Transport Authority, Bangalore and Others*, the facts in brief were as below:

17. The petitioners held stage carriage permits for various routes which were to expire on March 31, 1958, and applied for the renewal of the permits. After the initiation of certain proceedings which it is not necessary to mention, the Regional Transport Authority renewed the permits of the petitioner for a period of one year from April 1, 1958 to March 31, 1959. The petitioners went up in appeal against the order of renewal on the ground that they were entitled to renewal for three years at least u/s 58 of the Motor Vehicles Act.

Their appeals were dismissed and thereafter they applied to the High Court of Mysore under Articles 226 and 227 of the Constitution, but their petition was dismissed in limine. The petitioners thereafter filed petitions under Articles 226 and 227 of the Constitution and reiterated the said contention. The following observations were made by Hon'ble Mr. Justice Wanchoo who delivered the judgment of the majority of the members constituting the Bench:

"It is true that where it is a case of discretion of an authority, this Court will only quash the order and ask the authority to reconsider the matter if the discretion has not been properly exercised. But in this case, the discretion is not absolute: it is circumscribed by the provision of Section 58 (1) (a), which lays down a duty on the authority which grants a renewal to specify a period which is not less than three years and not more than five years. The duty being laid on the Authority which has in this case decided to grant a renewal to specify a Period not less than three and not more than five years as the duration of the renewal, it is in our opinion open to this Court to direct the Authority to carry out the duty laid on it by Section 58(1) (a) read with Section 58 (2), when it has granted the renewal".

18. Applying the aforesaid principle of law to the instant case a writ in the nature of mandamus can be issued to respondents Nos. 1 and 2 requiring them to direct the Forest Officer to issue a Transit Pass in accordance with Rule 5 of the Mahasu

District Timber Transit (Land Routes) Rules, 1958.

19. I, therefore, allow the petition with costs and issue a writ of mandamus directing respondents Nos. 1 and 2 to issue or to get issued to the petitioner a Transit Pass as required by Rule 5 of the Mahasu District Timber Transit (Land Routes) Rules, 1958, without undue delay, subject to the payment of fee as required by Sub-sections (2) and (3) of Section 11 of the Himachal Pradesh Private Forests Act, 1954 and the Mahasu District Timber Transit (Land Routes) Rules, 1958.