
(2016) 03 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : CIMA No. 75 of 2001

State of Jammu and Kashmir	Vs	APPELLANT
M/s R.B. Jodha Mal & Co.(Pvt) Ltd.		RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Jammu and Kashmir Forest Act, 1987 — Section 52, 52B

Citation : (2016) AIRCC 1961 : (2016) 3 JKJ 166

Hon'ble Judges : Mr. N. Paul Vasanthakumar, C.J. and Mr. Tashi Rabstan, J.

Bench : Division Bench

Advocate : Mr. D.C. Raina, Advocate General with Mr. P.S. Chandel, Dy AG, for the Appellant; Mr. Z.A. Shah, Sr. Advocate with Mr. Vipin Gandotra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. N. Paul Vasanthakumar, C.J.—This appeal is preferred by the State challenging the order passed by the One Man Forest Authority at

Jammu dated 20.06.2001 in File No.16/Suit/1977, in entertaining the counter claim of the respondents to the tune of Rs. 14,15,883.18 with 9%

interest w.e.f 12.11.1975.

2. Brief facts necessary for disposal of this appeal are as follows:-

The appellant preferred a suit before the One Man Forest Authority (for short ""the Authority"" hereafter) under Section 52(C) of the Jammu and

Kashmir Forest Act for a decree for recovery of an amount of Rs. 3,87,457.67 on account of compensation, benefit and advantages derived from

the void lease agreement dated 26.03.1963 in the lease of compartment Nos. 15-a, 17-b, 20, 21, 22, 23 and 24-B Sewa Block, Circle Basohli of

Billawar Forest Division along with interest @ 9% per annum from the date of

institution of the suit till the final payment. The said claim was made on the ground that the Conservator of Forests Jammu Circle invited tenders for lease of the aforesaid compartments on 27.12.1962 for a period of three years and the date of opening of tenders was fixed as 16.01.1963. The respondent company offered tenders along with others and the respondents bid of Rs. 31,77,777.00, being highest, was accepted and recommendations were made to the Government for allotment of the tenders to the respondent company. The Government vide order No. FST/167/62 of 1963 dated 07.02.1963 sanctioned the tenders in favour of the respondent company. The respondent company was called upon to execute the lease agreement and pay the security amount and sinking fund. The lease agreement was executed on 26.03.1963 and the security amount of Rs. 20,000/- and sinking fund of Rs. 5297/- was paid by the respondent company. The lease agreement was executed by the Conservator of Forests, Jammu Circle. Thereafter the said authority issued work order in favour of the respondent company vide No. 2666-68 dated 26.03.1963 and handed over the Compartments for exploitation against proper receipt. The bills for supplementary marking to the tune of Rs.2,50,288.43/- were also issued in favour of the respondents. Under Clauses 11 and 12 of the lease agreement, the original period of lease was fixed as from June, 1968 and ending June 1969 respectively, which was again extended twice i.e. from June 1969-70 and ending June 1970-71. The total royalty for the entire lease period was calculated as Rs.34,28,065.43. The lease agreement having been executed by the Conservator, a Full Bench of this Court in State of Jammu and Kashmir v. Goodwill Forest Lessees (AIR 1974, JK 1 (FB) by judgment dated 15.06.1973 declared the lease agreements as void as the said lease deeds were in contravention of Section 122 of the State Constitution. In such circumstances, for recovering the outstanding amount the State Legislature amended the Jammu and Kashmir Forest Act by creating an Authority under Section 52(C) of the Act to determine the quantum of advantages, benefits, compensation and interest from such transaction of the lease agreements relating to sale of forest produce or extraction of timber from such forests. The appellant consequently filed the suit claiming decree for a sum of Rs. 3,87,455.67 on account of interest bills on belated

payments as compensation benefit and advantages derived by the respondent company along with interest @ 9% per annum.

3. The respondent company filed written statement on 28.11.1977 and sought counter claim for recovery of Rs.16,39,939.28 against the appellant

amongst other things. The preliminary issues were raised after filing rejoinder on 04.01.1978 and the said issues are as follow:

1) Whether M/s Joginder Lal, Vipan Lal and Jaswant Lal have been wrongly impleaded as parties to the proceedings and no claim against them is

maintainable? O.P.Rs.

2) Whether the claim made by the State for payment of interest falls outside the purview of the Forest Act? O.P.Rs.

3) Whether the claim made by the State limited to the amount of interest is not maintainable as the same is based on stipulations mentioned in the

agreement which admittedly is void? O.P.Rs.

4) Whether the claim and the rejoinder thereto filed on behalf of the State are neither signed by the competent person nor verified properly, if so,

what is its effect? O.P.Rs.

5) Whether the State has any inherent right to claim interest on the payments due on the basis of void agreement? O.P.Rs.

4. After framing the said issues, the appellant moved an application on 05.01.1978 regarding the maintainability of the counter claim of the

respondents. The said application was dismissed on the ground that the said issue was purely question of law and the matter was listed for

arguments. Regarding the other issues, particularly, as to whether the claim made by the State for payment of interest falls outside the purview of

the Forest Act and whether the claim made by the State limited to the interest is not maintainable as the same is based on the stipulation which

admittedly is void and whether the State has any inherent right to claim interest on the payment due was decided against the State and in favour of

the respondents. The preliminary issues were answered and thereafter further issues were framed on 25.02.1978, which are as follow:

1) Whether the respondent company suffered a loss of Rs. 14,15,883.15 in working out the lease covered by the void agreement in question, if so,

whether the said company is entitled to the recovery of the amount of loss from the State as benefits/advantages received by the State under void

agreement which it was not entitled to recover? O.P.R.

2) Whether the State was not entitled to recover the amount of Rs.2067.12 on account of penalties based on the terms of the agreement which is

admittedly void, if so, whether the amounts of penalties imposed by the State under the agreement is reimbursable to the respondent Co.? O.P.R.

3) Whether the respondent company suffered a loss on account of felling 224 trees marked on precipitous areas valuing at Rs. 2,21,998.98. If so, is

the respondent company entitled to recovery of the said amount, admittedly paid by it to the State? O.P.Rs.

4) Whether the claim of the State for compensation on account of advantages and benefits received by the respondent was entertainable in view

of withdrawal of the main claim by them, if so, what is quantum of the advantages and benefits derived by the parties? O.P.Rs.

5) Relief.

5. As against the preliminary findings given, the State preferred Civil Revision No. 14 of 1978 before this Court and the plea of maintainability of

the civil revision was raised by the respondents by stating that the Authority being not a civil Court, the revision petition filed under Section 115

CPC was not maintainable. Based on the preliminary objections, this Court dismissed the writ petition and observed that the authority appointed

under the Act is not a Court within the meaning of Section 115 of the Code of Civil Procedure. Hence, the revision was not maintainable. The said

order was challenged by the State before Hon'ble the Supreme Court and by order dated 20.01.1981 the Hon'ble Supreme Court remitted the

revision petition to this Court for decision on merits and as per the observations made by Hon'ble the Supreme Court. This Court after remand,

dismissed the Civil Revision on merits by order dated 29.09.1988. Against the said order the State preferred Civil Appeal No. 1110/1989, which

was dismissed by Hon'ble the Supreme Court by judgment dated 21.08.1996. By virtue of the said order of the Hon'ble the Supreme Court, the

claim made by the State being not recoverable, the authority proceeded with the counter claim and ultimately the authority sustained the counter

claim made by the respondents and held that respondent company is entitled to recovery of compensation of Rs. 14,15,883.18 as

advantages/benefits derived by the appellant from the respondent company

being difference of amount in between total sale proceed and total recovery of entire royalty and the said amount was directed to be paid with interest @ 9% per annum as per the Banking Rules w.e.f 12.11.1975 till the entire amount is paid. The authority further ordered that the order shall be deemed to be a certificate within the meaning of Section 90 of the Land Revenue Act subject to appeal if preferred by the aggrieved party. The said order of the authority dated 20.06.2001 is challenged mainly on the ground of want of jurisdiction.

6. Mr. D.C. Raina, learned Advocate General submitted that the authority has been created under Section 52 of the Jammu and Kashmir Forest Act, 1987, which being not a civil Court, the counter claim made by the respondent is not maintainable and if respondent is having any claim over the appellant, it can only approach the Civil Court for recovery of any amount due. In support of the said contention, learned Advocate General placed reliance on the judgment of Division Bench of this Court reported in AIR 1982 J & K 16 (Malik Abdul Ahmad Shah Jalil Ahmad Akhtar v. State of Jammu and Kashmir). According to the learned Advocate General, in the said Division Bench judgment, it is held that One Man Forest Authority having limited functions under Section 52-B of the Jammu and Kashmir Forest Act, the authority cannot order the Government to pay excess amount to the private party/respondent and even if it were to hold that the Government has been benefited at the cost of private party/respondent, the remedy of the respondents is to recover the excess amount, if any, from the Government through Civil Court alone. Learned Advocate General also relied on another Division Bench judgment made in CIMA No. 119/1996 decided on 26.05.2000 and stated that in the said judgment also the proceedings before the Forest Authority were held as not of a civil nature, so as to enable the authority to take notice of the counter claim which is peculiar to Order 8, Rule 6A of the Code of Civil Procedure.

7. Mr. Z.A. Shah, learned senior counsel appearing for the respondents, on the other hand argued that as per Section 52- B of the Forest Act, 1987, the One Man Forest Authority is empowered to restore the advantages of benefits of compensation to any person who has received any advantages or is enjoying any benefits by virtue of such transaction and shall be

bound to register it or to direct compensation for it to the person or party from whom he received it. Learned senior counsel also argued that the authority having been constituted under Section 52 of the Act to determine the extent of advantage or benefit or value thereof or the amount of compensation under Section 52-B having been vested with all the powers of civil Court while trying the suit under the Code of Civil Procedure particularly as per Section 52-F, the authority is vested with the power to regulate its own procedure in all the matters arising out of or connected with discharge of functions and the jurisdiction of civil Court being ousted under Section 52-H, if the authority has taken cognizance of any matter under Section 52-B, the respondents are entitled to lay counter claim which has rightly been entertained and decree has been passed which needs no interference. Learned senior counsel also relied on the judgment of Hon'ble the Supreme Court reported in 1995 Supp (4) SCC 422 (Syed and Company and others v. State of Jammu & Kashmir and others).

8. We have considered the rival submissions with reference to the provisions of Forest Act particularly Section 52 of the Forest Act, 1987.

9. The claim of the appellant regarding interest for the belated payment was raised as a preliminary issue and adverse finding was recorded, which

was upheld by this Court in Civil Revision No. 14/1978 by order dated 29.09.1988 as well as by Hon'ble the Supreme Court in Civil Appeal No.

1110/1989 by order dated 21.08.1996. Thus the said issue cannot be raised by the appellant in this appeal.

10. As far as the jurisdiction of the authority to entertain the counter claim is concerned, a Division Bench of this Court in detailed judgment

reported in AIR 1982 J & K 16 considered the very issue and held that even if the Government received excess payment from the appellant, still

the authority should have merely certified that nothing was due to the first respondent. Keeping in view the limited jurisdiction conferred under

Section 52-B, it could not have ordered and certified that as the remedy available to the respondents is to recover the excess amount from the

appellant through civil Court alone. The judgment cited by learned senior counsel appearing for the respondent reported in 1995 Supp (4) SCC

422 is of no assistance to the respondent. In the said case also, the High Court

held that the authority under Section 52 of the Jammu and Kashmir

Forest Act 1987 was not competent to direct drawing up of a decree based on counter claim. The said finding was challenged by the private party

in the said case before Hon'ble the Supreme Court and the Supreme Court referring the judgment of this Court reported in AIR 1982 J&K 16,

dismissed the Civil Appeal and in paragraph 11, it is held thus:

We are equally convinced that the High Court was right in setting aside that part of the order of the prescribed authority asking the drawal of the

decree in accordance with the observations contained in paragraph 7 of the order. The prescribed authority is not a civil Court. However, we may

add that it is open to the appellant in Civil Appeal No. 543 of 1985 (Syed & Co.) to recover the said amount in accordance with law. The appeals

are dismissed. However there shall be no order as to costs.

11. In light of the Division Bench as well as Hon'ble the Supreme Court judgments cited (supra), we are of the view that the learned Advocate

General is justified in his contention that the Forest Authority is not entitled to entertain a counter claim and pass decree against the State. As held

by the Hon'ble Supreme Court in above referred case, the remedy available to the respondents is to approach the civil Court for realisation of

excess money, if any paid to the appellant. The appeal is allowed and the order passed by the authority is set aside by granting liberty to the

respondents to approach the civil Court.

12. No costs.