

(1968) 07 OHC CK 0001
In the Orissa High Court
Case No : First Appeal No. 86 of 1964

State of Orissa and Others		APPELLANT
	Vs	
Maguni Oharan Mohanty		RESPONDENT

Date of Decision : 04-07-1968

Acts Referred:

Orissa Forest Contract Rules, 1966 — Rule 17

Citation : (1968) 34 CLT 919

Hon'ble Judges : Patra, J;G.K. Misra, J

Bench : Division Bench

Advocate : Advocate General and K.C. Jagadev Ray, for the Appellant; S.C. Ghose, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—The Defendants are Appellants. Plaintiff Respondent is a forest contractor and took lease of Talai Pathar S.W.C. coupe No. 10, lot No. 2 in Athmallik and deposited a sum of Rs. 950/- towards security with the Divisional Forest Officer, Athmallik. The lease expired on 30.9.1958. Thereafter the forester of Talai Pathar submitted a report to the Divisional Forest Officer, Athmallik alleging that during his inspection of the said coupe on the 4th and 5th October, 1958, he detected illicit felling of three trees for which the Plaintiff was liable to pay compensation of Rs. 76.12.9 on royalty basis. Auction sale was held in respect of lot No. -:1:3 of Nuagan B class coupe No. 13 and lot No. 1/1 of Talai Pathar coupe No. 13, on 3-8-1959 and 4-8-1959 respectively and the Plaintiff was the highest bidder in respect of these two coupes, his bid amounts being Rs. 4000/- and Rs. 21, 2000/- respectively. He deposited towards security Rs. 660/- for the Nuagan coupe and Rs. 3180/- for the Talai Pathar coupe. These bids were subject to ratification by the Conservator of Forests, but the latter did not accept the same. The Plaintiff's case is that he being the highest bidder of these 2 coupes was under the impression that the bids would be finally accepted and therefore invested a sum of Rs. 7, 000/-for effectively carrying out the contract.

As the bids were not finally accepted he suffered a 1088 to that extent for which he is entitled to be compensated by the Defendants. Due to his inability to pay court-fee on such a high amount be, however, limited his claim of damages to Rs. 110/- only. Beside be also claimed refund of the amount of Rs. 3840/- deposited by him as security deposit in respect of these two coupes. So far as lot No. 2 of Talai Pathar coupe is concerned the Divisional Forest Officer, Athamalik assessed the compensation payable in respect of the illicit felling of three trees at Rs. 1929. 36 ps. and held that the Plaintiff was liable to pay the same and this order was confirmed by the Conservator of Forests, Defendant No. 3. The Plaintiff therefore sought a declaration that he is not responsible for the illicit felling of the trees if any and that he is not liable to pay any compensation and is entitled to a refund also of the amount of Rs. 950/- which be had deposited as security deposit for the coupe. But as inspite of his repeated demands the security amounts were not returned to him, be brought the suit claiming the refund of Rs. 4790/- being the security amounts deposited by him in respect of the three coupes referred to above and also a sum of Rs. 110/- towards damages.

2. Defendants Nos. 2 to 4 alone contested the suit. They admitted that the Plaintiff had deposited Rs. 4790/- towards security deposit as alleged by him. But their case is that the Plaintiff was found responsible for illicit felling of three trees in Talai Pathar coupe No. 10 for which the market value was assessed at Rs. 1870/- and a penalty of Rs. 109.36 ps. was imposed on him. Thus the total amount payable by him is Rs. 1979.36 ps. As he had not paid this amount the security amounts deposited by him had been withheld. Regarding the Plaintiff's claim for damages it is alleged that as the bids were subject to satisfaction by the Conservator of Forests, the Plaintiff had no business to make any investment for carrying out such contract before the ratification and even if he did so it was entirely at his own risk and the Defendants would not be liable to pay any damages to him. They therefore prayed for the dismissal of the suit.

3. The learned Subordinate Judge held that the Defendants had failed to establish that the Plaintiff was responsible for the illicit felling of three trees in lot No. 2 of Talai Pathar coupe No. 10 and that he is not liable to pay any compensation for the same and that as such the Defendants were not justified in holding back the security amounts which the Plaintiff had admittedly deposited. He negated the Plaintiff's case regarding the claim of compensation of Rs. 110/-. In the result, he passed a decree directing the Defendants Nos. 2 and 3, the Conservator of Forests, Sambalpur and the Divisional Forest Officer, Rairakhol respectively to pay Rs. 4790/- to the Plaintiff with pendent lite, and future interest at 5% per annum and the proportionate costs of the suit. Being aggrieved by the decision in so far as it declared that the Plaintiff is not liable to pay Rs. 1929. 36 ps. to Defendants, the latter filed this appeal.

4. The only point for consideration in this appeal is whether the Defendants have succeeded in establishing that the Plaintiff was responsible for the illicit felling of any trees in lot no of Talai Pathar coupe No. 10 and if so whether the amount of

compensation of Rs. 1929. 39 ps. claimed from him is reasonable and valid. The Plaintiff asserts that he is not at all responsible for the illicit felling of the trees in question. On the Defendants' side three witnesses have been examined. D.w. 1 is the Forester of Athamallik, who made an inspection of Talai Pathar coupe No. 10/2 on 4.10-1958 and 5-10-1958 and found 3 unmarked Sal trees which had been cut and converted into 7 logs. He says that his enquiry revealed that the Plaintiff was Admittedly he himself has not seen the illicit felling. It has not been revealed on whose information he came to the conclusion that the Plaintiff was responsible for the same. In any case those persons on whose information he came to such a conclusion have not been examined. D.w. 2 was the then Divisional Forest Officer of Athamallik. Not only that he has no personal knowledge about the illicit felling of the trees by the Plaintiff but he has also not cared to enquire about the truth or otherwise of the report submitted by d.w. 1, that the Plaintiff was responsible for the illicit felling. The only other witness examined for the Defendants is the Conservator of Forests (d.w. 3) and he too has neither personal knowledge about the Plaintiff's complicity in the alleged felling nor had he made any independent enquiries to satisfy himself about the Plaintiff's responsibility in the matter. We thus find that there is absolutely no evidence on the basis of which it can be held that the Plaintiff is responsible for illicit felling of the three trees in question.

5. It is however contended on behalf of the Appellants relying on Rule 17 of the Orissa Forest Contract Rules that the compensation fixed by the Divisional Forest Officer is final and binding on the Plaintiff and cannot be questioned in a Court of law. It is admitted that the Forest Contract Rules are not statutory but are only framed for the guidance of forest officers and forest and that they were not published in the gazette. The contention of the Appellant is that these Rules form part of the agreement which the Plaintiff had executed when he took lease of lot No. 2 of Talai Pathar coupe No. 10. Neither the agreement nor the Forest Contract Rules had been exhibited in the trial Court. An application was however made in this Court to admit them as additional evidence and we allowed the application these documents are to be found in the printed record. Rule 17 of the Forest Contract Rules as follows:

17. A forest contractor shall be responsible for any damage that may be done in a Government forest by himself or his servants and agents. The compensation for such damage shall be assessed by the Divisional Forest Officer whose decision shall be deemed to be that of an arbitrator and shall be final and binding on the parties, except to the extent that it shall be subject to an appeal to the Conservator of Forests.

This Rule therefore clearly contemplates that there should be first a finding that the contractor is responsible for the damage that has been caused to the Government forest. It is only then that the Divisional Forest Officer gets the power to assess the compensation for such damage. As indicated by m already there is not an iota of evidence to show that it is the Plaintiff who is responsible

for the damage. In the absence of such evidence, the assessment of compensation made by the Divisional Forest officer cannot acquire any sanctity in the eye of law. In the view we take in this matter it is unnecessary to consider further the contention put forward on the Appellant's side that the compensation fixed by the Divisional Forest Officer was arbitrary and mala fide and as such is not binding" on the Plaintiff.

6. In the circumstances stated above, the learned Subordinate Judge was right in holding that the Plaintiff is not liable to pay any compensation for the alleged illicit felling of trees in lot No. 2 of Talai Pathar coupe No. 10. We would therefore uphold the judgment and decree passed by the learned Subordinate Judge and dismiss this appeal with costs.

G.K. Misra, J.

7. I agree.