(1972) 04 AHC CK 0010

In the Allahabad High Court

Case No : Special Appeal No. 71 of 1970

State of U.P. and Others — APPELLANT

Vs

Raghubir Sahai and Another — RESPONDENT

Date of Decision : 07-04-1972

Acts Referred:

Forest Act, 1927 — Section 82, 83(2)

Citation : AIR 1972 All 555 : (1972) 42 AWR 584

Hon'ble Judges : S.D. Khare, J;K.B. Srivastava, J

Bench : Division Bench

Advocate : Chief Standing, for the Appellant; P.N. Bhatt and Ashok Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Khare, J.—This is a special appeal directed against an order dated 2nd September, 1969, passed by a learned Single Judge of this Court allowing the writ petition of the respondent No. 1 (Raghubir Sahai), and directing the opposite parties not to take further steps to implement the so-called sale in favour of opposite party No. 4, Matru Khan.

2. The facts leading up to this appeal, briefly stated, are that Raghubir Sahai (respondent No. 1), being a forest contractor, had taken numerous contracts from the Forest Department during the year 1965-66 and subsequent years. The Deputy Conservator of Forest, South Kheri Division, Lakhimpur Kheri, issued a notice in the year 1968 that the forest produce belonging to certain contractors, who had not paid their dues and whose timber was stacked in the Depot of one Bakhshish Ahmad contractor at Mailani railway station in that district, would be auctioned on 10th December, 1968, accordingly the wood belonging to the petitioner (respondent No. 1) was auctioned by the Forest Officer for a sum of Rs. 3,100/- in favour of Matru Khan (respondent No. 2). The petitioner alleged that the sale was mala fide, that nothing was in fact due from him and that the sale could not, therefore, be given effect to, as it was void. In the counter

affidavit filed on behalf of the District Forest Officer and Deputy Conservator of Forest, South Kheri Division, it was alleged that a sum of Rs. 276.28 was due from Raghubir Sahai, and another sum of Rupees 9,000 for which Raghubir Sahai had stood surety, was due from Jai Prakash, son of Raghubir Sahai. It was alleged that the sale of the wood belonging to Raghubir Sahai had been made in order to realise those dues.

3. The learned Single Judge was of the opinion that even if it be assumed that certain amount was due from Raghubir Sahai, the wood belonging to him could not be sold directly by the District Forest Officer. In case any amount was due, a recovery certificate for that amount should have been sent to the Collector and the said amount could have been realised by the Collector by sale of the property of Raghubir Sahai as if it were arrears of land revenue, In this view of the matter the writ petition was allowed.

4. The learned Chief Standing Counsel has contended that the view taken by the learned Single Judge that the sale could not have been made directly by the District Forest Officer was not correct because under the provisions of Section 83 of the Indian Forest Act he was duly empowered to make such sales.

5. Sections 82 and 83 of the Indian Forest Act 1927, read as follows :--

"82. All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue.

83. When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest Officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest Officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government."

Section 82 relates to the recovery of all money payable to the Government under the Indian Forest Act, or under any rule made under that Act, while Section 83 provides that when any such money is payable for, or in respect of, any particular forest produce, the amount thereof shall be deemed to be a first charge on that produce, and it can be taken possession of by a Forest Officer and sold by him by public auction.

6. Section 83 of the Indian Forest Act, 1927, could apply to the impugned sale only in case it could be established that the recovery was being made for, or in

respect of, the very forest produce, which had been sold on 10th December, 1968. There was no such allegation in the counter affidavit filed on behalf of opposite parties Nos. 1 to 3. On the other hand the averments made in paragraph 4 of the counter affidavit filed on behalf of Opposite Parties 1 to 3, and sworn by Sri D. S. Negi, clearly indicated that the arrears claimed were due in respect of the sales made during the years 1966-67. In other words, the money due was in respect of past transactions and could have been realised only under the provisions of Section 82 of the Indian Forest Act, 1927, read with the Revenue Recovery Act, 1890, as amended by the Revenue Recovery (Uttar Pradesh Amendment) Act, 1965. The Forest Officer could not have sold the stock of wood under the provisions of Section 83 of the Indian Forest Act.

7. There is no force in this special appeal, and it is dismissed with costs.