

**(1979) 03 AP CK 0021**

**In the Andhra Pradesh High Court**

**Case No : Appeal Suit No. 118 of 1974**

Sunnam Sattiah

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

**Date of Decision : 19-03-1979**

**Acts Referred:**

Andhra Pradesh (Telangana Area) Abkari Act, 1361 — Section 15, 4  
Contract Act, 1872 — Section 10, 2, 56

**Citation : AIR 1980 AP 18**

**Hon'ble Judges : Lakshmaiah, J**

**Bench : Single Bench**

**Advocate : A. Satyanarayanarao and N. Venugopal Rao, for the Appellant; Govt. Pleader, for the Respondent**

## **Judgement**

Lakshmaiah, J.—This appeal by the 1st plaintiff is directed against the decree and judgment dated December 20, 1972 made in O. S. No. 3 of 1969 on the file of the Subordinate Judge, Medak at Sangareddy in so far as the same is against him.

2. That suit was instituted by the appellant and his minor son, the 2nd plaintiff for a declaration that the levy of baitak amount alone with other incidental and auxiliary levies under the Hyderabad Abkari Act and the Rules was ultra vires Art. 265 of the Constitution of India and the legislative powers of the component State of Andhra Pradesh and for an injunction restraining the defendant from collecting a sum of Rs. 17,920-14 Rs. comprising of (a) Rs. 446/- being the amount of the alleged arrears between 9-7-1953 and 15-7-1953 illegally sought to be collected; (b) Rs. 5,167/- being the amount sought to be collected as alleged tree tax, (c) Rs. 3,957-14 being the penalty for alleged illicit tapping of the tree; (d) Rs. 7,349-being the amount of arrears of Baitak and (e) Rs. 1000/- being the amount of penalty for alleged adulteration of Sendhi with Chloral Hydrate.

3. The reliefs sought for with respect to item (a) i.e. Rs. 446/- and item (e) i.e.

Rs. 1,000/- were granted to the plaintiffs by the court below. There was no appeal against that. We are therefore not concerned with those items in this appeal.

4. So far the surviving reliefs are concerned they pertain to the abkari year 1955-56. In Fasli 1365 i.e., 1955-56, the appellant was the highest bidder in the public auction in respect of Rangampet group, Lingapur and Kodapak. The contract was entered into with the State of Andhra Pradesh the defendant through its subordinate, whereby the appellant agreed to pay a sum of Rs. 4,146/- per two months baitak and earnest money as required by the auction conditions after the payment of the tree tax for 4,000 tress besides offering substantial immovable property as security for the satisfaction of the abkari arrears.

5. The case of the appellant was that he could not commence the business due to hartal and strike during the first month of the contract period in the said fasli. Although the tree tax for 600 trees was paid in advance, the tapping of the 600 tress was stopped for 1 1/2 months under the express orders of the Government between 15-8-1956 and 3-9-1956. The contract therefore became frustrated due to that supervening impossibility. The defendant is not only bound to grant remission of that amount but is station for the loss sustained by the plaintiff to the extent of Rs. 12,000/-

6. The plaintiff appellant reserved his right for the reliefs of refund of Baitak amount already collected by the Government and for compensation to the extent of Rs. 1200/- towards the loss sustained on account of the stopping of the tapping of the tress and for the loss of business due to Hartal etc. As such the right of plaintiffs for the refund of Baitak amount and compensation referred to in the suit giving rise to the present appeal is not it necessary to consider.

7. The State of Andhra Pradesh, the defendant sought to collect a penalty of Rs. 3,957 -14 P. besides the tree tax of Rs. 5,167/- from the appellant for the alleged illicit tapping of the tress included in the contract. There is no warrant under law for the employment of the coercive machinery of the State purporting to be under Ss. 7 and 43 of the Hyderabad Abkari Act instead of pursuing a remedy in common law courts. There was also a claim made against the appellant for two months rental which was not admittedly paid.

8. The defendant respondent filed a written statement and an additional written statement stating inter alia that the appellant entered into a contract with respect to Ramayampet group etc. for the year 1955-56 on a monthly rental of Rs. 4,145/- and deposited two months baitak and earnest money and offered security for the satisfaction of the Abkari arrears. It is not correct to state the appellant could not commence business due to Hartal and strike during the first month of the contract period. A ration of 7,400 tress was allotted for the contract. During that contract, the appellant tapped 4,080 trees out of which he paid tax and Haq-e-Malikana for 3,444 trees only. He did not pay anything for

the remaining 636 trees. The appellant submitted an application dated 24-10-1955 regarding the alleged strike and Hartal. That application was enquired and found to be false. During the month of October, 1955, the appellant tapped 2,000 trees. That shows that there was no strike and Hartal. The contention that from 15-8-1956 till the end of September, 1956 the tapping of 600 trees was stopped is baseless and false. The appellant illegally tapped 489 trees without payment of any tax. Instead of taking any action against the 1st plaintiff appellant, he was given a chance to deposit the taxes for the trees but he did not pay the same. Therefore, orders were issued to stop the tapping of the above trees. The appellant cannot claim any damage or compensation from the Government. There was no supervening impossibility.

9. It is true that the defendant Government seeks to collect a penalty of Rs. 3,957-14 Ps. besides the tree tax of Rs. 5,167/- from the appellant for the illicit tapping of trees. This amount can be collected as land revenue. The defendant Government need not institute a suit for recovery of the said amount in a civil court. The provisions of the Hyderabad Abkari Act are not ultra vires the provisions of the Constitution. The suit is barred by limitation. It is further stated that the suit contracts are not void and unenforceable.

10. Exs. A-1 to A-7 are marked on behalf of the plaintiffs and Exs. B-1 to B-12 for the defendant. The plaintiff(appellant) examined himself as P. W. 1 and the police Patel was examined as P. W. 2 and an employee of the plaintiff was examined as P. W. 3. On behalf of the defendant, Sri M. A. Raheem was examined as D. W. 1.

11. The Court below after having framed appropriate issues dismissed the suit with respect to the three following items - Rs. 5,167/- being the amount of tree tax, Rs. 3,957-14 representing the penalty for alleged illicit tapping of the tree and Rs. 7,340/- being the amount of arrears of baitak for two months after making some deductions, decreeing with respect to items comprising (a) Rs. 446/- and (e) Rs. 1000/- as against which there was no appeal.

12. The learned counsel appearing for the appellant contended inter alia that the court below erred in not granting the relief with respect to those three items. The court below ought to have held that there was a hartal and strike and on account of the orders passed by the Government directing the stoppage of the tapping of the tress, the contract was frustrated and, therefore, the appellant is not liable to pay those amounts.

13. It is contended on the other hand by the learned Government Pleader that there is no hartal nor there is any strike. There was no supervening impossibility as to justify the contention of the appellant that there is a frustration of the contract and in the nature of things, having regard to the nature of the governmental contract involved in this case the plea as regards frustration under the Indian Contract Act cannot be applied to the facts of the case.

14. The point that arises for consideration is whether there is any frustration of

the contract and whether the theory of frustration as contemplated under the Indian Contract Act is applicable to a governmental contract entered into under the provisions of the Andhra Pradesh (Telangana Area) Abkari Act. 1316 Fasli.

15. The abkari year commences from 1st October and ends by the end of September every year. The appellant is the highest bidder in the public auction for the year 1955-56 in respect of Rangampet group of shops. The appellant examined as P.W. 1 stated in cross examination that he did not pay the baitak amount of Rs. 7,340/- for the months of August and September, 1956 because he was stopped from tapping the tress from 14-8-1956 to 30-9-1956. Therefore, the months of the abkari year viz., August and September, 1956 was admitted by the appellant. But the reason given by him for not so paying was an account of frustration of contract as he was compelled to stop from tapping the trees from 14-8-1956 till 3-9-1956. The monthly contract amount was Rs. 4,146/-. For the last two months it comes to Rs. 8292/-. The earnest money paid on the total annual baitak amount has to be adjusted. After the amount was so adjusted, the appellant has to pay a sum of Rs. 7349/- to the Govt. as regards baitak amount. There is no dispute about the amount mentioned above. The dispute is only as regards the liability to pay the amount. That depends upon the question whether there is a frustration of the contract. I am of the opinion that there is no such frustration for reasons to be mentioned after a short space of time.

16. The appellant contends that the contract was frustrated and therefore, he is not liable to pay that amount. He claims on the other hand that he is entitled to remission and compensation but he reserved that right without claiming the same in the present suit. The case of the plaintiff was that he paid tree tax for 4,000 trees. He could not commence the business due to Hartal and strike during the first month after the commencement of the contract period in the said year and that although the tree tax for 600 trees was paid in advance the tapping of those 600 trees was stopped for 1 1/2 months between 15-8-1956 and 30-9-1956 under express orders of the Government and that as such the contract above supervening impossibility.

17. The positive case of the appellant was that on account of the express order of the Government, the tapping of 600 trees was stopped for 1 1/2 months. No such express order of the Government was produced by the appellant.

18. In the plaint, it is stated that the Hartal was during the first month of the contract. But P.Ws. 1 to 3 exaggerated the duration and deposed that the Hartal was for a period of 1 1/2 months, though that discrepancy was sought to be explained away by P. Ws. 1 to 3 by stating that there was strict hartal for one month and the hartal was not very effective for the other 15 days. The reasons which led to hartal, the appellant did not state in the plaint. No doubt, the appellant filed a petition before the Government, at the time of alleged hartal and strike. Ex. B-8 is the report of the Sub Inspector of Excise regarding his enquiry into the matter. According to that, the weavers are in a majority in Rangampet. They demanded that the sendhi should be sold in bottles at 0-3-0 I.

G. instead of 0-4-0 O. S. The above demand of the villagers of Rangampet about the use of bottles and about the price of Sendhi was a peaceful demand and it was not in the nature of a strike. There was no picketing and no force was used. There is no evidence to show that the shop in Rangampet was ever closed and the sendhi was ever destroyed at any time.

19. The appellant examined as P. W. 1, stated that some political leaders campaigned against the selling of the sendhi and boycotted the sendhi shops. He gave petitions to the Excise Superintendent and also to the police and the police advised the political leaders not to march to the sendhi shops and prevent the persons from drinking sendhi in the shops and that the political leaders went away. He denies the suggestion that he tapped 2000 trees in the first instance.

20. P.W. 2 when cross examined on this aspect of the matter stated that some people were saying that the drinking habit was ruining the families and that same other people were saying that they would drink toddy if it was sold at cheap rates and that there was some sort of strike. We have also noticed that he exaggerated the period of alleged hartal as having taken place for 1 1/2 months.

21. So far as P.W. 3 is concerned , he deposed that there was hartal for a period of over a month in the year 1956 in Rangampet group of villages and that it was in the beginning of the year 1956. So, the business of the appellant was completely lost during that period of hartal and the same was dull for a period of 15 days. But P. W. 1 stated that the hartal took place in the month of October, 1955 whereas according to P. W. 3, the hartal took place in the year 1956. According to him, the serious hartal must have been in the month of January 1956 and the ineffective hartal must have been in the month of February 1956. The testimony of this witness does not inspire any confidence and the discrepancy detected in the testimony of P. W. 3 are regards the duration of hartal also does not inspire any confidence in his testimony and I agree that the court below was quite correct in not placing any reliance on their testimony. It is open to the licensee to fix his own rates. When the public demanded for lessor price, it is the business of the appellant to see that nothing untoward happens. I am therefore of the opinion that there was no hartal as alleged by the appellant nor the circumstance constituting the same can be raised to the level of the supervening impossibility.

22. According to P. W. 3, there was an account maintained by the appellant. Had there been hartal during that period the accounts of the appellant could have shown that. Those accounts could have shown as to how many tress were tapped during the alleged period of hartal. No such accounts were filed. Under those circumstances, I have no hesitation to come to the conclusion , agreeing with the finding of the court below that there was no hartal and even if it is true, as I have already observed, it cannot be construed as one leading to the frustration of the extract.

23. Even otherwise, I am not satisfied that the plea of frustration has any

relevancy in the contest of the contract entered into under the provisions of the Andhra Pradesh (Telangana Area) Abkari Act, 1316 false.

24. This Act is intended to be a comprehensive law relating to abkari. The Government under S. 4 of the Act has been given power subject to such conditions as it may deem fit, to grant for a fixed period to any person at any place, a lease jointly or severally for the supply, manufacture or sale of any inebriating or intoxicating drug or mohwa flower: Under sub-section (2) thereof the Government has been given power to confer on any officer the powers mentioned in sub-section (1). The lease cannot take effect until the Collector or any competent officer issued licence in the prescribed form. Under Ss. 10, 11, and 12, no person shall tap sendhi tree or draw sendhi therefrom or possess sendhi exceeding the exempted limit or sell sendhi without obtaining licence under S. 15 of the Act. Under S. 15 (1) of the Act, the Collector or other officer has been given the power to grant a licence mentioned in the Act on payment or such duty or fee for such period subject to such conditions and containing such particulars as the Government may prescribe. The person to whom a licence under sub-sec. (1) is granted shall be required under sub-sec. (2) thereof to execute a counter-part agreement in conformity with the performance and to give such security for the performance of the agreement as the licence issuing authority may require. The Government have been given the power under sub-section (2) of S. 3 to make rules for the purpose of the Act. Under S. 13 of the Act, duty shall have to be assessed and recovered in the manner stated therein. The lease amount is called the Baitak amount for the highest bid amount at which the successful bidder bids in the auction of sendhi shops by the Government. As per the Rules made under the Act, the lessee of a Sendhi shop shall have no deposit two moths Baitak amount and earnest money calculated at the rate of 2% on the total annual baital amount. The lessee shall continue to deposit the monthly baitak amount every month. He has to pay licence fee of Rs. 1/- per each shop. Certain number of trees will be allotted for each shop. The lessee shall have to pay the tree tax and haq-e-malikana on the trees allotted to him in advance. The rates of tree tax and haq-e-malikana are prescribed in the Rules only.

25. Under S. 4, the Government has got power to grant a lease. Subject to certain conditions that may be prescribed by the Government over which conditions the lessee has no control. Such a lease cannot take effect until the competent officer issued a licence to the lessee. The person to whom a licence u/s 15 (1) is granted shall have to execute a counterpart agreement In conformity with the tenor of his licence. Contravention of the provisions of the Act and the Rules thereunder including the conditions subject to which the leases and licences are granted are rendered (sic) under the Act. These are some of the peculiar features with which an abkari contract is associated with statutorily distinguishing the same from its counterpart consensual agreement under the Indian contract Act. Nothing is left to the volition of the lessee of licensee.

26. The entire activity associated with the abkari is thus comprehensively dealt with under the Andhra Pradesh (Telangana Area) Abkari Act, 1316 Fasli, and the Rules made thereunder including the fixation of the terms of the lease and of the counter-part agreements required to be executed by the lessee in conformity with the tenor of his licence.

27. The concept of agreement conceived from the realm of private law is thus utilised for the purpose of public law and all its private law associations are thus intended to be subject to the predominance of the public law interest mentioned in the Act and the Rules made thereunder. The Act and the Rules made thereunder, as has already been seen are comprehensive with respect to every aspect of the transactions relating to the abkari revenue as not to leave anything to the volition and intention of the parties as it is generally required to be ascertained from the terms of a contract which is consensual in nature.

28. The effect of the impact of the exercise of statutory power under the Abkari Act by the functionaries designated thereunder on a lease and counter-part agreements as contemplated under the Abkari Act, falls for consideration in this case.

29. The process of transformation, a private law concept like contract, undergoes through both structurally as well as functionally, while being utilised for purposes of public law and the consequent need to secure through interpretative process, predominance to public interest over private rights, involved in the implementation of the measure contemplated under the Act for the welfare of the State, this case illustrates and emphasises.

#### Social Functions of Contract.

30. This change in the conception of State resulting in its tremendous expansion of the welfare and social service functions of the State accentuated the social function of a contract in the rapidly developing modern society. That has become one of the major factors responsible for the transaction in the function and substance of contract. That has also led to a multitude of statutory terms of contract, substituted for or added to the terms agreed to by and between the parties to the contract.

#### Contract as an instrument of Social Control:

31. The concept of contract has now come to be utilised for the purpose of public law as an instrument of social control by Government. Arthur S. Miller opined in an article "Government Contracts and Social Control; A preliminary Enquiry" in 41 V. L. R. 1955 at pp. 56-57 (from Law in a Changing Society by W. Friedmann-First Edition at page 110).

"To a large extent, the Government contract is an instrument of a power relationship, and only vaguely resembles the consensual agreement extolled by Maine and relied upon by Adam Smith. The significant decision is that of the Government in setting the terms of conditions of the proposed

agreement.....

It is as one of the control processes of Government that the institution of the Government contract may be meaningfully viewed. For the lawyer, this means that the Government contract and perhaps, also the private contract should be viewed from the point of departure of the extent to which "public law..... affects and modifies the law of contract."

32. Freedom of contract is the basic postulate of the classical theory of consensual contract. That was the reason why mistake, duress, undue influence and misrepresentation were formulated as vitiating elements in the formation of the contract. The classical theory assumes that the parties are free to bargain and settle among themselves the terms and conditions of the agreement. The intervention of state in the matter of imposing or altering the terms and conditions of a contract in the interests of public was at that stage simply unthinkable.

33. The impact of public law upon private agreement is discernible in the variation of the terms and conditions of a contract by public authority either by statute or by action taken thereunder be it though rules or orders.

"By far the most important modification of the law of contract" said Friedmann (Law in a Changing Society - First Edition) (Page 109) however results from the increasing role played by the Government, by local authorities, and the growing number of incorporated public authorities, as owners and managers of industry as providers of public utilities, administrators of social services or in some other capacity, which requires the making of contracts."

34. Speaking about "The Non-Discrimination clause in Government Contracts" Pasley said in an article in 43 Virginia Law Review, page 846 (1957).

"To begin with, a Government contract is a contract of adhesion, that is to say, a contract with standard terms and conditions, preferred by one party and offered to the other on a take-it or leave-it basis. The consensual element is reduced to a minimum, obviously principles of general contract law, based on theories of freedom of contract, can have little application to such a clause."

35. In "Principles of Administrative Law" by Griffith and Street (Fourth Edition) at page 262, the learned authors had this to say about the governmental contracts.

"The law of governmental contracts make the usual assumption of English law that the ordinary principles of private law should apply to administrative bodies. Nonetheless, the special circumstances attending these contracts make some variations from these principles inevitable. Administrative bodies other than the Crown and some of the instrumentalities are statutory corporations; they are, therefore, subject to the principle of ultra vires and the rules controlling the form of contracts entered into by corporate bodies. Parliamentary control of expenditure introduces considerations irrelevant in private contracts.

A further characteristic of administrative contracts, and the one which French administrative law regards as dominant, is the overriding public interest in the completion of contracts for public works and services. This interest is secured by widespread use of standard terms and conditions. Administrative bodies have a monopoly in the supply to the public of various services such as power, water and telephones; for these, special rules are necessary.

One further point is that contract can be used to accomplish regulatory ends of Government."

36. In the aforesaid background of the conception of governmental contract, the facts of the case and the arguments advanced are now proposed to be considered.

37. The expression "agreement" as defined in S. 2 of the Indian Contract Act is essentially and exclusively consensual in nature. That is not always the case in the case of governmental contracts including those arising under the Abkari Act with respect to leases and counterpart agreements.

Frustration - Indian Contract Act.

38. The principle underlying S. 56 of the Indian Contract Act enacted in the year 1872 shall have to be limited according to the function and purpose of a governmental contract contemplated under the Abkari Act. Whereas an agreement as defined in the Indian Contract Act is consensual in nature, the governmental contract as envisaged under the Abkari Act is to be construed as if it is more or less unilateral in character in the sense that the lessee or licensee undertook to abide by the terms and conditions contained in the lease and licence prepared and other and (sic) by the Government.

39. In *Satyabrata Ghose v. Mugneeram Bangur & Co.*, 1954 SCR 310 at P. 318 Mukherjea, J. (as he then was) explicated the contents of S. 56 of the Contract Act. After extracting the Section, the learned Judge observed at p. 318 of the report thus:-

"Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as inter-changeable expressions."

40. Proceeding further, the learned Judge observed at P. 322 thus:

"These differences in the way of formulating legal theories really do not concern us so long as we have a statutory provision in the Indian Contract Act. In deciding cases in India the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in S. 56 of the Contract Act, taking the word "impossible" in its practical and not literal sense. It must be borne in mind, however, that S. 56 lays down a rule of positive law and does not leave the

matter to be determined according to the intention of the parties."

41. What is therefore manifest from the aforesaid decision is that S. 56 of the Indian Contract Act lays down the positive rule relating to frustration and it does not leave the matter of frustration of the contracts to be determined according to the real intention of the parties. The intention of the parties therefore is not intended to be decisive in the matter of establishing whether or not there is frustration of a contract. It is, as a rule of law, to be ascertained and established. That rule of law as enunciated under S. 56 of the Indian Contract Act in the context of a consensual agreement when sought to be applied to a governmental contract arising under specific statute like Abkari Act undergoes a needed transformation. And sometimes a rule of law that can be established under a specific statute like Abkari Act in the context of a governmental contract should be given predomination over the rule of law established under S. 56 of the Indian contract Act envisaged in the context of the consensual agreement.

42. The rights of the parties with respect of an agreement shall have to be ascertained only in the context of the provisions contained in the Abkari Act and the Rules made thereunder as the leases or the counter-part agreements of the parties entered into or executed are merely those prepared by the Government Officials under the Act and placed before the parties for acceptance or for rejection, not there being involved thus any consensual element, when the entire activity associated with the abkari revenue is provided exclusively, exhaustively and comprehensively thus by the Act and the Rules made thereunder, the rights and obligation of the parties arising thereunder shall have to be ascertained as a matter of statutory construction or interpretation from the scheme of the Act alone. I therefore, find that the concept of frustration of the agreement which is consensual as envisaged under the Indian Contract Act, 1872 cannot have ipso facto application to the situation arising under the specific statute like Abkari Act. The appellant therefore is not entitled, even otherwise, to invoke the doctrine of frustration under S. 56 of the Indian Contracts Act for applying the same to the facts of this case arising under the Abkari Act.

43. The further question is whether the appellant is not liable to pay Rupees 5,167/- to the Government representing the penalty for alleged illicit tapping of the trees. It is the admitted case of the appellant that 7,400 trees were allotted to him under the contract. According to the Government, the appellant tapped 4,000 trees and paid tax and haq-e-Malikina 3,444 trees. The appellant therefore tapped illegally 636 trees without payment of tree tax and haq-e-malikana. On that score, a sum of Rs. 3,957-14 was levied as penalty for an illicit tapping of the trees and another sum of Rs. 5,167/- was sought to be collected as tree tax and haq-e-malikana on the above trees.

44. Tree tax and haq-e-malikana is Rs. 8-25ps per tree. P. W. 1 says in his evidence that tree tax and haq-e-malikana per tree was Rs. 8-12 ps. The Government levied penalty at Rs. 5/- and odd only per tree. The levy of tree tax and haq-e-malikana of Rs. 5,167/- and the penalty of Rs. 3,957-14 is found to

be correct for the appellant tapped 636 trees, illegally without payment of tree tax and haq-e-malikana. As per the plaint, the appellant paid tree tax for 4000 trees and though he paid the tree tax for 600 trees of the above 4000 trees in advance, tapping of the 600 trees was stopped by the Government for one and half months. In his chief-examination also the appellant deposed that he paid an advance tax for 600 trees. He further deposed that the Government stopped him from tapping the 600 trees alleging that he defaulted in the payment of penalties amounting to Rs. 5,000/- and that the penalty was imposed on him on the ground that he tapped those trees without paying the tree taxes. He states that a notice as per Ex. A-4 was issued to him to offer his explanation as to why he tapped those trees illegally, that he went to the office of the Circle Inspector on 18-8-1956, that being holiday, the office remained closed. But according to the Government, the appellant did not do what is expected of him by way of acquiring and to what date his matter stood adjourned. The Government levied the penalty and tree tax and haq-e-malikana after enquiring into the same as per the Rules. In this context, the appellant commented upon the failure of the Government in making its records available. We have already seen in a different context that the testimony of P. Ws. 2 and 3 were rightly rejected by the court below. As the appellant is supposed to have been maintaining accounts he could have produced his own accounts but he did not produce those accounts. Therefore, the Government is justified in placing reliance upon the records available and levying the penalty tax. The burden is upon the appellant to prove. He did not discharge that burden. On the other hand, he throws the burden upon the Government. The court below rightly accepted the contention of the Government that the appellant illegally tapped 636 trees without payment of tree tax and haq-e-malikana and therefore, the Government is perfectly entitled to levy the tree tax and haq-e-malikana as well as penalty.

45. A contention was raised in the end that these dues may be written off as they used to do with respect to other matters. That is a matter entirely left to the discretion of the authorities concerned and no legal right is established inhering in the appellant to claim such a relief. This does not however prevent the Government from considering the case of the appellant, if he chooses to approach them.

46. For the aforesaid reasons, I am satisfied that there are no merits in this appeal. This appeal is therefore dismissed with costs.

47. Appeal dismissed.