
(1969) 12 MP CK 0009
In the Madhya Pradesh High Court
Case No : First Appeal No. 109 of 1957

The State of Madhya Pradesh	Vs	APPELLANT
Devilal Shivilal Palliwal and Another		RESPONDENT

Date of Decision : 04-12-1969

Acts Referred:

Central Provinces Land Revenue Act, 1881 — Section 202

Citation : AIR 1970 MP 179 : (1970) JLJ 112 : (1970) 15 MPLJ 145 : (1970) MPLJ 119

Hon'ble Judges : Bishambhar Dayal, C.J; Shiv Dayal Shrivastava, J; A.P. Sen, J

Bench : Full Bench

Advocate : K.P. Munshi, for the Appellant; R.S. Dabir and V.S. Dabir, for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.

This appeal arises from a suit for recovery of Rs. 2,05,000/- as value of wood which belonged to the plaintiff and was seized by Revenue Officers in exercise of powers u/s 202, of the C. P. Land Revenue Act, 1917.

Shivilal (whose legal representatives are respondents Devilal and Smt. Godavaribai) brought the suit against the State on the allegation that he was a Malguzar Lambardar of village Jamalpani, Settlement No. 154, Patwari Circle No. 24, Tahsil Sausar, district Chhindwara. He did cutting of trees in some portion of his malguzari jungle at Jamalpani in the year 1949-50. The cut teak wood and fire wood were lying in the jungle and outside it. The plaintiff did the cutting work in the forest from September 18, 1949 to October 19, 1950. The plaintiff completely observed the rules framed for cutting jungles, but under the impression that the provisions of Section 202 of the Land Revenue Act had not been observed, the State started proceedings against the plaintiff through its officials. (Revenue Case No. 37/V-4 of 1949-50). Shri Das Sharma, Naib

Tahsildar, seized the plaintiff's cut wood through the Revenue Inspector on October 22, 1950. The property seized was entrusted to Shakharam (defendant 2), a resident of Jamalpani. Eventually, this revenue case was filed on December 22, 1952. "But the plaintiff did not get back his seized goods. The order for selling the seized goods by auction was also passed on 22-12-52",

It was further alleged in the amended plaint that revenue proceedings were started by the officers for complicating the plaintiff's claim as far as possible. The plaintiff filed an appeal before the Board of Revenue. The appeal was allowed and the order dated March 22, 1954, passed by Shri Konher, and the order of the Deputy Commissioner dated February 12, 1954, were set aside by the Board of Revenue, by its decision dated September 28, 1955. On these allegations, the plaintiff claimed a decree for Rupees 2,05,000/-. He estimated the value of his wood at Rs. 2,28,744/-.

The State (defendant No. 1) resisted the suit contending that the act of cutting the trees was illegal. It was denied that the defendant-State ever got seized the timber and wood, cut by the plaintiff. But it was admitted that, in his capacity as a Revenue Officer, the Tahsildar ordered the seizure of the cut timber and wood and that the Revenue Inspector seized the same on October 20, 1950 under a seizure memo. The value of the wood as alleged by the plaintiff was denied. It was admitted that the seized property was entrusted to the second defendant as Supratdar.

The second defendant admitted the plaintiff's allegation that the seized property was entrusted to him as Supratdar, but resisted the suit on the ground that he is a Gond by caste; that he is illiterate and a rustic; that he was in the employ of the plaintiff and was getting three Khandis of grain from each crop plus Rs. 30/- in cash as annual remuneration; that it was at the desire of the plaintiff that he accepted entrustment of goods; that the plaintiff approached him in the month of Phagun or Chait (February or March) of the year 1951 and represented to him that the case against the plaintiff had been dismissed and the seized property had been released so that he could take the seized property to his house at Mohgaon; and that practising this deception on him, the plaintiff took away the seized property to his house at Mohgaon.

The Trial Court held that part of the wood had been removed by the plaintiff; that on June 8, 1954, the Additional Deputy Commissioner, Sausar, passed an order for auction of the seized property; that the seizure of the goods was not in exercise of the sovereign functions of the State; that 5779 logs of wood had been seized; and that the plaintiff was entitled to recover Rs. 55,011/- from the defendant-State. The rest of the claim was dismissed. The second defendant was held not liable and the suit was dismissed as against him.

Aggrieved by the judgment and decree of the trial Court, the State preferred this appeal. The plaintiff also preferred a Cross-appeal (First Appeal No. 127 of 1957) claiming a further decree for Rs. 1,49,989/-. Both the appeals were heard

by a Division Bench consisting of Golvalker and Kekre, JJ. Mr, Justice Kekre, relying on a Division Bench decision of this Court in the State of Madhya Pradesh Vs. Singhai Kapoorchand of Seoni, was of the opinion that this appeal filed by the State should be allowed and the plaintiff's cross-appeal should be dismissed. Mr. Justice Golvalkar, on the other hand, took the contrary view and recorded the opinion that this appeal should be dismissed. He, however, agreed that the plaintiffs appeal No. 127 of 1957, be dismissed. Both the appeals were then placed before Mr. Justice Pandey, as the third Judge, but he submitted the case to the Hon'ble the Chief Justice to consider the desirability of constituting a larger Bench to hear and dispose of both these appeals, Both these appeals were then heard by us.

As narrated above, as regards First Appeal No. 127 of 1957, both the learned Judges of the Division Bench (Golvalker and Kekre, JJ.) recorded a concurrent opinion.

In the present appeal (No. 109 of 1957), Shri Dabir, contends that the suit was maintainable and the State was liable to compensate the plaintiff for the loss sustained by him. He relies on State of Gujarat v. Memon Mohammed AIR 1967 SG 1885 and argues that by this decision their Lordships have overruled their earlier decision in Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, , although they merely said that that case was distinguishable. The learned referring Judge (Mr, Justice Pandey) observed that the decisions of this Court in The Bilaspur Central Co-operative Bank Ltd. Vs. The State of Madhya Pradesh, and State of Madhya Pradesh Vs. Singhai Kapoorchand of Seoni, were in conflict. We must, therefore, see what has been held in those cases.

The case of The Bilaspur Central Co-operative Bank Ltd. Vs. The State of Madhya Pradesh, was decided on the following findings. The Inspector-General-of Police granted permission to a Co-operative Bank to deposit its cash chests in the Police Station provided the chests were properly locked and sealed and on the clear understanding that the Police took no responsibility for the contents of the box as laid down in Police Regulations 697 and 698. A box containing an amount of Rs. 4694G/7/- was kept in the Thana duly locked and sealed. No other property except the box was found missing the next day. The box was found at some distance from the Malkhana with its lock intact, hasp broken and contents removed. It was held that by accepting the bailment of the box, the police officers must be deemed to be responsible for the security of the box as a whole. The Inspector-General was acting within his powers in granting permission, vide regulations 697 and 698. The entrustment had the foundation in contract in which the consideration was the trust reposed in the Government. The Government was liable for the negligence of the subordinates. The principle of bailment was applied. The State preferred an appeal to the Supreme Court. Their Lordships upheld the view of the High Court that it amounted to a contract of bailment and observed as follows:--

"Having regard to the terms of the arrangement, we agree with the High Court

that the reservation made by the Inspector-General of Police that the Police officers were not to be responsible for the contents of the box did not operate to limit the responsibility of the bailee under the contract of bailment and thereby the bailee was not absolved from liability to take with regard to the property that degree of care which is prescribed by Section 151 of the Contract Act But we are unable to agree with the High Court that by virtue of the arrangement between the Inspector-General of Police and the Bank the State of Madhya Pradesh was liable to compensate the Bank for the loss of the contents of the cash box. The Inspector-General of Police is invested by statute with certain authority. It is not suggested that the Inspector-General-of-Police was an agent of the State of Madhya Pradesh for entering into a contract of bailment."

Their Lordships then examined the relevant regulations and came to the conclusion that the Inspector-General-of-Police, in granting the permission, cannot be deemed to have acted within the authority conferred upon him by regulations 697 and 698 as the Cooperative Bank was not a Government Department. Their Lordships then observed:--

"The High Court was, in our judgment, in error in holding the State of Madhya Pradesh liable on the footing that the Inspector General-of-Police acting in exercise of his statutory powers entered into a contract of bailment on behalf of the State of Madhya Pradesh"

In *State of Madhya Pradesh Vs. Singhai Kapoorchand of Seoni*,) it was held that the State Government could not be held liable for torts committed by their servants in exercise of powers and duties imposed upon them by law. The Division Bench relied on *The State of Tripura Vs. The Province of East Bengal*, . In that case, proceedings had been started u/s 251 of the C. P. Land Revenue Act for contravention of the rules framed thereunder. It was held that the Deputy Commissioner exercising powers conferred upon him by the Act did not act as a servant of the State.

In our opinion there is no conflict between these two cases. The former related to a non-sovereign function, and a contract of bailment was the basis. The latter related to exercise of statutory powers or sovereign function of the State.

In *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , the appellants were owners of two, motor trucks, which were hired out to the Union of India for imparting tuition to the military personnel. The trucks were handed over to the Union of India. Later on, the Union of India gave notice to the appellants terminating the agreement and asking them to remove the trucks. The Union of India did not return the trucks to the appellants, nor did they pay any hire charges to them. Their Lordships held that the wrongful detention being a tort which continues all the time until the re-delivery of the goods by the defendant to the plaintiff, the only verdict or judgment which the Court can give in actions for wrongful detention is that the defendant do deliver to the plaintiff

the goods thus wrongfully detained by him or pay in the alternative the value thereof which can only be ascertained as on the date of the verdict or judgment in favour of the plaintiff. But in the case of wrongful conversion, the tort is complete the moment the goods are wrongfully converted by the defendant and no question can arise in those cases of any continuing wrong. In that case, a decree for money being the appreciated value of the trucks together with interest was passed against the Union of India.

In *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, a jeep owned and maintained by the State of Rajasthan for the official use of a Collector, knocked down a pedestrian and fatally injured him. It was found that the driver drove it rashly and negligently. It was held that the State was vicariously liable for the tortious act like any other employer and it made no difference that the jeep was being maintained for the use of a Collector in the discharge of his official duties. It was observed:--

"Under the Constitution we have established a welfare State, whose functions are not confined only to maintaining law and order, but extend to engaging in all activities including industry, public transport, State trading, to name only a few of them. In so far as the State activities have such wide ramifications involving not only the use of sovereign powers but also its powers as employers in so many public sectors, it is too much to claim that the State should be immune from the consequences of tortious acts of its employees committed in the course of their employment as such." The decree for damages was maintained.

In *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, the question of liability of the State arose in these circumstances. The plaintiff was arrested by police officers on suspicion of possessing stolen property and on search of his person a large quantity of gold was seized under the provisions of the Code of Criminal Procedure. Ultimately, he was released but the gold seized from him was not returned as the Head Constable in charge of the Malkhana had absconded with valuable property including the gold seized from the plaintiff. In the suit instituted against the State for return of the gold or, in the alternative its value, the evidence disclosed that the police, officers had not followed the provisions of the Police Regulations in taking care of the gold seized from the plaintiff. It was held (i) that the manner in which the gold seized from the plaintiff had been dealt with at the Malkhana showed a gross negligence on the part of the police officers and that the loss suffered by the plaintiff was due to the negligence of police officers of the State, and (ii) that the act of negligence was committed by the police officers while dealing with the property of the plaintiff which they had seized in exercise of their statutory powers. The power to arrest a person, to search him, and to seize property found with him, are powers conferred on the specified officers by statute and in the last analysis they are powers which can be properly characterised as sovereign powers; and so the act which gave rise to the present claim for damages had been committed by the employee of the State during the course of its employment; but the employment in question being of

the category which can claim the special characteristic of sovereign power, the claim could not be sustained.

Gajendragadkar, C. J., while distinguishing *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, referred to the classic observations made in 1861 by Peacock, C. J., of the Supreme Court at Calcutta in *Peninsular and Oriental Steam Navigation Co. v. Secy, of State for India-in-Council* (1868-69) 5 Bom HCR App. 1.

"There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them."

And Peacock, C. J., then observed that in the former case no action will lie, while in the latter case an action will lie. The Supreme Court then laid down the following test in *Vidhyawati's case*, AIR 1962 SG 933 (supra):--

"The question to ask is: was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such, tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose. This distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious act committed by public servants. That is why the clarity and precision with which this distinction was emphasised by Chief Justice Peacock as early as 1861 has been recognised as a classic statement on this subject."

This brings us to the decision in ` which, according to Shri Dabir, overrules the decision in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, . The facts of that case were that in 1947, two trucks belonging to the plaintiff had been seized by the Customs Authorities on the ground that the plaintiff had not paid import duties on those trucks, that the plaintiff used them for smuggling goods, and that some goods were smuggled goods. The law provided for an appeal. Eventually, the appellate authority set aside the order of confiscation made by the Customs authorities and directed return of the vehicles to the plaintiff. However, in the meanwhile, on an application made by a Police officer, the trucks had been disposed of under an order of a . Magistrate passed u/s 523 of the Code of Criminal Procedure and the sale proceeds were handed over to the creditor of the respondent under an attachment order passed in his favour. As the defendant State could not return the vehicles, the plaintiff filed a suit for

their return or, in the alternative, for their value. The Trial Court decreed the suit. The High Court dismissed the appeal preferred by the State of Gujarat, although reduced the decretal amount. The Supreme Court, upheld the decree passed by the High Court. In that case, the State Government, in its return, did not raise the contention that it was not liable for any tortious act committed in respect of the said goods and the vehicles, by any one of its servants. When the State Government sought to raise that contention before the High Court, it was not allowed to raise it for the first time in appeal. However, the contention was reiterated before the Supreme Court. The contention before their Lordships was that since the vehicles had been seized by a competent officer and the seizure was lawful, all that could be alleged was that one or other servant of the State Government was guilty of negligence but the State Government was not liable for any tortious acts of any of its servants. Their Lordships, after examining the relevant provisions of the enactment (Junagadh Sea Customs Act No. 2 of Samvat year 1998), held that the seizure of the vehicles was carried out with jurisdiction by a competent officer, and further that the vehicles had been sold pursuant to a judicial order. Their Lordships further observed:--

"It is also possible to contend that as the said vehicles were sold pursuant to a judicial order, no liability could be attached on the State Government for their disposal by public auction."

Having said so, their Lordships held that between the seizure of the trucks and their auction, there was a duty implicit from the provisions of the Act to take reasonable care of the property seized. "But in spite of the clear position of the law while the appeal was still pending before the Revenue Tribunal and without waiting for its disposal, it allowed its Police authorities to have it disposed of as unclaimed property." Their Lordships then held that (1) there can be bailment and relationship of bailor and bailee in respect of a specific property without there being an enforceable contract; (2) there being a legal obligation to preserve the property intact and also an obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final was that of a bailee; and (3) once a Revenue Tribunal set aside the order of the Customs Officer and the Government became liable to return the goods "the owner had the right either to demand the property seized, or its value, if in the meantime the State Government had "precluded itself from returning the property either by its own act or acts of its agent or servant. Their Lordships then observed as follows:--

"This was precisely the cause of action on which the respondent's suit was grounded. The fact that an order for its disposal was passed by a Magistrate would not in any way interfere with or wipe away the right of the owner to demand the return of the property or the obligation of the Government to return it. The order of disposal in any event was obtained on a false representation that the property was an unclaimed property. Even if the Government cannot be said

to be in the position of bailee, it was in any case bound to return the said property by reason of its statutory obligation or to pay its- value if it had disabled itself from returning it either by its own act or by any act of its agents or servants. In these circumstances, it is difficult to appreciate how the contention that the State Government is not liable for any tortious act of its servants can possibly arise. The decisions in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, and *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, to which Mr Dhebar drew our attention have no relevance in view of the pleadings of the parties and the cause of action on which the respondent's suit was based."

Their Lordships have made two things very clear in the penultimate paragraph. Firstly,--

"In these circumstances, it is difficult to appreciate how the contention that the State Government is not liable for any tortious act of its servants can possibly arise". This means that the question of the liability of the State for tortious acts of its servants did not arise in that case. Secondly,--

"The decision in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, and *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, have no relevance in view of the pleadings of the parties and the cause of action on which the respondent's suit was based".

Thus, it is not correct to say that their Lordships overruled their earlier decisions, or in particular, the decision in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, , on the contrary that decision must be deemed to hold the ground and it was merely distinguished because it was not applicable to that case.

Again, the case of *Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta*, , is clearly distinguishable because in tint case, the Government was running daily market without licence. The claim by the Municipal Corporation was, therefore, decreed. So also the case of *Post Master General, Nagpur v. Radhabai*, Civil Appeals Nos. 761-762 of 1966, DA 23-4-1969 (SC) is distinguishable. In that case, a driver in the employ of the Government drove rashly and negligently, which caused the death of one Nathu. That case was similar to *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, ,

No doubt there is a school of thought that the distinction between sovereign and non-sovereign functions of the State, in order to determine the extent of State immunity, should not be perpetuated. A critical article by Mrs. Alice Jacob on *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, appeared in the *Journal of India Law Institute*, 1965 at page 247. This was followed by a more elaborate, yet critical, note by Mr, A. R. Blackshield in the same *Journal*, 1966, at page 643. It is noted that the basis of Government immunity is, what Roscol Pound called, the public interest in the integrity, security, efficiency and dignity of the State by the juristic person, and what Jullius Stone calls a social interest in political institutions. But there is an emphasis which is to be found, inter alia, in these

words:--

"But whatever we may want to say in answer to these questions, we seem finally to be led back to one central perturbation. This has its source in intuitive feeling that it is not fair for a man to be wrongly deprived of his property without some means of restitution; that however we do it, "justice" insists that somehow or the other such a man must be compensated".

The learned writer has also quoted the following remarks of Mr. Justice Peacock in the P. and O. case (1868 5 HCR 1 (supra).

"It may be difficult in some cases to determine whether an act is done in exercise of powers usually called sovereign powers, by individuals to whom such powers have been lawfully delegated". But to us it is quite clear that the Supreme Court has succinctly laid down the law in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, by posing the crucial tests which have to be applied. That ruling of the Supreme Court has not been overruled by their Lordships so far. All the decisions of the Supreme Court to which we have referred above hold the ground. In no later decision have their Lordships overruled any of their earlier decisions. *Vidya-wati* was not overruled in *Kasturilal*; nor was the latter overruled in *State of Bombay (Now Gujarat) Vs. Memon Mahomed Haji Hasam*, . Therefore, by virtue of Article 141 of the Constitution, the law declared by the Supreme Court in all these decisions is binding on all Courts in this country.

The following dicta can be deduced from the Supreme Court decisions:-- (1) Where a tortious act is committed by a public servant in discharge of his statutory functions, which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant, an action for damages for loss caused by such tortious act will not lie (2) If a tortious act has been committed by a public servant in discharge of duties assigned to him, not by virtue of delegation of any sovereign power, an action for damages will lie. (3) Where, due to negligent driving of a vehicle owned by the State, a claim for damages is made, the State is not immune because the use of the vehicle is not in exercise of any sovereign function. (4) Where the State has engaged itself in activities like industry, public transport or State trading and exercises powers as employers in public sector, the State is not immune from the consequences of tortious acts of its employees committed in the course of their employment as such. (5) Where the relationship of bailor and bailee between the plaintiff and the State comes into being and the Question of tortious liability does not arise, the first two propositions will not apply and the State will be liable, if its liability under the ordinary law of bailment is made out. (6) The relationship of bailor and bailee may come into existence, even when there is no express contract between the plaintiff on the one hand and the State or its servant in the discharge of his official function, on the other,

Since the present appeal itself has been referred for decision to the Full Bench, we shall now deal with it on merits.

The plaintiff's suit is for value of the goods seized by revenue authorities from his possession. He has not claimed the relief of return of his goods, and for the value of the goods in the alternative, which is ordinarily done. But, that apart, in either case, the plaintiff can succeed only if he has established that he is entitled to the return of his goods. If the plaintiff is not entitled to the return of the goods, which were seized by the revenue authorities, in other words, if there is no order in his favour directing return of the goods to him, he is not entitled to a decree. We have, therefore, to concentrate on this question before adverting to any other.

It is common ground that in connection with cutting of trees in some portion of Jamalpani malguzari jungle and in exercise of the powers u/s 202 of the C. P. Land Revenue Act (No. II of 1917), logs of wood which had been cut by the plaintiff were seized on October 20, 1950, in Revenue Case No. 37/5-4 of 1949-50. It is averred in the plaint:--

"5. In Rev. Case No. 37/5-4 of 1949-50, defendant No. 1 through its employee, Shri Das Sharma, Naib Tahsildar, Sausar, seized the plaintiff's cut wood through the Revenue Inspector on 20-10-1950

"7. u/s 202 of the Land Revenue Act, the orders of seizure were complied with and (but ?) the plaintiff was prohibited from lifting and taking away the wood from the jungle.

As there was no evidence with defendant No. 1 the said revenue case was filed on D/- 22-12-1952. But the plaintiff did not get back his seized goods. The order for selling the seized goods by auction was also passed on 22-12-1952."

But the order-sheet (Ex. P,7) of the Revenue Case docs not support the above allegation continued in paragraph 8 of the plaint. The relevant orders read thus:--

"8-10-52. Vide D. C.'s orders the case is submitted to A. D. C. for n.a.

Sd/- Tehsildar.

"22-12-52. Returned to Tehsildar. Orders for disposal of property will have to be passed. Further enquiry be made and report be submitted.

Sd/- A. D. C, Sausar."

"25-5-53, The property mentioned in seizure memo at page 7, be ordered to be put to auction and the sale proceeds credited to State Revenue. Submitted to A. D. C. through Tehsildar for order.

Sd/- Naib Tehsildar."

"2-6-53. Submitted to A, D. C. Sausar for orders.

Sd/- Tehsildar."

"8-6-53. Property be auctioned. Sale proceeds be credited in Treasury and then

case be resubmitted for filing.

Sd/- A. D. C. Sausar."

Thus the allegation that" the said revenue case was filed on December 22, 1952, is contrary to the record.

In paragraph 10-B of his amended plaint the plaintiff relied on the judgment (Ex, P. 12) dated September 28, 1955, of the Board of Revenue. On a perusal of that judgment, and the orders referred to therein, the following facts are clear.

(i) On April 3, 1950, the Extra Assistant Commissioner registered a case against Sheo-lal for breach of Malguzari Forest Rules. The matter dragged on. 5779 pieces of teak wood were seized and entrusted on "Suprat-nama" to the Mukkadam Gumashta of the village who was appointed by the plaintiff Malguzar.

(ii) On June 8, 1953, the then Additional Deputy Commissioner, Sausar, Shri W. R. Deshpande, passed the following order:--

"Property be auctioned. Sale proceeds be credited in Treasury, and the case be re-submitted for filing."

(iii) On February 10, 1954, Shri N. P. Kohner, Additional Deputy Commissioner, who succeeded Shri W. R. Deshpande, was of the opinion that it was necessary to review the abovesaid order dated June 8, 1953. This he could do only after obtaining permission u/s 40 of the C. P. Land Revenue Act. Accordingly, he moved the Deputy Commissioner. Shri V. B. Bangale, Deputy Commissioner, on February 12, 1954, granted the required permission.

(iv) Thereupon, Shri Kohner, Additional Deputy Commissioner, after recording evidence, by his order dated March 22, 1954: (A) imposed a fine of Rs. 1000/ for breach of Rules 2 (c), 5 (c) and 5 (e) of the rules made u/s 202 of the C. P. Land Revenue Act; and (B) also directed confiscation of the timber u/s 202 (3) ibid.

(v) It was against the last mentioned order of March 22, 1954, allowing review, that the plaintiff went in appeal before the Board of Revenue. The learned Member of the Board of Revenue came to the conclusion that the Additional Deputy Commissioner was not subordinate to the Deputy Commissioner. Therefore, the Deputy Commissioner had no jurisdiction to grant permission to the Additional Deputy Commissioner to review an order of his predecessor-in-office u/s 40 of the Act. On that basis, he set aside the order dated March 22, 1954 passed by Shri Kohner, Additional Deputy Commissioner. While doing so, the learned Member of the Board of Revenue made very clear observations as follows:--

"I accordingly hold that the order passed by Shri Konher is illegal and direct that it be set aside."

I may make it clear that the merits of the original order passed by Shri Deshpande have not been considered because they are not relevant to the

present appeal", which is concerned with subsequent order passed by Shri Konher. The appeal is allowed,"

(underlined (here in " ") by us)

Now, there cannot be a shred of doubt that what was set aside by the Board of Revenue was the order dated March 22, 1954, passed in review by Shri Konher, and it is equally clear that the order passed by Shri Deshpande on June 8, 1953, remained undisturbed and untouched.

The material sub-sections of Section 202 of the Act read as follows:--

"(1) The Chief Commissioner may make rules regulating the control and management of the forest-growth on the lands of any estate or mahal, and the exercise of any right of user over such forest-growth, and may attach to the breach of such rules a penalty not exceeding two hundred rupees, or, if the breach be a continuing one, a penalty not exceeding ten rupees for each day during which such breach continues.

(2) The Deputy Commissioner may direct that the whole or any part of any sum recovered under the rules made under Sub-section (1) shall be paid as compensation to any person or persons to whom loss or injury has been caused, or that it shall be expended in such manner as he may deem fit for the benefit of the forest-growth.

(3) The Deputy Commissioner may confiscate and sell any timber or other forest produce cut or removed in contravention of any rule made under Sub-section (1) and may apply the proceeds of sale to either or both of the purposes mentioned in Sub-section (2)." Under the 1st sub-section a penalty could be imposed within the prescribed limits. Under Sub-section (3) any timber or other forest produce cut or removed in contravention of any rule, could be confiscated and sold and the sale proceeds could be applied to either or both of the purposes mentioned in Sub-section (2).

Shri Konher's order dated March 22, 1954, was both under Sub-section (1) and Sub-section (3). He imposed a fine and also ordered confiscation of the cut wood. This order of Shri Konher was set aside. But the earlier order of Shri Deshpande, which, as pointed out above, remained undisturbed and untouched, was certainly within the purview of Sub-section (3) although not under Sub-section (1). It was obviously to enable him to impose a penalty under Sub-section (1) that Shri Konher, Additional Deputy Commissioner obtained permission to review the order of Shri Deshpande, which he did.

In the present suit, the following issues, among others, were framed:--

"(1) (a) Whether the cutting by the plaintiff from 18-9-49 to 19-10-50 was without the previous permission of D. C. Chhindwara ?

(b) Whether the previous permission of the D. C. Chhindwara, was necessary ?

Whether the stumps were not cut flush with the ground ?

Whether teak trees within 20 feet of the nala which retained water till April, were cut ?"

The plaintiff got these issues deleted on the ground that they were entirely within the cognizance of the Revenue Court. Accordingly, they were deleted. Moreover, the order of Shri Deshpande was not challenged in the plaint.

From the above resume, it must be held that the order dated June 8, 1953, passed by Shri W. K. Deshpande, stands good and is in force even today. That order has not been set aside by any revenue authority; and, on the plaintiff's own showing, this matter is within the exclusive jurisdiction of the revenue authorities. That order was to auction the wood seized and to credit the sale proceeds in treasury. That order was clearly an order of confiscation of the wood seized within the purview of Section 202 (3) of the C, P. Land. Revenue Act. No decree could, therefore, be passed in favour of the plaintiff for the value of the wood.

There is yet another aspect of this case on which also the suit has to be dismissed. The plaintiff's wood, which was seized by the Revenue authorities was entrusted to Sukharam (defendant 2) as custodian (Supratdar). In his written statement Sakharam pleaded as follows:--

"3. I was. in plaintiff's service -- at mouza Jamlapani itself. I was carrying on cultivation work from the plaintiff. I was getting 3 Khandis of summer and winter crops and Rs. 30/- per year in lieu of my service. Only at the instance of the plaintiff himself I had accepted the Supratnama in respect of 265 logs & 14 beams, which the plaintiff has taken away."

The matter relates to year 1951. In about the month of Fagun or Chait, the plaintiff came (to me). He said "The case is dismissed. All the seized property is released. Now let (us) take the seized property to my house at Mohgaon."

"5. The plaintiff sent for his bullock carts from mouza Mohgaon & mouza Jamlapani and took away the entire seized property to mouza Mohgaon by causing deception on me. The seized property is still at plaintiff's place at Mohgaon even till now. And 14 beams are still lying at mouza Jamlapani at present. I can adduce evidence in respect of all this."

"6. I am a Gond by caste quite illiterate and a villager, The plaintiff himself took away the seized property by causing deception on me. This suit is quite bogus, false and illegal. It has been filed by showing too much value of the wood."

After this written statement was filed, the plaintiff amended his plaint to introduce certain other averments but did not controvert the above allegations of defendant No. 2. It is an established practice in that part of this State, in which the present case was tried, that the allegations against the plaintiff requiring an answer based on facts, are controverted by amending the plaint, if the plaintiff

has to deny them, or has to say something about them in answer. Even in his deposition as P. W. 5, which was recorded on April 24, 1957, the plaintiff did not controvert the aforesaid allegations made in the written statement of the second defendant. Salikram (D. W. 3) was produced to say that at the plaintiff's command, the seized wood, which was lying at Sukhuwali Khari was carried by the plaintiff's servants to the plaintiff's house in about four days. Now, there are two possibilities. Either the plaintiff took away from the Supratdar the seized wood, as alleged by the second defendant, or the seized wood had been misappropriated by the second defendant. In the former case, the plaintiff is not entitled to a decree. In the latter case, if we had held that the plaintiff is entitled to the return of the wood, then the first of the above six propositions would apply and the State would not be liable for the Supratdar's tortious act. The order to seize the wood was passed by a revenue authority in exercise of his statutory powers and the seizure of the wood was by a competent authority in exercise of his statutory functions, and the seized wood was entrusted to the Supratdar, which also was an act done in exercise of statutory functions. In this view of the matter as well, the suit must be dismissed.

The appeal is allowed. The judgment and decree of the Trial Court are set aside. Having regard to all the circumstances of the case, we leave the parties to bear their own costs as incurred throughout.