

(1957) 01 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 78 of 1956 (K)

V.J. Mathew

APPELLANT

Vs

Divisional Forest Officer, Konni

RESPONDENT

Date of Decision : 02-01-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : AIR 1957 Ker 113

Hon'ble Judges : Menon, J

Bench : Single Bench

Advocate : T.S. Krishnamurthy Iyer and V.K. Gopinathan Pillai, for the Appellant;

Final Decision : Dismissed

Judgement

Menon, J.—The petitioner offered Rs. 7,800 at an auction of the right of tapping trees in a Government Rubber Plantation for a period of twelve months ending on the 31st January 1957. The offer was accepted and Ext. P1 dated 17-3-1956 is the formal agreement that followed.

2. Ext. P2 of the same date is the licence issued in pursuance of Ext. P-1:

"No. 13 of 1956. Sri. V. J. Mathew, Puthuvallil House. Kallali, Koni.

Koni Division.

2. Nature and period of the contract.

Lease right of tapping the 42.75 acres of rubber plantations at Karippanthodu Group in Koni Teak Plantations till the end of January 1957 as per agreement dated 17-3-1956.

3. Particulars of produce to be collected.

Rubber:

4. Description of the locality of collection.

42.75 acres of Govt. rubber plantations at Karippanthodu Group in Koni Teak Plantations.

5. Destination.

6. Remarks.

The collection of the produce referred to herein should be made in strict conformity with the conditions of the agreement executed by the contractor on 17-3-1956 copy of which is attached here-with."

3. By Ext. P6 dated 10-12-1956 the right granted to the petitioner under Ext. P1 has been cancelled. The memo reads as follows :

"Lease right of Tapping the rubber trees at Karippanthodu group for the year up to the end of January 1957 Agreement dated 17-3-1956 with Sri. V. J. Mathew.

Consequent on the bad tapping conducted by the lessee in violation of the agreement conditions, the above lease right in his name is ordered to be cancelled forthwith and security deposited by him forfeited to the Government.

The Lessee will hand over the plantations and the Government properties entrusted to him, to the Teak Plantation Officer, Naduvathumuzhi immediately"

and the prayer in the petition is that Ext. P8 should be quashed "by a writ of certiorari or other appropriate writ or direction"" by this court. It will be clear from what is stated above that the complaint of the petitioner can spell no more than an allegation of a breach of contract and I hold that he should seek "his remedy, if any, by a normal action against the Government and not by way of a petition under Article 226 of the Constitution.

4. In view of Section 80 of the Code of Civil Procedure, 1908, a suit against the Government is no doubt not possible as pointed out by the learned counsel for the petitioner "until the expiration of two months next after notice in writing" has been given. I do not consider this as a sufficient reason in the circumstances of this case for taking action under Article 226 of the Constitution.

5. The question as to whether in such cases any interim relief can be granted under Article 226 of the Constitution must also be considered as settled by the decision of the Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, . In that case the High Court of Orissa after holding that the remedy by way of a suit is the proper remedy (as I have done) ordered as follows :

"We direct that till three months from today or one week after the institution of their contemplated suit, whichever is earlier, the Government of the State of Orissa should refrain from disturbing the petitioner's possession over the mining areas in question and that thereafter this order will cease to have effect". The Supreme Court said :

"If the court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action".

6. My conclusion being that a suit is the proper remedy and that the said remedy is adequate this petition has to be rejected and it is hereby rejected.