(1960) 10 MP CK 0014

Madhya Pradesh High Court

Case No: First Appeal No. 112 of 1957

State of Madhya Pradesh		APPELLANT
	Vs	
Singhai Kapoorchand of Seoni		RESPONDENT

Date of Decision: Oct. 31, 1960

Acts Referred:

- Central Provinces Land Revenue Act, 1881 - Section 202, 33, 9
- Constitution of India, 1950 - Article 300

Citation: AIR 1961 MP 316 : (1961) JLJ 601 : (1961) 6 MPLJ 456

Hon'ble Judges: T.C. Shrivastava, J; S.P. Bhargava, J

Bench: Division Bench

Advocate: R.J. Bhave, for the Appellant; A.P. Sen, for the Respondent

Final Decision: Allowed

Judgement

Shrivastava, J.

This appeal has been filed by the State Government against the respondent Singhai Kapoorchand challenging the decree passed by the 1st Civil Judge, Seoni, in Civil Suit No. 6-B of 1954.

Shri E. B. Reinboth, Sub-Divisional Officer, Seoni, was impleaded as defendant No. 2 in the suit. The claim has been decreed against him also; but no appeal has been filed on his behalf, nor has he been impleaded by the State Government as a respondent in this appeal.

The facts in the case are not in dispute. Respondent Singhai Kapoorchand was the lambardar of Patti No. 2 in Mouza Mohgaon in Seoni Tahsil till 31-3-1951'' when the proprietary rights vested in the State under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951). There was forest growth on the lands belonging to the respondent. A report was made against him in the year 1949 alleging that the trees were being cut in contravention

of the rules framed u/s 202 of the C. P. Land Revenue Act, 1917.

Shri Reinboth, who was the Sub-Divisional Officer, Seoni, at that time and who was defendant No. 2 in the present case, passed the order (Ex. P-3) on 31-8-1949 directing the respondent to suspend cutting. The timber which wag lying cut in the village was seized under Ex.. P-12 on 14-9-1949 and was placed in the custody of Hirde and Premlal under Supratnama (Ex. P-10). An enquiry was made by the Sub-Divisional Officer into the alleged illegal cutting and on 27-1-1951 he ordered the respondent to pay a fine of Rs. 500/-.

The respondent went up in appeal to the Board of Revenue, but it was dismissed on 26-10-1951 (Ex. P-4),, Thereafter, the respondent filed an application on 6-1-1952 for the return of the timber which had been seized and the Sub-Divisional Officer directed on 11-1-1951 that the timber be returned. However, when the Revenue Inspector went to return the timber to the respondent, he found that none was left in the village and therefore the timber could not be returned. Ex. P-11 is his report. The suit was accordingly filed by the respondent for the value of the timber which was seized,

In defence, the State Government pleaded that the timber did not belong to the respondent, that even after the seizure, the Custody of the respondent over the timber remained and that it was he who was responsible for removing the timber with the aid of his contractor Akbarkhan. It was further stated that the State Government was not liable for any negligence of the Sub-Divisional Officer, Seoni, in seizing or returning the timber. The value of the timber claimed was disputed.

The Sub-Divisional Officer (defendant No. 2) in addition pleaded that his act was done in good faith and he was protected u/s 1 of the Judicial Officers Protection Act.

The trial Court held that the responsibility for returning the timber was on the Sub-Divisional Officer and the timber had disappeared on account of his negligence. Accordingly, the Court held that the Sub-Divisional Officer as we''ll as the State Government were liable for the value of the timber. The value was determined at Rs. 6,000/- only and the claim was decreed for this amount against both the defendants. As we have already said, the Sub-Divisional Officer did not appeal against the decree, and in this appeal we are only concerned with the liability of the State Government.

6-A. Section 202 of the C. P. Land Revenue Act, 1917, gives power to the State Government to make rules regulating the control and management of forest growth on the lands of proprietors. Power has also been given to attach to the breach of the rules a penalty not exceeding one thousand rupees as also the power to confiscate any timber cut contrary to the rules framed under the section. In exercise of these powers the State Government has framed rules, Under these rules restrictions are placed on the right of the proprietor to cut several species of trees.

Rule 5 imposes certain conditions on the cutting of timber trees and requires that not less than thirty timber trees per acre shall be left uncut. Rude 9 provides the penalty for illegal cutting. It was in exercise of the power under Rule 9 read with Rule 5 that the Sub-Divisional Officer seized timber and after enquiry ordered the respondent to pay a fine of Rs. 500/- only. He did not, however, pass any order confiscating the timber and therefore the timber was returnable to the respondent when the proceedings closed.

On behalf of the State Government, it was contended that the Sub-Divisional Officer, Seoni, was acting under powers which were given to him by the Legislature u/s 202 of the C. P. Land Revenue Act, 1917, and in exercising those powers he was not acting as a servant of the State Government. On the other hand, Shri A. P, Sen for the respondent contends that the Sub-Divisional Officer was at all times a servant of the State Government and the State Government as master were responsible for any damage resulting from the acts of their servant which were committed during the course of employment, even though the servant acted in excess of the authority given to him.

The power to impose a fine necessarily implies that a judicial enquiry into the matter had to be made by the Sub-Divisional Officer. Further an appeal lay to the Board of Revenue u/s 33 of the Land Revenue Act which shows that the proceedings were of a judicial nature. Accordingly, if the officer acted in good faith, Section 1 of the Judicial Officers Protection Act completely protected him,

Shri A. P. Sen contends that the rules framed u/s 202 of the Land Revenue Act do not expressly confer any power on the Deputy Commissioner to seize the timber which was illegally cut. u/s 202 and Rule 9 thereunder power has been expressly given to confiscate the timber, and seizure of the timber pending the enquiry appears to us to be subsidiary to the exercise of the power of confiscation after enquiry. The Sub-Divisional Officer exercising the powers of the Deputy Commissioner was therefore within his right to seize the property.

In starting proceedings against the respondent he was acting u/s 202 of the Land Revenue Act and was thus exercising statutory powers and duties imposed upon him. The power which is given to the State Government to make rules is de legated power of legislation. After the rules are framed, the State Government ceases to be in the picture and it is left to the officers to enforce the provisions of the Act as also the rules framed there under.

The contention of Shri Sen that the Deputy Commissioner was paid out of the revenues of the State and was otherwise subordinate to the State Government in administrative capacity does not, in any way, affect the position that while acting under the statutory powers he did not act as a servant of the Government. Those powers were not derived by him from the State Government and the State Government had no control over him while he exercised those powers, In fact, the

State Government could not interfere in any manner with the powers exercised by him. He was not, therefore, acting as a servant of the State Government in any sense.

Before we proceed with the case further, we may briefly refer to the question of the liability of the State Government for torts committed by their servants. Section 65 of the Government of India Act, 1858, Section 32 of the Government of India Act, 1915, Section 176 of the Government of India Act, 1935 and Article 300 of the Constitution of India, read together, lead to the position that the liability of the Secretary of State was the same as the liability of the East India Company. The question in every case therefore narrows down to whether an action of the character could be brought against the East India Company prior to 1858.

The matter was first considered in Peninsular and Oriental Steam Navigation Co. v. Secretary of State, 5 Bom HC App 1, which has been quoted often in several decisions thereafter. The question in that case was whether the damage sustained by the plaintiff on account of injury Caused to his horses fey the servants of the East India Company working in the dockyards could be claimed from the Secretary of State. A distinction was drawn between acts done in exercise of Sovereign powers and acts done in the conduct of commercial undertakings,

It was held that in the latter case the Secretary of State was liable. In Secretary of State v. Moment ILR 40 Cal 891 (PC) and Secretary of State v. Hari Bhanji ILR 5 Mad 273 the matter was again considered in the context of commercial undertakings run by the Government and it was held that the secretary of State was liable for the tortious acts of their servants. It is now well settled that a liability of the State Government in respect of torts committed by their servants in commercial undertakings exists, as such a ''liability could be enforced against the East India Company.

In Shankar Rao v. Sham Bihari ILR (1949) Nag 560 : (AIR 1951 Nag 419), the following conclusion was reached after reviewing the case law on the point:-

"In the case of a Provincial Government its servants are employed either for the doing of ''commercial acts'' or ''sovereign acts''. If a tort is committed within the scope of what may be termed ''commercial'' employment then the Government would probably be liable provided other necessary factors were also present, but if the acts fall within the scope of their ''sovereign'' employment then the Provincial Government is not liable."

''Sovereign'' acts may be divided into ''Acts of State'' strictly so-called and other acts. As regards ''Acts of State'', in Province of Bombay Vs. Kusaldas S. Advani and Others, the position has been stated thus on page 696:-

"This phrase is capable of being misunderstood. As applied to an act of the sovereign power directed against another sovereign power or the subjects of

another sovereign power not owing temporary allegiance, in pursuance of sovereign rights of waging war or maintaining peace on the high seas or abroad, it may give rise to no legal remedy. But as applied to acts of the executive directed to subjects within the territorial jurisdiction it has no special meaning, and can give no immunity from the jurisdiction of the Court to enquire into the legality of the Act."

There cannot be any ''Act of State'' between a sovereign and its subjects. As regards the torts committed by the servants, the Government is absolutely immune in such cases. We need not, however, discuss this point further, as the act of the Sub-Divisional Officer in the present case was not an ''Act of State''.

The question of the liability of the State has been summed up in paragraph 19 of the decision in Sewkissendas Bhatter and Others Vs. Dominion of India, which is as follows:-

"The State''s liability to be sued for its own acts or acts of its officers or subordinates in the discharge of their official duties has often been the subject of much discussion. These acts may be conveniently grouped under two general heads, namely (i) acts, done in pursuance of ventures which a private individual may as well undertake, for example, mercantile operations and the like, and (ii) acts, done in the exercise of Governmental powers which cannot be lawfully done except under sovereign authority or delegation thereunder. Acts of the former class are plainly justiciable in the municipal'' courts of the country and the State is always answerable for their consequences and its primary and vicarious liability in respect of such acts is absolute in the sense that it is governed by the same principles as govern private individuals in similar matters. The second class of acts fail under two distinct sub-heads, one comprising sovereign acts or sets of State, properly so-called, not professing or seeking to justify themselves under the municipal law, and the other, done or purported to be done under the sanction of some Municipal law or statute and in the exercise of powers, conferred thereby. Acts of State, properly so-called, are never justiciable in Courts of Paw or Municipal Courts of the country and the State is not answerable for them. There the immunity is absolute. Acts, done or purported to be done under the municipal law, do not enjoy the same immunity and, where they amount to unlawful detention of land, goods, chattels Or money, belonging to the subject, the State is always liable for their consequences For such-acts again, that is acts under this second sub-head which seek justification from municipal law, but eventually turn out to be unlawful or legally unwarranted, the State will be liable, except when they are done by officers of the State in the exercise of some statutory powers, conferred upon them as such officers, or where they are done otherwise by its officers and the State has not ordered or ratified the doing of the same."

As in the instant case we are concerned with the latter class of acts, we shall refer to the relevant decisions on this aspect only. In Shivabhajan v. Secretary of State ILR 28 Bom 314 the Chief Constable had attached some bundles of hay and the plaintiff

sued the Government for damages. The Chief Constable was acting under the provisions of the Criminal Procedure Code. The contention that the Chief Constable was acting in his capacity as a Government servant and the Government was liable as the principal was overruled on the ground that the Chief Constable was acting in performance of a statutory power vested in him by the Legislature.

In Ross v. Secretary of State AIR 1915 Mad 434, the Collector of Ganjam had dismissed a local agent and ordered the closing of a depot by virtue of powers vested in him under the Assam Labour and Emigration Act, 1901. The suit was for recovery of damages for the wrongful closure of the depot and the dismissal of the local agent It was held that the Collector had not exercised his power properly. Still, the Secretary of State was not held liable for the tort.

Reliance was placed upon the decision in Tobin v. Reg, (1864) 143 ER 1148 in which the captain of a ship of war, who had destroyed the vessel supposed to be engaged in the slave trade, was found to be acting under statutory powers and the Crown was held immune from the liability. The contention that the act was done by the captain in the course of employment was repelled. That decision of the single Judge of the Madras High Court was confirmed by a Division Bench in A.M. Ross, Duly Authorised Agent of certain Tea Companies and Labour Associations Vs. The Secretary of State for India in Council, .

In Secy. of State Vs. Ramnath Bhatta, a Deputy Collector had paid the surplus proceeds of the sale of a village to the recorded proprietor contrary to the orders of the Collector that they were to be paid to the mortgagee of the village. The Deputy Collector was acting under the powers derived from, the Bengal Land Revenue Sales Act of 1859. The contention that the Secretary of State was liable was rejected with the following observations:-

"In the present case the alleged loss of the plaintiff was caused by the error or delinquency of the subordinate staff under the Collector of Chittagong. The question is whether for their acts the Secretary of State for India in Council is liable or in other words, whether the Government revenues are liable for the alleged tosses. In this case the surplus sale proceeds were held in the interest of the late recorded proprietor. It was not held by the Collector for the profit of the Government. By the order of payment of the money to Faizali the Government did not derive any benefit. The act was done by the Deputy Collector entirely in the exercise of his statutory duties. If he committed an error in his duty the Secretary of State for India in Council cannot be held liable for the same."

In Uday Chand v. Province of Bengal 51 Cal WN 537 the Collector had similarly paid the sate proceeds negligently to a wrong person. He was acting under the Putni Regulation, 1819. It was held that no right of action lay against the Government, as the act was done in exercise of the power or discretion vested in the officer by the relevant law, and not in pursuance of any implied authority derived from the

Government.

In Ram Gulam and Another Vs. Government of U.P., the stolen property was seized under the provisions of the Criminal Procedure Code and was lost on account of the negligence of the Government servants. It was held that in such cases the Government did not occupy the position of a bailee in respect of the property and was not liable to indemnify the owners in Case of their loss due to the negligence of its servants. It was also held that the rule embodied in the maxim ''respondeat superior'' is subject to the exception that the master is not liable for the acts of his servants performed in the discharge of a duty imposed by law.

In the District Board of Bhagalpur Vs. Province of Bihar, the question of the liability of the Slate of Bihar arose on these facts. The Treasury Officer was required by the provisions of the Local Government Act to pay money on the cheques issued by the Chairman of the District Board. He paid money to a wrong person on a cheque which was not drawn by the Chairman and the mistake was due to his carelessness in not comparing the signatures.

This was thus a case of tort or negligence which caused loss to the District Board. After reviewing the case law on the point, the learned Judges reached the conclusion that the Government could, in no case, be liable for tortious acts done by its officers during the course of their statutory duties. The observations of Erle, C. J., in (1864) 143 ER 1148 (supra) were extensively quoted in the judgment. We may refer only to the following:-

"The liability of a master for the act of his servant attaches in the case where the will of the master directs both the act to be done and the agent who is to do it. The act of the servant is then held to Be the act of the master; and the servant acting in the course of his employment is a general agent in that employment, and makes his principal liable for all that he does within the scope of his authority as such general agent; and, further, in respect of all his acts within the scope of that authority, they are the acts of the principal notwithstanding any private arrangement to the contrary between the principal and such agent.....

When the duty to be performed is imposed by law, and not by the will of the party employing the agent, the employer is not liable for the wrong done by the agent in such employment."

The following observations of Fazl Ali, J., in The State of Tripura Vs. The Province of East Bengal, are instructive:-

".... the following three points which emerge from a careful perusal of a large number of cases bearing on the subject seem to be material:

(1) The principles of the law of torts have been consistently applied in all cases dealing with the liability of the Secretary of State for wrongs committed by the servants or agents of the Crown or the Government.

(2) It is settled law that the Secretary of State cannot be held liable for wrongs committed by the servants of the Crown in the performance of duties imposed by the Legislature (See ILR 28 Born 314 James Symonds Evans v. Secy. of State AIR 1920 Lah 362; 1864 143 ER 1148; AIR 1915 Mad 434, in which this principle is fully explained and the reasons upon which it is based, are dearly set out.).

(3) It is also well settled that where a statute specially authorizes a certain act to be done by a certain person, which would otherwise be unlawful or actionable, no action will lie for the doing of the act."

In that case, their Lordships were Concerned with the interpretation of the expression "actionable wrong" occurring in Article 10 of the Indian Independence (Rights, Property and Liabilities) Order, 1947. Fazl Ali, J., in his judgment considered the expression as synonymous with ''tort'' and after discussing the question whether the State Government was liable to be substituted in place of the Province of Bengal under the Order concluded that no action for damages could be maintained against the Province of East Bengal on the allegations in the plaint,

The majority of the Judges, however, decided the case on the ground that ''actionable wrong'' was wider than "tort'' and the Province of East Bengal was, therefore, liable to be substituted. The contention of Shri A. P. Sen that the observations of Fazl Ali, J., should be deemed to have been negatived by the majority is not correct, as they did not consider the question at all and decided the appeal on other grounds. Nothing in the majority judgment detracts from those observations.

To sum up, the State Government cannot be held liable for torts committed by their servants in exercise of powers and duties imposed upon them by law. Accordingly, the State Government in the present case is not liable to pay to the respondent the value of the property which was seized by the Sub-Divisional Officer in exercise of his powers under the Land Revenue Act and the rules made thereunder.

There is another reason why the State Government cannot be held to be liable. The Sub-Divisional Officer was acting under the statutory powers which were, more or less, of a judicial nature. He is, therefore, protected u/s 1 of the Judicial Officers Protection Act. Further the Sub-Divisional Officer had acted with promptness and had passed the order of release as soon as an application to that effect was filed by the respondent. The loss was caused due to the negligence of the spreaders for which the Sub-Divisional Officer cannot be held responsible. As the Sub-Divisional Officer himself was not liable, the State Government cannot be held to be liable.

It was argued by Shri R. J. Bhave for the State that the value of the timber seized has not been properly determined by the trial Court. This ground has not been expressly taken in the memorandum of appeal, and nothing was shown to us how the calculations were wrong. We accept the value of the timber seized at Rs. 6,000/-.

We have already said that the memorandum of appeal is not signed by the Sub-Divisional Officer. He has not even been impleaded as a party therein. The decree against him, therefore, becomes final and cannot be set aside, even though, on our findings, he is not liable.

In the result, the appeal is allowed. The claim against the State Government is dismissed with costs throughout.