Mulamchand Ratilal Asathi Vs State of Madhya Pradesh and Others

Court: Madhya Pradesh High Court

Date of Decision: May 6, 1959

Acts Referred: Constitution of India, 1950 â€" Article 299, 299(1), 366, 372(1)
Forest Act, 1927 â€" Section 3, 7, 82
Government of India Act, 1935 â€" Section 175(3)

Citation: AIR 1960 MP 152 : (1959) ILR (MP) 513 : (1960) JLJ 321 : (1960) 5 MPLJ 195

Hon'ble Judges: G.P. Bhutt, C.J; T.C. Shrivastava, J

Bench: Division Bench

Advocate: M.N. Phadke and K.K. Dube, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Bhutt, C.J.

This is a Letters Patent appeal against the order of Naik J. in Miscellaneous Petition No. 197 of 1956. The order in this appeal shall also dispose

of Miscellaneous Petitions Nos. 92, 142 and 168, all of 1956. In all these cases the right of the State Government to realize the dues under forest

contracts as arrears of land revenue is in question.

As a result of the coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1950 (No. 1

of 1951), the village forests vested in the State with effect from 31 March 1951. The right to propagate and collect lac in some of the forests of

Balaghat district was auctioned by the Additional Deputy Commissioner, Balaghat, for the years 1951-52, 1952-53 and 1953-54 during

September and October 1951, and the bids of the present appellant Mulamchand for Rs. 69,500/-, and of the petitioners of Miscellaneous

Petitions Nos. 142 and 168 of 1956, namely, Keshrimal of the former and Shivlal of the latter petition, for Rs. 34,500/- and Rs. 11,250/-

respectively, being the highest, were accepted. In these cases, separate indentures were executed by the present appellant and the other

petitioners, on the one hand, and the Governor through the Deputy Commissioner, Balaghat, on the other.

In Miscellaneous Petition No. 92 of 1956, the petitioner Chandulal acquired the right to propagate and collect lac, but no document was executed

to evidence the transaction. He alleged that the right was disposed of at the auction held by the Additional Deputy Commissioner, Balaghat, when

his bid for Rs. 5,600/- which was the highest, was accepted for the years 1952-53, 1953-54 and 1954-55. The case of the State Government, on

the other hand, was that the right was settled by private treaty for the years 1951-52, 1952-53 and 1953-54 between the petitioner and the

Additional Deputy Commissioner, Balaghat. The case set up by the ''State Government was not disputed by the petitioner for purposes of

arguments.

The amounts for which the rights were disposed of were payable in three annual instalments. The present appellant paid in all Rs. 11,000/- and Rs

58,000/- were due by him. In Miscellaneous Petition No. 92 of 1956, the amount paid was Rs. 1866/10/9 and the balance due was Rs.

3,733/5/3. In Miscellaneous Petition No. 142 of 1956, Rs. 11,166/- only were due and the balance of Rs. 23,334/- was paid off.

In Miscellaneous Petition No. 168 of 1956, only the first instalment of Rs. 3,750/- was paid, and the remaining two instalments of Rs. 3,750/-

each were due. The amounts remaining due were sought to be realised as arrears of land revenue by the revenue authorities u/s 225 (c) of the

Central Provinces Land Revenue Act, 1917, and since the objections of the present appellant and the other petitioners to this method of recovery

were disallowed and their appeals and revisions up to the Board of Revenue, Madhya Pradesh, were dismissed, they moved this Court under

Article 226 of the Constitution of India.

The petition of the present appellant was heard by Naik J. and dismissed by him in limine. He has, therefore, come up in appeal, which has been

heard along with the other petitions.

The reasons why the remaining amounts were not paid have been stated by the present appellant and the other petitioners in their petitions. Shortly,

they allege that they could not work some parts of the forests on account of the obstruction put up by the tenants and the ex-malguzars and in

some parts they could not raise lac for want of pains trees, and also that they could not make any profit by sale of the lac that they could gather

due to the sharp fall in the price. However, these allegations were controverted and therefore, were not pressed in support of the petitions. The

points that were urged are:

(1) That as the Indian Forest Act, 1927, does not apply to the forests that vested in the State under Act No. 1 of 1951, the action u/s 225(c) of

the Central Provinces Land Revenue Act was without the authority of law; and

(2) that as the indentures were not executed by proper authority, and in Miscellaneous Petition No. 92 of 1956 there was no disposal by a written

instrument, Article 299 of the Constitution of India was contravened and the contracts were not legally enforceable.

We shall take up these points in the above order.

Point (1): Lac is a ''forest produce'' as defined in Section 2(4)(a) of the Indian Forest Act, whether found in, or brought from, a forest or not.

There has been in the cases before us a disposal of the right to raise and collect lac. If the disposal was by way of a sale, the amount recoverable

would be the price of the forest produce within the meaning of Section 82 of the Indian Forest Act.

If, therefore, the Indian Forest Act applies to the forests which vested in the State under Act No. 1 of 1951, the amounts that fell due would be

recoverable as arrears of land revenue vide Section 82, and consequently Section 225(c) of the Central Provinces Land Revenue Act would be

attracted. The question accordingly is whether the disposals were by way of sale; if so, whether the Indian Forest Act is attracted.

The indentures that have been executed are headed:

''Deed of contract for the sale and purchase of forest produce.''

Thereafter, the entire tenor of the documents evidences clearly that the disposals were by way of sale. In Ananda Behera and Another Vs. The

State of Orissa and Another, their Lordships described the grant of a licence to enter on land and carry away fish as a sale of a right to carry away

fish in specific portions of the lake over a specified future period, that is to say, a sale of a profit-a-prendre. The same is the case here, and this is

also evidenced by the indentures that were executed.

In Miscellaneous Petition No. 92 of 1950, it is no doubt true that there was no written instrument, but the petition itself shows that the disposal was

by way of a sale. We have accordingly no hesitation in holding that the amounts that fell due were on account of the price of forest produce within

the meaning of Section 82 of the Indian Forest Act.

-8. The question then is as regards the applicability of the Indian Forest Act to the forests vesting in the State under Act No. 1 of 1951. Although

the Indian Forest Act deals specifically with (i) Reserved Forests, (ii) Village Forests, viz, reserved forests which have been assigned to any village

community, and (iii) Protected Forests, the preamble and other provisions of the Act are wide enough to cover all categories of forests.

We are, therefore, of opinion that Section 82 of the Indian Forest Act is applicable to the cases before us and consequently the revenue authorities

were entitled to realize the amounts due as arrears of land revenue u/s 223 (c) of the Central Provinces Land Revenue Act.

Point (2): As already stated, the indentures were executed in cases other than Miscellaneous Petition No. 92 of 1956 by the purchasers and by the

Deputy Commissioner, Balaghat, on behalf of the Governor. Section 218-A was introduced in the Central Provinces Land Revenue Act to

empower the State Government to make rules regulating the control and management of the forest growth on the land vesting in the State under

Act I of 1951. The rules made under this section do not prescribe the authority entitled to sell the forest produce.

It was accordingly urged that the Deputy Commissioner, Balaghat, was not the person, as contemplated by Clause (1) of Article 299 of the

Constitution of India, who was entitled to execute the indentures on behalf of the Governor; consequently, the contracts were not legally

enforceable. In respect of Miscellaneous Petition No. 92 of 1956, it was urged that since there was no written instrument as required by Clause

(1) of Article 299 there was no valid contract between the parties.

Under Section 7 of Act I of 1951 Deputy Commissioners were authorised to take charge of all lands and interests vesting in the State u/s 3. The

power to take charge obviously includes the power to manage and dispose of. In exercise of the powers conferred"" by Sub-section(3) of Section

175 of the Government of India Act, 1935, the Governor of the Central Provinces and Berar was pleased to make rules prescribing the classes of

contracts and assurances of property made in the exercise of the executive authority of the Province and the authorities entitled to exercise them.

These rules were notified in the Central Provinces and Berar Gazette dated 14-5-1937. In Clause E, item 2, the Deputy Commissioners of districts

were authorised to execute contracts relating to any matter falling within their ordinary jurisdiction. The management and disposal of the forests that

vested in the State u/s 7, Act I of 1951, accordingly fell within the ordinary jurisdiction of the Deputy Commissioners of their respective districts.

These rules have been kept alive under Article 372(1) read with Clause (10) of Article 366 of the Constitution of India. In the cases where

indentures were executed by the Deputy Commissioner, Balaghat, therefore, there was no breach of Article 299(1). If, however, there be any

lacuna in the form of these documents, the cases would stand on par with Miscellaneous Petition No. 92 of 1956. We may, therefore, consider the

effect on the right of the State Government relating to contracts which are not expressed in form prescribed in Article 299(1).

There can in view of Section 7 of Act No. 1 of of 1951, be no doubt that the Deputy Commissioner, Balaghat, was authorized to dispose of the

forest produce. In cases where indentures were executed by him he must be deemed to have disposed of the forest produce. In Miscellaneous

Petition No. 92 of 1956, it was doubtless the Additional Deputy Commissioner, Balaghat, who had disposed of the forest produce. There is,

however, no reason to doubt that he had the authority of the Deputy Commissioner, Balaghat, as he had in the other cases where he held the

auctions and accepted the bids on his behalf.

The disposal of the forest produce in all these cases, therefore, was done by a duly authorized officer. Accordingly, the decision of their Lordships

of the Supreme Court in Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others, is clearly attracted.

In the cited case, the contract was entered into by the Chairman of the Board of Administration, whose authority in that capacity to contract on

behalf of the Union Government was not in question. The contract, however, was not expressed in the form prescribed by Article 299(1) of the

Constitution of India. Their Lordships observed that the provisions in that article were not inserted for the sake of mere form and they were there

to safeguard Government against unauthorised contracts.

On the other hand, according to their Lordships, an officer entering into a contract on behalf of the Government could always safeguard himself by

having recourse to the proper form. Their Lordships also considered intermediate classes of contract and observed:

''In between is a large class of contracts, probably by far the greatest in numbers, which, though authorised, are for one reason or other not in

proper form. It is only right that an innocent contracting party should not suffer because of this and if there is no other defect or objection we have

no doubt Government will always accept the responsibility. If not, its interests are safeguarded as we think the Constitution intended that they

should be''.

After setting out the law thus far, which shows that Article 299(1) of the Constitution of India, although mandatory unlike Article 166 ibid, is only

intended to safeguard the interests of Government, their Lordships proceeded to observe:

It would, in our opinion, be disastrous to hold that the hundreds of Government officers who have daily to enter into a variety of contracts, often

of a petty nature, and sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be effected

by a ponderous legal document couched in a particular form. It may be that Government will not be bound by the contract in that case, but that is a

very different thing from saying that the contracts as such are void and of no effect. It only means that the principal cannot be sued; but we take it

there would be nothing to prevent ratification, especially if that was for the benefit of Government.

We may also refer to the following observation in The State of Assam Vs. Keeshab Prasad Singh and Another, in the context of auction sale and

acceptance of a bid:

''According to all notions of contracts current in civilized countries that would have constituted a binding engagement from which one of the parties

could not resile at will and had respondent 1 tried to back out we have little doubt that the State Government of Assam would, and quite justifiably,

have insisted on exacting its just dues.''

This means that even by acceptance of a bid by the State Government or its authorized servants a contract binding on the person offering the bid is

created by operation of law.

In view of the exposition of law stated above, it is not necessary to resolve the controversy that had raged previously over the interpretation of

Section 30(2) of the Government of India Act, 1915, as amended by the Act of 1919, or Section 175(3) of the Government of India Act, 1935.

The law laid down by their Lordships of the Supreme Court is that the Government has the power to ratify a contract not in proper form and even

where it is ratified by acceptance of the bid and nothing more, the Court would be entitled to enforce it at will.

With respect to the learned Judge who decided New Churulia Coal Co. Ltd. Vs. Union of India (UOI), , therefore, we are unable to agree with

his dictum that an agreement not in proper form is wholly void under the provisions of Section 2(g) of the Indian Contract Act. We may, however,

notice that the decision in that case was correct as the suit was for enforcement of the agreement against the Government, which had disclaimed it

and was, therefore, rightly dismissed according to the law laid down in the case of Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and

Others, .

In the cases before us, there is no doubt that the contracts were ratified by the State Government which had, under Clause (xi), Chap XIX of the

Instructions issued under Sub-sections (1) & (3) of Section 3 of Act I of 1951, authorized the Deputy Commissioners to dispose of the forest

produce (page 273 of the Madhya Pradesh Land Reforms Manual) and also allowed the present appellant and the petitioners to exploit the forests

according to the terms of the sales. There is thus no bar to the right of the State Government or its servants to realize the dues from them as arrears

of land revenue.

The result is that the present appeal and also the connected petitions fail and are dismissed with costs. Hearing fee Rs. 50/- in each case. The

balance of the security amounts shall be refunded to the depositors.