

**DIVL. FOREST OFFICER**

v.

**MOOL CHAND SAROUGI JAIN**

*January 6, 1971*

[J. C. SHAH, C.J., K. S. HEGDE AND A. N. GROVER, JJ.]

*Assam Forest Regulation VII of 1891. Rules made under—Rule 10 scope of.*

The Divisional Forest Officer Kamrup Division Assam invited tenders for the purchase of monopoly rights to quarry stone for the period July 1, 1963 to June 30, 1964. The tender submitted by the respondent was accepted and for the minimum quantity of 1,25,000 c.ft. of stone allotted to the respondent he was to pay Rs. 31,250/-. On appeal being filed against the order accepting the tender the Government of Assam granted stay of the order. When three months later the appeal was dismissed for non-prosecution the respondent declined to accept settlement of the quarry. Thereafter tenders had to be invited again and it was only on January 10, 1964 that a settlement was made for a minimum quantity of 5000 c.ft. for the period from January 25, 1964 to June 30, 1964 for Rs. 10,000. The Divisional Forest Officer then sought to recover the amount of Rs. 31,250/- for which the tender of the respondent was accepted as arrears of land revenue in the manner provided by s. 75 of the Assam Forest Regulation VII of 1891. The respondent moved a petition in the High Court for an order quashing the proceeding for recovery of the amount demanded. The High Court allowed the petition holding that the amount claimed was not recoverable under the aforesaid Regulation. The State of Assam appealed to this Court with certificate. It was conceded that the amount was not recoverable under s. 75 of the Regulation but reliance was placed on Rule 10 of the rules made under the Regulation.

**HELD :** The appeal must fail.

Rule 10 does not apply to recovery of the amount alleged to be due for failure to carry out the obligations of the tender by proceedings under the Assam Forest Regulation 1891. It is again difficult to hold that 'stone' is forest produce within the meaning of the Act. In any event the Rule does not give rise to any liability to pay a sum of money. It merely imposes a limitation upon the power of the officers of the Forest Department to grant leases in respect of certain forest produce. The lease may not be granted except in accordance with the general or special order of the conservator who alone is empowered to authorise a sale in respect of such a lease. [300 E-F]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 595 of 1967.

Appeal from the judgment and order dated July 28, 1966, of the Assam and Nagaland High Court in Civil Rule No. 242 of 1964.

*Naunit Lal*, for the appellants.

*D. N. Mukherjee*, for the respondent.

A The Judgment of the Court was delivered by

**Shah, C.J.** The Divisional Forest Officer, Kamrup Division, Assam invited tenders for the purchase of monopoly rights to quarry stone from certain areas, including Harengi Stone Quarry Mahal, for the period July 1, 1963 to June 30, 1964. Mool Chand Sarougi—hereinafter called 'the respondent' submitted a tender accompanied by the requisite deposit of Rs. 100/- as earnest money, and offered the rate of Rs. 5.25 per rupee of royalty. The tender, submitted by the respondent was accepted and for the minimum quantity of 1,25,000 c. ft. of stone allotted to the respondent out of the quarry he was to pay Rs. 31,250/-. Intimation of acceptance of the tender was given to the respondent on July 13, 1963.

B One Baputi Ram, a member of a scheduled tribe, appealed against the order of the Divisional Forest Officer accepting the tender, to the Government of Assam and obtained a stay order. After about three months he declined to prosecute the appeal and his appeal was dismissed. The respondent then declined to accept the settlement of the quarry.

D The Divisional Forest Officer invited fresh tenders. The offers made were not however accepted and tenders were invited again. On January 10, 1964 a settlement was made for a minimum quantity of 50,000 c. ft. for the period from January 25, 1964 to June 30, 1964 for Rs. 10,000/-

E The Divisional Forest Officer, thereafter, sought to recover the amount of Rs. 31,250/- for which the tender of the respondent was accepted as arrears of land revenue in the manner provided by s. 75 of the Assam Forest Regulation VII of 1891. The respondent then moved a petition in the High Court of Assam for an order quashing the proceeding for recovery of the amount demanded. The High Court held that the amount claimed was not recoverable under the provisions of the Assam Forest Regulation, VII of 1891 and passed an order quashing the proceeding for recovery and issued a *mandamus* to the Divisional Forest Officer, Kamrup Division not to proceed with the recovery. The State of Assam has appealed to this Court with certificate granted by the High Court.

G Section 75 of the Assam Forest Regulation VII of 1891 provides :

H "All money, other than fines, payable to Crown under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce, or of expenses incurred in the execution of this Regulation

in respect of any forest produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue." A

The amount claimed to be due from the respondent is not on account of the price of any forest produce, or of expenses incurred in the execution for recovery of any forest produce. The amount is also not due in the execution of the Regulation. So far there is common ground. It was claimed, however, that the amount was due under rule 10 promulgated in exercise of power under the Regulation and on that account it was recoverable as an arrear of land revenue. Rule 10 provides : B

"No lease for any fixed period giving the right of removing India rubber, cane, *kutch*a or *cutch*, lac, agar, ivory, or any other forests produce shall be given otherwise than in accordance with the general or special orders of the Conservator who is empowered to authorise sales in respect of such leases, by auction, tender or any other method at such rates as he may decide in his discretion." C D

The Rule in our judgment does not apply to recovery of the amount alleged to be due for failure to carry out the obligations of the tender by proceedings under the Assam Forest Regulation 1891. It is again difficult to hold that stone is forest produce within the meaning of the Act. In any event the Rule does not give rise to any liability to pay a sum of money. It merely imposes a limitation upon the power of the officers of the Forest Department to grant leases in respect of certain forest produce. The lease may not be granted except in accordance with the general or special orders of the Conservator who alone is empowered to authorise a sale in respect of such a lease. It is a rule relating to the exercise of power to grant leases. The High Court was, in our judgment, right in observing that the amount of damages for breach of the terms of the sale notice is not an amount due under the Regulation, or rule 10 made thereunder. E F

The appeal accordingly fails and is dismissed with costs. G

G.C.

*Appeal dismissed.*