

A PUSHAPRIYADEVI AND ORS.

v.

STATE OF MAHARASHTRA AND ANR.

April 4, 1978

B [R. S. SARKARIA AND P. S. KAILASAM, JJ.]

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, Act 1 of 1950, Sections 3 and 6—Scope of—Whether the Forest Contract Ex. P. 19 void—Whether there is a novation of contract by virtue of the letter Ex. P. 17 and therefore whether there is estoppel by conduct in claiming the refund.

C Before the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated) Act, 1950, came into force on 31st March, 1951, the plaintiff-predecessor of the appellant and who is a brother of the second respondent and the proprietor of Ahiri estate, took a forest contract Ex. P. 19 on 15th March, 1951 for cutting the standing trees in the forest known as Huchbodi Nendwadi coupe for a sum of Rs. 50,000/-. The contract provided that a sum of Rs. 15,000 was to be paid immediately on the date of the execution of the contract and the balance to be paid within six months. After the dismissal, on 2nd, May, 1952 of the writ petition filed by the second respondent, challenging the validity of the Act, the departments of the Government refused permission to the original plaintiff to remove the trees cut. The plaintiff made representation to the State Government and the State Government by its letter dated 12th March, 1953 Ex. P.-17, permitted the plaintiff to remove the trees on condition that he deposited Rs. 35,000/-. Accordingly the plaintiff paid Rs. 35,000/- on 24th March 1953 and removed the timber. Thereafter, the plaintiff filed a suit for the return of the said sum of Rs. 35,000/- on the ground that he had already paid Rs. 35,000/- to his brother on 30th September, 1951, with interest of Rs. 7,000/- in all Rs. 42,000/- contending that as the Supreme Court had granted a stay of the operation of the Act, the property did not vest in the State on 31st March 1951 but only on 2nd May, 1952, when the Supreme Court dismissed the writ petition and therefore the contract was binding on the defendant's estate, making his title perfect on the date of the contract before 31st March, 1951 when the estate vested in the State. The trial Court decreed the suit on 21st November 1959 holding that the transaction was entered into by the second respondent in the ordinary course of management and that the transaction was not sham or a bogus one and that the transfer of sale under the contract of the standing timber was sale of movable property and, therefore, the transaction did not contravene the provisions of s. 6 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.

The High Court of Bombay, (Nagpur Bench) allowed the appeal by the State, set aside the decree passed by the trial Court and dismissed the suit of the original plaintiff.

Dismissing the appeal by Certificate, the Court

G HELD : 1. While under Section 3 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 the interest of the proprietor vests in the State Government from the date specified in the Notification i.e. 31st March, 1951 Section 6 provides that the transfer of any right which is liable to vest in the State under this Act made by the proprietor at any time after 16th March, 1950 shall be void from the date of vesting. The result of the operation of Section 6 would be that the contract dated 15th March, 1951 which is a transfer of a right of property which is liable to vest in the State having been made by the proprietor after 16th March, 1950, shall become void from the date of vesting i.e. 31st March, 1951. [581 G-H, 582 A]

H 2. (a) The several clauses of the contract Ex. P. 19 clearly show that the contract was to commence on 15th March, 1951 and will be in force till 14th March, 1953 during which period the contractor agreed to file monthly

accounts of falling, logging and extraction by him. As per Cl. 5, the contractor will not remove the forest produce till logs are checked and passed by the Estate Forest Officer. The second instalment of Rs. 35,000/- is to be paid on 15th September, 1951. What was contracted for was the sale of forest produce, which is proprietary right vested in the proprietor in the property which according to the Act is to vest in the State. The plea that the contract was only for the sale of goods i.e. movable property and that as the trees have been marked and felled before 31st March 1951, the contract of sale of goods had been concluded cannot be accepted. The contract was clearly not for sale of goods but for transfer of right in property. [583 C-E]

(b) In order that the property in the goods passes under the Sale of Goods Act, it is necessary that the tree should be felled and ascertained before the relevant date. In the present case, the trees were not felled before 31st March, 1951 and further they were not ascertained as required under the contract for the sale as logs had to be checked and passed by State Forest staff by affixing the mark before they can be removed by the appellant. Since the trees were not felled and ascertained the title in the goods had not passed to the appellant before 31st March, 1951, the date on which the estate vested in the State. The provisions of s. 6(1), therefore, will be attracted and this being a transfer of right in property which is liable to vest in the State after 16th March, 1950, it shall be void from the date of vesting. [584 A, G-H, 585 A]

Badri Prasad v. State of Madhya Pradesh & Anr. [1967] 2 S.C.R. 380; followed.

3. Taking into account the fact that the appellant and the second respondent are brothers, the imminence of the vesting of the entire estate of the second respondent with the State, and the absence of any material to show that the appellant was possessed of the funds, the appellant would not have paid the amount of Rs. 35,000/- to the second respondent. After the vesting of the forest in the Government, the Government under s. 6(2) offered to permit the appellant to remove the trees on payment of Rs. 35,000/-. Having agreed to the condition and paid Rs. 35,000/- the appellant cannot ask for any refund.

[585 E, F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2455 of 1968.

From the Judgment and Decree dated 12-8-1966 of the Bombay High Court in F.A. No. 15 of 1960.

M. N. Phadke and *A. G. Ratnaparkhi* for the Appellant.

R. P. Bhatt, S. P. Nayar and *M. N. Shroff* for Respondent No. 1.

M. R. K. Pillai for Respondent No. 2

The Judgment of the Court was delivered by

KAILASAM, J.—This appeal is by the legal representatives of the plaintiff by a certificate granted by the High Court of Bombay (Nagpur Bench) against its Judgment and decree dated 12th August, 1966.

The plaintiff in the suit is the brother of the ex-proprietor of the Ahiri Zamindar, the second defendant, second respondent in this appeal. The first defendant is the State of Maharashtra, the first respondent in this appeal.

The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, Act I of 1951 received the assent of the President on 22nd January, 1951 and was published in

A the Gazette on 26th January, 1951. The State Government published a notification bringing the Act into force from 31st March, 1951. Before the Act came into force on 31st March, 1951 the plaintiff who is a brother of the second respondent, the proprietor of the estate, took a contract on 15th March, 1951, for cutting the standing trees in the forest known as Hachbodi Nendwadi coupe for a sum of Rs. 50,000. The contract provided that a sum of Rs. 15,000

B was to be paid immediately on the date of the execution of the contract and the balance to be paid within six months. The second respondent filed a writ before the Supreme Court challenging the validity of the Act and also of the notifications and obtained an order of stay on 27th March, 1951. The writ petition was ultimately dismissed on 2nd May, 1952 and the stay vacated. After the dismissal of the writ petition filed by the second respondent, the Departments

C of the Government refused permission to the plaintiff to remove the trees cut. The plaintiff made a representation to the State Government and the Government by a letter dated 12th March, 1953, Ex. P-17, permitted the plaintiff to remove the trees on condition that he deposited Rs. 35,000. Accordingly, the plaintiff paid Rs. 35,000 on 24th March, 1953 and removed the timber.

D

The suit out of which this appeal arises was filed by the plaintiff for the return of the sum of Rs. 35,000 on the ground that he had already paid Rs. 35,000 to his brother by 30th September, 1951 and that the Government was not entitled to recover another sum of Rs. 35,000. He claimed for the return of the amount of Rs. 35,000 with interest of Rs. 7,000 in all Rs. 42,000. It was contended in the

E plaint that as the Supreme Court had granted a stay of the operation of the Act the property did not vest in the State on 31st March, 1951 according to the notification and that it was only on 2nd May, 1952 when the Supreme Court dismissed the writ petition that the estate vested in the Government. On this ground, it was submitted that the plaintiff's contract was binding on the defendant's estate.

F Plaintiff also contended that apart from Rs. 15,000 which he paid to the second respondent on the date of the agreement i.e. on 15th March, 1951, he paid the balance in two instalments of Rs. 35,000 on 31st August, 1951 and 30-9-1951. The plaintiff, it was submitted, was forced to pay another Rs. 35,000 as the first respondent, the State, refused to permit him to remove the timber that had already been

G cut by him. In any event, the plaintiff contended that his title became perfect on the date of the contract before 31st March, 1951 when the estate vested in the State. The State denied the claims of the plaintiff and contended that the property vested in the State on 2nd May, 1952 and denied the allegation that the plaintiff had paid a sum of Rs. 35,000 to the second respondent. While admitting that the plaintiff applied for permission to remove the teak cut and receipt of Rs. 35,000 it denied that the amount was collected under any duress. The plea by the State Government was that the contract Ex. P-19 entered into by the plaintiff with the second respondent was

H sham and collusive transaction without consideration.

The trial court decreed the suit on 21st November, 1959 holding that the transaction was entered into by the second respondent in the ordinary course of management and that the transaction was not sham or a bogus one. It also found that as a result of the stay order the property continued to be with the second respondent and that he was entitled to receive the balance of the sale price under the contract. It also held that the transfer of sale under the contract of the standing timber was sale of movable property and therefore the transaction did not contravene the provisions of section 6 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.

In an appeal by the State before the High Court it was conceded by the plaintiff that the vesting of property in the State could not be postponed by reason of the stay order. The order of stay passed by this Court was not produced and the High Court rightly accepting the concession found that the vesting of the estate was not postponed because of the order of the stay granted by this Court.

Before examining the contention whether the contract Ex. P-19 was a sham and collusive transaction and whether the plaintiff had paid Rs. 35,000 to his brother, the second respondent, it is necessary to examine the provisions of the Act for determining the rights of parties on the date when the contract was entered into. The Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, Act I of 1951, received the assent of the President on 22nd January, 1951 and the assent was published in the Madhya Pradesh Gazette on 26th January, 1951. Section 3 of the Act provides that on and from a date to be specified by notification by the State Government in this behalf all proprietary rights in an estate vesting in a proprietor of such estate shall pass from such proprietor and vest in the State for the purposes of the State free of all encumbrances. By a notification the Act came into force on 26th March, 1951 and the estate vested in the State on 31st March, 1951. Section 4 states that when a notification under section 3 in respect of any area has been published all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land, scrub jungle, forest, trees etc. shall cease and be vested in the State for purposes of the State free of all encumbrances. Section 6 of the Act renders certain transfers void. It provides that except as provided in sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March, 1950, shall as from the date of vesting, be void. While under section 3 the interest of the proprietor vests in the State Government from the date specified in the notification i.e. 31st March, 1951, section 6 provides that the transfer of any right which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March, 1950 shall be void from the date of vesting. The result of the operation of this section would be that the contract

A dated 15th March, 1951 which is a transfer of a right of property which is liable to vest in the State having been made by the proprietor after 16th March, 1950 shall become void from the date of the vesting i.e. 31st March, 1951. The plea on behalf of the plaintiff is that the transfer would become void only as from 31st March, 1951 but as by that date the sale in favour of the plaintiff had become complete, section 6 would not have any application. On behalf of **B** the State, it was submitted that the plaintiff applied under sub-section (2) that the transfer was in good faith and in ordinary course of business management and therefore may be declared that the transfer shall not be void after the date of the vesting. The Collector refused to accept the plea but permitted him to remove the timber that had been cut on payment of Rs. 35,000 which was not paid to the second respondent. The questions that arise for consideration are whether **C** the transaction of sale was complete before the date of the vesting of the estate i.e. on 31st March, 1951 and whether the plea of the plaintiff that he was forced to pay a sum of Rs. 35,000 to the State even though he had already paid the amount of Rs. 35,000 to the second respondent as provided for in the contract is made out.

D To determine the question as to whether the transaction between the plaintiff and the second respondent was complete before 31st March, 1951 it is useful to refer to the contract entered into between the parties. Ex. P-19 is the contract and is dated 15th March, 1951. The agreement is designated as Forest Contract and provided that the agreement is for the sale and purchase of forest produce and that it was agreed between the parties in the following terms :—

E 1. The Forest Produce sold and purchased under this agreement is the following :—

Un-Marked (Teak & Miscellaneous) Standing/cut/withfallen trees, situated in the coupe known as Teak trees coupe in the near Hachbodi-Nendwadi Forest Range in the Ahiri Estate :—

F Teak 1000 Teak trees over 4' in girth near Hachbodi-Nendwadi at Rs. 50/- per tree sanctioned by Z. S. Ahiri on 14-3-1951.

G Clause 3 provided that the contract shall commence on 15th March, 1951 and will be in force up to 14th March, 1953 after which date the contractor will have no right to any material not removed from the contract area. The contractor agreed to remove the forest produce only during the above period. Clause 4 provided that the consideration payable by the contractor for this contract is Rs. 50,000 and that the amount will be duly paid by the contractor by crediting it in the Ahiri Estate Treasury in instalments of Rs. 15,000 on 15th day of April and Rs. 35,000 on 15th day of September. Clause 5 of the contract is important any may be extracted in full :

H "5. The contractor will not remove any forest produce from the site of the x (x torn) and until the logs are checked and passed by the Estate Forest Staff by affixing x (x torn) bed passing hammer. The contractor will not

remove any forest produce between the sunset and sunrise. The contractor will make his own arrangements for stacking x (x torn) outside the contract area.”

Clause 7 provided that the contractor will duly coppice the stumps of the trees felled by him. He agreed to carry out all his operations properly, according to the rules in force governing the forest area and in a workman-like manner and further agreed to abide by any directions and instructions in regard to the working of this contract that may be issued to him by the Estate Forest Staff and other estate authorities. Clause 8 provided that in the event of the contractor's failure to pay any of the instalments within the time fixed, the estate authorities will be entitled to stop and restrain all further extraction or other work in the contract area. Clause 9 provided that the contractor agrees to file every month accounts of the felling, logging and extraction done by him.

The clauses above extracted clearly show that the contract was to commence on 15th March, 1951 and be in force till 14th March, 1953 during which period the contractor agreed to file monthly accounts of felling, logging and extraction by him. Clause 5 also provided that the contractor will not remove any forest produce till the logs are checked and passed by the State Forest staff. The second instalment of Rs. 35,000 is to be paid on 15th September, 1951. These clauses make it very clear that what was contracted for was the sale of forest produce which is a proprietary right vested in the proprietor in the property which according to the Act is to vest in the State. The plea on behalf of the plaintiff that the contract was only for the sale of goods i.e. movable property and that as the trees had been marked and felled before 31st March the contract of sale of goods had been concluded cannot be accepted. Apart from the fact that the contract was clearly not for sale of goods but for transfer of right in property, the facts also do not support the plea of the plaintiff that the trees were marked and felled before 31st March, 1951. The evidence of P.W. 1 is that the marking and cutting was done at the same time simultaneously and that the plaintiff had cut all the trees in the disputed contract. According to P.W. 2 the trees were being cut as they were marked. The trial court held that the title of the plaintiff to the trees was complete before 31st March, 1951 but the High Court came to the conclusion that there is no evidence to show that the trees were cut before the date of vesting. The High Court may not be quite correct in stating that there is no evidence to show that the trees were cut before the date of vesting but there can be no doubt that the evidence cannot be accepted for it is impossible to have cut the trees before 31st March, 1951.

Even assuming that the trees were cut the property will not pass to the plaintiff till requirements of clause 5 of the contract are complied with i.e. the logs have been checked and passed by the State Forest Officer by affixing marks and delivered to the plaintiff. This was admittedly not done. Before the logs are checked and passed the goods are not ascertained and the title cannot pass to the plaintiff.

A We have no hesitation in coming to the conclusion that the trees were not in fact cut before 31st March, much less the cut trees ascertained before 31st March, 1951.

The decision of this Court in *Bādri Prasad v. State of Madhya Pradesh & Anr.*⁽¹⁾ was relied on by both the appellants and the respondents. The facts are similar and arise out of a forest contract in Madhya Pradesh and the case raised similar questions. The facts of the case briefly are that the appellant before this Court entered into a contract for removing forest produce in Madhya Pradesh. After the passing of the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, a notification was issued vesting the estate in the State and the appellant was prohibited from cutting timber in exercise of his rights under the contract. Later after some negotiations the appellant agreed to pay an additional sum of Rs. 17,000 but reserved his right to claim a refund. The State Government rejected the appellant's right to cut trees. The appellant thereafter filed a suit claiming specific performance of the contract on the ground that the forest and trees did not vest in the State under the Act and even if they vested the standing timber having been sold to the appellant did not vest in the State and in any event a new contract was completed in February and the appellant was entitled to specific performance. This Court negatived all the pleas and held after considering the earlier decisions that it was too late in the day to contend that the forest and the trees did not vest in the State under the Act. Repelling the contention on behalf of the appellant that under the contract the plaintiff had become owner of the trees as goods, this Court observed that though the trees which were agreed to be served before sale or under the contract of sale are goods for the purpose of Sale of Goods Act but before they cease to be proprietary rights or interest within the meaning of section 3 and 4(a) of the Act, they must be felled under the contract. On the facts of the case the Court held that the property in cut timber would only pass to the appellant under the contract at the earliest when the trees were felled. It further added that as the contract provided that the appellant was entitled to cut teak trees of more than 12" girth it would have to be ascertained which trees fell within the description and till that is ascertained they were not ascertained goods. Thus in order that the property in the goods passes under the Sale of Goods Act, it is necessary that the trees should be felled and ascertained before the relevant date. In the present case we agree with the conclusion arrived at by the High Court that the trees were not felled before 31st March, 1951 and further they were not ascertained as required under the contract for as pointed out the logs had to be checked and passed by State Forest staff by affixing the mark before they can be removed by the appellant. Thus the facts are similar and the decision in the case applies to the present case. Holding that the trees were not felled and that the goods were not ascertained, we find that the title in the goods had not passed to the appellant before 31st March, 1951, the date on which the estate vested in the State.

(1) [1969] 2 S.C.R. 380.

When it is found that the title in the goods had not passed to the appellant, then the provisions of section 6(1) will be attracted and this being a transfer of right in property which is liable to vest in the State after 16th March, 1950, it shall be void from the date of vesting.

We agree with the finding of the High Court that it is not possible to accept the appellant's case that he paid Rs. 35,000 to the second respondent. The appellant is the brother of the Zamindar, the second respondent. The appellant has not chosen to examine himself as a witness and speak to his payment of Rs. 35,000 to the second respondent. On behalf of the appellant his agent was examined as P.W. 1. According to him he paid in cash to the respondent a sum of Rs. 35,000 on 30th September, 1951. The witness was questioned as to whether for making the payment he borrowed the money from second respondent himself. He denied any knowledge about such borrowing. It is most unlikely that any payment of Rs. 35,000 was made on behalf of the appellant on 30th September, 1951. Without making sure that he would be able to remove timber contracted without any objection from the State, he would not have paid Rs. 35,000. As pointed out by the High Court P.W. 3 does not state that he in fact received Rs. 35,000 in cash. There is no material to show that the appellant had such an amount with him. In the correspondence that passed between the appellant and the Government, the appellant did not mention that he had already paid Rs. 35,000 to the second respondent. In fact, when the Government demanded that he should pay Rs. 35,000 the appellant paid the amount without any protest. Taking into account the fact that the appellant and the second respondent are brothers, the imminence of the vesting of the entire estate of the second respondent with the State, and the absence of any material to show that the appellant was possessed of the funds, we have no hesitation in agreeing with the finding of the High Court that the appellant would not have paid the amount to the second respondent.

Lastly, it was contended that in any event as the Government permitted the appellant to remove the logs on payment of Rs. 35,000 it should be construed as ratification of the contract entered into by the second respondent and as such the Government is not entitled to collect Rs. 35,000 as if at all anyone was entitled to the amount it was only the second respondent. We have no hesitation in rejecting this argument for after the vesting of the forest in the Government, the Government under section 6(2) offered to permit the appellant to remove the trees on payment of Rs. 35,000. Having agreed to the condition and paid Rs. 35,000 the appellant cannot ask for any refund.

We find that there is no substance in this appeal and dismiss it with costs of the first respondent.

S.R.

Appeal dismissed.