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Court : Allahabad

Decided On : Jul-30-1979

Reported in : AIR1980All213

Judge : K.C. Agrawal and ;K.M. Dayal, JJ.

Acts : Forest Act, 1927 - Sections 82 and 83

Appeal No. : C.M.W.P. No. 2362 of 1976

Appellant : Mohd. Yaqub

Respondent : The State of U.P. and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Triloki Nath, Adv.

Disposition : Petition dismissed

Judgement :

Agrawal, J.

1. This is a writ petition seeking relief of mandamus commanding the respondents to restrain from arresting the petitioner or from selling his interest in the residential house situate in mohalla Mohammad Wasil, Pilibhit. Another, relief claimed was for a writ of certiorari quashing the notice dated 10th Sept. 1974.

2. At an auction of lot No. 719 relating to drift timber in Banbasa Canal Forest Division, Khatema Range, Pilibhit, the petitioner was declared to be the highest bidder and the timber was sold to him for Rs. 14,000/-. The petitioner deposited Rs. 4200/-, as security. Subsequently, an agreement was executed between the petitioner and the department. Under the agreement, the last date to be worked out was 15-6-1974. Leaving out the unnecessary details, the fact appears that by letter dated 31-5-1974 the petitioner was permitted to store the timber at a safe place on the bank of river. The petitioner was, however, directed that he could be given export permit on the condition that he deposited the due instalment by 7th June, 1974 or before. The petitioner gave an undertaking that he would restore the entire material, by 7th June, 1974 and deposit the required amount of instalment due from him. After the aforesaid undertaking being given, the petitioner worked on the sight and restored timber at the bank of the river. It, however, appears that as the petitioner paid only Rs. 4200/- out of Rs. 14,000/- for which the auction was held, the proceedings for the realisation of the remaining amount were started against the petitioner. Through notice dated Sept. 10, 1974, the petitioner was informed that he was liable to pay a sum of Rs. 11623.75p. to the Government on account of the aforesaid contract and that the aforesaid amount would be realized as arrears of land revenueunder Section 82 of the Indian Forest Act and under Sec. 3 of the U. P. Public Moneys (Recovery of Dues) Act, 1972. The details of the sum of Rupees 11623.75 P. which was being realised from the petitioner, are as follows:--

(1) Remaining Price of the timber Rs. 11270/- Damage for the delayed payment 3 Paisa per day 353.75 P. After having received the aforesaid notice, the present writ petition was filed in this court.

3. Counsel appearing for the petitioner raised two contentions before us. The first was that the amount sought to be recovered being damages, the same could not be realized as arrears of land revenue. The second was that the Forest Department having exercised the power under Section 83 of the Forest Act, it was obligatory for it to have resold the timber at the risk of the petitioner, and the remedy of the State Government was to recover the deficiency, if any, on such resale as arrears of land revenue.

4. At this place, it may be useful to refer to Sections 82 and 83 of the Forest Act. Section 82 provides that all money payable to the Government under the Act or under any Rule made under the Act, or on account of the price of any forest produce, or of expenses incurred in the execution of the Act in respect of such produce, may if not paid when due, be recovered as if it were an arrear of land revenue. Section 83 provides:--

'(1) When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce and such produce may be taken possession of by a Forest Officer until such amount has been paid.

(2) If such amount is not paid when due. the Forest Officer may sell such produce by public auction, and the proceeds of the sale shall be applied in discharge of such amount.

(3) * * *'

5. In this connection reference mayalso be made to Rule 8 of the Rulesframed under the Act. Rule 8 entitlesthe State Government to stop removalof goods in value exceeding the amountalready paid by the contractor, wherethe consideration is payable in instalments.

6. That apart, we have seen above that the State Government has underSec. 83 of the Act power to stop the removal of the goods even though the property in the case has passed to the contractor. It can take possession till the amount is paid and to sell the goods if the same is not paid when due.

7. The State Government has therefore under the terms of the contract and by virtue of the statute, even though the property in the goods has passed to the contractor, right to stop removal of the goods and take possession thereof till the amount due is paid and to sell the goods if the amount is not paid when due.

8. In the instant case, it would be seen that after paying the first instalment of Rs. 4200/-, the petitioner did not pay any further amount. Under the terms of the contract, the same had fallen due. For recovering this amount, the State

Government had two rights. One of the rights has been given to it under Section 83. The other is under Section 82. These are two provisions provided for different contingencies. One does not overlap the other. There is nothing in these two sections that the State Government cannot resort to Section 82 due to the charge created under Section 83(1) of the Forest Act. It is the first rule of interpretation that the words of a statute are first understood in their natural, ordinary or popular sense, unless there is something in the context, or in the object of the statute to suggest the contrary. We are unable to find anything in the context, or in the object of the statute to suggest the contrary interpretation than one placed by UP.

9. Counsel for the petitioner, however, contended that great hardship would be done to a contractor, if the interpretation above was accepted. To us, the submission made does not appear to be sound. A departure from the literal construction would lead to unwarranted restriction of the meaning of the words and would further give rise to serious errors.

10. In State v. Bootasingh, AIR 1972 Madh Pra 116, a similar point was raised. In this case, the State Government had withheld the removal of timber and had further started recovery of the amount as arrears of land revenue. The recovery was challenged on the ground that it was obligatory for the State to have resold the timber at the risk of the contractor. The High Court held that in the event of default in payment of any instalment or breach of the other conditions of the contract, the State Government was not bound to resell the contracted goods.

11. Inasmuch as the petitioner has chosen to enter into a contract which was subject to the Forest Act and Rules, their rights and mutual obligations have to be decided on the basis of provisions of the Act and Rules. In this view of the matter, the petitioner could not argue that the power conferred by Section 82 can be utilised only after the property had been sold. It is noticed that under Section 83(1), money payable for or in respect of any forest produce, the amount thereof shall be a first charge on such produce and that such produce can be taken possession of by a Forest Officer. Sub-section (2) empowers the State Government to sell the produce by public auction. Section 83 is supplementary to Section 82 and can be used at the same time, when price is being recovered as an arrear of land revenue

under Section 82.

12. Counsel next contended that under the general law, a creditor has a right to proceed against the property charged, the State Government was obliged to proceed as against the charged property. In this connection, he invited our attention to Sub-section (2) of Section 83 of the Forest Act. It is true that the general law is that the charged property is to be proceeded first but there being a special provision entitling the State to recover price as an arrear of land revenue, the right of the State would be defeated if the interpretation of the petitioner's counsel was accepted. It is settled that a Court should lean against a construction which reduces the statute to a futility. The legislature provided a special mode of recovery to the State Government under Section 82 of the Act. This can be done despite the fact that a charge is created on the forest produce under Sub-section (1) of Section 83. The provision of Section 82 being special in nature will prevail over the general law. Any other interpretation if placed on Ss. 82 and 83, would fail to achieve the manifest purpose.

13. Counsel next referred to the decisions of this Court reported inFirm Gobardhan Das Kailashnath v. Collector, Mirzapur, AIR 1956 All 721 and State of U. P. v. Deewanchand, 1973 All LJ 309.

14. These two cases are distinguishable. In Gobardhan Das's case (supra) the forest produce had been resold and the difference between the original sale price and the price obtained after the resale was being recovered. The amount which was realizable was damages for the breach of the contract under Section 54(4) of the Sale of Goods Act. This could not be described as price because the property had not been sold. The basis of the claim being under terms of the contract, which the petitioner had accepted, he was liable to make up the loss incurred by the State by reselling the forest produce. After the cancellation of the sale, the relationship between the State and the petitioner was not that of the seller and the buyer.

15. Similar position obtained in Deewanchand's case. In this case, the Bench followed the earlier case of Firm Gobardhan Das Kailashnath v. Collector of Mirzapur (supra) and held that what was being claimed by the State was merely

damages for the loss occasioned by the breach of the contract. Under Section 82 what can be recovered was 'price' and as the claim was not that of price but damages the Bench held that Section 82 did not apply.

16. In the instant case, the recovery was that of the price and not damages. The Forest produce sold to the petitioner had not been reauctioned. The claim for price is different than the claim for damages. The distinction between an action for the price and an action for damages is of considerable importance.

17. For all these reasons, the writ petition fails and is dismissed with costs.

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