

The State of Madhya Pradesh Vs. Devilal Shivilal Paliwal and ors.

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Court : Madhya Pradesh

Decided On : Dec-04-1969

Reported in : AIR1970MP187

Judge : Bishambhar Dayal, C.J., ;Shiv Dayal and ;A.P. Sen, JJ.

Acts : Central Provinces Land Revenue Act, 1917 - Sections 202

Appeal No. : First Appeal No. 66 of 1967

Appellant : The State of Madhya Pradesh

Respondent : Devilal Shivilal Paliwal and ors.

Advocate for Def. : R.S. Dabir and ;V.S. Dabir, Advs.

Advocate for Pet/Ap. : K.P. Munshi, Govt. Adv.

Disposition : Appeal allowed

Judgement :

Shiv Dayal, J.

1. This appeal arises from a suit for the recovery of Rs. 55,000/-as value of wood which belonged to the plaintiff and was seized by the Revenue Officers in exercise of powers under Section 202 of the C. P. Land Revenue Act, 1917.

2. Shivilal (whose legal representatives are respondents Devilal and Smt Godavaribai) brought a suit against the State on the allegation that he was a Malguzar Lambar-dar of village Rohna, Settlement No. 350, Patwari Circle No. 14, tahsil and district Chhindwara. He did cutting of trees in some portion of his malguzari jungle at Rohna in the year 1949-50. The cut wood of teak, Biwla and other trees was lying in the jungle and outside it. The plaintiff had started the work of cutting trees in the forest from February 1949 to August 15, 1950. The plaintiff completely observed the rules framed for cutting Jungle but under the impression that the provisions of Section 202 of the Land Revenue Act had not been observed, the State started proceedings against the plaintiff through its officials. (Revenue Case No. V/5-4 of 1947-48). Shri Das Sharma, Naib Tahsildar, seized the plaintiff's 'cut wood through the Revenue Inspector on October 22, 1950. Eventually, this revenue case was filed on September 17, 1952, but the defendant did not return the seized goods and an order for selling the seized goods by public auction was passed.

3. It was further alleged in the plaint that certain 'revenue proceedings' werestarted by the Officers for complicating the plaintiff's claim as far as possible. The plaintiff filed an appeal before the Board of Revenue. The appeal was allowed and the order dated March 22, 1954, passed by Shri Konher, and the order of the Deputy Commissioner dated February 12, 1954, were set aside by the Board of Revenue in its decision dated September 28, 1955. On these allegations, the plaintiff claimed a decree for Rs. 55,000/-. He estimated the value of his wood at Rs. 64,351/-. The suit was resisted by the State. The Trial Court held that 6891 pieces of wood were seized by the Revenue Officers. The wood was not returned to the plaintiff. Accordingly, it passed a decree for Rs. 6054/-.

4. Aggrieved by the judgment and decree of the Trial Court, the State preferred this appeal. The plaintiff also preferred a cross-appeal (First Appeal No. 66 of 1957) claiming a further decree for Rs. 48,945/-. Both the appeals were heard by a Division Bench consisting of Golvalker and Kekre, JJ. Mr. Justice Kekre, relying on the State of M. P. v. Kapoorchand, 1961 MPLJ 456= (AIR 1961 Madh Pra 316), was of the opinion that this appeal filed by the State should be allowed and the plaintiff's cross-appeal should be dismissed. Mr. Justice Golvalker, on the other

hand, took the contrary view and recorded the opinion that this appeal should be dismissed. He, however, agreed that the plaintiff's appeal No. 65 of 1957, be dismissed. Both the appeals were then placed before Mr. Justice Pandey, as the third Judge, but he submitted the case to the Hon'ble the Chief Justice to consider the desirability of constituting a larger Bench to hear and dispose of both these appeals. Both these appeals were then heard by us.

5. As narrated above, as regards First Appeal No. 65 of 1957, both the learned Judges of the Division Bench (Golvalker and Kekre, JJ.) recorded a concurrent opinion.

6. We shall record a separate order in respect of First Appeal No. 65 of 1957.

7. The question of liability of the State for tortious acts of a public servant was also referred to this Full Bench in similar circumstances. That question has been answered by us in our judgment delivered today in State of M. P. v. Devilal, F. A. No. 109 of 1957, D/- 4-12-1969 = (reported in AIR 1970 Madh Pra 179),

8. Since this appeal itself has been referred to the Full Bench for decision, we shall now deal with it on merits.

9. The plaintiff's suit is for value of the goods seized by the revenue authorities from his possession. He has not claimed the relief of return of his goods and for the value of the goods in the alternative which is ordinarily done. But, that apart, in either case, the plaintiff can succeed only if he has established that he is entitled to the return of his goods. If the plaintiff is not entitled to the return of the goods, which were seized by the revenue authorities, in otherwords, if there is no order in his favour directing return of the goods to him, he is not entitled to a decree. We have, therefore, to concentrate on this question before adverting to any other.

10. The plaintiff has relied on the judgment and order dated September 28, 1955 (Ex. P. 9) of the Board of Revenue, On a perusal of that judgment and the orders referred to therein, the following facts are clear.

(i) On October 16, 1947, the Tahsildar registered a case for breach of rules framed under Section 202 of the C. P. Land Revenue Act, 1917, against the plaintiff. The

matter dragged on. Eventually, the Tahsildar passed an order in pursuance of which 6891 pieces of teak were seized by the Revenue Inspector and handed over in Supratnama to the second defendant. This was on October 22, 1950.

(ii) On September 17, 1952, the then Additional Deputy , Commissioner, Shri S. N. Verma passed the following order:--

'Register a case. It will now be very difficult to establish a case against the N, A. Hence the case is filed. The wood seized be auctioned and sale proceeds be credited in the treasury. Send a separate memo to Tahsildar, Sausar, for further action. Case is filed.' The Board of Revenue pointed out that a case had already been registered and there was no question of its being registered afresh. However, that is of no consequence.

(iii) On February 10, 1954, Shri N. P. Konher, Additional Deputy Commissioner, who succeeded Shri S. N. Verma, was of the opinion that it was necessary to review the abovesaid order dated September 17, 1952. This he could do only after obtaining permission under Section 40 of the C. P. Land Revenue Act, Accordingly, he moved the Deputy Commissioner. Shri V. B. Bangale, Deputy Commissioner on February 12, 1954, granted the required permission.

(iv) Thereupon, Shri Konher, Additional Deputy Commissioner, after recording evidence, by his order dated March 22, 1954: (a) imposed a fine of Rs. 1,000/~ for breach of Rules 2 (c) and 5 (c) of the rules framed under Section 202 of the Act; and (b) also directed that under Section 202 (3) the timber seized should be confiscated,

(v) It was against the last mentioned order of March 22, 1954, allowing review, that the plaintiff went in appeal before the Board of Revenue. The learned Member of the Board of Revenue came to the conclusion that the Additional Deputy Commissioner was not subordinate to the Deputy Commissioner. Therefore, the Deputy Commissioner had no jurisdiction to grant permission to review an order of his predecessor-in-office under Section 40 of the Act. On that basis, he set aside the order dated March 22, 1954 passed by Shri Konher, Additional Deputy Commissioner. While doing so, the learned Member of the Board of Revenue

made very clear observations as follows:--

'I accordingly hold that the order passed by Shri Konher is illegal and direct that it be set aside.

1 may make it clear that the merits of the original order passed by Shri Verma have not been considered because they are not relevant to the present appeal which is concerned with the subsequent order passed by Shri Konher. The appeal is allowed.'

(underlined (here in ' ') by us)

Now, there cannot be a shred of doubt that what was set aside by the Board of Revenue was the order dated March 22, 1954, passed in review by Shri Konher and it is equally clear that the order passed by Shri Verma on September 17, 1952 remained undisturbed and untouched.

11. The material Sub-sections of Section 202 of the Act read as follows:--

'(1) The Chief Commissioner may make rules regulating the control and management of the forest-growth on the lands of any estate or mahal, and the exercise of any right of user over such forest-growth, and may attach to the breach of such rules a penalty not exceeding two hundred rupees, or, if the breach be a continuing one, a penalty not exceeding ten rupees for each day during which such breach continues. .

(2) The Deputy Commissioner may direct that the whole or any part of any sum recovered under the rules made under Sub-section (1) shall be paid as compensation to any person or persons to whom loss or injury has been caused, or that it shall be expended in such manner as he may deem fit for the benefit of the forest-growth.

(3) The Deputy Commissioner may confiscate and sell any timber or other forest produce cut or removed in contravention of any rule made under Sub-section (1), and may apply the proceeds of sale to either or both of the purposes mentioned in Sub-section (2).' Under the first sub-section a penalty can be imposed within the

prescribed limits. Under Sub-section (3) any timber or other forest produce cut or removed in contravention of any rule, could be confiscated and sold and the sale proceeds could be applied to either or both of the purposes mentioned in subsection (2).

12. Shri Konher's order dated March 22, 1954, was both under Sub-section (1) and Sub-section (3). He imposed a fine and also ordered confiscation of the cut wood. This order of Shri Konher was set aside. But the earlier order of Shri Verma, which, as pointed out above, remained undisturbed and untouched, was certainly within the purview of Sub-section (3) although not under sub-section (1). It was obviously to enable him to impose a penalty under Sub-section (1) that Shri Konher, Additional Deputy Commissioner obtained permission to review the order of Shri Verma, which he did.

13. In the present suit, the following issues, among others, were framed:--

'1, Whether the 'cutting by the plaintiff from February 1949 to 15-8-1950 was without the previous permission of D.C. Chhindwara?

(a) Whether the previous permission of the D. C. Chhindwara, was legally necessary

(b) If so, what is the effect?

2. Whether the stumps were not cut flush with the ground

3. Whether teak trees within 20 feet of thenala which retained water till April were cut

14. The plaintiff got these issues deleted on the ground that they were entirely within the cognizance of the Revenue Court. Accordingly, they were deleted.

15. From the above resume, it must be held that the order dated September 17, 1952, passed by Shri S.N. Verma, stands good and is in force even today. That order has not been set aside by any revenue authority; and on the plaintiff's own showing this matter is within the exclusive jurisdiction of the revenue authorities. That order was to auction the wood seized and to credit the sale proceeds in

treasury. That order tantamounted to an order of confiscation of the wood seized within the purview of Sec. 202 (3) of the C. P. Land Revenue Act. When Shri Verma said in his order: 'It will now be very difficult to establish a case against the N. A. Hence the case is filed', it was only regarding the imposition of penalty under Sub-section (1) of Section 202. If that was not so, Shri Verma would have set aside the order passed by Shri Das Sharma, Naib Tahsildar, and would have ordered return of the wood seized but would not have ordered sale of the seized wood by auction and to credit the sale proceeds in treasury. Thus, in ultimate analysis, the plaintiff's wood stands confiscated to the State by an order of an authority whose competence has not been challenged in this suit. No decree could, therefore, be passed in favour of the plaintiff for the value of the wood. Moreover, the order of Shri Verma was not challenged in the plaint.

16. This appeal is allowed. The judgment and decree passed by the Trial Court are set aside. Having regard to all the circumstances of the case, we leave the parties to bear their own costs as incurred throughout.