

Rameshwar Proshad Khandelwal & Ors vs Commissioners Land Reforms & Jagirs ... on 13 November, 1958

Equivalent citations: AIR 1959 SUPREME COURT 498

Author: K. N. Wanchoo

Bench: N.H. Bhagwati, B.P. Sinha, K.N. Wanchoo

CASE NO.:

Writ Petition (civil) 172 of 1955

PETITIONER:

RAMESHWAR PROSHAD KHANDELWAL & ORS.

RESPONDENT:

COMMISSIONERS LAND REFORMS & JAGIRS MADHYA BHARAT (NOW M.P.) & ORS.

DATE OF JUDGMENT: 13/11/1958

BENCH:

S.R. DAS (CJ) & N.H. BHAGWATI & B.P. SINHA & K. SUBBARAO & K.N. WANCHOO

JUDGMENT:

JUDGMNET AIR 1959 SC 498 With Writ Petition (C) Nos. 173, 177-183, 430 & 431 of 1955 and Writ Petition(c) Nos. 4, 5, 14, 18, 19, 30, 31, 34, 77 89, 92, 99 and 232 of 1956.

The Judgment was delivered by : K. N. WANCHOO K. N. WANCHOO, J. : These are twenty-four petitions under Art. 32 of the Constitution. We propose to deal with them by one judgment, as the main point involved in them is common.

2. The petitions fall into three groups. The first group consists of ten petitions relating to Sirsi jagir (hereinafter called the Sirsi petitions). The second group comprises nine petitions relating to Pohri jagir (hereinafter called the Pohri petitions). The third group consists of five petitions relating to Palpurjagir (hereinafter called the Palpur petitions). There are some differences in detail between the three groups, and we shall give the facts of each group separately, after setting out certain preliminary matters common to all the petitions.

3. Abolition of jagirs was under contemplation in the former State of Madhya Bharat (now included in Madhya Pradesh). In order, therefore, to preserve the forest resources of jagirs to be abolished, the State of Madhya Bharat passed an Act called the "Jagir Forests (Prevention of, Indiscriminate Cutting Act. No. 55 of 1950,"(hereinafter called the Cutting Act), which came into force on July 3, 1950. Section 3 of the Act provides restrictions on the power of a jagirdar to deal with the forests in his jagir, and the relevant portion of that section is in these terms : -

"Except for his own bona fide Nister purposes or those of the villagers residing in the Jagir area concerned, no. jagirdar shall cut, or cause to be cut, or authorise any person to cut or cause to be cut any tree in the forest area of jagir without the previous sanction obtained in writing of the Commissioner for Jagirs .,, .., who shall not give such sanction without the previous consultation of the Chief Conservator of Forests. Such sanction may be subject to such conditions and restrictions as may be Imposed by the Jagir Commissioner."

' The Madhya Bharat Abolition of Jagirs Act, No. 28 of 1951, (hereinafter called the Abolition Act) was passed in that year and received the assent of the President on November 27, 1951. Before, however, a date could be appointed for the resumption of jagirs under S. 3 of the Abolition Act, an injunction was issued on December 7, 1951 restraining the Government of Madhya Bharat from putting it into force. This injunction continued up to December 4, 1952, when the writ petitions in which the injunction had been issued were dismissed. On that very day a notification was issued under S. 3 of the Abolition Act and all jagirs in Madhya Bharat stood resumed.

4. Section 6 of the Abolition Act will have to be referred to later and is in these terms :

"Where a Jagirdar has on or after the 29th January, 1949-

(a) granted a lease of his jagir land or any part thereof for any non-agricultural purpose for a period of 3 years or more; or

(b) granted a lease of or entered : into a contract relating to, any forest in his Jagir land for a period of 3 years or more ; and the Jagir Commissioner is satisfied that such lease or contract was not made or entered into in the normal course of management but-in anticipation of legislation for the abolit on of Jagirs, the Jagir Commissioner may, according to the rules made by the Government in this behalf, by order in writing, cancel the lease or the contract, as the case may be."

5. The facts of the Sirsi petitions are these : The jagirdar of Sirsi applied to the Commissioner or Jagirs on July 12, 1952, for permission to cut forest trees in about three thousand bighas in his jagir. While this application was pending, he gave contracts to the ten petitioners on various dates in November 1952, to cut forest in certain specified areas of his jagir on payment of certain premia, and the contracts were for a period ending June 30, 1954. Payments were made in part to the jagirdar by the petitioners soon after. The sanction of the Jagir Commissioner was, however, received in relation to these contracts on January 19, 1954, except in one case where sanction had been given earlier in 1953. Thereafter, the petitioners began to exploit the areas given to them. On March 1, 1954, the Collector of Guna took the view that the contract were illegal and unconstitutional. He, therefore, styped the petitioners from working further an referred the matter to Government for clarification, which appears to have been received soon after. The petitioners were then informed on April 5, 1954, by the Divisional Forest Officer that they could continue their work after receiving pass-books from the office. The contracts, however, expired on June 30, 1954, and the petitioners apparently applied for extension of the period of the contracts. It is said that the Conservator of

Forests passed an order on August 31, 1954, extending the period of the contracts to June 30 1955; the balance outstanding from the petitioners on that date was demanded and was paid, and thereafter they were informed on October 9, 1954, in accordance with the orders received from the higher authorities that as they had failed to complete the work within the period fixed up to June 30, 1954 the time for working was being extended to June 30, 1955. They were told to complete the work within this extended period and were required to sign agreements therefor. The petitioners thereupon signed the agreements and restarted working in November or December 1954. On March 25, 1955, they were informed that they should stop all further work, including cutting wood, manufacturing charcoal and exporting forest produce, and to return the pass-books to the office. They seem to have made representations to the Jagir Commissioner, who passed an order on May 25, 1955, stopping further cutting of trees. But the petitioners were allowed to collect the felled trees and manufacture charcoal out of them, and to finish the making of charcoal which was in the process of manufacture. They were also allowed to export out of the forests timber, wood and charcoal after furnishing security to be fixed by the Divisional Forest Officer. Similar conditions were imposed with respect to those who were working in the production of katha. Thereafter the petitioners furnished securities as required under protest. But on September 11, 1955, they were informed, in accordance with a decision of the Madhya Bharat High Court given in a case (to which they were not parties) that timber, wood, charcoal and katha lying in the forests had been confiscated by the Government. They were also required to hand over all the goods to the Range Officer.

6. The present petitions were made thereafter, and the main contention of the petitioners is that the goods ordered to be confiscated by the order of September 11, 1955, were their property, and the order of confiscation not being supported by any law was illegal and their fundamental right to hold and dispose of property was thus infringed. They, therefore, prayed that the State of Madhya Bharat (now Madhya Pradesh) be restrained from giving effect to the order of confiscation, and further restrained from interfering with the petitioners' right to complete their work in the area assigned to them.

7. The facts of the Pohri petitions are these : The jagirdar of Pohri appears to have applied for permission for cutting trees in his forest and sanction was granted by the Jagir Commissioner on November 19, 1951, on certain terms, and he was told that contracts for the sanctioned area up to the end of May 31, 1952, should be granted. The jagirdar, however, granted contracts to the nine petitioners of this group on various dates in October and November 1952, for a period up to May 31, 1955. On October, 16, 1952, the period of sanction had been extended up to June 30, 1953, which explains why the contracts to the petitioners were granted in October and November, 1952. The petitioners allege that they started work soon after the contracts were granted to them by the jagirdar; but the case of the State is that no work was started in fact till December 1954. In November 1954, the petitioners applied to the Divisional Forest Officer, Shivpuri for permission to continue to work in the forests. Thereupon the Divisional Forest Officer ordered that the petitioners should sign written agreements in the usual form and pay the balance of the money due, and thereafter they would be permitted to carry on the work. The petitioners' case is that fresh agreements were executed by the Divisional Forest Officer and sanctioned by the Chief Conservator of Forests; but this is denied by the State. The petitioners further state that they were permitted on

December 29, 1954, by the Forest Officer to start work and they did so. But they were suddenly ordered by the Jagir Commissioner on March 3, 1955, to stop all work. Thereafter they appeared before him, and the Jagir Commissioner passed orders on March 24, 1955, dividing the contractors into two groups. All further cutting was stopped in the case of both the groups. Both the groups were permitted to carry on operations with respect to the trees which had already been felled. One group was, however, allowed to take out timber, wood, charcoal and kattha after furnishing security, while the other group to which the petitioners belong were allowed to remove timber, wood, charcoal and kattha only on payment of the value of the materials. The petitioners then applied to the various authorities, including the Government of Madhya Bharat, for cancellation of the order of March 24, 1955. Their contention was that new contracts had been entered into between them and the Government of Madhya Bharat, which could not be interfered with by the Jagir Commissioner in the manner in which he did. The Government of Madhya Bharat, however, gave them no relief, and, consequently, the present petitions were filed in this Court. The main contention of the petitioners in this group is also that they were the owners of timber, charcoal and kattha etc., and their property could not be taken away by the State of Madhya Bharat, as was done, without the authority of law in support of the order of March 24, 1955. They, therefore, prayed that the Government of Madhya Bharat (now Madhya Pradesh) be restrained from giving effect to the order of March 24, 1955, and interfering with their right to hold and dispose of their properties lying in the forest.

8. We now turn to the facts of the five Palpur petitions. It appears that the jagirdar of Palpur had applied to the Jagir Commissioner for sanction to cut forests in his jagir. The Jagir Commissioner gave sanction on October 30, 1952, for working 5698 bighas of forest land in the jagir for that year i.e., the year ending June 30, 1953. In consequence of this permission, the jagirdar gave contract to one Fateh Singh on November 15, 1952, which was to run up to June 30, 1955. Fateh Singh did not work the area granted to him but transferred the contract to the five petitioners of this group on January 12, 1954. In October 1954, a request was made to the Divisional Forest Officer, Shivpuri, to permit the petitioners to start work with the prayer that the working period should be extended up to 30th June 1955. Thereupon the Divisional Forest Officer asked the petitioners to deposit certain amounts and to take out passbooks. The petitioners did some work soon after on obtaining the permission and then applied again in November 1954 for permission to work a further area. This was permitted by the Divisional Forest Officer on 8th November 1954, on payment of further amounts and the Divisional Forest Officer also put his signature on the agreement between the jagirdar and Fateh Singh. While the petitioners were working under the permission of the Divisional Forest Officer, they were suddenly ordered to stop work on 3rd March 1955, by the Jagir Commissioner. They thereupon made representations and the Jagir Commissioner passed final orders on 12th April 1955, which were on the same lines as in the case of the Pohri petitions. Further representations were made by the petitioners, but to no effect. Consequently, the petitioners filed the present petitions. Their main contention is that the order of 12th April 1955, deprives them of their property without the authority of law in support of it and is thus an invasion on their fundamental right to hold and dispose of property. The petitioners, therefore, pray that the State of Madhya Bharat (now Madhya Pradesh) be restrained from interfering with the petitioners' rights to hold and dispose of their property, namely, timber, wood, charcoal and kattha etc. lying in the forest.

9. The petitions have been opposed by the State. The facts set out above so far as they relate to various orders passed by the officers have not been disputed. It is, however, contended that the property in the trees never passed to the petitioners, and, therefore, the material which was lying in the forests, namely, timber, wood, charcoal and katha, is not their property and they have no. right to maintain the present petitions as they never had any fundamental right in respect of the property.

10. We shall first take the case of the Sirsi petitioners. It is urged by the learned Additional Solicitor General that all jagirs having been abolished from 4th December 1952, the Jagir Commissioner had no. authority thereafter under S. 3 of the Cutting Act to sanction any contracts entered into by the jagirdars before that date. It is, however, unnecessary for the present purposes to decide this question, and we shall proceed on the footing that the sanction granted by the Jagir Commissioner on 19th January 1954, to these petitioners in respect of their contracts of November 1952 was valid. Those contracts, however, all expired on 30th June 1954. The property, which the petitioners now claim as theirs, was clearly all acquired, if it could be acquired at all, after 30th June 1954. The question, therefore, that falls for consideration is whether the alleged extension of the period of the contracts by the forest authorities on 31st August 1954, conveyed to the petitioners by the letter of 19th October 1954, was sufficient to confer property in the trees upon the petitioners. All jagir forest became the property of the State from 4th December 1952. it was the State, therefore, which could grant extension of the terms of the contracts after 30th June 1954. The extension granted by the forest authorities would only confer property in the trees on the petitioners, if the forest authorities had been delegated the power by the Government to sell the trees in the forests. The petitioners in this connexion rely on a notification of 5th August 1954, by which all contracts for the sale of forest coupes, &c. and leases of forest lands could be executed on behalf of the Rajpramukh by the Chief Conservator of Forests, Conservator of Forests, Divisional Forest Officers and District Forest Officers. This notification, however, was under Art. 299 (1) of the Constitution and merely specifies officers who will make the contracts on behalf of the Rajpramukh. It does not confer on them power to sell the property of the State. The notification only authorises the various categories of forest officers to execute contracts after the sale has been sanctioned by the proper authority entitled to sanction the same. The power to make sales was given by letter No. 770/XV /1951 (102) /50, ated 7th March 1951, from the Development Secretary to the Chief Conservator of Forests, by which Divisional Forest Officers, Conservators of Forests and Chief Conservator of Forests were authorised to sanction sales by auction of forest produce up to Rs. 2, 000, Rs. 10, 000, and Rs. 25, 000 respectively. Nothing has been brought to our notice to show that the forest officers were authorised to grant extensions of the period of contracts. It is not in dispute that though the petitioners might have signed some agreement forms, they were never completed and signed by any officer of the Forest Department and no. sale by auction took place. It is clear, therefore that though the forest officers had allowed the petitioners to work in the forests, there was no. legal transfer of the title to the trees in favour of the petitioners at any time either by grant of a fresh contract or by the extension of the period of the contracts, which expired on 30th June 1954. The petitioners, therefore, cannot claim that the property in the trees in the areas worked by them passed to them legally through any sale made in their favour by the State or by any officer duly authorised to make the sale. It was urged, however, that this was a case of sale of movable property, namely, standing timber and no. written registered instrument was required to complete the sale, and as it was later

ratified by the State Government it became binding and, passed the property in the trees to the petitioners. Reliance in this connexion was placed on *Chatturbhuj Vithaldas v. Moreshwar Parashram*, 1954 SCR 817 at p.836 : 1954 AIR(SC) 236 at p. 243), where it was held that "when a government officer acts in excess of authority, government is bound if it ratifies the excess."

It is enough to say that there was no. ratification of the action of the forest officers in these cases, which was obviously in excess of their authority. Reliance was also placed on S. 6 of the Abolition Act ; but that, in our opinion, has no. relevance so far as these petitioners are concerned for their contracts had expired on 30th June 1954 and we are here concerned with the question whether property in the trees passed to the petitioners thereafter. The conclusion, therefore, which is inevitable on these facts, is that there was no. extension of the period of the contracts in favour of the petitioners after 30th June 1954, and no. sale of the trees in the areas worked by them in their favour, and the property in the trees never passed to them in law.

11. In the alternative, it is urged on behalf of the petitioners that they were given a license by the forest officers to work the areas, and, therefore, property in the trees passed to them in view of Ss. 26 (2) (a) and 34 of the Madhya Bharat Forest Act, No. LXXIII of 1960, (hereinafter called the Forest Act). Now, a "license" is defined in S. 52 of the . Easements Act (V of 1882) as follows :

"Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

It is clear from this definition that license gives a right to do something upon the immovable property of the grantor, which would, in the absence of any such right be unlawful. And so far as the forest officers had given permission to the petitioners to go into the forests and work, they would be entitled to do so. But a license alone cannot pass even movable property to the licensee unless the license is coupled with a grant of such property. Reliance in this connexion was placed on *Ramakrishna v. Unni Check*, I L R 16 Mad 280. In that case a license was granted to capture elephants in a certain forest. It was urged that though the instrument was held to be merely a license, the licensee was entitled to take away the elephants and the defendant, who was a transferee from the licensee; only failed because the transfer was not with the permission of the licensor. A perusal, however, of the term of the license in that case shows that it was not a mere license but included also a grant of the elephants, which might be captured, for the license said that permission was given for digging 50 elephants' pits and for removing and taking the elephants from the pits and for doing everything necessary for such taking. When the license permits any person to do something on immovable property and also includes permission to take away movable property the license may operate not only as a license but also as a grant for movable property. But in this case, there was merely a license by the forest authorities in favour of the petitioners. There could be no. grant of the trees by these authorities, for, as already stated above, they had no. power to make such a grant. The license, therefore, that was granted by the forest authorities, cannot, in the circumstances of this case, pass property in the trees to the petitioners.

12. Nor can Ss. 26 (2) (a) and 34 of the Forests Act help the petitioners to claim property in the trees. Section 26 (2) (a) appears in the Chapter of "Reserved Forests", which are declared as such by notification, under S.

4. There is nothing to show that the forests in question were so declared. But apart from that, . S. 26 (2) (a) merely saves a person from certain penalties if permission has been granted to him. It cannot, therefore, help the petitioners. Section 34 applies to "protected forests". In the case protected forests also, the Government has to issue a notification under S. 29, and there is nothing to show that this was done in these cases before the relevant dates. Further S. 34 allows a person to do something with permission in writing of the forest officer which would otherwise be prohibited under Chap. IV relating to protected forests. This section is of no. avail to the petitioners so far as the main point is concerned, namely, the passing of the property in the trees to them. As a matter of act, there is nothing in the Forests Act, which deals with the sale of forest produce and lease of forest lands for exploitation. The Act deals with the management of forests ; and tower for sale of forest produce and lease, of forest lands for exploitation has to be found elsewhere. We are, therefore, of opinion that the petitioners cannot be said to have legally acquired property in the trees from which they made charcoal and kattha etc. by virtue of the permission or license granted to them by the forest authorities.

13. We now turn to the Pohri and Palpur petitioners. Their case may be dealt with together. The permission granted in their case to the jagirdars was to grant contracts for cutting trees in certain areas up to 30th June 1953. The jagirdars, however, granted the contracts up to 31st May 1955. The first question, therefore, that arises is whether the jagirdars could have granted contracts for a period longer than that sanctioned. It is urged that S. 3 of the Cutting Act does not bar the grant of contracts by the jagirdars ; it only bars the cutting of the tree. Here again we do not think it necessary to decide whether S. 3 of the Cutting Act bars contracts for a period longer than that permitted by the Jagir. Commissioner or only bars cutting of trees. Assuming that it only bars cutting of trees that would not improve the position of the petitioners. In these cases the permission was only up to 30th June 1953. Therefore, unless fresh permission was granted after June 1953, or the Government of Madhya Bharat granted fresh contracts after that date, the petitioners would have no. right to work the forests after 30th June 1953, and claim property in the trees felled by them, and in kattha and charcoal manufactured by them out of these trees. It is not the petitioners' case that the Jagir Commissioner granted further permission to them to cut the trees after 30th June 1953. They rely on certain acts of the forest officers, which we have already mentioned to show that fresh contracts were granted and therefore property in the trees passed to them. The same arguments were addressed in the case of these petitioners as in the case of the Sirsi petitioners to show that by the acts of the various forest officers property in the trees passed to the petitioners. We have dealt with these arguments in considering the case of Sirsi petitioners, and for the same reasons, we hold that property in the trees did not pass to the petitioners in these two cases also.

14. Other points raised in the petitions were not argued and we need not refer to them.

15. Our conclusion, therefore, is that in all these cases, no. legal right to property in the trees passed to the petitioners. It is well settled that no. petition under Art. 32 is maintainable, unless it is shown

that the petitioner has some fundamental right. The fundamental right claimed in these cases is that the property which the State of Madhya Bharat (now Madhya Pradesh) is not permitting the petitioners to remove from the forests is property which they have a right to hold and dispose of. This could only be so if the property in the trees or the charcoal or katha which have been manufactured, passed to the petitioners. No. such property, however, passed to the petitioners. In the circumstances they have no. right to maintain these petitions on the ground that they have a fundamental right to hold and dispose of their property, in the absence of any law authorising the State to deprive them of it.

16. The petitions, therefore, fail and are hereby dismissed, but as the officers of the State acted in a manner which gave the petitioners the idea that they had some right to the trees also, we order the parties to bear their own costs. '