Madan Lal vs State Of U.P. And Others on 28 August, 1975

Equivalent citations: 1975 AIR 2085, 1976 SCR (1) 442, AIR 1975 SUPREME COURT 2085, 1975 2 SCC 779, 1976 2 SCJ 45, 1975 UJ (SC) 759, 1976 (1) SCR 492

Author: A.C. Gupta

Bench: A.C. Gupta, Hans Raj Khanna, V.R. Krishnaiyer

PETITIONER:
MADAN LAL

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS.

DATE OF JUDGMENT28/08/1975

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
KHANNA, HANS RAJ
KRISHNAIYER, V.R.

CITATION:
1975 AIR 2085 1976 SCR (1) 442
1975 SCC (2) 779
CITATOR INFO :
RF 1976 SC2101 (11)

ACT:
Indian Forest Act, 1927-S. 17-Scope of.

HEADNOTE:
A notification was issued by the State Government under s. 4 of the Indian Forest Act, 1927 declaring that it decided to constitute some land as a reserved forest. The appellant preferred a claim under s. 6 of the Act before the Forest Settlement Officer stating that he had sirdari rights over certains plots of the land included in the notification, to which claim the Divisional Forest officer filed an objection. The Forest Settlement Officer recorded an order on May 9, 1955 that the appellant had proved his claim. The respondent alleged that the order made by the

Forest Settlement Officer admitting the claim of the appellant was passed without any notice to it, and in its absence, and that it came to know of the order on April 24, 1956 on which date the Forest Settlement Officer passed another order. The State filed an appeal under s. 17 of the Act "against the order dated 24th April, 1956". The prayer made in the petition was 'this appeal be allowed and the orders of the Forest Settlement Officer admitting the claim of the respondent be set aside with costs." The Appellate Tribunal, to which the appeal was preferred, held that the period of limitation should run from April 24, 1956 and not from the date of the first order.

In a petition under Article 226 of the Constitution, the appellant challenged the order of the Appellate Tribunal on the ground (i) that the order of May 9, 1955 was set aside though the appeal was directed not against that order but against the order dated April 24, 1956 which was not an appealable order under the Act and (ii) assuming the appeal was also directed against the earlier order, it was barred by limitation. The High Court held that since the prayer made in the petition of appeal was for setting aside the "orders" of the Forest Settlement Officer, the appeal must be held to have been preferred against both the orders and the appeal against the order recorded on May 9, 1955 was not barred by limitation because the said order must be deemed to have been passed on April 24, 1956 when the forest Department came to know of it.

Dismissing the appeal.

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HELD : (1) Though the date of the earlier order was not mentioned in the petition of appeal, there can be no doubt that the appeal was also directed against that order. The prayer made in the petition of appeal referred not only to 'orders' in the plural but also described them as orders admitting the claim of the respondent, though of course the order dated April 24, 1956 was not one admitting the claim and as such, was not appealable. [496A-B]

(2) The High Court was right in holding that the impugned order should be deemed to have been passed on April 24, 1956 when the Forest Department came to know of it and the right of appeal granted to the Department should be determined on that basis. [498C]

Section 17 provides a right of appeal from an order passed by the Forest Settlement Officer under s. 11 and lays down a time limit of three months from the date of the order for presenting the appeal. In this case the order under s. 11 was recorded by the Forest Settlement Officer on May 9, 1955 and the appeal under s. 17 filed on July 20, 1956 was obviously long out of time if the impugned order could be said to have been made on May 9, 1955 when it was recorded. [494DE, H]

This section does not state what would happen if the Forest Settlement Officer made an order under s. 11 without

notice to the parties and in their
493
absence. It would be absurd to think that in such a case if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting the appeal from the order, the remedy would be lost for no fault of his. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. This principle is embodied in Order XX r. 1 of C.P.C. Though the Forest Settlement Officer adjudicating on the claims under the Act is not a court, yet the principle which is really a principle of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions, must also apply to him. [497E-F]

Municipal Board, Pushkar v. State Transport Authority, Rajasthan & Ors. [1963] Supp. 2 S.C.R. 373 held inapplicable.

Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer, A.I.R. 1961 S.C. 1500, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 678 of 1968.

From the judgment and order dated the 9th May 1966 of the Allahabad High Court (Lucknow Bench) in Writ Petition No. 150 of 1960.

S. C. Aggarwala and V. J. Francis, for the appellant. G. N. Dikshit and O. P. Rana, for the respondents. The Judgment of the Court was delivered by GUPTA, J.-This appeal by certificate granted by the Allahabad High Court, Lucknow Bench, under Article 133(1)(b) of the Constitution has its origin in a proceeding under the Indian Forest Act, 1927 (hereinafter referred to as the Act).

Appellant Madan Lal had preferred a claim under sec. 6 of the Act in respect of certain plots of land in village Khamaria, Pargana Khairigarh, District Kheri which were included along with other land in a notification under sec. 4 of the Act issued on April 3, 1954 declaring that the State Government had decided to constitute the said land a reserved forest. The Divisional Forest Officer, North Kheri Division, filed an objection to the claim of the appellant that he had Sirdari rights in the said plots. An inquiry into the claim was started by the Forest Settlement Officer under sec. 7 of the Act and evidence of the parties was concluded on February 19, 1955. The case was adjourned for local inspection to March 3, 1955. The local inspection was not however held on the due date and was made instead on May 3, 1955 when the Forest Settlement Officer further directed that the case would be put up for orders, but it was not stated when. The record of the case shows that on May 9, 1955 the Forest Settlement Officer recorded an order under sec. 11(1) of the Act that the appellant had proved his claim, and directed the Divisional Forest Officer to "inform within 15 days whether he wants the land on payment of compensation or not". Sec. 11(1) reads :

> "In the case of a claim to a right in or over any land, other than a right-of-way or right of pasture, or a right to forest-produce or a water-course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part."

Sub-sec. (2) of sec. 11 states:

> "If such claim is admitted in whole or in part, the Forest Settlement Officer shall either-
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> (i) exclude such land from the limits of the proposed forest; or
>
> (ii) come to an agreement with the owner thereof for the surrender of his rights; or
>
> (iii)proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894."

According to the respondents the order made by the Forest Settlement Officer admitting the claim of the appellant was passed without any notice to them and in their absence. The respondents' case is that they came to know of this order on April 24, 1956 when the Forest Settlement Officer recorded another order stating:

> "Claim has been admitted in this case. The case will be included in the list to be forwarded to the Govt. When information from the Govt. is received in regard to the acquisition of land, further action will be taken under Section 11(2) (iii) of the Indian Forest Act....."

The first respondent, State of Uttar Pradesh, filed an appeal through the Divisional Forest Officer (respondent No.

2) in the Court of the Deputy Commissioner, Lakhimpur-Kheri on July 20, 1956 under sec. 17 of the Act. Sec. 17 allows an appeal to be preferred by any person who has made a claim under the Act or any Forest-officer or other person generally or specially empowered by the State Government in this behalf, against an order passed on such claim by the Forest Settlement Officer under sec. 11. The section prescribes a time limit of three months from the date of the order for presenting the appeal. The petition of appeal under sec. 17 presented in this case shows that it was directed "against the order dated 24.4.1956" and the prayer made in the petition was : "This appeal be allowed and the orders of the Forest Settlement Officer admitting the claim of the respondent be set aside with costs.....". The appellate tribunal repelling a contention raised by the claimant that the appeal was barred by limitation observed:

> "Since the order dated 9.5.55 was not delivered in the presence of the parties or after giving them any notice of date it cannot be said to have been delivered properly under the law. It is obvious that in case the Forest Settlement Officer had decided to pass an

> order determining the rights of the parties, it was incumbent on him to have duly informed the parties concerned both of the date of the order and subsequently of its content. This was clearly not done."

In these circumstances it was held that the period of limitation should run from April 24, 1956 and not from the date of the first order. On the merits the appellate tribunal found on a consideration of the evidence that claim of 'Sirdari' rights over the land in question had no basis and allowed the appeal by its order dated April 20, 1959. The tribunal also set aside another order releasing the disputed land in favour of the claimant which was passed by the Forest Settlement Officer during the pendency of the appeal.

The claimant filed a writ petition in the High Court at Allahabad challenging the order of the appellate tribunal as without jurisdiction on two grounds: first, the order passed on May 9, 1955 was set aside though the appeal was directed not against that order but against the order dated April 24, 1956 which was not an appealable order under the Act and, secondly, assuming the appeal was also directed against the earlier order, it was barred by limitation. On the first point the High Court took the view that since the prayer made in the petition of appeal was for setting aside the 'orders' of the Forest Settlement Officer admitting the claim, the appeal must be held to have been preferred against both the orders. As regards limitation, the High Court observed:

> "In the present case, the facts found show that though this order was purported to be passed on the 9th May, 1956 on that date the parties were not present and no notice of that date had been given to the parties. The finding of the Deputy Commissioner is that the Divisional Forest Officer actually came to know of that order only on the 24th April, 1956 and this fact does not appear to have been challenged on behalf of the petitioner..... In these circumstances, we think that, on the principles governing the administration of justice, it should be held that so far as the Forest Department was concerned, the order should be deemed to have been passed on the 24th April, 1956 and the right of appeal granted to the Department should be determined on that very basis. This is actually what the Deputy Commissioner did. If we were to accept the submission on behalf of the petitioner that the limitation for filing the appeal must be computed from the date put down by the Forest Settlement Officer in the order itself, it can result in material injustice to the parties because there can be cases where a Forest Settlement Officer may make an order, sign it and keep it in his own custody without pronouncing it or informing the parties concerned. The order may see that light of day only after the expiry of three months and thus this interpretation would result in all concerned parties being deprived of the right of appeal altogether."

The learned Judges of the High Court added, "even if we were to hold that the appeal was time-barred", in the circumstances stated above, they would still not consider this to be "a fit case for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution." On this view the High Court dismissed the writ petition on May 9, 1966. The appellant had also filed a revisional application to the State Government under sec. 18(4) of the Act against the order of the appellate tribunal which the State Government rejected by its order dated March 9, 1960. The writ

petition refers to this unsuccessful revisional application in stating the facts, but it contains no prayer for quashing or setting aside the order of the State Government.

In the appeal before us, counsel for the appellant pressed the same two grounds urged before the High Court, and also sought to raise several questions of fact and further made a grievance that the order passed by the State Government on the revision application did not state the reasons for rejection. On the question whether the appeal presented under sec. 17 of the Act covered the order passed by the Forest Settlement Officer on May 9, 1955, it appears that the prayer made in the petition of appeal refers not only to 'orders' in the plural, but also describes them as orders admitting the claim of the respondent, though, of course, the order dated April 24, 1956 was not one admitting the claim and as such was not appealable. Thus though the date of the earlier order was not mentioned in the petition of appeal, there can be no doubt that the appeal was also directed against that order.

The other question is whether the appeal was in time. Sec. 17 provides a right of appeal from an order passed by the Forest Settlement Officer under sec. 11 and lays down a time limit of three months from the date of the order for presenting the appeal. In this case the order under sec. 11 was recorded by the Forest Settlement Officer on May 9, 1955, and the appeal under sec. 17 filed on July 20, 1956 was obviously long out of time if the impugned order could be said to have been made on May 9, 1955 when it was recorded. Counsel for the appellant relied on a decision of this Court, Municipal Board Pushkar v. State Transport Authority, Rajasthan & Ors.(1) as an authority for the proposition that equitable considerations have no place in interpreting provisions of limitation. This was a case under the Motor Vehicles Act, 1939. Sec. 64A of that Act provides a right of revision from an order made by a State Transport Authority or Regional Transport Authority to the State Transport Appellate Tribunal and adds that no revisional application shall be entertained by the State Transport Appellate Tribunal "unless the application is made within thirty days of the date of the order." This Court observed that the words "date of the order" could not mean the date of the knowledge of the order in the absence of clear indication to that effect. If the decision stopped with the above observation it would have undoubtedly lent support to the appellant's contention, but the Court having made the observation went on to consider the question what the expression "date of the order" meant. This is what the Court said :

> "This still leaves open for investigation the problem as to what is the date of the order. According to the appellant the date when the Regional Transport Authority passed the resolution is the date of the order. Against this it is urged on behalf of the bus operators that it is the date when that resolution was brought into effect by the publication of the notification which should be considered to be the date of the order. In our opinion, the respondents' contention should be accepted. For, it is a fallacy to think that the date when the Regional Transport Authority passed the resolution was the date on which the fixation of the new-bus-stand or the discontinuance of the old bus stand was ordered. It has to be remembered in this connection that Rule 134 itself contemplates that the fixation or alteration of bus stands would be made by a notification. It is only on such notification that a notified but stand comes into existence. So long as the notification is not made there is in law no effective fixation

> of a new bus stand or discontinuance of the old bus stand The matter may be considered from another aspect. Section 64A provides for an application for revision by a person aggrieved by an order. It is the making of the order which gives rise to the grievance. In this case it is the fixation of the new bus stand and the discontinuance of the old bus stand by which the bus operators claim to have been aggrieved. It is easy to see that there is no real cause for grievance till such fixation and discontinuance of bus stands have been made by a notified order. In other words, the order has not been "made" till the notification has been published. Before that it is only an intention to make an order that has been expressed."

It is clear that the publication of the notification serves as notice to the aggrieved party and enables him to make an application under sec. 64A within the prescribed time limit. This case therefore does not support the appellant.

The Act we are concerned with does not state what would happen if the Forest Settlement Officer made an order under sec. 11 without notice to the parties and in their absence. In such a case, if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appal from the order, would the remedy be lost for no fault of his ? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are effected by an order must have notice of it. This principle is embodied in Order 20, Rule 1 of the Code of Civil Procedure; though the Forest Settlement Officer adjudicating on the claims under the Act is not a court, yet the principle which is really a principle of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions must also apply to him. The point has been considered and decided by this Court in Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer(1). This was a case under the Land Acquisition Act, 1894 and the Court was considering the question of limitation under the proviso to sec. 18 of that Act. Under sec. 18 of the Land Acquisition Act a person who has not accepted the Collector's award can apply to the Collector requiring him to refer the matter for the determination of the court. This application has to be made within Six months from the date of the Collector's award in the case where person interested was not present or represented before the Collector at the time when he made his award or had received no notice from the Collector of the award. Construing the expression "the date of the award" this Court observed:

> "The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way.
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> .... where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the order must mean either actual or constructive communication of the said order to the party concerned."

The High Court in the case before us was therefore right in holding that the impugned order should be deemed to have been passed on April 24, 1956 when the Forest Department came to know of the order and "the right of appeal granted to the Department should be determined on that very basis."

Counsel for the appellant sought to argue that the appellate authority was wrong in finding that the respondents had no notice of the order passed by the Forest Settlement Officer. We cannot permit the appellant to question the findings of fact in this appeal. As regards the order passed by the State Government on the revision petition filed by the appellant, it appears that though the appellant referred to the said order in the writ petition there is no prayer in the petition for setting aside or quashing that order. As the validity of this order was not questioned before the High Court, the appellant cannot be allowed to raise the question at this stage.

In the result the appeal is dismissed with costs.

P.B.R. Appeal dismissed.