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C.A.No. 2532 OF 1998

PARR-HEARD

ITEM No.101

Court No. 8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 2532 of 1998

PRINCIPAL CHIEF CONS. OF FOREST & ORS.

Appellant (s)

VERSUS

YAMTHONG HAOKIP Respondent (s)

(With office report)

Date : 11/11/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. Kh. Nobin Singh,Adv.

For Respondent (s)Mr. B.P. Sahu,Adv.

Ms. Rajani K. Prasad,Adv.

Mr. K.R. Nagaraja,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties from 10.35 a.m. to 11.35 a.m.

The civil appeal is dismissed with costs of Rupees twenty five thousand to be paid by the appellants to the respondent.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2532 OF 1998

Principal Chief Cons. of Forest & Ors.

...Appellant(s)

Versus

O R D E R

The order passed by the Division Bench of the High Court in a writ petition filed by the respondent herein is under challenge in this appeal. The respondent applied in 1991 to the State Government for issue of permit under the lease agreement to enable him to collect forest produce (clove) on payment of outright price in the same manner and circumstances as other minor forest produces were allowed to be collected and exported. The respondent belongs to a Schedule Tribe community in the State of Manipur. When royalty was sought to be collected from the respondent, he had to approach the High Court for the relief. The respondent was allowed to collect the forest produce (clove) under the lease agreement dated 31st May, 1991 for working of clove in Chandel District. The relevant clauses of the agreement read:

...2/-

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"Whereas the right of the contractor for collection of and trade in clove from the forest area under the Forest of Manipur, Chandel District for a period of 1 (one) year w.e.f. 31.5.91 to 30-5-92 has been extended/accepted vide order no. 57/4/91 for dated 30-5-91.

2. That the lessee shall have to pay outright price of Rs.10000/- (rupees ten thousand only) on or before the signing of the lease agreement.

14. That, the lessee shall obey the order of the principal chief conservator of forest, Govt. of Manipur who shall have the power to introduce further conditions in the lease if he considered necessary but not to the disadvantage of the lessee....."

On the date when the agreement was entered into, no rate of royalty was fixed as far as clove was concerned; it was fixed for the first time on 29th July, 1991. Before the High Court, in the writ petition, a detailed counter affidavit was filed on behalf of the appellants contending that the State had power to impose and collect royalty on clove. This power was available to them right from 1986, although rate was not fixed as far as clove was concerned. According to the State, it was only a mistake and omission in not mentioning in the agreement as to the right to collect royalty on clove. The High Court, on consideration of the respective contentions, found that the State had no power to collect royalty on clove. In the view it took, the High Court allowed the writ petition filed by the respondent and granted the relief.

Before us, the learned counsel for the appellants contended that the High Court committed an error in allowing the writ petition without considering the number of contentions raised and the grounds stated in the counter

...3/-

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affidavit. According to him, the High Court did not deal with these contentions raised in the counter affidavit.

In opposition, the learned counsel for the respondent made submissions supporting the impugned order. He drew our attention to the lease agreement entered into between the parties, in particular to clauses (2) and (14), to contend that it was not open to the appellants to act contrary to the specific clauses contained in the agreement. The learned counsel submitted that the respondent acted on the basis of the said agreement; it was not open to the appellant to put any condition to the disadvantage of the respondent after he commenced the work under the agreement, particularly when on the date of the agreement the appellants could not impose any clause to collect royalty on clove as the rate of royalty was not fixed as on that date. He also submitted that the High Court passed an interim order on 18th December, 1991, and the operative portion thereof reads:

"On consideration of the matter, we make the following order: The petitioner shall be allowed to take out minor forest produce in question on payment of royalty and current transit pass fee at the enhanced rate. The respondents shall keep proper accounts of the royalty and enhanced transit pass fee paid by the petitioner so that in case the petitioner succeeds in this petition necessary orders for refund may be made."

The learned counsel submitted that pursuant to the said order of the High Court, the respondent has deposited the amount with the appellants.

...4/-

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Having considered the submissions made on behalf of the parties and particularly having due re

gard to the terms of the agreement, referred to above, we find it difficult to upset the conclusion of the High Court arrived at in granting relief to the respondent. It is not disputed that on 31st May, 1991 when the lease agreement was executed in the absence of the rate of royalty fixed by the State Government, no provision could be made for collecting royalty. It is also not stated in the agreement that liberty was reserved to the State to impose any royalty on a future date. On the other hand, the lease agreement shows that outright price was fixed and that an embargo is placed on clause (14) of the agreement that the appellants shall not vary any condition of the agreement to the disadvantage of the respondent. This being the position, we are of the view that it was not open to the appellants to demand royalty from the respondent contrary to the terms of the agreement. We are told, during the course of the argument, that in subsequent agreements entered into, the specific clauses have been added in the agreement with regard to the collection of royalty. Since the parties are bound by the specific terms of the agreement, it may not be necessary for us to go into other legal contentions in this case in the light of the facts and circumstances. Thus, we find no merit in the appeal. It is, accordingly, dismissed with costs of Rupees twenty five thousand to be paid by the appellants to the respondent having regard to the passage of time and taking note of the fact that the amount deposited by the respondent has been with the appellants for a long time.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
November 11, 2003.