IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 145 of 1997

Judgment reserved on:20.10.2006

Date of decision: 31.10.2006

Balbir Singh **Appellant.**

VERSUS

H.P.State Forest Corporation **Respondent.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: **Mr.Bhupender Gupta,Senior Advocate with Mr.Neeraj Gupta,Advocate.**

For the Respondent: **None**

Deepak Gupta, J.

Nazar, son of Thapi, resident of village Karaura, Tehsil Jubbal, District Shimla was allotted 6 bighas 4 biswas of land as Nautor. This land was comprised in Khasra No. 3926. There were a large number of Deodar and Kail trees on this land. The land was allotted in favour of Nazar on 30.7.1972 on payment of Rs.310/- as Nazrana. Nazar entered into an agreement with the plaintiff (appellant herein) on 6.10.1972 (Ex.PW-

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

2-C/1) whereby Nazar agreed to sell the standing trees on the land allotted to him as Nautor to the plaintiff and the plaintiff was entitled to convert the standing trees to timber. It would be pertinent to mention that in the agreement, Ex.PW-2-C/1, no consideration whatsoever was mentioned. As per receipts, Ex.PW-2/C-2 and Ex.PW-2/C-3 the plaintiff paid a sum of Rs.1500/- and Rs.2,000/- to Nazar on 18.1.1973. Thus, according to the plaintiff he had paid Rs.3,500/- to Nazar as consideration for the sale of the trees and he alone became entitled to cut and remove the trees.

Thereafter Nazar entered into an agreement with the respondent-H.P.State Forest Corporation (hereinafter referred to as the defendant). The defendant permitted Nazar to fell the trees standing in Khasra No. 3926 sometime in the year 1982-83. The plaintiff filed a suit being Civil Suit No. 64/1 of 1983 before the Sub Judge Ist Class, Rohru for grant of permanent injunction restraining Nazar from taking payment of the standing volume of trees from the H.P.State Forest Corporation. This suit was decreed by the Sub Judge Ist Class, Rohru on 14.4.1986 and Nazar was restrained from taking payment of the standing volume of trees on the suit land

from the H.P.State Forest Corporation and he was also restrained from removing the sleepers from the suit land. It would be pertinent to mention that in the said suit the Divisional Manager of the Forest Corporation was impleaded as proforma respondent and no relief was claimed against him. It would also be pertinent to mention that while deciding the said case the said court came to the conclusion that since Nazar had received the amount of consideration for his trees from the plaintiff Balbir Singh, he had no right to receive the amount from the H.P.State Forest Corporation and that the plaintiff Balbir Singh alone was entitled to get the price of the trees from the H.P.State Forest Corporation.

An appeal against the said judgment and decree was filed by Nazar as well as by one Balwant Singh Thakur, who claimed to be a partner of plaintiff Balbir Singh. Both the appeals were dismissed. The appellate court, however, observed that since Nazar had already sold the trees in favour of the H.P.State Forest Corporation, plaintiff Balbir Singh is entitled to get Nazar restrained from receiving the sale price of the trees from the H.P.State Forest Corporation. The appellate court however, found no ground to restrain the H.P.State Forest

Corporation from removing the converted timber. Against this judgment and decree of the first appellate court an appeal being R.S.A. No. 44 of 1987 was filed by Nazar and RSA No. 72 of 1987 was filed by Balwant Singh. Both these RSAs were dismissed by this court on 25th June, 1987.

It would be pertinent to mention that during the course of proceedings before the trial court an appeal had been filed in the court of learned District Judge, Shimla against some interim order dated 19.5.1984 passed by the trial court. This appeal was disposed of in terms of the agreement arrived at between the parties which is in the following terms:

> "On the undertaking given at the bar by the learned counsel for Forest Corporation that the amount realized from the converted timber, the subject matter of dispute would be deposited in the Fixed Deposit of any Scheduled bank after deducting the actual expenses for one year for first instance and if matter not decided the period would be extended till the decision of the suit. The amount will be given to the person who succeeds. The sale will be held in the presence of the parties after notice to them. Respondent counsel Shri B.Gupta have no objection of this order."

Thereafter the plaintiff filed another suit being civil suit No. 99-S/1 of 95/88 claiming damages to the extent of Rs.2,95,000/- from the H.P.State Forest Corporation. This suit was initially filed in this court, but after the enhancement of the jurisdiction, the said case was transferred to the court of learned District Judge, Shimla. According to the plaintiff as soon as he paid the sale consideration to Nazar, he became the owner of the trees and he alone was entitled to cut and remove the trees. Further, according to the plaintiff, Nazar had been restrained in the earlier litigation from receiving the amount. According to the plaintiff the total standing volume of the trees, as calculated by the H.P.State Forest Corporation, itself was 101.34 cubic meters. The plaintiff averred that against the standing volume 101.34 cubic meters the extracted timber was only 68.78 cubic meters which works out to 71.42 per cent. The plaintiff submitted that this showed that the defendant had not got the extraction done properly and the extracted timber should have been to the extent of 90% of the standing timber. Further, according to the plaintiff, the timber had been sold at throw-away price and as a result thereof the plaintiff had suffered loss and he accordingly claimed

Rs.2,95,000/-. The plaintiff also alleged that despite orders of the court he was neither associated with the extraction of timber nor was the auction of timber held in his presence.

The defendant contested the suit and took up various objections. The claim of the plaintiff was denied. A specific objection was raised that the alleged agreement dated 6.10.1972 was void in view of Section 19 of th H.P. State Forest Corporation Produce (Regulation of Trade) Act, 1982 (hereinafter referred to as the Act) and became invalid after 30.11.1982 and, therefore, the plaintiff had no right to claim any amount on the basis of the said agreement. It was also contended that the extraction was done as per the proper method and the timber had been sold at market price and that the plaintiff was associated with the entire process.

On the pleading of the parties the trial court framed the following issues :-

1. Whether the plaintiff was entitled to cut and remove the trees as per agreement dated 6.10.1972 ? OPP
2. Whether the plaintiff suffered damages due to the acts of defendant as stated in para 15 of the plaint ? OPP
3. To what amount the plaintiff is entitled to recover as damages from the defendant ? OPP

4. Whether the plaintiff is estopped by his own acts and conduct to file the present suit ? OPD
5. Whether the suit is bad for non-joinder of necessary parties ? OPD
6. Whether the agreement dated 6.10.1972 is void in view of Sec. 19 of the H.P.Forest Produce (Regulation of Trade) Act ? OPD
7. Relief.

The trial court decided issues No. 1 and 6 against the plaintiff and held that the agreement dated 6.10.1972 was void in view of Sections 4 and 19 of the Act and, therefore, the plaintiff was not entitled to cut and remove the trees as per the said agreement. The trial court also held that the plaintiff had failed to prove that he had suffered any damages and further came to the conclusion that the plaintiff was estopped on account of his own act and conduct from filing the suit. Aggrieved against the said judgment and decree of the trial court the present appeal has been filed.

Two questions arise for decision in the present appeal. Firstly, whether the finding of the learned court below that the plaintiff was not entitled to cut and remove the trees as per agreement dated 6.10.1972 because the said agreement is void in view of the provisions of the Act is correct or not . Secondly whether

the plaintiff has proved that he has suffered any damages, if so to what extent.

To decide the first question, it would be appropriate and apposite to refer to certain provisions of the Act. This Act came to effect from Ist October, 1981. Sections 2(d), 4 and 19 of the Act read as follows:-

> "2(1) In this Act, unless the context otherwise requires,-
>
> (d) "forest produce" means trees of any of the species standing, felled or otherwise fashioned, specified in the Schedule annexed to this Act and any other produce declared as such by the State Government from time to time by a notification published in the official Gazette;"
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> "4. On the commencement of this Act,-
>
> (a) no owner of forest produce shall effect sale of any forest produce to a person other than the State Government or the agent appointed under section 3 ;
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> (b) no person other than the State Government through its authorized officer or agent appointed under section 3 shall purchase forest produce from any owner; and
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> (c) no person shall transport forest produce to any place within or outside the division without permit issued in that behalf by such authority, in such manner and subject to such terms and conditions as are prescribed under sections 41 and 42 of

the Indian Forest Act, 1927 and the rules made thereunder by the State Government."

"19. (1) Notwithstanding anything to the contrary contained in section 4, the State Government or its authorized officer may, on such terms and conditions and in such manner as be prescribed, permit any person who had purchased the extracted forest produce for the purpose of further sale or had extracted forest produce or had obtained the orders of demarcation and marking for its extraction before the commencement of this Act, to fell, convert, transport and sell such forest produce to any person other than the State Government or an authorized officer or agent and permit any person other than the State Government or its authorized officer or agent to purchase and transport the same. The permission so accorded shall lapse after the 30th November, 1982.

(2) Where at any time before the commencement of this Act, any person had entered into any contract for the sale of forest produce to any trader and obtained an advance from such trader towards the price of the forest produce accepted to be delivered to the trader under such contract, then notwithstanding that by virtue of the provisions of section 4, such contract shall have become void on the commencement of the Act, the said person and trader may make a joint application before the Divisional Forest Officer or an officer authorized by him or the agent, in that behalf, giving particulars of such advance and thereupon the said officer, on

being duly satisfied that the transaction is genuine one, may direct the officer of the State Government or the agent to pay on behalf of the said person to such trader a sum equivalent to the said advance (less the amount already repaid by the said person to such trader) without any interest or compensation out of the price due to the said person for the forest produce sold under section 5, and the liability of the State Government or the agent to the said person and of the said person to the trader shall, to the extent of such payment, stand discharged and the said person shall not be liable to pay any interest or compensation in respect of such advance. Such claims shall lapse after the 30th November, 1982"

A reading of Section 4 of the Act clearly shows that after the commencement of the Act, no owner of the forest produce could sell the same to any person other than the State Government and there is a prohibition prohibiting any person other than the State Government or its agent from purchasing or transporting forest produce. Forest produce includes felled timber.

Mr.Bhupender Gupta, learned Senior Advocate, has urged that the provisions of this Act do not apply to the plaintiff for two reasons. Firstly, that his client had already become the owner of the timber and in previous litigation, Nazar was restrained from recovering

the price of timber from the Corporation and the plaintiff was held entitled to the same. Second limb of his argument is that in the previous litigation the defendant Corporation had not raised any plea that the agreement is void and, therefore, the Corporation is restrained from raising this plea in the present case.

As far as the first argument is concerned, the forest produce includes felled timber. Admittedly, though the agreement was entered into between the plaintiff and Nazar as far back as on 6.10.1972 and Nazar had been paid Rs.3,500/- on 18.1.1973, the standing trees had not been converted to timber till 1.10.1981, the date of commencement of the Act. Therefore, obviously, this agreement was no longer in force. Even assuming that the plaintiff had become owner of the trees, he admittedly could not have either felled, sold or transported the same to any person except the State Government or its agent(s). There is no agreement between the plaintiff and the Forest Corporation. The plaintiff wants to step into the shoes of Nazar. In my opinion, this cannot be permitted to be done. Nazar had entered into a separate agreement with the Forest Corporation. Though the plaintiff filed an earlier suit in which he claimed that Nazar had sold the

trees to him and was not entitled to recover any amount from the Forest Corporation, no prayer was made in the said suit that the agreement entered into between Nazar and the Forest Corporation be declared illegal and invalid. The decree passed by the learned trial court was only to the extent that Nazar was restrained from taking the payment of the standing volume of trees from the Corporation and from removing the sleepers from the suit land. In appeal, the decree was modified and the appellate court permitted the defendant Forest Corporation to remove the converted timber. There was no decree in favour of the plaintiff that he is entitled to recover the amount from the defendant.

The rights of the plaintiff emanate and flow from the order dated 21.2.1985, quoted hereinabove, wherein the court in interlocutory proceedings had ordered that the amount realized by the Forest Corporation after deducting the expenses will be given to the persons who succeeds in the suit. No doubt the plaintiff succeeded. He, therefore, is entitled to the amount, but the question which arises is whether he is entitled on the basis of the said order to claim damages. In my opinion, the answer to that question has to be in the

negative. In the agreement the plaintiff and Nazar became inoperative and invalid in view of the provisions of Sections 4 and 19 of the Act. The plaintiff himself had not entered into any agreement with the Corporation. The plaintiff had never prayed for and cannot be permitted to step into the shoes of Nazar. The plaintiff, therefore, has no right to claim any damages from the Corporation. Section 19(1) will not apply in the present case since that only applies where a person had purchased “extracted forest produce”. In the present case the agreement was not for purchase of extracted forest produce, but a forest produce.

Even Section 19(2) will not apply because in terms of Section 19(2) it is necessary that both the parties to the agreement for sale of forest produce must apply to the Divisional Forest Officer and in that event the orders are to be passed. In the present case, in my opinion, Section 19 has no applicability and as per Section 4 the plaintiff had no right to sell the forest produce.

Nazar entered into an agreement with the defendant Corporation for sale of forest produce. Even if the plaintiff was the owner of the forest produce, he did not seek any declaration in the earlier litigation against

the Forest Corporation that the agreement was null and void since Nazar was no longer the owner of the trees. The only relief the plaintiff sought in the earlier proceeding was a permanent injunction restraining Nazar from taking the payment of the standing volume of trees from the Forest Corporation and from removing the sleepers. No doubt, in the earlier litigation the courts held that Nazar had no right to sell the forest produce again since he had received the sale consideration for the trees from the plaintiff Balbir Singh and, therefore, the plaintiff Balbir was entitled to get the price of trees from defendant No.2.

For the reasons best know to the plaintiff, the plaintiff did not seek any specific relief against the Forest Corporation in the earlier litigation. Since no relief was claimed against the Corporation, it did not appear before the trial court and was proceeded against ex parte. It was only when some interim relief was to be granted that Forest Corporation made an offer that it would sell the timber in the presence of the parties and pay price to the persons who succeed in the litigation. Therefore, the rights of the plaintiff, if any, emanate from the said order only. Therefore, I am of the opinion that the plaintiff had

not entered into any agreement with the Forest Corporation and has no right to claim any amount from the Forest Corporation, except what was admitted by the Forest Corporation in the previous proceeding.

Though I have held that the plaintiff is not entitled to claim any amount from the Forest Corporation, I proceed to decide the question with regard to the damages. It is the admitted case of the parties that the volume of the standing timber was 101.34 cubic meters. The first question which arises is whether the extraction has been done properly or not. In this behalf it would be pertinent to mention that other than the self-serving statement of the plaintiff, he has led no other evidence of any expert to show as to what is the normal ratio between the standing timber and extracted timber. Nazar had offered to sell the timber to the Forest Corporation and vide Ex.D-4 the Forest Corporation had found that the standing volume of timber was 103.84 cubic meters and after working out the economics it was expected that the converted volume would be 72.69 cubic meters. This letter, Ex.D-4 is dated 26.4.1983, much before the dispute started between the parties. The expected converted timber mentioned in this letter was 72.69 cubic meters

and the timber actually extracted was 68.78 cubic meters. The difference is negligible. It would be pertinent to mention that in fact later on it was found that standing timber was 101.34 cubic meters and not 103.84 cubic meters. So in percentage terms the timber extracted is as per the expectation of the Corporation and there is no material on record to show that the extraction could be at higher rate.

It would not be out of place to mention that there is lot of correspondence between the parties which has been proved on record which shows that Balbir Singh plaintiff knew about the entire process of extraction. He never complained that the extraction was not done properly till the filing of the suit. This also shows that his claim is not correct.

Lastly, it has been alleged that the timber has been sold at rates much lower than the market rate. The plaintiff has relied upon various sale instances, Ex.PW-4/A to Ex.PW-4/T to show that the timber was sold at a higher rate. DW-1 while appearing in the witness box has explained that the rates mentioned in these documents relied upon by the plaintiff cannot be applied since those instances related to timber which had been converted into

specific sizes and scants which were bound to fetch higher rate than the timber in the present case which was in the form of logs and billets. Round logs had to be further converted into timber of specific sizes to earn higher rate. Though a number of documents have been placed on record, no specific instances have been pointed out to show that was the rates of comparable timber. Therefore, I am constrained to hold that the plaintiff has failed to prove that he suffered any damages.

In view of the above discussion, the appeal is without any merit and the same is dismissed with no order as to costs.

October 31, 2006(K) (Deepak Gupta), Judge