MAHADEO

v.

THE STATE OF BOMBAY

(and connected petitions)

1959

March 9.

(S. R. DAS, C. J., S. K. DAS, P. B. GAJENDRAGADKAR, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Fundamental Rights, Violation of—Agreement with Proprietors for grant of right to pick and carry away tendu leaves and other ancillary rights—Nature of such rights—Non-Registration of agreement—Effect—Abolition of proprietary rights in Estates, etc.—Non-recognition of the agreements by State, if violates fundamental rights—Central Provinces Land Revenue Act, 1917 (Central Provinces II of 1917), ss. 2(13), 47(3), 202—Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh I of 1951), ss. 2(6), 3, 4.

Some of the proprietors of the former State of Madhya Pradesh granted to the several petitioners rights to take forest produce, mainly tendu leaves, from the forests included in the Zamindaris belonging to the proprietors. The agreements conveyed to the petitioners in addition to the tendu leaves other forest produce like timber, bamboos, etc., the soil for making bricks, and the right to build on and occupy land for the purpose of their business. These rights were spread over many years, but in the case of a few the period during which the agreements were to operate expired in 1955. Some of the agreements were registered and the others unregistered. After the coming into force of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the Government disclaimed the agreements and auctioned the rights afresh, acting under s. 3 of the Act under which "all proprietary rights in an estate .....in the area specified in the notification, vesting in a proprietor of such estate.....or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances".

The petitioners filed petitions under Art. 32 of the Constitution of India challenging the legality of the action taken by the Government on the ground that it was an invasion of their fundamental rights. They contended (1) that the Government stepped into the shoes of the quondam proprietors and was bound by the agreements into which the latter had entered, before their proprietary rights were taken over by the Government, (2) that the petitioners were not proprietors as defined in the Act and therefore ss. 3 and 4 of the Act did not apply to them, (3) that the agreements were in essence and effect licenses granted to them to cut, gather and carry away the produce in the shape of

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tendu leaves, or lac, or timber or wood, (4) that the agreements granted no 'interest in land' or 'benefit to arise out of land' and that object of the agreements could only be described as sale of goods as defined in the Indian Sale of Goods Act, and (5) that the interest of the petitioners was not proprietary right but only a right to get goods in the shape of leaves, etc. The petitioners relied on the decision in *Firm Chhotabhai Jethabai Patel and Co.* v. *The State of Madhya Pradesh*, [1953] S.C.R. 476.

Held: (1) that the agreements required registration and in the absence of it the rights could not be entertained.

Srimathi Shantabai v. *State of Bombay*, [1959] S.C.R. 265, followed.

(2) that in cases where the period stipulated in the agreement had expired, the only remedy, if any, was to sue for breach of contract and no writ to enforce expired agreements could issue.

(3) that on their true construction the agreements in question were not contracts of sale of goods.

(4) that both under the Act in question and the Central Provinces Land Revenue Act, 1917, the forests and trees in the Zamindari area belonged to the proprietors and they were items of proprietary rights. Consequently, the rights conveyed to the petitioners under the agreements were proprietary rights, which under ss. 3 and 4 of the Act, became vested in the State.

(5) that assuming that the agreements did not amount to grant of any proprietary right by the proprietors to the petitioners, the latter could have only the benefit of their respective contracts or licenses. In either case, the State had not, by the Act, acquired or taken possession of such contracts or licenses and, consequently, there had been no infringement of the petitioners' fundamental rights which alone could support a petition under Art. 32 of the Constitution.

Chhotabai Jethabai Patel and Co. v. *The State of Madhya Pradesh*, [1953] S.C.R. 476, not followed.

Ananda Behera v. *The State of Orissa*, [1955] 2 S.C.R. 919, followed.

ORIGINAL JURISDICTION: Petitions Nos. 26 and 27 of 1954, 24 and 437 of 1955, 256 of 1956, 12, 16, 17 and 73 of 1957.

Petition under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

M. S. K. Sastri, for the petitioners in Petitions Nos. 26 and 27 of 54 and 24 of 1955.

V. N. Swami and *M. S. K. Sastri*, for the petitioners in Petitions Nos. 437 of 55 and 256 of 56.

L. K. Jha, *J. M. Thakur*, *S. N. Andley* and *J. B. Dadachanji*, for the petitioner in Petition No. 12 of 1957.

N. S. Bindra and *Harbans Singh*, for the petitioners in Petitions Nos. 16 and 17 of 1957.

N. S. Bindra and *Govind Saran Singh*, for the petitioner in Petition No. 73 of 1957.

H. N. Sanyal, *Additional Solicitor-General of India*, *H. J. Umrigar* and *R. H. Dhebar*, for the respondent in Petitions Nos. 26 and 27 of 1954, 24 and 437 of 1955, 256 of 1956 and 12 of 1957.

M. Adhikary, *Advocate-General for the State of Madhya Pradesh* and *I. N. Shroff*, for the respondent in Petitions Nos. 16, 17 and 73 of 1957.

1959. March 9. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—The judgment in Petition No. 12 of 1957 shall also dispose of petitions Nos. 26 and 27 of 1954, 24 and 437 of 1955, 256 of 1956 and 16, 17 and 73 of 1957. *Hidayatullah J.*

These petitions under Art. 32 arise out of alleged agreements by which some of the proprietors in the former State of Madhya Pradesh granted to one or other of the petitioners the right to take forest produce, mainly tendu leaves, from the forests included in Zamindari and Malguzari villages of the grantors. Government has disclaimed these agreements and auctioned the rights afresh. The petitioners state that this is an invasion of their fundamental rights. The dates on which these alleged agreements were entered into, the terms thereof and the periods during which they were to subsist are different from case to case. It is not necessary in this judgment to recite the terms of these documents, and it is sufficient to group them for purpose of decision, on the bases whether the said agreements still subsist, and whether they are incorporated in a registered instrument or not.

Petitions Nos. 437 of 1955 and 256 of 1956 are founded on unregistered documents. The answering respondent does not admit these documents, and contends that they cannot be looked into to prove their

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terms, in view of the decision of this Court in *Shrimathi Shantabai* v. *State of Bombay* (1).

Petitions Nos. 16, 17 and 73 of 1957 form another group, inasmuch as the period during which the alleged agreements were to operate expired in 1955. Additionally, the documents on which the claim is founded in those petitions are unregistered. In the last mentioned case, it is pleaded that the answering State Government had recognised the agreements in favour of the petitioner but resiled from that position subsequently, which allegation has been adequately explained by the State Government in its affidavit. The recognition was not in favour of the petitioner but in favour of one Thakur Kamta Singh, who claimed under an agreement entered into by one Vishwanath Singh on a date when he had already transferred his interest in the Zamindari to his son, Onkar Prasad Singh. This point was therefore not taken before us at the hearing, and nothing more need be said about it. The main objection against these petitions is that the agreements having expired, there is nothing left to enforce either in favour of the petitioners or against the State Government, and the remedy, if any, of the petitioners is to sue the State and/or the proprietors for the breach.

The last group consists of Petitions Nos. 26 and 27 of 1954, 24 of 1955 and the present petition (No. 12 of 1957). In these petitions, the agreements with the petitioners are made by registered documents and the terms during which they are to operate have yet to expire. These cases, it is stated, fall outside the rule in *Shantabai's case* (1), to which reference has already been made. They are stated to fall within the decision of this Court reported in *Firm Chhotabhai Jethabai Patel and Co.* v. *The State of Madhya Pradesh* (2). In all these petitions, counsel argue that the view expressed in the last mentioned case is correct, while the view in *Shantabai's case* (1) needs further consideration.

The argument of the petitioners in these several cases is that Government steps into the shoes of the

(1) [1959] S.C.R. 265. (2) [1953] S.C.R. 476.

quondam proprietors, and is bound by the agreements into which the latter had entered, before their proprietary rights were taken over by Government. They also raise the contention that the petitioners were not proprietors as defined in the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (hereinafter called the Act), and thus ss. 3 and 4 in terms do not apply to them. These sections, it is contended, do not apply to *profit a prendre*, which the petitioners enjoy under these agreements. In support of this contention, reference is made to the decision of this Court in *Chhotabhai's case* (1), and to the definition of 'proprietor' in the Act. Reference is also made to some provisions of the C. P. Land Revenue Act to be mentioned hereafter, to prove that the persons on whom the right to collect forest produce was conferred by the proprietors cannot be regarded as proprietors even under that Act. This, in main, is the argument in these cases, and even those petitioners whose agreements are incorporated in unregistered documents or whose agreements have since expired, adopted the same line of argument denying the necessity for registration of such agreements.

The matter in so far as it relates to the first two groups is simple. It has already been ruled in *Shantabai's case* (2) that if the right be claimed on foot of an unregistered agreement, it cannot be entertained. Such documents were examined from five different angles in that case, and it was held that the document—if it conferred a part or share in the proprietary right, or even a right to *profit a prendre*—needed registration to convey the right. If it created a bare licence, the licence came to an end with the interest of the licensors in the forests. If proprietary right was otherwise acquired, it vested in the State, and lastly, if the agreements created a purely personal right by contract, there was no deprivation of property, because the contract did not run with the land. Bose, J., who delivered a separate judgment, also held that in the absence of registration no right was created.

(1) [1953] S.C.R. 476. (2) [1959] S.C.R. 265.

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In view of the clear pronouncement of this Court, the first two groups of petitions must fail. Petitions Nos. 16, 17 and 73 of 1957 also fail for the added reason that the agreements having expired, the only remedy, if any, is to sue for breach of contract and no writ to enforce expired agreements can issue.

This brings us to the arguments advanced in the last four petitions in the third group which were also adopted by the other petitioners, whose petitions we have just considered. All these petitioners strongly relied upon *Chhotabhai's case* (1). It is therefore necessary to examine attentively what was decided there. In that case, it was held at p. 483 that:

"The contracts and agreements appear to be in essence and effect licenses granted to the transferees to cut, gather, and carry away the produce in the shape of tendu leaves, or lac, or timber, or wood."

Reference in this behalf was made to a decision of the Privy Council in *Mohanlal Hargovind of Jubbalpore* v. *Commissioner of Income-tax, Central Provinces and Berar* (2), where it was observed:

"The contracts grant no interest in land and no interest in the trees or plants themselves. They are simply and solely contracts giving to the grantees the right to pick and carry away leaves, which, of course, implies the right to appropriate them as their own property.

The small right of cultivation given in the first of the two contracts is merely ancillary and is of no more significance than would be, e.g., a right to spray a fruit tree given to the person who has bought the crop of apples. The contracts are short-term contracts. The picking of the leaves under them has to start at once, or practically at once, and to proceed continuously."

The Bench next observed that there was nothing in the Act to affect the validity of the several contracts and agreements, and that the petitioners were neither proprietors within the meaning of the Act, nor persons having "any interest in the proprietary right through the proprietors". After quoting from Baden Powell's

(1) [1953] S.C.R. 476. (2) I.L.R. 1949 Nag. 892, 898.

Land Systems of British India, Vol. I, p. 217, as to what was meant by 'proprietorship' in the Land Revenue Systems in India, it was observed that the definition of 'proprietor' in the Act conveyed the same sense. Finally, repelling the argument that the agreements concerned "future goods", it was held on the basis of a passage in Benjamin on Sale, 8th Edition, page 136, that a present sale of the right to goods having a "potential existence" could be made. Since possession was taken under the agreements and consideration had also passed, there could be "a sale of a present right to the goods as soon as they come into existence."

Reference was also made (at pp. 480, 481) to s. 6 of the Act, which provides:

"(1) Except as provided in sub-section (2), the transfer of any right in the property which is liable to vest in the State under this Act made by the proprietor at any time after the 16th March, 1950, shall, as from the date of vesting, be void."

It was observed in the case as follows:

"The date, 16th March, 1950, is probably the date when legislation on these lines was actively thought of, and sub-section (1) hits at transfers made after this date. This means that transfers before that date are not to be regarded as void. Even in the case of transfers after the said date, sub-section (2) provides that the Deputy Commissioner may declare that they are not void after the date of vesting, provided they were made in good faith and in the ordinary course of management.

The scheme of the Act as can be gathered from the provisions referred to above makes it reasonably clear that whatever was done before 16th March, 1950, by the proprietors by way of transfer of rights is not to be disturbed or affected, and that what vests in the State is what the proprietors had on the vesting date. If the proprietor had any rights after the date of vesting which he could enforce against the transferee such as a lessee or a licensee, those rights would no doubt vest in the State."

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It was accordingly held that the State Government could not interfere with such agreements but had only the right to enforce rights arising therefrom "standing in the shoes of the proprietors."

It is clear from the foregoing analysis of the decision in *Chhotabhai's case* (1) that on a construction of the documents there under consideration and adopting a principle enunciated by the Privy Council in *Mohanlal Hargovind of Jubbalpore* v. *Commissioner of Income-tax, Central Provinces and Berar* (2) and relying upon a passage each in Benjamin on Sale and the well-known treatise of Baden-Powell, the Bench came to the conclusion that the documents there under consideration did not create any interest in land and did not constitute any grant of any proprietary interest in the estate but were merely contracts or licenses given to the petitioners "to cut, gather and carry away the produce in the shape of tendu leaves, or lac, or timber or wood". But then, it necessarily followed that the Act did not purport to affect the petitioners' rights under the contracts or licenses. But what was the nature of those rights of the petitioners? It is plain, that if they were merely contractual rights, then as pointed out in the two later decisions, in *Ananda Behera* v. *The State of Orissa* (3), *Shantabai's case* (4), the State has not acquired or taken possession of those rights but has only declined to be bound by the agreements to which they were not a party. If, on the other hand, the petitioners were mere licensees, then also, as pointed out in the second of the two cases cited, the licenses came to an end on the extinction of the title of the licensors. In either case there was no question of the breach of any fundamental right of the petitioners which could support the petitions which were presented under Art. 32 of the Constitution. It is this aspect of the matter which was not brought to the notice of the Court, and the resulting omission to advert to it has seriously impaired, if not completely nullified, the effect and weight of the decision in *Chhotabhai's case* (1) as a precedent.

(1) [1953] S.C.R. 476.
(2) I.L.R. 1949 Nag. 892, 898.
(3) [1955] 2 S.C.R. 919.
(4) [1959] S.C.R. 265.

The argument of counsel in these cases followed the broad pattern of the decision in *Chhotabhai's case* (1), and we next proceed to consider it. It is contended that what vests in the State is the right which the proprietors had on the date of vesting because s. 3 of the Act is not retrospective, and that the agreements are " in essence and effect licenses granted to the transferees to cut, gather and carry away the produce in the shape of tendu leaves, or lac, or timber or wood ". These agreements, it is submitted, grant no 'interest in land' or 'benefit to arise out of land', the object of the agreements can only be described as sale of 'goods' as defined in the Indian Sale of Goods Act, and the grant of such a right is not comprehended in the first sub-section of s. 3 where it says :

" ..... all proprietary rights in an estate, mahal.....in the area specified in the notification, vesting in a proprietor of such estate, Mahal.....or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances ".

It is finally contended that the interest of these petitioners is not 'proprietary right' at all but a right to get 'goods' in the shape of leaves, lac, etc. We have to examine these contentions critically.

Before we do so, it is necessary to set out in brief the terms of the agreements which have been produced in these cases. In Petition No. 12 of 1957 there were two agreements, Annexures A and B. The first was executed in 1944 and granted the right from 1947 to 1956 ; the second was executed in 1946 and granted the right from 1957 to 1966. These are long term agreements and they are typical from case to case. Indeed, the second agreement was made even before the first began, and the total period is 20 years. In addition to the right to the leaves the documents provided for many other matters. It is convenient to quote only from Annexure 'B' :

" Before this I had given you a similar contract selling Tendu leaves produce by contract dated

(1) [1953] S.C.R. 476.

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7-7-1944 registered on 12-7-1944. In pursuance of that registered contract, which is for five years from 1947 to 1951 and another for subsequent five years from 1952 to 1956 in all for ten years, you are to remain in possession and occupation of the areas and the Tendu leaves produce till the termination of the year 1956 for which time you continue your possession and thereafter in pursuance of this contract you continue for further period of ten years your possession and occupation from 1957 to 1966 as is usual and customary pruning and coppicing Tendu leaves plants, burning them, and instal Fadis for collection of Tendu leaves and construct Kothas (godowns) for storage of the leaves at your sweet will and choice on any open plot or land within the estate with my permission and you are allowed to take free of all costs any Adjat timber, bamboos, etc., from my forests for constructing them. I shall charge you no further consideration. In the same manner, for the purpose of constructing these godowns and such thing you may according to your convenience (you may) manufacture bricks at any place you like in the vicinity of any rivers, rivulet, Nala or pond at your costs. I shall not receive from you any extra amount as rent for the use and occupation of land that will be used for construction of Kothas, for manufacturing bricks and for locating Fadis (Bidi leaves collection centres). All those are included in the consideration fixed for this contract. All these rights are already conferred on you in the previous contract dated 7-7-1944 and under this contract for the entire contract period. It is also open to you to collect Tendu leaves not only those growing in the summer season but also those growing in Kartik. During the term of this contract, if for one reason or another it becomes necessary for you to sell the Tendu leaves produce and assign this contract to any other person you can do so. But you shall be responsible for me to give my consent after inquiring of the fitness of the intended transferee. However, you shall continue to be responsible to pay to me the agreed amount of instalments on or before the agreed dates; and if the agreed amount of instalment is not paid to me on or

before the agreed date, I shall have full right to start proper proceedings in that connection ".

In Petition No. 26 of 1954, the period of the two agreements was from 1944 to 1963. There too, the rights were similar to those in Petition No. 12 of 1957, and analogous terms are to be found in Petitions Nos. 27 of 1954 and 24 of 1955.

The question that arises is, what is the nature of this right? In English law, distinction was made between easements and *profit a prendre* and a right to take the produce of the soil was regarded as a *profit a prendre.* While easements were not regarded as an interest in land, a right to take the produce of the soil or a portion of it was an interest in land: *Fitzgerald* v. *Fairbanks* (1). *Profit-a-prendre* can be the subject of a grant. Where they take the form of a grant, they are benefits arising from land. In all these cases, there is not a naked right to take the leaves of Tendu trees together with a right of ingress and of regress from the land; there are further benefits including the right to occupy the land, to erect buildings and to take other forest produce not necessarily standing timber, growing crop or grass. The right of ingress and of regress over land vesting in the State can only be exercised if the State as the owner of the land allows it, and even apart from the essential nature of the transaction, the State can prohibit it as the owner of the land.

Whether the right to the leaves can be regarded as a right to a growing crop has, however, to be examined with reference to all the terms of the documents and all the rights conveyed thereunder. If the right conveyed comprises more than the leaves of the trees, it may not be correct to refer to it as being in respect of 'growing crop' *simpliciter.*

We are not concerned with the subtle distinctions made in English law between emblements, *fructus naturals* and *fructus industriales*, but we have to consider whether the transaction concerns " goods " or " moveable property " or " immovable property ". The law is made difficult by the definitions which exist in the General Clauses Act, the Sale of Goods Act, the

(1) [1897] 2 Ch. 96.

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Transfer of Property Act and the Registration Act. These definitions must be placed alongside one another to get their ambits.

If the definitions are viewed together, it is plain that they do not tell us what "immovable property" is. They only tell us what is either included or not included therein. One thing is clear, however, that things rooted in the earth as in the case of trees and shrubs, are immovable property both within the General Clauses Act and the Transfer of Property Act, but in the latter, "standing timber", "growing crop" and "grass" though rooted in earth are not included. Of these, "growing crop" and "grass" form the subject-matter of the sale of goods, and "standing timber" comes within the last part of the definition of 'goods' in the Indian Sale of Goods Act, to be subject thereto if the condition about severing mentioned in the definition of 'goods' exists.

It has already been pointed out that the agreements conveyed more than the tendu leaves to the petitioners. They conveyed other forest produce like timber, bamboos, etc., the soil for making bricks, the right to prune, coppice and burn tendu trees and the right to build on and occupy land for the purpose of their business. These rights were spread over many years, and were not so simple as buying leaves, so to speak, in a shop. The expression "growing crop" might appropriately comprehend tendu leaves, but would not include, 'Adjat timber', bamboos, nor even *tendu plants*. The petitioners were not to get leaves from the extant trees but also such trees as might grow in the future. They could even burn the old trees, presumably, so that others might grow in their place. In these circumstances, the agreements cannot be said to be contracts of sale of 'goods' *simpliciter*.

It remains now to consider whether the rights enjoyed by the petitioners can be said to fall within s. 3(1) of the Act. That section divests the proprietors of their proprietary rights, as also any other person having an interest in the proprietary right through the proprietor and vests those rights in the State. That section has to be read with the section which

follows, and which sets out the consequences of vesting of such rights in the State. The rights which vest can be stated briefly to be (a) all proprietary rights in the proprietor, and (b) all proprietary rights in any person having interest in such proprietary rights through the proprietor. These rights vest in the State free of all encumbrances.

Section 4 of the Act provides *inter alia* that after the notification has been issued, then, 'notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force and save as otherwise provided in this Act'—the following consequences (among others) shall ensue:

"(a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including Land (cultivable or barren), grassland, scrub-jungle, forest, trees, fisheries, wells, tanks, ponds, water-channels, ferries, pathways, village sites, *hats*, bazars and melas; and in all subsoil, including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge on any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act;

(b) all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not, determine:".

If these petitioners can be said to be possessing "an interest in the proprietary right", then their rights, title and interest in the land determine under the Act, and vest in the State. The petitioners, therefore, contend that their rights under the agreements cannot be described as 'proprietary right' or even a share of it. They rely on the definition of 'proprietor' in the Act, and refer under the authority of s. 2(b) of the Act to the Central Provinces Land Revenue Act, 1917.

The definition in the Act is not exhaustive. It only

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tells us who, besides the proprietor, is included in the term 'proprietor'. Further, the definitions in the Act are subordinate to the requirements of the context and the subject-matter of any particular enactment. From the Act, we know that the proprietor's interest in forest, trees, shrub, grass and the like passes to the State. The question thus resolves into two short ones—did the former proprietors own proprietary interest in these trees, and did they part with that proprietary interest and convey it to the petitioners ?

There is but little doubt that in so far as the Act is concerned, it does contemplate cesser of all proprietary rights in land, grass land, scrub jungle, forest and trees, whether owned by the proprietor or through him by some other person. The contention of the petitioners is that by the term "proprietor" is meant what that term conveys in the Central Provinces Land Revenue Act, and reference is made for this purpose to various sections therein. The term "proprietor" is defined in the Central Provinces Land Revenue Act thus:

"'Proprietor' except in sections 68, 93 and 94, includes a gaontia of a Government village in Sambalpur Territory."

This definition does not advance the matter any further. In several sections, special explanations are added to define "proprietors". In all those explanations, the term is not defined, but is said to include 'thekedars or headmen with protected status', 'mortgagee with possession', 'lessees holding under leases from year to year' and the like. In addition, there is invariably the inclusion of 'a transferee of proprietary rights in possession', which again leaves the matter at large. See ss. 2(5), 2(21), 53 and 68.

Counsel faced with this difficulty rely upon the scheme of settlement in Ch. VI of the Central Provinces Land Revenue Act, and the record of rights which consists of *Khewat*, a statement of persons possessing proprietary rights in the mahal including inferior proprietors or lessees or mortgagees in possession, specifying the nature and extent of the interest of each; and *Khasra* or field book and *Jamabandi* or list of persons

cultivating or occupying land in the village. These documents are prepard separately. The petitioners contend that by 'proprietary right' is meant that right which can find a place or be entered in the *Khewat*, and the rights enjoyed by the petitioners are not and cannot be entered in the Khewat because thay are not 'proprietary rights'. They also refer to the schemes of settlement under which 'proprietors', 'sub-proprietors', etc., are determined and offered assessment.

In our opinion, these arguments, though attractive, do not represent the whole of the matter. What these documents record and what the settlement operations determine are the kinds of 'proprietors' among whom the entire bundle of rights is shared. Every proprietor or sub-proprietor enjoys proprietary rights over land, forests, etc., falling within his interest. The right to forest trees, etc., is the consequence of proprietorship, and indeed, under s. 47(3) the State Government can declare which rights and interest must be regarded as 'proprietary rights'. That sub-section provides:

"The State Government may declare the rights and interests which shall be deemed to be proprietary rights and interests within the meaning of sub-section (2)."

The second sub-section provides:

"The Deputy Commissioner shall cause to be recorded, in accordance with rules made under s. 227, all changes that have taken place in respect of, and all transactions that have affected, any of the proprietary rights and interests in any land."

The matter is made clear if one refers to the provisions of s. 202 of the Land Revenue Act. That section confers on Government the power to regulate the control and management of the forest-growth on the lands of any estate or mahal. A reading of sub-ss. (4) to (8) of that section clearly shows that forests belong to the proprietors from whom under those sub-sections they can be taken over for management, the profits of the management less expenses being paid to the proprietors or to superior and inferior proprietors as the case may be. Sub-sections (9) and (10) provide;

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(9) "No lease, lien, encumbrance or contract with respect to the forest land held under direct management shall be binding upon the Government.

(10) On the expiration of the period fixed for the direct management, the forest land shall be restored to the proprietor thereof."

Even here, the term 'proprietor' is explained by the usual explanation showing the same category of persons as included in the section.

From this, it is quite clear that forests and trees belonged to the proprietors, and they were items of proprietary rights. The first of the two questions posed by us, therefore, admits of none but an affirmative answer.

If then the forest and the trees belonged to the proprietors as items in their 'proprietary rights', it is quite clear that these items of proprietary rights have been transferred to the petitioners. The answer to the second question is also in the affirmative. Being a 'proprietary right', it vests in the State under ss. 3 and 4 of the Act. The decision in *Chhotabhai's case* (1) treated these rights as bare licenses, and it was apparently given *per incuriam*, and cannot therefore be followed.

Even assuming that the documents in question do not amount to grant of any proprietary right by the proprietors to the petitioners, the latter can have only the benefit of their respective contracts or licenses. In either case, the State has not, by the Act, acquired or taken possession of such contracts or licenses and consequently, there has been no infringement of the petitioners' fundamental right which alone can support a petition under Art. 32 of the Constitution.

The result is that these petitions fail, and are dismissed, but in view of the fact that they were filed because of the decision in *Chhotabhai's case* (1), there shall be no order about costs.

Petitions dismissed.

(1) [1953] S.C.R. 476.