DIVISIONAL FOREST OFFICER, HIMACHAL PRADESH & ANR.

v.

SHRI DAUT & ORS.

October 30, 1967

[J. C. SHAH, S. M. SIKRI AND J. M. SHELAT, JJ.]

Himachal Pradesh Abolition of Big Landed Estates & Land Reforms Act, 1953, s. 11—*Expression "right, title and interest of the land-owner in the land"—If includes trees on the land.*

Upon an application filed by a cultivating tenant M under s. 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, the Compensation Officer held that as such tenant he was entitled to acquire "the right, title and interest" of the owner of the land in question. After payment by the tenant of a specified amount of compensation, a certificate of ownership was granted to him and, after his death, the land was mutated in favour of his wife and daughter, respondents in this appeal.

The respondents applied to the Divisional Forest Officer for permission to sell the trees of their land and although that Officer granted permission for the sale, he failed to give the necessary orders for felling the trees and taking out the converted timber from the land. The respondents filed a petition under Art. 226 of the Constitution for the issue of a writ of *mandamus* directing the Divisional Forest Officer to issue or get issued the necessary permission for felling the trees and moving the timber. The Judicial Commissioner, following *Vijay Kumari Thakur* v. *H.P. Administration*, A.I.R. 1961 H.P. 32, held that the appellants were estopped from contending that the respondents had no interest in the trees and allowed the petition.

In appeal to the Supreme Court it was contended on behalf of the appellants that under s. 11 of the Act the trees did not vest in the deceased tenant but only the 'land' as defind in s. 2(5) of the Act, and that the Compensation Officer was not competent to grant and, in fact, did not grant proprietary rights in the trees to the deceased tenant.

HELD : dismissing the appeal :

Under sub-s. (6) of s. 11, the tenant becomes the owner of the land comprised in the tenancy on and from the date of grant of the certificate, and it is expressly provided that the right, title and interest of the land-owner in the said land shall determine. In the context the word 'owner' is very comprehensive and implies that all rights, title and interest of the land-owner passed to the tenant. [116E-F]

Furthermore, the expression "right, title and interest of the land-owner in the land" is wide enough to include trees standing on the land. Under s. 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it; and s. 11 of the Himachal Pradesh Act should be construed in the same manner. [115 E]

Achhru Mal v. *Maula Bakhsh*, (1924) 5 Lah. 385 and *Nasib Singh* v. *Amin Chand*, A.I.R. 1942 Lah. 152, distinguished.

Kaju Mal v. *Salig Ram*, [1919] Punj. Rec. 237, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 128 of 1965.

Appeal from the judgment and decree dated December 12, 1963 of the Judicial Commissioner's court, Himachal Pradesh, in Civil Writ Petition No. 19 of 1963.

B *Vikram Chand Mahajan* and *R. N. Sachthey*, for the appellants.

Rameshwar Nath and *Mahinder Narain*, for respondents.

The Judgment of the Court was delivered by

C **Sikri, J.** This appeal by certificate granted by the Judicial Commissioner, Himachal Pradesh, is directed against his judgment allowing a petition filed by the respondents and issuing a writ of *mandamus* directing the Divisional Forest Officer, Sarahan Forest Division, and the Chief Conservator of Forests, Himachal Pradesh —hereinafter referred to as the appellants—to issue or get issued the necessary permission for felling the trees and the transit pass, D in respect of certain *khasra* numbers.

In order to appreciate the points raised by the learned counsel for the appellants, it is necessary to set out the relevant facts. Land measuring 27 *bighas* and 16 *biswas* comprised in *khasra* Nos. 452/1, 453, 453/1, 40, 100 and 440 and situated in village E Kadiali, Tehsil Theog, District Mahasu, belonged to Government and was under the tenancy of Moti Ram. He filed an application under s. 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953—hereinafter referred to as the Act—and was granted proprietary rights in the land by the Compensation Officer by order dated August 30, 1957. Provi- F sional compensation was assessed at Rs. 62.56 nP. The Compensation Officer held that "as the applicant is a cultivating tenant over the aforesaid land he is entitled to acquire right, title and interest of the said land-owner on payment of Rs. 62.56 as compensation which should be deposited." On September 9, 1957, a certificate of ownership was granted to Moti Ram on his depositing Rs. 62.56. Moti Ram died and the land was mutated in G favour of his wife Smt. Besroo and his daughter Smt. Rupi. The respondents applied for permission to sell the trees on their land, and the Divisional Forest Officer by order dated July 18, 1958, permitted them to sell the trees from their land on certain conditions. On November 15, 1958, the respondents deposited Rs. 1267.13 nP as government fee, but the Divisional Forest H Officer failed to give clear orders for felling the trees and taking out the converted timber from the said land. The Chief Conservator Officer, by letter dated July 12, 1961, informed the respondents that the matter was being inquired from the Conservator of

Forests, Simla Circle. Thereupon, not hearing anything further, the respondents filed a petition under Art. 226 of the Constitution.

It was urged before the Judicial Commissioner, on behalf of the Divisional Forest Officer that the respondents had no interest in the trees standing on their land as the trees were not 'land' as defined in s. 2(5) of the Act, and that the Compensation Officer was not competent to grant, and, in fact, did not grant proprietary rights in the trees to the deceased Moti Ram. The learned Judicial Commissioner, following *Vijay Kumari Thakur* v. *H. P. Administration*(1) held that the appellants were estopped from contending that the respondents had no interest in the trees. He further held that the respondents were granted permission to sell the trees standing on their land and they had, in fact, entered into an agreement to sell to a third party, and they had deposited Rs. 1267.13 nP and had thus acted to their detriment. As stated already, the learned Judicial Commissioner allowed the petition and issued a writ of *mandamus*. With certificate granted by the Judicial Commissioner the appellants have filed this appeal.

The learned counsel for the appellants contends that under s. 11 of the Act the trees did not vest in the deceased Moti Ram. He says that what vested under s. 11 of the Act was land, and 'land' is defined in s. 2(5) as follows :

> "S. 2(5).—'Land' means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes—
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> (a) the sites of buildings and other structures on such land;
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> (b) orchards;
>
> (c) ghasnies;"

He relies on a number of decisions of the Punjab Chief Court and the Lahore High Court interpreting a similar definition existing in the Punjab Alienation of Land Act (XIII of 1900). In our opinion those cases are distinguishable inasmuch as they deal with the question whether trees could be sold or assigned under the Punjab Alienation of Land Act without infringing the prohibitions contained in that Act forbidding sale of land by agriculturists in favour of non-agriculturists. For instance, in *Achhru Mal* v. *Maula Bakhsh*(2), under a deed of sale the vendee was entitled to cut and remove the trees within a period of ten years, and the plaintiff brought a suit asking for a perpetual injunction

(1) A.I.R. 1961 H. P. 32.

(2) (1924) 5 Lah. 385.

A to issue to the defendants-respondents to restrain them from preventing him from cutting and removing certain trees from the land belonging to the defendants-respondents. The lower courts held that the trees growing on agricultural land were "land" within the meaning of the expression as defined in s. 2(3) of the Punjab Alienation of Land Act, and, therefore, their sale to the plaintiff B was unlawful having regard to the provisions of that Act. The Lahore High Court held that the sale did not infringe the provisions of that Act because the sale of trees was not a sale of land. The High Court was not concerned with the question whether on a transfer of land trees standing on it passed to the transferee or not.

C In *Nasib Singh* v. *Amin Chand*(1) it was held that the suit for possession of certain mango, shisham and jaman trees was not a suit between a landlord and his tenant under the Punjab Tenancy Act and consequently the Civil Court was competent to try the suit.

D There can be no doubt that trees are capable of being transferred apart from land, and if a person transfers trees or gives a right to a person to cut trees and remove them it cannot be said that he has transferred land. But we are concerned with a different question and the question is whether under s. 11 of the Act trees are included within the expression "right, title and interest of the land-owner in the land of the tenancy". It seems to us that this expression "right, title and interest of the land-owner in the E land" is wide enough to include trees standing on the land. It is clear that under s. 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it. It seems to us that we should construe s. 11 in the same manner.

F The learned counsel for the appellants contends that the trees standing on the land transferred to Moti Ram under s. 11 of the Act are worth about Rs. 76,000, and it could not have been the intention to transfer Rs. 76,000 worth of trees for Rs. 62/56. He says that the trees are really forest trees and it was never the intention of the legislature to vest forest trees in the tenants acquiring land under s. 11 of the Act. But no such contention G seems to have been raised in the written statement filed by the appellants. It might have been different if it had been proved that the portion of the area transferred to Moti Ram was a natural forest. [see *Kaju Mal* v. *Salig Ram*(2)].

H The learned counsel referring to s. 84 of the Act points out that one of the consequences of vesting of land in the State Government under s. 83 is that trees expressly vest in the State. He says that if it was the intention to vest trees in the tenant acquiring land

(1) A.I.R. 1942 Lah. 152.

(2) (1919) Punj. Rec. 237.

under s. 11 of the Act, it would have been similarly so expressed. We are unable to accede to this contention. Section 84(a)(i) reads as follows :

> "84. When a notification under section 83 has been published in the Gazette notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter setforth shall, from the beginning of the date of vesting ensue in respect of the land to which the notification applies, namely :—
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> (a) all rights, title and interest of all the landowners—
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> (i) in every such land including cultivable or barren land, ghasnis, charands, trees, wells, tanks, ponds, water channels, ferries, pathways, hats, bazars and melas;. . . ."

If the contention of the learned counsel were correct, even cultivable land which is expressly mentioned in s. 84(a)(i) would not vest in the tenant under s. 11 of the Act. Section 11 is drafted very simply and under sub-s.(6) the tenant becomes the owner of the land comprised in the tenancy on and from the date of grant of the certificate, and it is expressly provided that the right, title and interest of the landowner in the said land shall determine. In the context the word "owner" is very comprehensive indeed, and it implies that all rights, title and interest of the landowner pass to the tenant. Further, it seems to us that it would lead to utter confusion if the contention of the learned counsel is accepted. There would be interminable disputes as to the rights of the erstwhile landowners to go on the lands of erstwhile tenants and cut trees or take the fruit. Moreover, under s. 15 of the Act we would, following the same reasoning, have to hold that the trees on the land of the landowner did not vest in the State. This could hardly have been the intention.

For the aforesaid reasons we must uphold the judgment of the Judicial Commissioner, although for different reasons. In the result the appeal fails and is dismissed with costs.

R.K.P.S. *Appeal dismissed.*