

Dalip Singh
v.
Mahla Ram
and others

Sharma, J.

punishable under section 209 of the Indian Penal Code.

For the above reasons, the order of the learned District Judge, dated 7th June, 1961, declining to entertain Dalip Singh's application for lodging a complaint under section 209 read with section 109 of the Indian Penal Code because of the directions contained in section 479-A, Criminal Procedure Code, is set aside. He should now dispose of this part of the petitioner's prayer on merits. The revision petition is decided accordingly.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

NITYA NAND,—Petitioner

versus

THE ESTATE OFFICER, CAPITAL PROJECT,
CHANDIGARH AND ANOTHER,—Respondents.

Civil Writ No. 1952 of 1960,

1962

March, 26th

Punjab Land Revenue Act (XVII of 1887)—Section 42—Spontaneous growth of trees and bushes on Government land—Sale of—Sale price whether recoverable as arrears of land revenue.

Held, that the Government derives revenue by sale of spontaneous growth of trees and bushes on its land and the revenue thus accruing falls within the terms of section 42 of the Punjab Land Revenue Act. The sale-proceeds are, therefore, recoverable as arrears of land revenue.

Case referred by Hon'ble Mr. Justice Dua, dated 25th October, 1961, to a larger Bench, for decision owing to the important legal question involved in the case and finally decided by a Division Bench consisting of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Pandit, on 26th March, 1962.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate order or direction be issued quashing the order of recovery of arrears of the amount due on the auction of 27th November, 1959.

B. S. BINDRA AND G. S. GREWAL, ADVOCATES, for the Petitioner.

A. M. SURI, ADVOCATE, for the Respondent.

ORDER

DULAT, J.—Nitya Nand brought a petition under Article 226 of the Constitution to this Court alleging that at an auction held under the orders of the Estate Officer, Capital Project, Chandigarh, he, the petitioner, had purchased the thorny bushes and trees standing in the entire capital area for Rs. 8,000 and paid Rs. 2,000 at the time of the bid and offered to pay the balance in instalments of Rs. 2,000 each, but that later the Capital Project authorities alleged that only the bushes and trees in Sectors 7 and 7-E of Chandigarh Capital had been sold to the petitioner, and that although at one time the authorities concerned had agreed to look into the matter afresh, they had subsequently ignored the petitioner's claim and started proceedings to recover the balance of the sale-price as arrears of land revenue, while refusing to allow the petitioner to collect the thorny bushes and trees standing in the whole area of the Capital. This, according to the petitioner, Capital Project authorities were not entitled to do. The real dispute, therefore, was whether only the bushes and trees in Sectors 7 and 7-E had been sold to the petitioner, or whether all the trees and bushes in the whole of the Capital area had been sold. Into this disputed question of fact Dua J. who heard the writ petition declined to enter, and quite properly, because the question involved required the hearing of a good deal of evidence. In the alternative, it was contended on behalf of the petitioner, that, in any case, assuming the facts to be as alleged by the Capital Project

Dulat, J.

Nitya Nand
v.
The Estate
Officer, Capital
Project,
Chandigarh
and another

Dulat, J.

authorities, they still could not recover the balance of the price as arrears of land revenue. This question, Dua J., thought, required consideration by a larger Bench, and the case has, therefore, come up before us.

The only question is whether the auction price in respect of the thorny bushes and trees in Sectors 7 and 7-E, as alleged by the respondents, can be recovered as arrears of land revenue. It is now admitted by Mr. Bindra, appearing for the petitioner, that such rights are specifically mentioned in section 42 of the Punjab Land Revenue Act, which speaks of forest, quarry, unoccupied, wasteland and spontaneous produce or other accessory interest in land. The trees and bushes sold in this case stand admittedly on Government land and are obviously of spontaneous growth. Section 98 of the Punjab Land Revenue Act says that in addition to any sums recoverable as arrears of land revenue under the Act or under any other enactment for the time being in force, certain other amounts may also be recovered as arrears of land revenue, and clause (b) of that section runs:

“Revenue due to the Government on account of pasture or other natural products of land, or on account of mills, fisheries or natural products of water, or on account of other rights described in section 41 or section 42 in cases in which the revenue so due has not been included in the assessment of an estate.”

In the present case, of course, no question of assessment arises, because the estate is Government owned. As I have said, the rights in question are mentioned in section 42, and on the face of it, therefore the income due to Government on account of the rights is recoverable as land revenue.

Mr. Bindra's sole contention now is that, properly speaking, the sale-price of the thorny bushes

and trees standing on Government land is not revenue, because it is not recurring income. This argument assumes that the thorny bushes and trees when they are once sold and carried away by the purchaser, there would be no more such bushes and trees growing on the land and they are, therefore, not a source of revenue. It is clear that what has been sold is the right to remove the thorny bushes and trees standing on some Government land, and there is no reason to think that once removed such trees and bushes will not grow again and will not again be disposed of in the same manner by Government, and it is, therefore, not possible to agree, without clear evidence to establish the fact that the disposal of the disputed bushes and trees is disposal of certain property once for all, and that what has been disposed of is not the spontaneous growth of land recurring from time to time. *Prima facie*, therefore, the income derived from the disputed sale is revenue due to Government on account of rights described in section 42 of the Land Revenue Act and is, therefore, recoverable as arrears of land revenue. It may be that in certain circumstances the sale of trees cut and stored and later disposed of by Government may not properly be describable as revenue, but in the present case it appears that Government has derived revenue by sale of certain spontaneous growth on their land, and the revenue thus accruing falls within the terms of section 42 of the Land Revenue Act. In my opinion, therefore, the sale-proceeds are recoverable as land revenue being, as I have already mentioned, revenue accruing to Government in respect of certain rights specifically mentioned in section 42 of the Land Revenue Act.

No other question arises in the case. The learned Single Judge has rightly declined to enter into the real dispute between the parties which centres round the fact whether the sale in the present case was only of trees and bushes in Sectors 7 and 7-E, or whether the sale covered such bushes and trees standing in the whole of the capital area. This is a dispute which can be settled

Nitya Nand
v.
The Estate
Officer, Capital
Project,
Chandigarh
and another
—
Dulat, J.

Nitya Nand
v.
The Estate
Officer, Capital
Project,
Chandigarh
and another
—
Pandit, J.

properly in an ordinary Court and the petitioner must seek his remedy in such Court. This petition, therefore, as it stands, must fail and I would dismiss it, but in the circumstances I leave the parties to bear their own costs.

PREM CHAND PANDIT, J.—I agree.

K.S.K.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

JOGINDER SINGH,—Appellant

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 35 of 1962.

1962
—
March, 26th

Punjab Municipal Act (III of 1911)—Section 236—Order passed by the State Government annulling the election of the President after it had been gazetted—Whether an administrative order immune from interference by High Court, under Article 226, Constitution of India—Such an order—Whether can be passed by the State Government—Punjab Municipal Election Rules—Rule 48—Marking of ballot papers with 'Yes' or 'No' in case, there are more than one candidate—Whether invalid—Interpretation of Statutes—Construction of a section—Whether permissible to look to other sections—Rule of implied exclusion—applicability of.

Held, that the order of State Government passed under section 236 of the Punjab Municipal Act, 1911, setting aside the election of the President is not a purely administrative or executive order outside the writ jurisdiction of the High Court under Article 226 of the Constitution. This Article is not confined to the five categories of writs mentioned therein and the High Court can always in the interest of justice frame its orders and directions to suit the occasion and the contingencies of a given case.

Held, that the election of the appellant as President, having been duly notified, could be the subject-matter of