

State of Karnataka Vs. Robert D'Silva

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Court : Karnataka

Decided On : Jul-28-1995

Reported in : ILR1995KAR2549; 1995(6)KarLJ120

Judge : Hakeem, Ag. C.J. and ;Eswara Prasad, J.

Acts : [Karnataka Preservation of Trees Act, 1976](#) - Sections 8, 8(1) and 26;
[Karnataka Land Revenue Act, 1964](#)

Appeal No. : W.A. Nos. 629, 716 and 717 of 1995

Appellant : State of Karnataka

Respondent : Robert D'Silva

Advocate for Def. : S.G. Sundaraswamy, Senior Adv. and ;Madhusudan R. Naik, Adv.

Advocate for Pet/Ap. : Srinivasa Murthy, HCGP

Disposition : Appeal dismissed

Judgement :

Eswara Prasad, J.

1. These Writ Appeals are heard and disposed of by this Common Judgment as common Questions arise for Consideration. Writ Appeal No. 629/95 arises out of

the Judgment of the learned Single Judge in W.P.26054/93 and W.As. 716 and 717/95 arises out a Common Judgment in W.P.Nos. 3603 and 3604/94.

2. The petitioners in these three Writ Petitions contended that they are deemed to have been granted permission to cut and transport the trees belonging to them by virtue of the deeming provision contained in Section 8(4)(ii) of the [Karnataka Preservation of Trees Act, 1976](#) ('the Act' for short) and the Rules made thereunder, inasmuch as the Tree Officer failed to inform them of his decision within one year from the date of receipt of the application by him. They sought a declaration that the sanction to fell the trees is deemed to have been granted and that they are entitled to cut and transport the trees from the lands belonging to them, and they further sought issuance of directions to the respondents in the Writ Petitions not to obstruct the felling of the trees and allow transporting the timber by issuing Mafia passes in accordance with the Rules.

3. The petitioner in W.P.No. 26054/93 claims to be the owner of the lands in Survey Nos. 22/1, 46/1, 46/2 and 46/3 (old Nos,22/1 and 46) of Mukkodlu Village of Madikeri Taluk, Kodagu District, having purchased the said lands in public auction on 23.1.1934 held by the Revenue authorities for recovery of arrears of land revenue from the previous holder of lands free from all encumbrances resulting in transfer of absolute and unlimited rights over the lands including the rights to tree growth thereon. He contended that he made an application dated 22.5.90. in Form No. 1 prescribed under Rule 4(1) of the Rules to the Tree Officer seeking permission to fell and remove unwanted and mature trees numbering 771 in the said lands. It is further stated that in pursuance of the application, opinion was sought from the concerned Revenue Authority. The lands were surveyed, trees were marked and necessary recommendations were made. Nevertheless the petitioner received an order dated 13.5.93 rejecting his application for permission from the Tree Officer. The petitioner contended that by virtue of the deemed provision, permission is deemed to have been granted on the expiry of one year from the date of the application and hence the order dated 13.5.93 was illegal and made without competence and void that the petitioner had cut and felled the trees and he cannot be prevented from removing the cut timber.

4. The petitioners in W.P.Nos. 3603 and 3604 of 1994 claim to be the absolute owners of the lands in Survey Nos. 1/342, 1/335 and 1/343 and Survey No. 187 of. Kumarahalli village, Somwarpet Taluk, Kodagu District, respectively. They contend that they applied to the Tree Officer on 20.8.91 seeking permission to fell and remove the unwanted matured trees numbering 250 in each of the estates of petitioners 1 and 2 herein with a view to plant coffee plantation. They contend that the Revenue Authorities after due enquiry, recommended for grant of permission after the trees were demarcated and the preparation of a sketch at a joint survey conducted by the officials of the Forest Department. They contend that thereafter there was no communication of any decision and after the expiry of one year from the date of application on 20.8.1992 permission is deemed to have been granted, The subsequent issuance of an order on 30.1.1993 permitting cutting of a limited number of trees is wholly arbitrary and illegal. The petitioners had already cut and felled the trees and they cannot be prevented from transporting the cut timber. They too sought similar relief as in WP.26054/93.

5. In W.P. 26054/93 the stand taken by the Government is that the application dated 22.5.90 though addressed to the Tree Officer was presented by the Writ Petitioner to the Deputy Commissioner, and it was forwarded to, and was received by the Tree Officer only on 23.1.93 and that the order dated 13.5.1993 rejecting the permission, was made within one year from the date of the receipt of the application on 23.1.93 and hence the provision regarding deemed permission does not come into play. The rejection of the application was proper inasmuch as the petitioner had no right to cut the trees as the tenure of the land is unprivileged-sagu-bane, where the right over the tree growth vests with the State Government.

6. In the objections filed in W.P.Nos. 3603 and 364/94 the title of the petitioners to cut the trees was not disputed. It was however stated that the deeming clause is not attracted inasmuch as the applications dated 20.8.1991, though addressed to the Tree Officer, were presented to the Deputy Commissioner and were forwarded to the Tree Officer and received by him only on 20.8.1992 and the order rejecting permission was made on 31.5.1993, well within the period of one year. The learned Single Judge allowed the Writ Petitions,

7. The learned Government Pleader appearing for the appellants contended that the Writ petitioners did not present the applications for permission to cut the trees to the Tree Officer, but presented the same before the Deputy Commissioner and that they were received by the Tree Officer long afterwards and the order rejecting the permission to the Writ petitioner in W.P. 26054/93 and granting permission to the petitioners in the other Writ Petitions were made within the prescribed period of one year, and therefore the deeming clause did not come into operation and the action of the Writ Petitioner in cutting the trees is illegal. He further contends that the petitioner in W.P.26054/03 had no right to cut the trees as the lands were un-pre-sagu-bane and the title to the trees vested in the Government. He further contended that the orders of the Tree Officer were appealable and therefore the Writ Petitions should have been dismissed in view of the availability of alternative remedy.

8. Sri Sundaraswamy, learned Senior Counsel for the respondents contended that the applications for permission were addressed to the Tree Officer and were presented to him on the very dates of the applications and that they were not presented to the Deputy Commissioner and that there is no record to support the contention of the learned Government Pleader. He further submitted that the Tree Officer not having passed any orders on the applications within the prescribed of one year, the deeming clause came into effect and that the respondents were well within their rights in cutting the trees and that they have a right to remove the timber in accordance with the Rules. He further contended that the respondent in W.A.629/95 had absolute right over the lands and had the right to cut the trees, as his father had purchased the lands from the Government in the year 1933 in an auction sale for recovery of land revenue arrears. He relied on Regulation 108(1) of the Coorg Land and Revalue Regulations, 1899 and Section 75 of the [Karnataka Land Revenue Act, 1964](#) in support of his contention.

9. In view of the submissions of the learned Counsel, the Question for Consideration in all the W.Ps. is whether permission can be deemed to have been granted by virtue of Section 8(4)(ii) of the Act and whether the petitioner in W.P. 26054/93 had the right to cut and remove the trees on the lands.

10. The applications dated 22.5.90 and 20.8.91 were addressed to the Tree Officer concerned. Pursuant thereto, necessary enquiries were made by the concerned officials, the lands were surveyed, the trees were enumerated and marked. The orders dated 13.5.93 and 31.5.94 did not contain any reference to the applications being presented to the Deputy Commissioner and their being forwarded to the Tree Officer. There was no endorsement by the Deputy Commissioner evidencing the receipt of the applications by him. It is not possible to accept the contentions of the learned Government Pleader, though made vehemently that the applications were presented to the Deputy Commissioner and not to the Tree Officer. We do not understand why the applications should be presented to a wrong authority when they are admittedly addressed to the Tree Officer, who alone is the authority competent to grant permission. We are in entire agreement with the conclusion of the learned Single Judge that the applications were made to the Tree Officer and that they were received by him and no orders were passed thereon within one year from the date of receipt of the applications, but the orders were passed on 13.5.93 on the application dated 22.5.90 in W.P. 26054/93. In the other Writ Petitions the orders were passed on 31.5.94 on the applications dated 20.8.91. It is therefore clear that the deeming clause in Section 8(4)(ii) came into operation and permission was deemed to have been granted. Once the permission is deemed to have been granted, there was no impediment for the respondents to cut the trees.

11. In the view we have taken the orders dated 13.5.93 and 31.5.94 of the Tree Officer are redundant and have no legal effect, The question of availability of alternative remedy, therefore does not arise and hence the Writ Petitions were maintainable.

12. It was vehemently contended by the learned Government Pleader that the petitioner in W.P. 26054/93 had no right to cut and remove the trees as the lands are un-pre-sagu-bane lands. Sri Sundaraswamy contended that by virtue of Regulation 108(1) of the Regulations, the petitioner had absolute rights over the lands including the right to cut and remove the standing trees. He further contends that the trees were all grown subsequent to the purchase of the lands in public auction and the trees belong to the petitioner. Even otherwise, the learned

Counsel submits, that by virtue of Section 75 of the Land Revenue Act, the rights of the State Government in the land, if any, shall be deemed to have been conceded to the petitioner.

13. Section 8 of the Trees Act reads as follows :

'8. Restriction on felling of Trees (1) With effect on and from the appointed day, notwithstanding any custom, usage contract or law for the time being in force no person shall fell any tree or cause any tree to be felled in any land, whether in his ownership or occupancy or otherwise, except with the previous permission of the Tree Officer.

(2) Any person desiring to fell a tree, shall apply in writing to the concerned Tree Officer for permission in that behalf. The application shall be accompanied by a site plan or survey sketch specifying clearly the site or survey number, the number, kind and girth of the tree sought to be cut and the reasons therefore along with the consent of the owner or occupant.

(3) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such inquiry as he deems necessary, either grant permission in whole or in part or refuse permission:

Provided that permission shall not be refused, if the tree -

(i) is dead, diseased or windfallen; or

(ii) has silviculturally matured, or

(iii) constitutes a danger to life or property; or

(iv) constitutes obstruction to traffic; or

(v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes, or

(vi) is required in rural areas to be removed either for extension of the cultivation in areas specified in Schedule II or for the bona fide use of the applicant.

(4) If the Tree Officer fails to inform the applicant of his decision;

(i) in the case of an application in respect of a tree in an urban area and in a rural area of the kind specified in Schedule II, within sixty days; and

(ii) in the case of an application in respect of a tree in a rural area of the kind specified in Schedule I, within one year from the date of receipt of the application by him or, if the receipt of the application has been acknowledged by him from the date of such acknowledgment, such permission shall be deemed to have been granted.'

14. On a perusal of Sub-section (1) of Section 8 it is seen that an owner or an occupant or a person who is otherwise entitled to fell trees may apply for permission of the Tree Officer for felling the trees. It is therefore clear that apart from the owner of the land, any occupant of the land or person who is otherwise entitled to fell tree is also entitled for felling trees. Irrespective of the fact whether the applicant is the owner, or an occupier of the lands, the Tree Officer shall consider the application under Sub-section (3) and grant permission wholly or in part, or refuse permission for any of the reasons mentioned in the Proviso thereto. Under Clause (ii) of Sub-section (4) permission will be deemed to have been granted if the Tree Officer fails to inform the applicants of his decision within one year from the date of receipt of the application or from the date of acknowledgment thereof. In the case on hand we have held that the permission is deemed to have been granted under Clause (ii) of Sub-section (4). It is therefore not necessary for us to go into the question as to whether the petitioner was the owner of the trees.

15. It is not disputed that the land in W.P. 26054/93 was purchased in the year 1933 in an auction sale free of all encumbrances. The sale certificate does not show that there were any standing trees on the lands and no right over the tree growth, if any, was reserved. In *E.G. WHITE AND ORS. v. STATE OF KARNATAKA AND ORS* 1972 (2) KLJ 233. it was held that where bane lands had become alienated and assessed to Land Revenue it ceases to be bane lands, and the Government cannot claim title to the trees that have been grown on the lands after the lands became alienated bane. It was further held that the malki of such trees including the trees grown from the stumps or roots of the trees cut and

removed vest in the owners and they will be entitled to cut and remove the same without paying the value of the timber and without obtaining transport passes in accordance with the Karnataka Forest Act. In view of the fact that there was no mention of any trees standing on the lands in the Sale Certificate in Annexure-B, it has to be held that the Writ petitioner is the owner of the trees and the Government cannot claim title to the said trees.

16. In *K.M. BASHEER AND COMPANY v. STATE OF MYSORE* 1975 (1) KLJ 372 it was held that when once it is either admitted or established that a person is in occupation of the land under Section 75 of the Act, he will become entitled to all the trees standing thereon, unless it is shown by the State Government that there has been a reservation in respect of any of the trees by the State Government or by any Survey Officer at the time of the settlement or by a notification made and published at any time after such settlement. It was further held that in the absence of proof on behalf of the Government showing that the Government had any right in the trees standing on the lands, the occupant should be presumed to be the owner of the trees. The Writ petitioner is the owner of the lands and is in lawful possession paying assessment to the State Government. It has to be held that he is an occupant under the [Karnataka Land Revenue Act, 1964](#). Since the lands are shown as redeemed lands, it has to be held that the owner of the lands is the owner of the trees even before the Act came into force. Hence the question of the petitioner paying any amount to the State Government by way of value of trees standing on the lands which he had cut, would not arise.

17. A Full Bench of this Court in *CHEEKERE KARIYAPPA POOVAIAH v. STATE OF KARNATAKA* : ILR 1993 KAR2959 held that a Jamma Bane holder shall be the holder of any alienated Bane on the coming into force of the [Karnataka Land Revenue Act, 1964](#), he became an occupant of such fully assessed erstwhile Jamma Bane Land and he is entitled to all the rights and obligations of an occupant of an unalienated land paying full assessment to the Government. It was further held that such a person became an occupant of such land within the meaning of Section 2(20) of the Act and got all the rights of such occupant as laid down by Sections 99 and 101 of the Act. It was observed that if the Government wanted to abolish even the privileges and concessions which were otherwise

giving some interest to the Jamma Bane holders, then they had to acquire such interests in these lands under the Land Acquisition Act. As observed earlier, there is nothing on record to show that any trees were in existence on the lands in question, prior to the purchase by the Writ petitioner in the year 1933. Hence the ratio of the Decision is not applicable to the instant cases.

18. It is also to be noted that Section 26 of the Act takes care of the subsequent situation by making the provisions of the Karnataka Forest Act, 1963 and the Rules made thereunder applicable mutatis mutandis to the transit of the felled trees under the Act. Pending disposal of the Writ Petition, the Conservator of Forests, Mysore, was directed to submit a report with regard to the market value in respect of the trees felled and report dated 23.5.95 was submitted, the same shall be taken into consideration by the concerned authorities while applying Section 26 of the Act.

19. Before we part with this case, we are constrained to make certain observations with regard to the deeming provision in Section 8(4)(ii) of the Trees Act. The Act was made with a view to provide for the preservation of trees in the State by regulating the felling of trees and for the planting of adequate number of trees to restore ecological balance, in view of the indiscriminate felling of large number of trees in the rural and urban areas of the State leading to erratic rainfall, recurring famine and floods, soil erosion and consequently ecological disturbances. When that is the object of the Act, it is unfortunate that a deeming provision is introduced in Clause (ii) of Sub-section (4) of Section 8, which enables an errant or negligent official to keep an application pending for over the prescribed period, enabling the applicant to take advantage of the deeming provision. We are of the view that such a provision should not be permutes to be on the statute such as the Preservation of Trees Act and that the Legislature should consider deleting the same, making alternative provision, safeguarding the interest of the applicants under Section 7.

20. For all the aforesaid reasons, we do not feel compelled to differ with the view taken by the learned Single Judge. With the observations mentioned above, the Writ Appeals are dismissed. No costs.

