In Re: Perumal Reddiar

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SooperKanoon Citation : sooperkanoon.com/775335

Court : Chennai

Decided On : Jan-05-1939

Reported in : AIR1939Mad551; (1939)1MLJ579

Appellant : In Re: Perumal Reddiar

Judgement :
ORDER

Pandrang Row, J.

1. The petitioner was convicted of an offence punishable under Rules 13 and 15 of the rules framed under Section 26 of the Madras Forest Act, namely, illicit quarrying of sand and stone from a public cart track and his conviction was upheld in appeal by the Joint Magistrate of Ramnad who laid stress on the fact that the quarrying was in a public path or track though it has little bearing on the character of the offence. Rule 15 merely provides a penalty in respect of breaches of the preceding rules and in this particular case the rule which is said to have been infringed is Rule 13 which relates to quarrying on reserved and unreserved lands. In the present case the place where the quarrying took place is unreserved land and the rule does not make any difference between places where quarrying is unobjectionable and places where quarrying is objectionable. It does not prohibit quarrying in one place and allow it in another place. The first part of the rule declares the State's right to mines and minerals, the second part of the rule relates to reserved lands, the third part relates to unreserved lands and the fourth and last

part gives information as to the authority to whom applications for permission to quarry in cases where the privilege of free quarrying is not allowed by the rules should be made. It is the third sub-rule of Rule 13 that applies to the present case. It runs as follows:

In unreserved lands quarrying will be left absolutely free to the general public for bona fide agricultural or domestic use and to departments of Government, local boards and municipalities for bona fide public purposes and not for sale or commercial profit and with the previous sanction of Government in each case to other public bodies (whether the minerals have acommercial value or not), subject to the proviso that quarries of any particular importance and value containing gravel, etc., may be closed against the general public and reserved for the use of Government departments or public bodies. Where a local body desires that the Executive right of quarrying on any such lands should be reserved for it, the lands will as a rule be leased to the local body concerned subject to the payment of the ordinary assessment. Quarrying by private persons for other than bona fide agricultural or domestic purposes will be charged with seigniorage fees.

2. From this it will be seen that there is no distinction made between quarrying in one locality and quarrying in some other locality. The only exception made by this rule is quarrying of gravel, etc. It is not the case that the quarrying by the petitioner was of gravel, etc. What was quarried was sand and stone of the ordinary kind and it is not pretended that they have any particular commercial value and the seigniorage fee charged when they are required for other than domestic or agricultural purposes is only six pies for cart as stated by the Tahsildar in his evidence. In this particular case, though it was sought to be made out by the prosecution that as much as 250 cart loads of material had been quarried by the petitioner, the evidence does not really establish that all this quantity was removed by him. This figure was arrived at as the result of an estimate made long after the removal by examining the pits found in the locality. But the evidence shows that quarrying was being done by a number of people at various times and it cannot be said that all the material that was taken away from the places where pits now exist was taken away by the petitioner alone. Even otherwise the evidence shows that the material removed by the petitioner was used by him for enclosing his land by

ridges. The learned Joint Magistrate observes that he is unable to see how this can be regarded as bona fide agricultural purpose. Obviously the enclosing of land with ridges must be regarded as a bona fide agricultural purpose. Rule 13(iii) itself provides that in unreserved lands quarrying is absolutely free to the general public for bona fide agricultural or domestic use and this is a case in which the quarrying must be held to have been for bona fide agricultural use. Even otherwise the rule itself does not actually prohibit quarrying for other than agricultural or domestic use by the general public; it only makes such quarrying subject to payment of seigniorage fee and it is not the case here that seigniorage fee was demanded and not paid. In any case the offence charged against the petitioner was not non-payment of seigniorage fee, it is the quarrying itself which is alleged to be an offence. The evidence makes it clear that in this case there was no infringement of Rule 13; the conviction is therefore not consonant with the evidence in the case. In the circumstances it is unnecessary for me to consider the other objection raised on behalf of the petitioner, namely, that the prosecution in this case was not with the sanction of the Revenue Divisional Officer as required by the order of Government regulating the procedure in the matter of prosecution of forest offences, the substance of which is printed at pages 465, etc., of the Forest Manual, 1931 Edition. The conviction proceeds on the wrong basis that the quarrying was not for a bona fide agricultural purpose and that the quarrying was from an objectional place, that is, a public cart track. The fact that the removal was from a public cart track has really nothing to do with the question whether such removal is an offence or not. Digging pits in a public cart track may be punishable in other ways, but it cannot amount to an infringement of Rule 13. The conviction and the sentence imposed on the petitioner are therefore set aside and he is acquitted. The fine, if paid, must be refunded to the petitioner.