

Narayan Etc. Vs. Deputy Commissioner, Uttara Kannada and anr.

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Court : Karnataka

Decided On : Feb-15-2002

Judge : D.V. Shylendra Kumar, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Karnataka Preservation of Trees Act, 1976](#) - Sections 8 and 8(4)

Appeal No. : Writ Petn. Nos. 34368 to 34372 of 2001

Appellant : Narayan Etc.

Respondent : Deputy Commissioner, Uttara Kannada and anr.

Advocate for Def. : Shashidhar S. Karamadi, H.C.G.P.

Advocate for Pet/Ap. : S.R. Hegde Hudlamane, Adv.

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. These petitions are by persons who claim that they own certain extent of private lands where there is certain tree growth and who have applied to the second respondent. Tree Officer for permission to cut and remove those trees under Section 8 of the [Karnataka Preservation of Trees Act, 1976](#) (hereinafter referred to as the 'Act' for short). The applications filed by the petitioners to the Tree Officer

are produced as Annexure A, B, C, D, E and F. The applications are dated 20-7-2000, 20-7-2000, 20-7-2000, 20-7-2000, 7-7-2000 and 20-7-2000 respectively. The grievance of the petitioners is that notwithstanding the applications having been made more than 1 1/2 years back, the second respondent-Tree Officer has failed to pass any orders on the same and the same has put them to considerable, difficulty and hardship in as much as the trees are getting ripe and old and are required to be felled immediately as otherwise they may lose the timber value.

2. The learned counsel for the petitioners Sri Hegde Hudlamane submits that the second respondent-Tree Officer is not passing orders on their applications in view of certain circulars that have been issued by the first respondent-Deputy Commissioner, copies of which have been produced as Annexures-G, H, J, K and L to the petition. It is the submission of the learned counsel for the petitioners that the first respondent-Deputy Commissioner has no jurisdiction or authority to interfere with the functioning of the Tree Officer and to issue circulars touching upon the functioning of the Tree Officer as an Officer under the provisions of the Act and particularly for coming in the way of the Tree Officer passing orders on the applications filed before him.

3. On a perusal of the circulars, it is found that the circulars have been issued by the first respondent-Deputy Commissioner in his capacity as the Deputy Commissioner of the District and for the purpose of taking suitable steps to preserve and protect the tree growth on Government lands and for proper realization of the value of trees which were standing on granted lands. It is in this context, these circulars have been issued. It cannot be said that issue of these circulars has in any way either interfered with the functioning of a Tree Officer or has the effect of supplementing the provisions of the Act.

4. Learned counsel for the petitioners also argues that the Tree Officer having not passed orders on the applications filed by the petitioners even for a period beyond one year and in view of the provisions of Section 8 (4) of the Act, the petitioners are entitled for a declaration to the effect that such applications are deemed to have been granted.

5. A declaration of this nature cannot be granted by this Court for the simple reason that a writ of declaration does not lie for the said purpose in the first Instance. Secondly, any right that is accrued in favour of the petitioners If is to be granted, requires an examination of the facts in each case particularly the nature of the land, character of the trees and such other relevant particulars. It is neither the function nor necessary for this Court to go into such factual aspects which facts are required to be looked into by the Tree Officer. Moreover, a deemed permission if at all operates as per the provisions of the statute and not because a declaration is given by any Court. A declaration in such circumstances will be a superfluous one. It is not appropriate for this Court to issue declarations apprising petitioners of the rights under any enactment, particularly while exercising the writ jurisdiction under Articles 226 and 227 of the [Constitution of India](#).

6. However, learned counsel for the petitioner further submits that as an alternative relief at least direction can be issued to the second respondent-Tree Officer to dispose of the applications expeditiously. The second respondent being a statutory functionary under the provisions of the Act is required to perform his duties as per the provisions of the Act. It is the fact that the petitioners have filed their applications and the second respondent is required to look into the same and pass appropriate orders either allowing or rejecting the same. In such circumstances, petitioners' prayer for mandamus is Justified as the second respondent has failed to perform his duty inspite of the applications being pending before him for a considerable length of time.

7. In the result, a writ of mandamus is issued to the second respondent-Tree Officer directing the second respondent to pass appropriate orders on the applications filed by the petitioners seeking for certain permission in accordance with the provisions of 'the Act, relevant rules and such other relevant law as is applicable in the circum-stances and within a period of three months from the date of receipt of a copy of this order.

8. The writ petitions are allowed accordingly.

9. Sri Shashidhar S. Karamadi, learned Government Pleader is permitted to file memo of appearance without four weeks.

