

(2020) 11 J&K CK 0032

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1335 Of 2020, Civil Miscellaneous No. 4183 Of 2020

Ashwani Kumar And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 17-11-2020

Acts Referred:

Citation : (2020) 11 J&K CK 0032

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Dinesh Verma, Aijaz Lone

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. In this petition, petitioners seek following reliefs:

(a) Quash the order DFO-J/courtcases/1394-1401 dated 17/07/2020 passed by the respondent no 5 where by the respondent rejected the representations of the petitioners without any logical reasons and in clear violation of SRO 111 dated 31/03/2016 and management plan of khair growing in non forest land issued by principal chief conservator of forest J&K vide no. PCCF/CORD/KHAIR/MANAGEMENT plan/ 2016/2608-78 dated 26/04/2016.

(b) Direct the respondents more particularly respondent no. 3 & 5 to extend permission for felling of Khair trees in proprietary land (Milikiyat Land) of village Balli, Majjam, Ghour, Bajourian, Gourda, Gulalai, DharDrochan, Marh, ThandaPani, Dhamibehra, Sail Jagir, ChaniMansar, Baryalta (Battal Jansal) Dist Jammu in terms of order No. DFO-J/Khair/29-40 issued by respondent no.5, strictly as per rules.

(c) Any other relief, which this Hon'ble Court in the facts and circumstances of the case deems fit and proper.

2. The facts those stem out from the pleadings are that the petitioners are residents of Jammu and Reasi districts and on account of their poor economic conditions grow Khair trees on their proprietary land for making earnings thereof upon selling the same.

3. According to the petitioners felling and selling of Khair trees is regulated under SRO 111 of 2016 dated 31.03.2016 being "The Jammu and Kashmir Non-Forest Land Khair Trees ?Acacia catechu? (Management Plan) Rules, 2016" (hereinafter for the short 'the Rules of 2016').

4. According to the petitioners respondent No. 5 herein accorded permission in their favour for felling of Khair trees in terms of order No. DFO-J/Khair/29-40 dated 29.02.2020.

5. According to the petitioners felling of the Khair trees could not be completed on account of outbreak of COVID-19 and consequent lockdown imposed, as such, representations came to be submitted by them before the respondents for extension of time, however, despite receiving the same, time was not extended by the respondents.

6. According to the petitioners upon failure by the respondents to grant extension of time as requested in the representations, the petitioners filed WP(C) No. 1109/2020 titled as Ashwani Kumar & Ors. Vs. UT of J&K and Ors , before this court which came to be disposed of on 06.07.2020, by directing the respondents in general and respondent Nos. 3 & 5 in particular to take a decision upon the representation of the petitioners.

7. According to the petitioners after serving the aforesaid order dated 06.07.2020 upon respondents, the representations submitted by them came to be rejected vide order dated 17.07.2020 by the respondents without any lawful justification being impugned herein.

8. According to the petitioners the rejection order dated 17.07.2020 is against law and facts inasmuch as the Management Plan issued by the respondents where under the respondents were required to issue permission in the Month of November to December which permission, however, came to be accorded in favour of the petitioners on last day of February 2020.

9. According to the petitioners the respondents though granted extension of time in favour of the 22 numbers of farmers including the petitioner Nos. 1, 2 & 3, yet the respondents did not adhere to the exceptional clause provided in the Management Plan qua the natural calamities/ unforeseen natural problems like the one of COVID-19 and declined the grant of extension in favour of the petitioners without any reason and lawful justification.

10. Per Contra, respondents in their objections filed in opposition to the writ petition refute and controvert the contentions raised by the petitioners in their petition and consequently seek dismissal of the writ petition.

11. According to the respondents felling of Khair trees is regulated under and in terms of the Rules of 2016 read with the Management Plan in place issued by the official respondents vide notification dated 26.04.2016.

12. According to the respondents the petitioners failed to adhere to the Management Plan qua marking and felling of the Khair trees and that the permission granted in favour of villagers of other villages have been adhered to qua time frame stipulated in the order except the petitioners who without any justification failed to undertake process of felling of Khair trees well within the stipulated time.

13. According to the respondents even though an extension came to be issued vide No. CCF/J/Lease/184-201 dated 04.05.2020, extending the time for transportation of khairwood up to June 2020, petitioners yet failed to avail the period of extension without any reason.

14. Heard, considered and perused the record.

15. Counsel for the petitioners as well as counsel for the respondents made their respective submissions in tune with the contentions raised in their respective pleadings.

16. Indisputably the petitioners have been granted permission by the respondents for felling of Khair trees existing on their proprietary land under and in terms of Rules of 2016 pursuant to order dated 29.02.2020.

17. The Management Plan issued by respondents vide notification dated 26.04.2016 supra provides following mode for carrying out operations of felling of Khair trees inasmuch as a time schedule thereof which for convenience is extracted and reproduced hereunder-

S. No

Operation

Time Schedule

1.

Notification of villages by the DFO

April

2.

Invitation and processing of applications

April to August

3.

Nisandehi/ Demarcation/ Enumeration of private land and trees therein

September to October

4.

Issuance of marking and felling permission by the divisional forest Officer

November

5.

Felling and conversion

November to December

6.

Transportation

January to February

18. A perusal of the aforesaid Management Plan would reveal that felling and conversion of Khair trees has to be done from the month of November to December and consequent transportation from the month of January to February.

19. A perusal of the objections filed by the respondents reveal that felling of Khair trees was ordered after time stipulated in the Management Plan for unknown reasons.

20. The aforesaid delayed issuance of order supra inasmuch as extension order purportedly seems to have been issued on the basis of following provision appearing immediately after the table supra in the notification dated 26.04.2016 which reads as under: -

"These time period for different operations shall be followed except in case of Natural calamities/ unforeseen natural problems."

21. The aforesaid provision qua the time frame prescribed and stipulated for various operations in the process of felling of Khair trees in question essentially opens a window for alteration / modification of said time frame, of course, on account of natural calamities/ unforeseen natural problems.

22. The outbreak of COVID-19 and consequent lockdown in the month of March by all means cannot, but said to be, a sort of natural calamity/ unforeseen natural problem within the meaning of expression used in the notification dated 26.04.2016, as such, the respondents ought to have taken into account the same while considering the cases of the petitioners for extension of time qua felling and conversion of Khair trees existing on their proprietary land more so when the Management Plan itself provide the month of November to December the time frame for felling and conversion of the Khair trees, which time schedule is yet to expire.

23. The approach of the respondents in considering the cases of the petitioners

for extension of time seemingly has not been visited by the respondents fairly and reasonably keeping in view of COVID-19. In the peculiar facts and circumstances the matter requires revisiting and reconsideration by the respondents.

24. Having regard to what has been observed hereinabove, the instant petition is allowed and order No. DFO-J/Court cases/1394-1401 dated 17.07.2020 is quashed, directing respondents to effectively re-consider and re-visit the cases of the petitioners for extension of time qua marking and felling of Khair trees existing on their proprietary lands in respect of which the petitioners have been granted permission vide order dated 29.02.2020, within a period of one week from the date of passing of this order.

25. Disposed of, along with all connected CM(s).