

(2002) 09 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 1536 of 1989

Balwant Gajanan Sathe

APPELLANT

Vs

Sub Divisional Officer and Others

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Maharashtra Felling of Trees (Regulation) Act, 1964 — Section 4
Maharashtra Land Revenue Code, 1966 — Section 44

Citation : (2003) 2 ALLMR 965 : (2003) 2 BomCR 372 : (2003) 3 MhLj 165

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : S.S. Redekar, for the Appellant; C.R. Sonawane, Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This petition is directed against the order dated 17-8-1988 passed by the Collector, Raigad, Alibag, against the petitioner. By the impugned order, the Collector has modified the order of the S.D.O. and directed that the charcoal found in possession of the petitioner be forfeited in exercise of the powers u/s 4 of the Maharashtra Felling of Trees (Regulation) Act, 1964, hereinafter referred to as the "Act", and further directed that non-agricultural assessment for unauthorised use also be recovered.

2. It is difficult to see how that order is sustainable in view of the following facts :--

The petitioner was found transporting certain bags of charcoal to his village Tala on 25-2-1988. According to the petitioner, he wanted to move the charcoal to a safer place since Holi was approaching. The Tahsildar, Mahad, stopped the petitioner and asked for necessary passes. According to the petitioner, he produced permission accorded to one Janu Dehu Manchekar for non-agricultural user of his land and transit pass for transporting 200 bags of charcoal in favour of the said Janu Dehu Manchekar. It has throughout been the petitioner's case

that he purchased the said charcoal from Janu Dehu Manchekar.

3. The Tahsildar passed an order forfeiting 175 bags of charcoal recovered from the petitioner and further directed recovery of penalty for unauthorised use of the agricultural land for non-agricultural purpose. The petitioner carried an appeal to the Collector who has rendered two findings: (i) that the petitioner had not obtained non-agricultural permission as required by the Maharashtra Land Revenue Code for manufacturing charcoal; and (ii) that the petitioner has breached Section 4 of the Act since he was found to be in possession of charcoal. I find both these findings completely unsustainable. Obviously, it has been the case of the respondent that the petitioner was found in possession of the charcoal. It is not possible to see how he can be held responsible for not having obtained permission for non-agricultural use of agricultural land u/s 44.

4. The other finding that the petitioner has illegally felled trees and has, therefore, violated the provisions of Section 4 of the Act is equally unsustainable. Section 4 reads as under :-

"4. Any person who, without permission being granted or deemed to have been granted to fell any tree, fells any such tree or causes it to be felled, shall be liable to such penalty not exceeding one thousand rupees as the Tree Officer empowered u/s 3 may, after holding an enquiry and giving such person an opportunity of being heard, deem fit to impose; and the Tree Officer may further order that any such tree so felled which is not the property of Government shall be forfeited to the State Government along with the tools, boats, vehicles or other conveyances used in felling and removing, any such tree."

The reasoning of the Collector seems that since charcoal found in the petitioner's possession is made from wood, the petitioner must have illegally felled trees. This reasoning, to say the least, suffers from a gross non-application of mind and is perverse. It would be indeed hazardous if a person found in possession of charcoal were to be held guilty of illegally felling trees.

5. Under the circumstances, I find that the impugned order is not sustainable and the petition must succeed. The rule is, therefore, made absolute in terms of prayer Clause (b). No order as to costs.

6. The learned counsel for the petitioner states that he has furnished solvency bonds in the sum of Rs. 35,000/- for the purpose of securing the release of the charcoal to the 1st respondent. The bonds are hereby cancelled.

7. P.S. to give ordinary copy of this judgment to the parties concerned.