

(2000) 01 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 30750 of 1992

Basavaraj Rayappa Kengeri and others	APPELLANT
Vs	
Three Officer/Deputy Conservator of Forests, Karwar and another	RESPONDENT

Date of Decision : 07-01-2000

Acts Referred:

Karnataka Preservation of Trees Act, 1976 — Section 8 (4)

Citation : AIR 2000 Kar 180 : (2000) ILR (Kar) 1348 : (2000) 2 KarLJ 565 : (2000) 2 KCCR 1290

Hon'ble Judges : Chandrashekaraiah, J

Bench : Single Bench

Advocate : Sri M.R. Naik, for the Appellant; Sri Ashok N. Nayak, High Court Government Pleader, for the Respondent

Judgement

1. The petitioners in this writ petition have sought for a direction declaring the permission sought for by them in their application dated 25-10-1989 is deemed to have been granted and they are entitled to cut and transport the trees standing on the land in Sy. No. 26 of Kasarwadi Village and also for a direction to issue transport passes to transport the cut trees.

2. Petitioners 1 to 3 are claiming to be the joint owners in possession of the land bearing Sy. Nos. 25 and 26 of Kasarwadi Village. It is stated that the petitioners with a view to utilise the land in Sy. No. 26 for better cultivation, made an application on 25-10-1989 for permission to fell the trees standing in Sy. No. 26 under the provisions of the Karnataka Preservation of Trees Act, 1976 (for short "Act"). The case of the petitioners is that since no order has been passed on the said application they are entitled to remove the standing trees in view of the deemed permission as provided u/s 8(4) of the Act.

3. The respondents have filed statement of objections wherein it is stated that the application filed by petitioners 1 to 3 was referred to the revenue department for grant of no objection certificate. Pursuant to that, the Deputy Commissioner,

no doubt, by his letter dated 9-4-1991 has given no objection subject on the condition that the Government has got right over 90 trees situated in Sy. Nos. 25 and 26. Subsequently, joint survey was conducted by the Assistant Director of Land Records and the forest authorities and it was found that most of the trees marked earlier, in respect of which the permission to fell was sought were in Sy. No. 22 which comes within the forest area and not in Sy. No. 26. In view of this the Deputy Conservator of Forests has written a letter dated 6-3-1993 to the Deputy Commissioner, Karwar to withdraw the N.O.C. issued to the petitioners. Thereafter, respondent 1, on the basis of the joint survey report, rejected the application of the petitioners for permission by order dated 23-2-1993 and the same was communicated to the petitioners. This order of rejection has not been questioned by the petitioners in this writ petition.

4. On the day when the petitioners made the application, they are entitled for the benefit of deemed permission u/s 8(4) of the Act. Section 8(4) of the Act reads as follows.-

"If the Tree Officer fails to inform the applicant of its decision within 60 days in respect of a tree in an urban area and in a rural area of any kind specified in Schedule II or within one year if an application is in respect of a tree in a rural area of any kind specified in Schedule I from the date of receipt of the application, the permission so sought for shall be deemed to have been granted".

In the instant case, the respondents in their statement of objection, have stated that the petitioners are not entitled for such relief since petitioners 1 to 3 are not the owners of most of the trees which are in Sy. No. 22 which is a forest area and further, there is a serious dispute between petitioners 1, 2, 3 and 4 regarding the revocation of power of attorney said to have been given in favour of petitioner 4. It is further stated that the application of the petitioners for permission has already been rejected on 22-3-1993 by the competent authority. In view of these facts the petitioners are not entitled to take advantage of the deemed provision u/s 8(4) of the Act.

5. During the pendency of this petition the State of Karnataka by its Act No. 12 of 1998 introduced amendment to the 1976 Act (hereinafter referred to as "Karnataka Act No. 76 of 1976") and Section 8(4) has been amended by substitution which reads as follows.-

"The Tree Officer shall make all possible endeavour to dispose off the application received under this section within a period of three months from the date of its receipt:

Provided that in computing the period of three months under this sub-section, the time required to obtain.-

(a) opinion from revenue authorities;

(b) report from the Assistant Director of Land Records;

(c) measurement list of trees intended to be felled; or

(d) any other relevant information as may be prescribed, shall be excluded".

From the reading of this, it is clear that the deemed permission in the event the decision of the Tree Officer is not communicated or informed to the petitioners within the specified period, has been taken away. Whenever there is an amendment by substitution, the amendment should be read as if it is there when the principal Act came into force. If that is so, the petitioners are not entitled for a declaration that he is entitled to fell tree in view of the amendment referred to above. In the statement of objections though it is stated that the application of the petitioners was rejected by order dated 23-2-1993, a copy of the said order has not been produced along with the statement of objection. Further, it is not stated in the statement of objection what the reason is for rejection of the application of the petitioners for grant of permission to fell the trees. Therefore, in my opinion, it is just and necessary to reconsider the application dated 25-10-1989 for permission to fell trees after notice in accordance with law. In the result, I pass the following order:-

Writ petition is disposed of with a direction to respondent 1 to consider the application of the petitioners filed on 25-10-1989 for grant of permission to fell trees in accordance with law and in the light of the observation made above.