
(2021) 01 KL CK 0033

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15096 Of 2020

C.V. Sujai

APPELLANT

Vs

Divisional Forest Officer And Ors

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Forest Conservation Act, 1980 — Section 2

Citation : (2021) 01 KL CK 0033

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : M.C. John, Sandesh Raja

Final Decision : Dismissed

Judgement

1. The petitioner seeks to quash Ext.P9 and to direct the 1st respondent to grant permission to the petitioner for using the Coupe Road for the purpose mentioned in Ext.P8 application. The petitioner further seeks to restrain the 1st respondent and his subordinates from prohibiting the usage of the Coupe Road by the petitioner for the purpose mentioned in Ext.P8.

2. The petitioner states that he is the managing partner of a partnership firm and a licensed dealer in explosives and detonators. The firm has an explosive storage at Kovalam. The storage place at Kovalam was insufficient to store explosive according to the demands and requirements. The petitioner wanted to construct an explosive magazine at a convenient place and safe place.

3. The petitioner therefore purchased 8 Acres and 26 cents land situated in Pangode Village. The said property is in a very remote area without any habitation. All four sides of the property are Eucalyptus/Acacia plantations. The Coupe Road on the western side is the only access to the property. Before purchasing the property, the petitioner applied for a No Objection Certificate which was granted by the 1st respondent-Divisional Forest Officer, as per Ext.P1. The property was purchased as per Ext.P2 only after getting the Ext.P1 NOC.

4. The petitioner made an application before the 2nd respondent-District Collector for permit for construction of explosive magazine and storage. The 2nd respondent called for reports from various authorities. The Regional Fire Officer submitted Ext.P3 report to the 2nd respondent stating that he has no objection for the storage of nitrate mixture, safety fuse and ordinary/electric detonators in the said property. The Tahsildar, Nedumangad also issued Ext.P4 letter to the 2nd respondent recommending that the petitioner can be given licence. Ext.P4 was issued after a site inspection.

5. The Deputy Superintendent of Police issued Ext.P5 letter dated 08.02.2019 attaching a report of the Station House Officer, Palode Police Station. The said report stated that the police authorities do not have any objection in constructing an explosive magazine complying with rules. Thereupon, the Deputy Collector issued Ext.P6-No Objection Certificate on 28.02.2019 stating that there is no objection for granting licence under the Explosive Rules to the petitioner for storing stipulated quantities of explosives in the premises in question.

6. The petitioner states that he made an application to the Petroleum and Explosive Safety Organisation and the Joint Chief Controller of Explosives approved the site and the construction of magazine/storehouse, as per Ext.P7. Thereafter, the petitioner submitted Ext.P8 application to the 1st respondent-Divisional Forest Officer requesting to grant permission to use the Coupe Road for transporting construction materials. The petitioner stated that after the construction, only Road Van will be used and that too between 7 a.m. and 5 p.m. without causing any disturbance to the wildlife. However, to the surprise and predicament of the petitioner, the 1st respondent declined permission to use the Coupe road for transporting construction materials and for transportation of articles by Van.

7. Learned counsel for the petitioner would urge that he had purchased 8 Acres and 26 Cents of land as per Ext.P2, solely for the purpose of construction of magazine/storage of explosives. The property was purchased only after obtaining no objection from the Department of Forest, as evidenced by Ext.P1. All statutory authorities including the Regional Fire Officer, Tahsildars, the Deputy Superintendent of Police, the District Collector and the Joint Chief Controller of Explosives, have given their consent and a no objection for establishment of the magazine/storage of explosives in the property in question. Therefore, the denial of permission to use the Coupe Road for the purpose of the said magazine/storage by the 1st respondent as per Ext.P9, is highly arbitrary and unjustified.

8. The learned counsel for the petitioner further argued that the said 8 Acres and 26 Cents of land is surrounded by Eucalyptus/Acacia plantations. The Coupe Road is passing through a chained gate at its entrance and it passes through the rubber plantations in the property of the petitioner. Whenever eucalyptus trees are felled, the logs are transported in lorries through the Coupe Road only. Even the predecessors in interest of the petitioner in respect of the property, were using the Coupe Road for their transportation requirements. Therefore, the

reasons stated in Ext.P9 is absolutely unfounded, discriminatory and against equity and fair play.

9. The Special Government Pleader (Forests) opposed the writ petition filing a statement dated 07.12.2020. The Government Pleader stated that the property of the petitioner is encircled by reserve forest and granting permission for transportation of heavy load vehicles and construction of explosive godown will dangerously affect the surrounding forest and movement of wild animals. The area is a part of Agastya Mala landscape and Agastya Mala biosphere reserve. Increasing interference in the biodiversity rich area will cause havoc to the sensitive ecosystem.

10. The learned Government Pleader further submitted that the right of way through the Coupe Road which is completely inside reserve forest, can be given only for agricultural activities. Usage of this road for non-forest activities would require prior approval of Central Government under Section 2 of the Forest Conservation Act, 1980. The petitioner cannot as a matter of right seek usage of Forest Road for his private activities and that too for non-forest activities.

11. Heard learned counsel for the petitioner and the learned Special Government Pleader (Forests).

12. The statement filed by the learned Government Pleader (Forests) would show that the Coupe Road through which permissions for right to way is claimed by the petitioner, is a Forest Road. In W.P.(C) No.33526 of 2017, a learned Single Judge of this Court considered the right of private citizens to use Forest Road passing through reserve forest. The learned Single Judge held that a forest area cannot be used for any commercial activity in view of the provisions of the Forest Conservation Act as well as the Kerala Forest Act, 1961. The said writ petition was filed by a petitioner who was conducting stone crusher unit in the forest area. Though W.A. No.971 of 2018 was preferred against the judgment of the learned Single Judge, a Division Bench of this Court dismissed the writ appeal.

13. In W.P.(C) No.6349 of 2020, a learned Single Judge of this Court held that vehicular traffic for transportation of explosives, which is a commercial activity, is impermissible under the Forest Conservation Act as well as Kerala Forest Act and therefore the petitioner cannot have any fundamental right to take vehicles through a reserve forest contrary to the provisions in those statutes.

14. In the present case, the fact that the Road is a Forest Road passing through reserve forest land, is not under dispute. The statement filed by the respondents show that the area is identified as high fire prone areas. The previous fire prone details, forest cover type, forest density, temperature etc. in the area show that it is in high forest fire risk zone. Hence, the construction of an explosive godown in this area will cause havoc to this area as well as adjacent reserved forest. It is also stated that the place is diverse with the wild animals like Elephant, Gaur, Sloth Bear, Sambar Deer, Indian Giant Squirrel, etc. Continuous vehicle movement through this area is not justifiable.

For all the above reasons, the prayers made by the petitioner in the writ petition are not liable to be granted. The writ petition is therefore devoid of any merit and it is accordingly dismissed.