

(2013) 05 GUJ CK 0035
In the Gujarat High Court
Case No : First Appeal No. 999 of 2004

Forest Office and 1

APPELLANT

Vs

Naginbhai Khushalbhai Patel and 4

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Forest Act, 1927 — Section 52, 62, 74

Citation : (2013) 05 GUJ CK 0035

Hon'ble Judges : G.R.Udhwani, J

Bench : Single Bench

Advocate : Rahul Dave, AGP for the Appellants No. 1-2, for the Appellant; PR Thakkar, Advocate for the Defendant(s) No. 2-5 Rule Served for the Defendant(s) No. 1, for the Respondent

Judgement

G.R. Udhwani, J.—The State is in appeal against the impugned judgment and order dated 4.5.2002 passed by learned Civil Judge (Senior

Division), Vadodara in Special Civil Suit No. 516 of 1989 awarding a compensation in the sum of Rs. 4,85,000/- with interest at the rate of 12%

from the date of the suit till realisation against the appellant for having caused a loss to the respondent on confiscation of his Truck bearing

Registration No. GTK- 5477 and damaging for want of maintenance during its possession for a period of more than four years, with the appellant.

The respondent before the trial court prayed for damages in the sum of Rs. 12,69,643/- under various heads including the loss suffered by the

respondent for the said period of four years as also reparation charges of the truck to make it road worthy. The respondent was examined at Exh.

36 wherein he came out with the case that the truck in question was seized by competent authorities on 26.2.1984 against which appeal was filed

in the Court of Sessions at Bharuch which was allowed and the possession of the truck was ordered to be handed over to the respondent. Such

judgment and decree was passed on 5.5.1988. The truck came to be handed over to the respondent on 11.1.1989 in a totally dilapidated

condition; its tyres were deflated; engine was damaged; there was damage to the chassis as well. The respondent, after getting the possession of the

truck, got it valued through a valuer, who, after taking into consideration various aspects, valued the truck at Rs. 87,000/-. The report was

produced before the trial court.

2. The respondent testified on oath before the Court that his father who owned the truck was earning Rs. 10,000/- per month from the use of the

truck and that due to confiscation he suffered that loss. It was contended by him in the testimony that he had suffered a loss of Rs. 6.00 lacs to Rs.

7.00 lacs. The respondent produced the books of accounts, and in the cross-examination, he identified the handwriting in the accounts as that of

one Bipinbhai and his father. Other facts stated by the respondent in his examination-in-chief were not at all challenged.

3. The trial court, upon hearing the parties and considering the evidence and while relying upon the books of account and the oral testimony of the

respondent, passed the impugned judgment and order decreeing the above amount. It is, however, noticed from the record that, though, the fact

that respondent suffered a loss on account of appellant's callous approach in dealing with the truck, the quantum of loss was not satisfactorily

brought on record by laying its basis.

4. Learned AGP Mr. Rahul Dave assailed the impugned judgment and order on the ground that no basis for damages was laid, and mere

production of accounts without making out a case as to what quantum of loss was suffered by respondent, in his submission, was not sufficient. He

also submitted that, in fact, the appellant was authorised by law to confiscate the vehicle u/s 61-A of the Act and the action of the respondent being

in exercise of legal provisions and the officer concerned having acted in good faith and bonafide while discharging his duty as a public servant, the

suit could not have been decreed by the court below.

4.1. Learned AGP would submit that since the action was in exercise of legal powers, it could not have been invited tortuous liability and therefore

also the suit could not have been decreed by the court below. Learned AGP also submitted that the court below could not have ordered the

exhibition of the books of account at the time of delivering the judgment inasmuch as the appellant did not get an opportunity to cross-examine the

witness in relation to the account. He submitted that therefore also the impugned judgment and decree cannot be sustained.

4.2. Learned AGP however, submitted that, in the peculiar facts and circumstances of this case, where the confiscation and subsequent release of

the truck upon the order being passed by the Sessions Court is not in dispute and the appellant having not dealt with the truck in accordance with

Section 61-A of the Indian Forest Act, 1927 (for short "the Act"), even if a lump-sum amount was to be awarded, in his submission, the amount

awarded was reasonable looking to the fact that the respondent was deprived of the use of the truck as also loss caused to the truck.

5. Having considered the arguments advanced by the parties as also the evidence on record and the undisputed facts, the question raised in this

appeal are required to be answered in the light of the provisions made in the Act particularly u/s 61-A of the Act. Under this provisions, the officer

concerned is obliged to produce the forest-produce in respect of which the offence is committed along with all tools, ropes, chains, boats, vehicles,

carts and cattle used in commission of such offence, seized under subsection (1) of Section 52, before an officer authorised by the State

Government in this behalf, and under sub-section (2) such officer is authorized to confiscate it irrespective of fact as to whether criminal transaction

is lodged or not, and under sub-section (3) the officer concerned is required to form an opinion as to whether it is expedient in the public interest to

sale confiscated property or any part thereof by public auction, and under sub-section (3) clause (b), the sale proceeds after deduction of

necessary expenditure etc. are required to be paid to the owner of the confiscated goods if the order of confiscation is set aside by the competent

court. All these exercise is required to be done after following the procedure contemplated u/s 61-B of the Act.

6. In the instant case, the truck was seized on 26.2.1984. It is not in dispute that until 8.6.1986 i.e. for about more than two and quarter years the

truck was in possession of the appellant. It was therefore obligatory on its part to maintain it. Further, after confiscation in the year 1986,

undisputedly the truck was retained by the appellant without bothering for its maintenance. The appellant also did not deem it proper to exercise its

powers under sub-section (3) (b) of Section 61-A of the Act, the purpose and object of which was to mitigate the loss that may occur to the

properties like the vehicles which may become useless during the course of time if not maintained for a long period like 4 years. Thus, it is apparent

that the appellant failed to discharge its duties u/s 61-A of the Act.

7. Admittedly, the respondent gave a statutory notice to the appellant to compensate the loss suffered by him. The notice was not replied. It is a

hard reality that in no case the statutory notices are replied. The requirement of statutory notice is not an empty formality. The litigant is prevented

from instituting a suit in absence of notice only because the legislature reposes a faith in the statutory authority that, before going to the Court, it

may have an opportunity to redress the grievance of the citizen. The notice is not merely an opportunity to the statutory authority to redress the

grievance, it also a duty of the statutory authority to redress the grievance in genuine cases, and therefore, ignoring of the notice by statutory

authority may lead to adverse inference. Be that as it may, the fact remains that the respondent's property i.e. truck which on confiscation vested in

the appellant was not maintained and also not sold. Therefore, to that extent, it can be held that a loss was caused to the property which ultimately

was ordered to be returned to the respondent. The appellant was therefore answerable for such a loss. However, it cannot be disputed that the

competent officer under the Forest Act was exercising its statutory powers while confiscating the truck. It may be that ultimately the confiscation

was set aside but that would not mean that the competent officer lacked inherent authority invested in him by law to seize and confiscate the

property. In fact, the respondent did not make any complaint u/s 62 of the Act for wrongful seizure, and thus, the case for compensation for

wrongful seizure/confiscation and the compensation or damages on that basis could not have been maintained by the respondent. In this context,

Section 74 of the Act may be quoted as under:

Indemnity for acts done in good faith:- No suit shall lie against any public servant for anything done by him in good faith under this Act.

8. Thus, no suit could have been maintained against the action of public servant

done in good faith, and in the instant case, since the competent officers were authorised by law to seize and confiscate the goods, their action was saved u/s 74 of the Act in absence of any proceedings against them u/s 62 of the Act, and therefore, their action could not have rendered the appellant liable for compensation or damages. Unfortunately, this legal provisions was not brought to the notice of the court below.

9. It is also noticed that the trial court did not form any basis in arriving at a conclusion that a loss of Rs. 10,000/- per month was caused to the respondent because of deprivation of the truck. The trial court merely referred to the books of account without even discussing it nor any statement was made before it in the evidence explaining as to how the figure of Rs. 10,000/- per month was arrived at. However, even that evidence was not accepted by trial court inasmuch as it did not make an award on the basis of loss of Rs. 10,000/- per month but it rested its finding on surmises and conjectures and on inference that since the truck was retained by the appellant, there must have been a loss to the respondent. I am afraid, without any basis, such finding could not have been rendered.

10. In view of the above position, since the appellant/its competent officers failed to exercise the powers vested in it u/s 61-A(3)(b) of the Act, the loss was caused to the vehicle which was kept idle for a period of more than four years, the respondent was entitled to be compensated.

However, the rest part of the impugned judgment and order cannot be sustained for the reasons aforesaid. In the result, the appeal is partly allowed and the impugned judgment and order to the extent it awards damages on the ground of loss to the respondent is quashed and set aside.

The compensation/damages for reparation of the truck as decreed by the court below is confirmed. The impugned judgment and order of the trial court shall stand modified to the aforesaid extent. There shall be no order as to costs. Decree be drawn accordingly.