
(2003) 02 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22261 of 1997

Forest Range Officer, S.V. National Park

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 44(2A), 44(2B)

Citation : (2003) 2 ALD 503 : (2003) 2 ALT 704

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Government Pleader, for the Appellant; Sandhya, Assistant Government Pleader for Respondent No. 1 and S.A. Razzaq, for the Respondent

Judgement

V.V.S. Rao, J.—The Forest Range Officer is aggrieved by the orders dated 4.7.1997 in C.M.A. No. 4 of 1997 passed by the Court of District Judge, Cuddapah. Be it noted that the learned District Judge passed that order in exercise of the powers u/s 44 (2-E) of the A.P. Forest Act, 1967 (hereinafter called as "the Act"). The facts are not in dispute. The lorry bearing No. AEE 6665 was seized on 8.12.1991 by forest officials. At the time of seizure, the lorry was allegedly carrying 2953 kgs of red sander logs without any permission or otherwise. At the relevant time, the third respondent was the owner of the lorry. Against the seizure, the third respondent filed a writ petition before this Court claiming release of the lorry pending further proceedings. This Court passed orders in W.P.No. 257 of 1992 on 13.1.1997 directing the release of the lorry subject to third respondent furnishing bank guarantee for a sum of Rs. 1,00,000/- and also giving an undertaking to the effect that he shall not alienate the lorry during the pendency of the proceedings. The lorry was accordingly released.

2. Criminal proceedings were launched in C.C. No. 226 of 1994 on 4-4-1997. The learned Judicial First Class Magistrate, Rajampet convicted A.1 and A.2 viz., the driver and the cleaner of the lorry respectively and sentenced them to undergo

imprisonment for six months and also to pay a fine of Rs. 500/- each in default to undergo simple imprisonment for one month.

3. The appeal to the Sessions Court being Criminal Appeal No. 77 of 1997 was also dismissed by the learned Additional Sessions Judge, Cuddapah on 19.1.1997. In the meanwhile, the bank guarantee expired on 5.6.1997. and in spite of notice, the third respondent did not renew the bank guarantee. Therefore, on 4.12.1994, vehicle was seized by the forest officials. The D.F.O., Rajampet passed orders after issuing notice to the third respondent confiscating the lorry as well as the red sanders to the Government. Aggrieved by the same, one Kakarlapudi Satyanarayana Raju and the third respondent - Moghal Rahim Baig, preferred C.M.A. No. 4 of 1997 u/s 44(2-E) of the Act. It was mainly contended before the learned District Judge that the third respondent herein who is the original owner of the lorry in question, sold and transferred the same in favour of Satyanarayana Raju and therefore, without notice to Satyanarayana Raju, the lorry cannot be confiscated. This order of the learned District Judge dated 4.7.1997 in the said C.M.A. is assailed in this writ petition.

4. Ms. Sandhya, learned Assistant Government Pleader submits that it is not incumbent to issue notice to the subsequent purchaser, when the third respondent who is the original owner filed the writ petition before this Court being W.P. No. 257 of 1992 and the same was disposed of by this Court ordering release of the lorry subject to the third respondent furnishing bank guarantee and giving an undertaking to the effect that he will not alienate the property. The third respondent who gave such undertaking, appears to have alienated/transferred the lorry. The learned Assistant Government Pleader further submits that the first respondent - learned District Judge committed an error in holding that for want of notice, to Satyanarayana Raju, the order of D.F.O. is illegal.

5. The question that falls for consideration is whether pending action u/s 44 (2-A) and the criminal case filed u/s 20 of the Act, if the owner on the date of seizure of the lorry/vehicle transfers in favour of other person, notice is required to the transferee of the vehicle?

6. Section 44(2-A) and 44(2-B) read as follows:

(2-A) Where an authorized officer seizes under Sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(2-B) No order confiscating any property shall be made under Sub-section (2-A) unless the person from whom the property is seized is given:--

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) An opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c) A reasonable opportunity of being heard in the matter.

7. A plain reading of the above provisions would show that the Forest Officer is given power to order confiscation of the timber or forest produce when he is satisfied that the forest offence has been committed. Such Forest Officer is also empowered to order confiscation of the vehicle used in the commission of the offence. The stress is, in confiscation of the vehicle used for committing a forest offence, the ownership or lorry/vehicle is irrelevant, Keeping in tune with subsequent Section 44(2-A), the Legislature very cautiously enacted Section 44 (2-B) obligating the Divisional Forest Officer/Forest Officer to give notice in writing to the person from whom the property is seized. When the vehicle is seized from the driver of the vehicle on the date of seizure in law it amounts to seizing the vehicle from the owner of the vehicle as on the date of the seizure. If subsequently, the owner on the date of seizure transfers the vehicle, the law does not require to serve notice to the subsequent purchaser of the lorry. If notice to subsequent purchaser is read into Sub-section (2-B) of Section 44, it would result in giving scope for uncertainty. The person who is the owner of the vehicle on the date of seizure so as to protect the vehicle may transfer the vehicle to others and may not inform the forest officials. The learned District Judge therefore wrongly came to the conclusion that notice is to be issued to K. Satyanarayana Raju who is allegedly subsequent purchaser. It is not denied before this Court that in WP No. 257 of 1992, the seized vehicle was ordered to be released at the instance of third respondent herein subject to furnishing bank guarantee for an amount of Rs. 1,00,000/- and subject to giving an undertaking that he would not alienate the property. If on the date of seizure, the third respondent is not the owner, as was urged before the learned District Judge, there was no necessity for the third respondent to file the writ petition and obtain an order of release. The lorry obviously was not transferred in favour of K. Satyanarayana Raju by then. The D.F.O. gave the notice to the third respondent before passing orders u/s 44 (2-D). The learned District Judge, it must be held, committed an error in coming to the conclusion that the confiscation order is bad for not issuing any notice to K. Satyanarayana Raju, The notice issued to the third respondent is sufficient compliance with the provisions of Section 44(2-B) of the Act.

8. In the result, the Writ Petition is allowed and order dated 4.7.1997 in CMA No. 4 of 1997 is quashed restoring the order passed by the DFO. No costs.