
(2020) 11 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1655 Of 2020, Civil Miscellaneous No. 5734,
5735 Of 2020

Girdhari Lal And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 17-11-2020

Acts Referred:

Citation : (2020) 11 J&K CK 0035

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Surinder Kour, Manpreet Kour, Aijaz Lone

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. The controversy fostered in this petition is that the petitioners being residents of village Karwa Tehsil Katra and District Reasi are having their proprietary land under Khasra No.s 46, 47, 72, 700 and 742 situated in village Karwa.
2. Petitioners are stated to have Khair trees grown on their aforesaid proprietary land and since the said Khair trees cause damage to the crops of the petitioner, as such, felling of said Khair trees became imperative.
3. According to the petitioners felling of Khair trees came to be regulated by the government by issuance of SRO 111 of 2016 dated 31.03.2016 being "The Jammu and Kashmir Non-Forest Land Khair Trees "Acacia catechu? (Management Plan) Rules, 2016" (hereinafter for the short "the Rules of 2016?").
4. According to the petitioners the said rules provide for a mechanism for felling of Khair trees standing on non-forest land including the private (Milikiyat) lands.
5. According to the petitioners under the said Rules of 2016, the petitioners applied in the requisite form-B to the respondents seeking permission for felling of Khair trees standing on their proprietary land whereupon the respondents are

stated to have issued an order bearing No. 5042-50 dated 06.03.2020 thereby granting permission for marking and felling of the Khair trees for the year 2019-20 existing on the proprietary land of villagers of various villages including the petitioners being residents of village Karwa.

6. According to the petitioners after completing all necessary requisite formalities, felling of the Khair trees standing on their propriety land could not be completed well within the time stipulated by the respondents under the Management Plan, owing to the imposition of lockdown, due to outbreak of COVID-19.

7. According to the petitioners the respondents were approached number of times for extension of time for felling of the Khair trees in question but, the respondents without any reasonable cause and justification failed to accord any extension leaving thereby no option open to them except to seek indulgence of this court through the medium of the instant petition and praying for the reliefs as claimed therein.

8. Per Contra, respondents in their objections filed in opposition to the writ petition refuted and controverted the contentions raised by the petitioners in their petition and consequently seek dismissal of the writ petition .

9. According to the respondents felling of Khair trees is regulated under and in terms of the Rules of 2016 read with the Management Plan in place issued by the official respondents vide notification dated 26.04.2016.

10. According to the respondents a time frame is provided for various operations in the said notification relating to the felling of the Khair trees. According to the respondents the said Management Plan is required to be adhered to and time frame prescribed and stipulated in the process has to be followed by all concerned.

11. According to the respondents petitioners have no right to maintain the writ petition and consequently seek its dismissal.

12. Heard, considered and perused the record.

13. Counsel for the petitioners as well as counsel for the respondents made their respective submissions in tune with the contentions raised in their respective pleadings.

14. Indisputably the petitioners have been granted permission by the respondents for felling of Khair trees existing on their proprietary land under and in terms of Rules of 2016 pursuant to order dated 06.03.2020.

15. The Management Plan issued by respondents vide notification dated 26.04.2016 supra provides following mode for carrying out operations of felling of Khair trees inasmuch as a time schedule thereof which for convenience is extracted and reproduced hereunder: -

S. No

Operation

Time Schedule

1.

Notification of villages by the DFO

April

2.

Invitation and processing of applications

April to August

3.

Nisandehi/ Demarcation/ Enumeration of private land and trees therein

September to October

4.

Issuance of marking and felling permission by the divisional forest Officer

November

5.

Felling and conversion

November to December

6.

Transportation

January to February

16. A perusal of the aforesaid Management Plan would reveal that felling and conversion of Khair trees has to be done from the month of November to December and consequent transportation from the month of January to February.

17. A perusal of the objections filed by the respondents reveal that Form-C came to be received by them from Tehsildar concerned after a lapse of time stipulated in the Management Plan resulting into delayed issuance of the order for felling of trees in question i.e. beyond the time frame provided in the Management Plan and consequent extension granted for felling of the said trees up to 31.03.2020.

18. The aforesaid delayed issuance of order supra inasmuch as extension order purportedly seems to have been issued on the basis of following provision appearing immediately after the table supra in the notification dated 26.04.2016 which reads as under: -

"These time period for different operations shall be followed except in case of Natural calamities/ unforeseen natural problems."

19. The aforesaid provision qua the time frame prescribed and stipulated for various operations in the process of felling of Khair trees in question essentially opens a window for alteration / modification of said time frame, of course, on account of natural calamities/ unforeseen natural problems.

20. The outbreak of COVID-19 and consequent lockdown in the month of March by all means cannot but said to be, a sort of natural calamity/ unforeseen natural problem within the meaning of expression used in the notification dated 26.04.2016, as such, the respondents ought to have taken into account the same while considering the cases of the petitioners for extension of time qua felling and conversion of Khair trees existing on their proprietary land more so when the Management Plan itself provide the month of November to December the time frame for felling and conversion of the Khair trees, which time schedule is yet to expire.

21. The approach of the respondents in considering the cases of the petitioners for extension of time seemingly has not been visited by the respondents fairly and reasonably keeping in view the natural calamity of COVID-19. In the peculiar facts and circumstances the matter requires revisiting of the same by the respondents.

22. Having regard to what has been observed hereinabove, the instant petition is allowed and is disposed of in the following terms: -

"Respondents shall effectively re-consider and re-visit the cases of the petitioners for extension of time qua marking and felling of Khair trees existing on their proprietary lands in respect of which the petitioners have been granted permission vide order dated 06.03.2020, within a period of one week from the date of passing of this order."

23. Disposed of, along with all connected CM(s).