

(1991) 07 MAD CK 0073
In the Madras High Court

Glenrock Estates (P) Ltd.

APPELLANT

Vs

The Chairman to the Committee constituted under Section 2-A of the Tamil Nadu Preservation of Private Forests Act, 1949 and Another

RESPONDENT

Date of Decision : 22-07-1991

Acts Referred:

Citation : (1992) 1 LW 377 : (1992) 1 MLJ 220

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—This writ appeal is directed against the Order of the learned single Judge in W.P.No.1997 of 1991. The petitioner in the writ petition is the appellant in this Writ Appeal. The respondents in the writ petitions are the respondents in the writ appeal Convenience suggests that the nomenclature assigned to the parties in the writ petition be adopted by us in the course of this judgment. The petitioners made an application for the grant of permission to cut 876 trees of various species in S. No. 284/1A of Cherangode village, Gudalur Taluk, Nilgiris District, under the provisions of the Tamil Nadu Preservation of Private Forests Act 27 of 1949, hereinafter referred to as the Act. The extent of the area over which these trees are located is stated to be 130 hectares. The cutting of the trees asked for, is by the selection method, namely felling of only selected trees of timber in contrast to the clear felling method, namely felling of all the trees in the area for the utilisation, mainly as fuel. The application has been turned down by the 1st respondent. The petitioner preferred an appeal to the 2nd respondent and the appeal was rejected by the 2nd respondent. This obliged the petitioner to come to this court by way of the writ petition seeking for a writ of certiorarified mandamus to quash the order and direct the first respondent to grant permission to cut the trees. The learned single Judge, who dealt with the writ petition, opined that relevant considerations did weigh with the respondents when they negatived the permission asked for by the petitioner and dismissed the writ petition. The learned Judge, however, gave a direction as

follows:

However, liberty is reserved to the petitioner to restrict its application for selection of felling to few number of trees which may need cutting for the purpose of development of the plantation and on sufficient grounds being made out there for, the Committee shall pass orders on that application within four months of receipt of the same.

Of course, the petitioner is not content with the above direction and that is why this writ appeal has been preferred.

2. Mr. A.L. Somayaji, learned Counsel appearing for the petitioner, would first contend that the considerations that should weigh for according permission to the petitioner to cut the trees by the selection method should be gleaned from and only from Rule 8 of the Rules framed pursuant to powers conferred by Section 10 of the Act and in the present case what all have been adverted to in the proceedings of the respondents run extraneous to the factors set down in the said rule. In answer, Mr. K. Subramanian, learned Advocate General, appearing for the respondents, would submit that Rule 8 has got a place in that it sets down certain factors, which should be taken note of in granting permission for the cutting of trees by the selection method; and the conditions subject to which cutting of the trees by the selection method could be permitted and the said rule cannot be stated to be exhaustive of the guidelines for according permission to cut the trees by the selection method, and there are other guidelines portently implicit though not explicit in the very objectives, reasons and intendment behind the Act, namely prevention of indiscriminate destruction of private forests or denuding of the private forests or diminishing their utility as private forests. Learned Advocate General would submit that considerations which weighed with the respondents, in negating the request of the petitioner, must be held to be in tune with the objectives, reasons and intendment behind the Act and other relevant provisions therein, and such considerations must be held to be relevant and unassailable.

3. The Act got enacted to prevent indiscriminate destruction of private forests and interference with customary and prescriptive rights therein and for certain other purposes. Section 3(2) inhibits the owner of any forest and any person claiming under him from cutting trees or reeds or doing any act likely to denude the forest or diminish its utility as forest without the previous permission of the Committee, constituted u/s 2-A of the Act. The Committee before according the permission should certainly be guided by the objectives, reasons and intendment behind the Act, and other relevant provisions therein and it cannot act derogatory to them, Rules got framed pursuant to powers conferred by Section 10 of the Act. Rule 8 of the rules, which is being heavily relied on by the learned Counsel for the petitioner as setting down the only and exhaustive guidelines for granting permission for the cutting of trees by the selection method; runs as follows:

8(1). In granting permission for the cutting of trees by the selection method, the District Collector shall have regard to the following:

(a) In the case of private forests in the State, permission to cut the trees specified in column (1) of the Table below shall be granted only if the minimum girth at breast height is not less than the limits specified in the corresponding entries in column (2) - thereof

Trees Girth at breast height Cms. 1. Casuarina 60 2. Eucalyptus 60 3. Wattle 60 4. Silver oak 60 5. Pines 80 6. Other trees not mentioned in Schedule I 70 (G.O.Ms.No.1345, Forests and Fisheries dated 19th November, 1981).

(b) the boundaries of the area containing the marked trees permitted to be felled, shall be defined and demarcated clearly on ground.

(c) Holders of selection felling permits shall maintain a register showing the particulars of the trees felled, viz., serial number, species, girth at breast height, date of felling, details of timber extracted from each tree, date of transport of the felled produce and remarks if any. The register shall be liable for inspection by any Forest or Revenue Officer at any time and a copy of it shall be furnished to such authority as the District Collector may prescribe in the permit, after the completion of the operations in the forest.

(d) The timber or logs extracted shall bear at one of the end surfaces, serial number of the trees from which it was obtained and the sequence of log in the tree denoted by letters A, B, C.

(f) Selection felling should be limited to not more than seven trees per hectare of minimum girth specified in Schedule I to these rules and second felling should not be permitted in the same area within 15 years.

(g) Every permission granted under Sub-rule (1) shall be subject to the following conditions:

(a) The serial number of the tree felled shall be marked in a conspicuous manner on the stump

(b) If during the course of felling any unmarked tree is damaged, it shall not be removed from the area in which felling takes place without the previous permission of the District Collector, who shall before according permission, satisfy himself that the damage was inevitable.

(3) Permission granted for cutting of reed copes shall be subject to the following conditions:

(a) Felling and removal of any reed growth within one chain of either bank of any stream shall be prohibited

(b) not more than two thirds of the number of culms in a clump shall be cut.

(c) No culm less than two years old shall be cut.

(d) No culm shall be uprooted, but shall be cut at a height not exceeding twenty-two centimetres from the ground level.

(e) Every coupe in which reeds have been cut in any year shall be demarcated at four prominent corners with coupe at once showing the year of felling and the area felled.

(f) The permission shall be valid only for the period specified therein; the period shall not exceed one year.

Provided that none of the conditions mentioned above shall apply to permission granted for the cutting of reeds for the purpose of bona fide cultivation of food crops or plantation crops. Only such forests as not really covered by any thick growth shall be permitted to be cleared and the District Collector shall satisfy himself before such permission is granted-

(1) that there will be no denudation of the forest if the permission is granted and

(2) that the area sought to be cleared has been inspected by the Forest Ranger having jurisdiction over the area in which the forest is situated, if any, or by the Tahsildar or Deputy Tahsildar having jurisdiction over such area.

4. An appraisal of Rule 8 only indicates that in granting permission regard should be had for certain factors and nothing more. We cannot take that rule or construe it as exhaustive of all the factors that should weigh with the authority in considering the question of according or not according the permission. In granting the permission, the factors set down in Rule 8 will certainly have to be taken note of and adhered to. But the question of according or not according the permission cannot be scuttled down only by those factors. The authority seized of the question will have to decide it taking guidelines from the objectives, reasons and intendment behind the Act and other relevant provisions therein also. Rule 8 is only ancillary and subserve the purpose of the Act. Hence, we are not able to subscribe our support to the submission of the learned Counsel for the petitioner that Rule 8 should alone form the guideline and there should not be a travelling beyond it while considering the question of according or not according the permission to cut the trees by the selection method.

5. Then Mr. A.L. Somayaji learned Counsel for the petitioner, would submit that the petitioner applied for the cutting of 876 trees and it has enclosed a list for selection felling satisfying all the formalities and requisites as per the provisions of the Act and the Rules and there has been recommendations by the concerned officials for the issuance of a cutting permit for 799 trees as against the 876 trees and these recommendations have not at all been adverted to either by the 1st respondent or by the 2nd respondent in their proceedings, when they negatived the permission sought for by the petitioner. Learned Counsel for the petitioner would express a grievance that the considerations which have been done by respondents 1 and 2 are only general in nature and they do not specifically advert to the relevant aspects relating to the propriety of permitting

the cutting of the enumerated trees by the selection method, and it is a case of non-application of mind on the part of respondents 1 and 2, and this court must interfere in the said circumstances and give suitable directions. When we go through the proceedings of respondents 1 and 2, we find that this grievance of the learned Counsel for the petitioner is not without substance.

6. In the order passed by the 1st respondent, the reasons which weighed within it run as follows:

The land in S. No. 284/1A of Charangode village is notified as forest under the provisions of the Tamil Nadu Preservation of Private Forest Act, 1949. The applicant has applied for permission to cut 876 (eight hundred and seventy six) valuable trees of various species on the plea that these trees are matured. The land in S. No. 284/1A is covered under rich forest growth with tree cover of various species. The urge of the applicant to cut the trees is not warranted as these trees are not causing any damage or hindrance to any one in the area where there are no crops or plantation. It is therefore evident that the applicant's main intention to cut these trees is to get immediate financial gain rather than any other bona fide purpose for cutting of these trees. On the above score, the request of the petitioner deserves no merit to comply with.

(ii) The area is rich in forest growth with valuable trees. It is also rich in wild life movements. Destruction of forest growth and cutting of trees in such a large scale will naturally affect the free movement of the wild life in the area. Felling of trees will also affect the ecological balance of the area and it will be also disastrous to the environment as this area forms part of Nilgiris Biosphere region. On this account also, the request of the applicant cannot be complied with.

(iii) The slope of the land is above 25% gradient. In some portion of the area, the slope is 30% gradient. Felling of trees in such slope area in large scale will cause soil erosion. On this point also the request of the applicant deserves no merit for compliance.

(iv) The land in S. No. 284/1A of Cherangode village is covered u/s 17 of the Janmam Act, 1979. The applicant is not the absolute owner of the land. The trees are not planted by the applicant and they are naturally grown trees. Dispute among the title of the land under the provision of the Janmam Act, 1969 is pending in the Supreme Court for final disposal. On this score also, the request of the applicant cannot be complied with.

Taking up the order passed by the 2nd respondent, we find that it has recapitulated the four grounds which weighed with the 1st respondent, in an elaborate manner in the light of the contentions raised by the petitioner in appeal. The 2nd respondent has not added on any new reason or ground. There has been only expatiation and elaboration of the very same grounds dealt with by the 1st respondent. Elaboration has not improved the content and substance of the reasonings.

7. When an application for cutting the trees by the selection method is made, it is reasonable to expect a survey or an inspection being made of the enumerated trees for the cutting of which permission is sought for. In the instant case, we do not get any indication as to whether such a survey or inspection was made. However, we heard Mr. K. Subramanian, learned Advocate General appearing for the respondents saying that there is a report of the concerned District Forest Officer recommending the cutting of 360 trees out of 876 trees for the cutting of which permission was sought for. Learned Advocate General would submit that this recommendation is not binding on the 1st respondent. We are not at this juncture saying as to how far the recommendation of the concerned District Forest Officer would be binding on the first respondent. Suffice it to take note of, at this juncture, that there was a total omission on the part of the first respondent even to advert to this recommendation of the District Forest Officer, which is certainly a relevant proceeding. If there had been advertence to it, what would be the result, we need not visualise by ourselves and take a view. It is relevant to note here that the District Forest Officer is one of the members of the Committee, to do the consideration of the question. The rules enjoin an applicant for permission for felling of trees by the selection method, to furnish very many particulars, such as location, name, survey number, approximate area, a survey sketch, a certificate of demarcation, a list enumerating the trees proposed to be felled, their species and their girth etc. These requirements are being called for to serve a specific purpose, and there must be consideration of each one of them by the authority conferred with the power to accord permission. It is not possible to view them as empty formalities. There is no reference to any one of these relevant features by way of consideration of them either in the proceedings of the 1st respondent or in the proceedings of the second respondent. In our view, the consideration of the application for permission to cut the trees especially by the selection method under the provisions of the Act should not be done on a general and theoretical basis and it must be done only with reference to particular tree or trees or group of trees for the cutting of which permission is sought for. There should be specific advertence to the location and other relevant features of such tree or trees and further a consideration as to how far the cutting of them could be permitted, without violating the objectives, reasons and intendment behind the Act and the relevant provisions therein. Such a consideration is patently lacking in the present case. The four grounds put against the petitioner are general in nature and more on theoretical side. As already noted, we are not much wiser as to whether a survey or an inspection was done in this case. If done already, the result of it must have due consideration. If not done so far, it must be done and the result properly considered before disposing of the application of the petitioner. In the said circumstances, we must also hold that the proceedings of respondents 1 and 2 suffer from non-application of mind to relevant factors. These features oblige us to interfere in writ powers for the purpose of remitting the matter back to the 1st respondent for a reconsideration of the same. The very pronouncement in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, ,

relied on by the learned Advocate General appearing for the respondents, sets down the proposition that if the authorities have not borne in mind relevant considerations and irrelevant considerations have influenced the decision, the court may interfere in order to prevent a likelihood of prejudice to the public. We are not in a position to disassociate the petitioner from the array of interested public. The petitioner is vitally interested having sought for permission to cut the trees as per the provisions of the Act.

8. Learned Advocate General appearing for the respondents would also submit that the petitioner could not come within the category of being an owner or a person authorised by him and there is a dispute with regard to the ownership of the land and that dispute is awaiting a decision before the Supreme Court and that is also a factor which dissuaded the authorities from according the permission. We need not dwell much on this aspect because even the Supreme Court, by way of interim orders, has not inhibited the cutting of the trees and on the other hand has set down only conditions there for. Since, we have found that the considerations done by respondents 1 and 2 do not fit in with the concept of a proper and relevant consideration of the application of the petitioner for permission to cut the trees by the selection method, we are obliged to interfere and remit the matter back. We find that the learned single Judge has not approached the question from this angle and our view being different from that of the learned single Judge on the moot question of proper consideration of the application for permission to cut the trees, we allow this Writ Appeal, set aside the order of the learned Single Judge, and remit the application of the petitioner for permission to cut 876 trees by the selection method to the 1st respondent for a reconsideration of the same in the light of the observations and directions we have made in this judgment of ours. We hope that the 1st respondent will do the process of reconsideration with expedition. No costs.