
(2014) 06 SHI CK 0096
In the High Court Of Himachal Pradesh
Case No : CWP No. 2074 of 2014

Jai Ram

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citation : (2014) 06 SHI CK 0096

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Aruna Chauhan, Advocate for the Appellant; Anup Rattan, Additional Advocate General, Mr. Vivek Singh Attri, Deputy Advocate General, Mr. Ramesh Thakur, Assistant Advocate General for State and Mr. Rajinder Singh Thakur, Advocate for Respondent No. 4, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Sureshwar Thakur, J.—Janahan Beat of Balson Range, in, Tehsil Theog, District Shimla, was, opened for felling of trees, under the 10 years felling programme. The petitioner, being, the General Power of Attorney of land owners, in, the aforesaid beat, applied for felling of tress standing on private lands. The application alongwith the revenue documents concerned, was, submitted, to, respondent No. 4, who, forwarded the application, to, respondent No. 3, for carrying out demarcation of the land, enumeration of the tress, and, issuance of felling orders. Annexures P-1 and P-2, are, the letters forwarded, to, SDO (Civil), Theog, for carrying out demarcation of the land, in, the presence of forest officials. The SDO (Civil), Theog, further directed the respondent No. 5, to, carry out demarcation of the lands concerned, in, the presence of the forest officials. Despite, visits by the petitioner, to, the Office of the respondents, particularly, the office of respondent No. 5, for the fixing of a date for demarcation of the lands concerned, yet, respondent No. 5, is, averred, to, have through the Forest Kanungo, Deha issued, a, certificate on 30.3.2013, countersigned by respondent No. 5, disclosing therein, that, the demarcation of lands, could not be carried

out, before 31.3.2011, owing to heavy work load and shortage of time. The said certificate, is, annexed, as, Annexure P-3. The petitioner feels aggrieved by the inaction, on, the part of the respondents, to, carry out demarcation of the land, of, the private lands owners, which has sequelled the effect of the respondents, being, consequently constrained, to, enumerate trees and issue felling orders. The petitioner avers, that, necessary directions be issued, to, the respondents for the carrying out of demarcation and for completion of other codal formalities.

2. The respondents filed a detailed reply to the writ petition, wherein, it was contended that private lands concerned, were to be demarcated before 31.3.2011. However, since the demarcation of the private lands concerned could not, be, carried out till 31.3.2011, therefore, the felling permission could not, be, accorded in favour of the petitioner, by the DFO, Theog. Reference has been made to Rule 4 Sub Rule 4 of the Himachal Pradesh Forest Produce (Regulation of Trade) Rules, 1982, whose contents, are, extracted hereinafter,

4(4) It will be the responsibility of the owner or his legally authorized representative to get the area demarcated expeditiously to enable the agent to fell and covert the trees within time.,

to succor the contention, that, it, was the responsibility of the petitioner, to, get the area demarcated expeditiously, hence, when he failed to get the area demarcated expeditiously, therefore, his omission, has, the consequent effect of, its, constraining and fettering the respondents, to, proceed, to, issue felling orders, which otherwise could have been issued, during the year 2011-2012, by the Principle Chief Conservator of Forests, and, during the years 2012-2013, by the Additional Chief Secretary, Forests. In short, the entire controversy inter se the parties hinges upon the interpretation, to, be afforded to Rule 4 Sub Rule 4 of the Himachal Pradesh Forest Produce (Regulation of Trade) Rules, 1982, which enjoins a responsibility upon the owners or his authorized representatives to get the area demarcated expeditiously. The duty, as, cast upon the petitioner, obviously had come to be complied with, by the petitioner as manifest from the fact of his having applied, for, demarcation, within the time stipulated. However it, is, evident from copy of letter dated 28.2.2011 forwarded to SDO(Civil) Theog by the DFO, Theog, for carrying out demarcation of the private lands concerned, as, a prelude to enumeration of trees, and, for issuance of felling orders, that, yet the same remained un-acted upon. Hence, it cannot be inferred that, there, was, any lapse inertia, eschewing of or abandonment of responsibility, on, the part of the petitioner, in, respect of getting the private lands concerned demarcated, as such, the rule aforesaid, cannot, be penally attracted against the petitioner. On the other hand, it appears that, in, the light of certificate, comprised, in, Annexure P-3, dated 30.3.2013, that, hence, there was absolute apathy, inertia and abnegation of duties, on the part of the respondents. The reason as divulged, in, Annexure P-3, of the respondents being constrained, more particularly, respondent No. 5, to, carry out demarcation of the private lands, concerned, is, of heavy work load and shortage of time. Even, if, there

was pressing or emergent work, prevailing at the relevant time, and, its acting as a deterrent, in, carrying out the demarcation of private lands concerned, it, ought to be conveyed to the petitioner immediately, rather, than belatedly on 30.3.2013. The petitioner has been made to suffer. He has been harassed and put to agony, on account of indolence and inertia on the part of respondent No. 5, to, carry out demarcation of the private lands, concerned. His omission, to, do so, deterred the DFO, Theog, to, issue felling orders. Hence, it is not now open to the respondents, given the inertia and apathy of respondent No. 5, also, a functionary of State Government, to, contend, on, the score of Rule, aforesaid, that, hence, there was any abandonment or waiver of responsibility, cast under the Rules upon the petitioner, especially when the facts, as, highlighted hereinabove, manifest otherwise. As a sequel, when, the respondents, also, contend that the necessary felling permission can be granted by the Additional Chief Secretary, Forests. Consequently, this Court, is, of the view that the inaction and administrative apathy of the respondent when led to the agony of the petitioner, it, be condoned, by the respondents being directed to carry out demarcation of the land of the petitioner expeditiously and consequently, theirs according approval for deviation of felling of trees on the strength of the application, submitted by the petitioner before the respondents. The view, as, adopted by this Court, in, directing the respondents, to, accord approval for deviation of felling of trees, attains succor and momentum from a decision reported in CWP No. 10043 of 2011 in case titled as Shri Narender Dutt Sharma versus State of H.P. & others, and affirmed, in, a decision comprised in LPA No. 342 of 2012, titled as State of H.P. & Others versus Narinder Dutt Sharma, wherein the Hon"ble Court, had, while attributing responsibility for delay, in, carrying out the demarcation of the private lands, concerned, to, the functionary of the State concerned, had hence, made direction for the according of approval by the respondents, for, deviation of felling of trees. Concomitantly, the view, as, adopted by this Court, in, ordering, so, reiteratedly gains succor and momentum. In upshot, it is directed that the respondent No. 5 shall expeditiously carry out the demarcation of the private lands, concerned, and, on receiving the demarcation report of respondent No. 5, the respondents No. 1 to 4 shall, as, directed hereinabove, accord approval for deviation of felling of trees.

In view of above observations, present petition stands disposed of, as also, pending application(s), if any.