

(2009) 07 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 12849 of 2009

Jyothi Brothers

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2

Citation : (2009) ILR (Kar) 4157 : (2009) 6 KarLJ 91 : (2010) 1 KCCR 413

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Basava Prabhu S. Patil Associates, for the Appellant; Basavaraj Karedy, Principal Government Advocate, for the Respondent

Judgement

P.D. Dinakaran, C.J.—The challenge in the above writ petition is to the demand of Rs. 38,30,45,306.00 by proceedings dated 6/28.3.2009 towards the damage/loss caused to the Government on account of illegal mining by the petitioner herein over an extent of 96 acres of forest land out of 100 acres leased out to him in Thirthampura North West Extension State Forest under Mining Lease No. 2363, without obtaining the forest clearance as contemplated u/s 2 of the Forest (Conservation) Act, 1980 (for short, the FC Act).

2. The grounds of attack against the impugned demand dated 6/28th March, 2009 are that:

(i) the petitioner could not be found fault with, because mining operations are carried out in the impugned 96 acres of forest land only on the basis of Mining Lease No. 2363 granted by the competent authorities; and

(ii) in any event, the impugned demand of Rs. 38,30,45,306.00 towards damage/loss caused to the Government on account of alleged illegal mining operation without obtaining prior approval u/s 2 of the FC Act, was made without giving an opportunity to the petitioner before assessing the quantum.

3. Neither the learned Counsel for the petitioner nor the learned Principal

Government Advocate disputes the fact that the impugned 96 acres of mining area leased to the petitioner is located in the forest area as per the Mysore Gazette Notification dated 9th September, 1938 issued by the Government of His Highness the Maharaja of Mysore, General and Revenue Departments. If that be so, to say that the petitioner had undertaken mining operation only based on the lease granted by the respondents over the entire 100 acres of land, despite the fact that 96 acres of land is located in the forest area, cannot be accepted, as ignorance of law is not an excuse.

4. That apart, the Special Secretary to Government, Forest, Environment and Ecology Department, by proceedings dated 7.2.2004 in order to process the application for renewing the impugned lease submitted by the petitioner, called upon the petitioner to obtain a clearance certificate u/s 2 of the F.C. Act and directed to submit the proposal before the Principal Chief Conservator of Forests, Bangalore to obtain Forest Clearance under the F.C. Act. But, the petitioner, instead of submitting the proposal for clearance under the F.C. Act, straightaway approached the Director of Mines and Geology, with the help of recommendation letters from the Tahsildar, C.N. Halli, vide letter dated 8.9.1992 and the Deputy Commissioner, Tumkur District, Tumkur, vide letter dated 22.1.1993 recommending that the leased area is a revenue land. It is therefore, clear that it is only based on those letters, the impugned lease was renewed in favour of the petitioner.

5. It is therefore clear that the petitioner had committed fraud by colluding with the then Director of Mines and Geology, Tahsildar, C.N. Halli and Deputy Commissioner, Tumkur District, in getting the impugned lease granted for mining operation over an extent of 96 acres of forest land without obtaining the prior approval contemplated u/s 2 of the FC Act. Hence, the Forest Department has rightly initiated action for assessing the damage/loss caused by the petitioner by the said illegal mining. Therefore, the defence of the petitioner that he had undertaken the mining operation on the basis of the recommendation made by the authorities, cannot be sustained. Hence, we do not agree with the first contention of the petitioner and the same is rejected.

6. It is settled law that fraud vitiates the entire proceedings. The Hon'ble Supreme Court in the case of Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors. reported in JT 2005(7) SC 530 while dealing with effect of fraud, held as follows:

14. Fraud is proved when It is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

15. This aspect of the matter has been considered by this Court in Roshan Deen Vs. Preeti Lal, ; Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, ; Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, .

16. Suppression of a material document would also amount to a fraud on the Court. See *Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others*, and *S.P. Chengalvaraya Naidu's case* (supra).

17. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav's case* (supra).

18. ...In *Lazarus Estate Ltd. v. Beasley* (1956) I QB 702, Lord Denning observed at pages 712 and 713. "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". In the same judgement Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722).

19. ...These aspects were recently highlighted in the State of Andhra Pradesh and Anr. v. T. Suryachandra Rao 2005 (5) Scale 621.

7. The said ratio is also followed by the Apex Court in the case of *Bank of India and Another Vs. Avinash D. Mandivikar and Others*, held as follows:

...When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. This Court in *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.* JT 2005(7) SC 530 dealt with effect of fraud. It was held as follows in the said judgment.

8. While thus holding that the petitioner has carried on illegal mining in the impugned 96 acres of forest land by fraud, collusion and suppression of facts, they are liable to pay the damages and costs on account of the said illegal mining in the forest land without obtaining prior approval u/s 2 of the FC Act, we direct the Government to take stringent action against the then Director of Mines & Geology, Tahsildar, Chikkanayakanahalli taluk and Deputy Commissioner, Tumkur District, Tumkur.

9. With regard to the second contention that the petitioner had no opportunity before quantifying the amount, the learned Principal Government Advocate is not in a position to satisfy that the petitioner was given an opportunity before assessing the quantum of Rs. 38,30,45,306.00 towards damage/loss caused by the petitioner by illegal mining. Therefore, we quash the demand dated 6/28.3.2009 of the Deputy Conservator of Forests, Tumkur Division, Tumkur, for the reason that the petitioner was not given an opportunity before quantifying the said amount of the damage/loss caused to the Government, with a further direction that the petitioner shall be given an opportunity before assessing the quantum under the different heads as contemplated under the statute and recover the same within a period of three months from the date of the receipt of the order.

10. Writ petition is disposed of with the above direction.