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(1996) 11 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2231 of 1990

Khanduja Brothers APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 52, 53, 54, 55, 66
Maharashtra Land Revenue Code, 1966 — Section 44, 45

Citation : (1997) 99 BOMLR 5

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—In this petition, an order passed by the Sub Divisional Officer, directing the confiscation of 2000 bags of the charcoal is called in question. The said order was confirmed by the appellate authority, i.e., the Resident Deputy Collector as also the revisional authority, i.e., the Additional Commissioner.

2. A Talathi of Balajinagar found that there was a coal kiln being operated in the field of one Timaji Jagtap, being survey No. 23 of village Yelabara. This was on 14.9.1989. He did not waste any time and proceeded to stop that kiln. He also executed a panchanama and gave the kiln and the charcoal that was being prepared in the same, in custody of one Rudrashankar Mataprasad Shrivastava who was allegedly a representative of one Khanduja Brothers of Nagpur, the present petitioner. He found that there was no valid permission with the said Rudrashankar Mataprasad Shrivastava in holding trial kiln, muchless in the field belonging to the said Timaji. Curiously enough, the said field''s owner has nowhere figured in the further proceedings and is not even a party here. On the report having been made to the Naib Tahsildar by the said Talaati, the Naib Tahsildar immediately sprang into action and served the notices. He recorded the statement of the said Rudrashankar Mataprasad Shrivastava. In that statement,

there was a clearcut admission by the said Rudrashankar that there was no permission obtained for running a charcoal kiln. He admitted that he was the representative of the petitioner, namely, M/s Khanduja Brothers, and that the said kiln was constructed and being run on behalf of his employer. He also accepted that about 2000 gunny-bags of charcoal were prepared, out of which a quantity of about 1000 bags of charcoal was taken out. He claimed that the timber for this charcoal was purchased in the Forest Department auctions at Ner and/or Ghatanji, and that the said timber was transported by a truck to Balaji Nagar where the kiln was run. It seems that the said Rudrashankar, Shrivastava filed before the Naib Tahsildar documents like receipts passed by Timaji for Rs. 200/- as the charges to allow his land for preparation of coal, the sketchmap, the 7/12 extract of the concerned field as also the permission granted by the Assistant Conservator of Forests dated 17.3.1989 to lift up the timber purchased in the auctions. The last document filed was a No Objection Certificate by the Gram Panchay at Yelabara for running a coal kiln. On this basis a report came to be made by the Naib Tahsildar, Yavatmal, to the Sub Divisional Officer. In that report, it was pointed out that the kiln was built and run without the necessary permission of the Revenue Department and, thus agricultural land was used unauthorisedly for the nonagricultural purposes. For this nonagricultural use of the agricultural land, a penalty and fine was proposed to be inflicted against the said Rudrashankar Mataprasad Shrivastava. This was done by report dated 13-10-1989. It seems that this report was submitted to the Tahsildar who, by his endorsement dated 17-10-1989, agreed with the proposals and probably put the same before the Sub Divisional Officer who passed a cryptic order of inflicting fine of Rs. 3240/-. The Sub Divisional Officer did not stop here, but proceed to confiscate 80000 Kgms of charcoal, which was attached on 14-9-1989 by the Talhati. It was also directed that the said coal should be auctioned and the proceeds thereof should be deposited with the Government. Now. it is also seen from the record that this action was informed by the Naib Tahsildar, Yavatmal, to the Range Forest Officer, Jodmaha, by his communication dated 24-10-1989, and he was informed that he should not issue any transit passes in respect of 80000 Kgms of charcoal. The Revenue Inspector of Yelabara was instructed to recover the fine, while the petitioner was informed of the action taken by the Sub Divisional Officer.

3. An appeal came to be filed against this order before the Resident Deputy Collector who dismissed the same, on the ground that no necessary permission was obtained for non-agricultural use of the agricultural land. The action, therefore, was endorsed. There was a second appeal filed before the Additional Commissioner. However, the second appeal was dismissed. This action of confiscation and the subsequent two order are challenged here in this writ Petition.

4. Shri V.S. Dastane, learned Counsel appearing on behalf of the petitioner, attacked these orders on various grounds. In support of the petition, he firstly submits that before taking the confiscation action, the petitioner was never heard

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and, therefore, the action was bad in law. According to him, even if the Naib Tahsildar recommended the confiscation of the charcoal before the final auction was taken, the Sub Divisional Officer was bound to hear, because it was the Sub Divisional Officer who ultimately had ordered the confiscation. According to him, the confiscation being a penal action, the opportunity to show cause was bound to be given to the petitioner and because of the fact that such opportunity was not granted, the whole action is rendered illegal and void. The second leg of argument of Shri Dastane is that under the provisions of the Maharashtra Land Revenue Code, there was no scope for such a confiscation. He pointed out that there was not a single provision in the Maharashtra Land Revenue Code to support confiscation on account of the non-agricultural user of the agricultural land. He has taken me through the provisions of Sections 44 and 45 of the Maharashtra Land Revenue Code and pointed out that both these Sections are completely silent about any power to confiscate for the said non agricultural use of the agricultural land. Thirdly, Shri Dastane submitted that the petitioner has suffered for the confiscation and the further refusal on the part of the Sub Divisional officer to release the coal has resulted into the coal being wasted.

5. Shri R.R. Deshpande, learned Assistant Government Pleader appearing on behalf of the State, however, pointed out that there is an ample power in the Revenue Officers to take any preventive action u/s 66 of the Indian Forest Act. He further pointed out that the Talhati had taken such a preventive action by attaching the coal-kiln and it is this very action which is ultimately finalised by the Sub Divisional Officer to prevent any commission of the forest offence. Even otherwise, the learned Assistant Government Pleader submitted that it was apparent that the preparation of the charcoal was wholly without any valid permission. Shri Deshpande further submitted that when the permission was granted for preparation of the charcoal, the Range Forest Officer had specifically put a condition that the necessary rules should be followed and the permission by the Revenue Department to use the agricultural land for this purpose was one such condition. According to the learned Assistant Government Pleader, admittedly no such permission was given and, therefore, the petitioner was wholly unjustified in preparing the charcoal and such preparation would amount to a forest offence and in that view the Revenue Officers were justified in ordering the confiscation of the charcoal. Shri Deshpande further pointed out that the petition was on behalf of Rudrashankar Mataprasad Shrivastava whose relation with M/s Khanduja Brothers is not established at all and, therefore, the whole petition was liable to be dismissed.

6. Considering the last contention first, during the pendency of the petitioner, the petitioner has pointed out that M/s Khanduja Brothers was a proprietory concern and Rudrashankar Mataprasad Shrivastava was its Manager.; that the petition has been filed by Rudrashankar as a representative and on behalf of M/s Khanduja Brothers. Shri Dastane pointed out that an amendment has been made changing the cause-title of the petition and accordingly M/s Khanduja Brothers has been shown to be the petitioner. In that view of the matter and in view of the

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amendment to the petition, the objection raised by the learned Assistant Government Pleader has to be rejected.

7. It will be seen that initially M/s Khanduja Brothers seems to have purchased in an auction, some timber, which was held on 17-9-1989. It is the case of the petitioner that the said timber was carried by them to Balaji Nagar for preparation of charcoal and they obtained permission, which permission was granted to them by the Range Forest Officer on 24.10.1989. Annexure-B to the petition is the permission granted. In that permission, it is stated that a coal kiln would be permitted to be set up in field survey No. 23 of Mouja Balaji Nagar and the said coal kiln should be of temporary nature. It is recorded that in pursuance of an application to that effect, the Forest Department had effected the inspections. On the basis of those inspections, the said permission came to be granted. Ordinarily, this permission is granted under the Bombay Transit of forest Produce (Vidarbha Region, Swarashtra & Kuchch Areas) Rules, 1960, and more particularly Rule 23 thereof. It seems that an application has been made by the petitioner and the permission has been granted by Range Forest Officer. In this permission, a specific condition has been imposed that unless a further permission is granted for the nonagricultural use by the Revenue Department, the transit passes for preparing the charcoal would not be granted.

8. Now, it is to be seen that on the date when this permission was granted, i.e., on 24.10.1989, there was no question of either preparation of coal or of any permission by the Revenue Department for the nonagricultural user. This will be clear from the fact that the coal was already got prepared on 14.9.1989 itself. It was, therefore, obvious that after the said coal, which was unauthorisedly prepared by the petitioner, the petitioner sprang into action and surreptitiously obtained the permission probably with the co-operation of an obliging forest Department personnel. The only redeeming factor which appears to be that there has been an application made to the Forest Department on 8.7.1989 which application is followed up by second application dated 23.10.1989. Thus, it is clear that the petitioner merely filed an application on 8-7-1989 for the permission and then straightaway proceeded to prepare the coal without bothering to wait for such permission having been granted under the relevant rules, referred to above. It was only by the vigilant Talhati that the matter was unearthed and the coal and the kiln were seized and, therefore, the petitioner probably went on and followed up his application and ultimately obtained a bogus permission on 24.10.1989. Yet, it is the case of the petitioner that the coal was prepared on the basis of this permission, and obviously the case of the petitioner is false. The so-called permission granted by RFO was also bogus, because the kiln was already built and the coal manufactured before the date.

9. It will be thus seen that it was after the coal was ordered to be confiscated by the Sub Divisional Officer by his order dated 17-10-1989 that, for the first time, a bogus permission was obtained from the Forest Department. In the petition, in paragraph No. 1 itself, the petitioner has referred to this permission dated

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24.10.1989. In paragraph No. 2, however, the petitioner made a very strange statement. The statement runs like this:-

Your petitioner submits that armed with the permission from the Gram Panchayat, Yelebara, your petitioner with the full knowledge of the Revenue Authorities, manufactured charcoal of about 80000 K.G. in quantity at the aforesaid site.

One fails to follow as to how a permission dated 24-10-1989 could arm the petitioner to manufacture the coal on or before 14.9.1989. That apart, the statement is misleading - because Gram Panchayat has got nothing to do with any such permission. Thus, it is obvious that the coal, which was prepared on or prior to 14.9.1989 was without any permission whatsoever, either of the Forest Department or of the Revenue Department, and the Revenue Department had not authorised non-agricultural use of the agricultural land of survey No. 23 of Yelebara on that date. Thus, the petitioner had acted in patent disregard of the Rules and Regulations in that behalf. It is probably because of this reason that Rudrashankar Mataprasad Shrivastava has not referred to any permission by the Forest Department, which has been referred to in the petition. One then fails to understand as to why this permission has been relied upon and annexed in this petition, when it was wholly irrelevant for the purpose of the present controversy.

10. In paragraph 1 at page 4 of the petition, there is a reference to the permission dated 24-10-1989. The sentence is like this:

Your petitioner thereafter applied to the Authorities of the Forest Department for grant of permission to convert the aforesaid wood into charcoal, which permission came to he granted vide the communication dated 24.10.1989. Annexed herewith and marked as Annexure-B is a copy of the aforesaid communication dated 24.10.1989 granting permission to your petitioner to convert the wood into charcoal.

The further contention is rather interesting :

Your petitioner thereafter obtained on leasehold rights the agricultural land from one Shri Tiraaji Jagtap admeasuring around half acre in area being the part and parcel of the field S.No. 23, situate within the jurisdiction of the Gram Panchayat, Yelebara, Tahsil and distt. Yavatmal. Your petitioner thereafter applied to the gram Panchayat Yelebara for permission to set up a coal manufacturing kiln on the aforesaid agricultural land which permission came ''to he duly granted vide ''no objection'' certificate issued by the Gram Panchayat, Yelebara. Hereto annexed and marked as Annexure-C to the instant Writ Petition is a copy of aforesaid ''no objection'' certificate dated 12-9-1989.

Thereafter, in paragraph No. 2, the petitioner proceeds to mention that armed with this permission from the Gram Panchayat and with the full knowledge of the Revenue authorities, he proceeded to manufacture the charcoal. All this prima facie gives an impression that as if firstly permission was obtained from the

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Forest Department, thereafter the leasehold rights were obtained from the said Timaji and thereafter a No Objection Certificate was obtained from the Gram Panchayat. These are factually incorrect statements, almost leaning on falsehood. The statements are undoubtedly misleading because the said No Objection Certificate by the Gram Panchayat is dated 12.9.1989. There is, thus, a clear attempt on the part of the petitioner to mislead the Court. Relying upon and filing of the permissions of Forest Department and Gram Panchayat on record could, in my opinion, mislead the Court. In view of these acts by the petitioner to obtain bogus permission and misleading statements, which arc factually found to be incorrect, there cannot be any leniency shown to the petitioner, nor could the petitioner be held to be entitled to any relief, muchless under Article 226 of the Constitution of India. It is trite law that the petitioner must come with clean hands; he must be fair and where the petition itself is based on or is tried to be put up on the crutches of falsehood, ugly tactics and factually incorrect statements, the petitioner must suffer. The petition is liable to be dismissed on this ground alone.

9. Shri Dastane, however, submits that this appears to be the drafting errors. That may be so. The Court does not read any intention. However, the fact remains that such incorrect statements do have a tendency to mislead.

10. Shri Dastane further submits that, however, even the action on the part of the Revenue Department was wholly without jurisdiction in confiscating the coal. Indeed, Shri Deshpande, learned AGP, tried to rely on the provisions of Sections 44 and 45 of the Maharashtra Land Revenue Code. Those provisions deal only with the diversion of the land and the use of the land. Those provisions do not, in any manner, arm the Revenue Officers with a power to confiscate such forest produce which have been prepared in contravention of that provision. The contravention might attract some other consequences like recovery of fine etc. Indeed, a fine has been ordered in this case which finding has not been challenged by Shri Dastane at all. It is stated at the Bar that the said fine has already been paid. The position, however, remains that under those provisions, there is absolutely no power, Shri R.R. Deshpande, learned AGP, tried to support this confiscation on the ground of Section 66 of the Indian Forests Act. He submitted that under that provision, every forest officer, police officer and revenue officer was duty bound to prevent and had a discretion to interfere for the purposes of preventing the commission of any forest offence. The language is only in terms of a duty imposed on these officers. The provision does not confer any power to confiscate the goods. There are other Sections in the Forests Act which provide for the seizure of the property and its confiscation, like Sections 52 to 55. Section 52 deals with confiscation and forfeiture of forest produce, tools, bus, vehicles and catties etc. However, it is clear that in this matter there is no forest offence registered, nor is there any seizure or confiscation done by any forest officer or police officer. Section 52 deals with the powers only of the Forest officer and/or police officer to seize, forfeit or confiscate such forest produce. Therefore, even Section 52 onwards in Chapter IX have no application and are of

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no use and cannot be pressed into service by the learned Assistant Government Pleader.

11. There is a power of confiscation of the property provided via Section 61A of the Indian Forests Act. However, that power lies only with the competent authority under the Indian Forests Act. There is a special modality and procedure provided for that confiscation and it is an admitted position that the course as directed by that section was not undertaken in the present case. Then it has to be observed only by way of observations that confiscation of the property by the Sub Divisional Officer was without jurisdiction. The two appellate orders do not realise this legal aspect and are totally silent in that behalf. In fact, beyond saying that the said preparation of charcoal was illegal, the appellate orders do not say anything. However, as has already been pointed out, the petitioner himself cannot stand on his own legs and the petition is bound to be dismissed for the reasons already shown above.

12. It was specifically enquired by this Court as to what is the state of affairs of the said charcoal. Both the learned Counsel were unanimously stating that there only remains some coal-dust. The quantity of 80000 Kgs. is very substantial quantity. One fails to follow as to why such National wealth was allowed to turn into coal-dust, which would be of no consequence or use to anybody. In fact, the Sub Divisional Officer should have realised that initially the permission dated 24.10.1989 was bogus and the preparation of coal was an offence because in that the said person was preparing the said coal without any valid permission and thereby breaching the rules, Breach of the rules is also an offence. Be that as it may, the revenue officers should have been vigilent enough to report the matter to the forest officers and/or to report the matter to the police. This apathy on the part of the revenue officers is rather intriguing. It seems that the revenue officers have informed the action regarding the confiscation to the Forest Department and more particularly to the Range Forest Officer. It is further intriguing that, that officer should have kept quiet. Had the offences been registered properly, there could have been the confiscation of this forest produce in time saving it from pilferage or from becoming dust, and the guilty could have been brought before the law, but that unfortunately has not been done. The Revenue Department as well as the Forest Department would be well advised to enquire into this matter, thoroughly, in the light of observations in para 8 of this judgment as also the other relevant observations and to punish the guilty, if so found.

13. In the result, the petition has no merits and it is liable to be dispersed and is hereby dismissed with costs.

A copy of this judgment shall be sent to the Commissioner, Amravati Division, Amravati, and the Chief Conservator of Forest, Maharashtra State.

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