

(2012) 06 KAR CK 0148
In the Karnataka High Court
Case No : Criminal Petition No. 2664 of 2008

K.T. Girianna

APPELLANT

Vs

The Range Forest Officer, Kaggalipura Range, kaggalipura

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Karnataka Forest Act, 1963 — Section 33 (2) (iii-a), 73 (d)

Citation : (2012) 5 KarLJ 49

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : Sajan Poovayya for M/s. Poovayya and Company, for the Appellant;
Vijaya kumar Majage, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—The petitioner has sought for quashing of the proceedings in C.C. No. 2176 of 2007 pending on the file of the Chief Judicial Magistrate, Bangalore Rural District, Bangalore. The Range Forest Officer registered a case in FOC No. 153/06-07, on 26-9-2006 for the offence punishable under Sections 33(2)(iii-a) and 73(d) of the Karnataka Forest Act, 1963 and Rules 25(1), 25(2), 25(3) and 43 of the Karnataka Forest Rules, 1969 and also Section 2 of the Forest (Conservation) Act, 1980.

2. The allegation in the complaint is that, the petitioner had encroached an area to the extent of 6 acres 38 guntas in Sy. No. 42 situated at Thurahalli Minor Forest Area which constitute an offence punishable u/s 33(2)(iii-a) of the Karnataka Forest Act and Rule 25 of the Rules made therein.

3. The case of the petitioner is that, the erstwhile Maharaja of Mysore, by a Gazette notification dated 21-8-1934 out of 180 acres 27 guntas of land in Sy. No. 42 had notified 159 acres 15 guntas of land as minor forest area and the remaining area remained as gomal land. In the year 1955, the land to the extent of 10 acres was granted to M.R. Narayan Singh, the predecessor in title of the

petitioner, from whom this petitioner has purchased the land in the year 1972 under a registered sale deed. Even before the purchase of land, the phodi was made and survey numbers were given as 70 and 71. However, the case of the complainant was that the petitioner has encroached land to the extent of 6 acres 38 guntas out of Sy. No. 42 and initiated proceedings.

4. Learned Counsel for the petitioner submitted that, even according to the complainant, the extent of land notified as minor forest was 159 acres 15 guntas of land out of 180 acres 27 guntas of land and still 20 acres of land remained as gomal land, out of which, the predecessor of title of the petitioner was granted 10 acres and out of the said 10 acres, if the allegation is that this petitioner has been in possession of 6 acres and 38 guntas, it will not become a forest land. It is also submitted that, at undisputed time, the name of his vendor was entered in the revenue records even before this petitioner purchased the land, phodi of the land was made. It was a gomal land, only in the year 2006-07 complaint is filed alleging encroachment. Learned Counsel for the petitioner also submitted that, in the proceedings before the Deputy Commissioner, Bangalore this issue has been decided. Deputy Commissioner has passed the order dated 15-3-2007, wherein he had held the encroachment.

5. As against the order dated 15-3-2007, the matter had come up before this Court in W.P. No. 12979 of 2007. This Court set aside the order of the Deputy Commissioner and remanded it to the Deputy Commissioner for fresh enquiry. After the remand, the Deputy Commissioner directed the Tahsildar, Bangalore to furnish a report after making a spot inspection and conducting survey. The Tahsildar, in pursuance of the same, submitted a report dated 3-2-2012 inter alia stating that the total extents of land in Sy. No. 42 is 185 acres 17 guntas and out of which, 159 acres 13 guntas of land is notified as minor forest area and the remaining land is gomal land. On the basis of the report of the Tahsildar, the Deputy Commissioner, by an order dated 15-2-2012 held that there is no encroachment and accordingly, he passed the order. As far as this passing of order is concerned, learned Government Pleader does not dispute. Further he submits that steps are being taken to file an appeal.

6. In view of the order of the Deputy Commissioner, till the said order is set aside, the fact remains that there is no encroachment. Even otherwise also, according to the complainant, the extent of minor forest area notified was 159 acres 15 guntas of land. If the total extent of land is 180 acres 27 guntas, then also there is 16 acres available and what is purchased by the petitioner and what is granted to the predecessor of title is only 10 acres. It is not the case that there is any other encroachment other than Sy. No. 42 and if the petitioner has got 10 acres in Sy. No. 42 and if it is taken on the basis of the notification in the year 1934, there is 10 acres available. Accordingly to the Tahsildar's report, more than 10 acres of land is available. In view of these undisputed facts, it is difficult to accept the complainant's contention that there is encroachment by the petitioner to the extent of 6 acres 38 guntas as is not supported by any

documents and much less when there is no order of the Deputy Commissioner holding that there is no encroachment, as long as that order stands, the allegation of encroachment is without any basis.

7. The contention was raised by the learned Government Pleader that there is 177 acres of forest land and not 159 acres and 15 guntas. Even if that is taken into consideration, it does not prove that there is any encroachment, as still more than 6 acres land remains. In view of the above, just because the complaint is filed, it does not automatically lead to prosecution. I find that there is merit in the contention raised by the learned Counsel for the petitioner. Hence, the petition deserves to be allowed.

Accordingly, petition is allowed. Proceedings in C.C. No. 2176 of 2007 stands quashed. Liberty is reserved to the forest and revenue authorities to conduct a joint survey, if they so desire with notice to the petitioner and based on the survey if there is any need to take action, it is open for them to do so.