
(2006) 01 MP CK 0095

In the Madhya Pradesh High Court

Case No : Writ Petition No. 472 of 1997

Kunjilal Gupta and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 27, 29, 39

Citation : (2006) ILR (MP) 358 : (2006) 3 MPLJ 254

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : A.G. Dhande, with Rahul Rawat, for the Appellant; Alok Pathak, for the Respondent

Final Decision : Allowed

Judgement

Ms. S.R. Waghmare, J.

The petitioners being aggrieved by the seizure of their trucks bearing Registration Nos. MP-19/1752 and MBA 8952 by the respondent No. 2/Director, Sanjay Rashtriya Udyan, Sidhi u/s 39 of the Wild Life (Protection) Act, 1972, for the alleged acts of offence committed under sections 27 and 29 of the said Act have filed the present petition for quashment of the order dated 17-1-1997 (Annexure P/6) and for the release of their trucks bearing Registration Nos. MP-19/1752 and MBA 8952.

The brief controversy pertains to the seizure of the trucks belonging to the petitioners which were being used for the transportation of goods of one Smt. Urmila Singh, wd/o Jainarayan who had the licence and permission to extract the sand under Rule 38(2) of the M.P. Minor Mineral Rules, 1996 from the Gram Panchayat, Akori, District-Sidhi for excavation over Khasra No. 391 by order dated 22-8-1996. The respondent No. 2/Director, Sanjay Rashtriya Udyan, Sidhi however seized the vehicles on 24-12-1996 despite having respective transit passes, pit passes and other documents as alleged by the petitioners. The trucks

were actually seized by the Game Range Officer and the other forest employees and notices were duly issued to the petitioners. The statements of the drivers were recorded on 3-1-1997 (Annexure P/4) and despite applications submitted by the petitioners to the Range Officer, Soan Gariyal Abhyaran, Sidhi for release of the trucks on 3-1-1997, the respondent No. 2/Director, Sanjay Rashtriya Udyan, Sidhi passed orders on 17-1-1997 for seizure of the said trucks stating that they were transporting sand from Soan Gariyal Sanctuary in violation of provisions of sections 27 and 29 of the Wild Life (Protection) Act, 1972 and as a result the trucks had become the property of the State Government as per section 39 of the Act (Annexure P/6) and hence the present petition.

Counsel for petitioners has contended that the petitioners had submitted to the enquiry and filed the lease according to which Smt. Urmila Singh was carrying on the extraction of sand. The lease was issued by competent authority and the Gram Panchayat, Akori had also granted permission for the trade quarry. The permits, licence and pit passes and transit passes issued by the lease holders to the drivers of the trucks were all in accordance with the law. However, there was no certified map notifying and demarcating the specific limits of the area declaring it to be a Sanctuary and in the absence of the final notification u/s 26-A of the Act, the respondents could not have alleged breach of the notification dated 23-9-1981 and nor did the proclamation of the Collector, Sidhi dated 5-11-1996 call for any penal action against the petitioners. The respondents had also lost sight of the fact that the petitioners were merely transporters of sand on behalf of the lease owner Smt. Urmila Singh and if at all any action was to be taken in consequence of violation of sections 27 and 29 of the Act, the respondent No. 2/Director ought to have proceeded against the lease owner Smt. Urmila Singh and taken action against the Gram Panchayat which had granted permission for quarrying in notified area. The petitioners could not be held responsible for the said violation. The power to grant excavation permission was exercised under Rule 38(2) of the M.P. Minor Mineral Rules, 1996 by the Gram Panchayat and the petitioners had not committed any offence as alleged.

Counsel for the respondent/State on the other hand has refuted the contentions of the counsel for petitioners stating that the petitioners' trucks were illegally excavating sand from Soan River bed which come in the boundaries of the Soan Gariyal Sanctuary and thus damaged the habitat of the wild life. The impugned order passed in accordance with the provisions of the Wild Life Protection Act, 1972 was within the competence of respondent No. 2/Director.

The respondent/State in the return stated that the transit passes issued to Smt. Urmila Singh and the permission for excavation as lease holder were in an area beyond the demarcated Sanctuary area. Whereas trucks were seized in the area notified under the Wild Life (Protection) Act, 1972. Annexure P/4 alleged to the statements of the drivers recorded by respondents were not recorded by respondents and the petitioners were guilty of committing offence under sections 27 and 29 of the Wild Life (Protection) Act, 1972, which is being reproduced for

convenience hereinbelow :-

Restriction on entry in sanctuary - (1) No person other than, -

(a) a public servant on duty,

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to reside within the limits of the sanctuary,

(c) a person who has any right over immovable property within the limits of the sanctuary,

(d) a person passing through the sanctuary along a public highways, and

(e) the dependants of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted u/s 28.

(2) Every person shall, so long as he resides in the sanctuary, be bound -

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any forest officer. Chief Wild Life Warden, Wild Life Warden or police officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.

(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code, alter, destroy, move or deface such boundary-mark.

(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary.

Destruction etc. in a sanctuary prohibited without a permit. - No person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the sanctuary is necessary for the improvement and better

management of wild life therein, authorises the issue of such permit.

Counsel for respondent/State further stated that in consequence proper notices were issued by respondent No. 2/Director and in pursuance to the same the petitioners had appeared before respondent No. 2/Director and it is only after granting of opportunity that the impugned order was passed that the petitioners were guilty of destroying or damaging the habitat since section 2(15) of the aforesaid Act states that habitat includes land, water or vegetation which is the natural home of any wild animal. The Soan Gariyal Sanctuary was created for the protection and preservation of Gariyal, crocodiles, turtles and other river fauna endangered species and the petitioners had entered the Sanctuary area without prior permission and were damaging the habitat of the wild life and hence the trucks were seized u/s 39 of the Act which reads thus :-

Wild animals, etc., to be Government property. - (1) Every -

(a) wild animal, other than vermin, which is hunted u/s 11 or sub-section (1) or section 29 or sub-section (6) of section 35 or kept or (bred in captivity or hunted) in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed (XXX) by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed,

(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act;

shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat (derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting) shall be the property of the Central Government.

(2) Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer -

(a) acquire or keep in his possession, custody or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage, such Government property.

Counsel for respondent/State denied that the order was contrary to provisions of law and stated that the property seized was within the Sanctuary area and the vehicles were used in violation of sections 27 and 29 of the Act and hence the property would become the property of the State Government as provided u/s 39 of the Act.

Counsel for respondent/State has however stated that a challan has been filed in criminal case registered before the Chief Judicial Magistrate against the petitioners for excavating the sand in prohibited area and the trial is in progress.

However considering a Full Bench decision passed by this Court in the matter of Madhukar Rao Vs. State of M.P. and Others, , whereby under similar circumstances when property was seized u/s 50 from the alleged offender, the Full Bench had held that such property cannot become the property of the State unless there is a trial and finding reached by competent Court that property seized was used for committing the offence. The Court further held that property including vehicle seized on accusation or suspicion of commission of an offence can be released pending trial in accordance with section 50(4) read with section 451 of the Code of Criminal Procedure. The order expressly stated as follows :-

Strong reliance has been placed on behalf of the State on Clause (d) of sub-section (1) of section 39 of the Act. It is submitted that vehicle including properties mentioned therein which have been seized on the ground of having been used for committing the offence become the property of the State and, therefore, such property including vehicle cannot be released even by the Magistrate. It is submitted that other interpretation would frustrate the object of the Amendment Act whereby the power to grant interim release of the property allegedly used in commission of offence has been taken away. On the plain language used in sub-clause (d) of sub-section (1) of section 39, we are unable to accept the interpretation placed and submission made on behalf of the State that every property seized merely on accusation or suspicion of commission of an offence under the Act would become property of the State. The language used in sub-clause (d) of sub-section (1) of section 39 is "Vehicle.....that has been used for committing an offence and has been seized." In order that the seized property may be treated as property of the State, there should be a finding by the competent Court that vehicle seized has been used for committing an offence. The seized vehicle or other property merely on the charge of commission of an offence cannot be declared to be the property of the State Government under said Clause (d) of section 39(1). The power to seize a vehicle by an Authority or officer under the Act is contained in section 50(1)(c). The power of seizure can be exercised in respect of a property including a vehicle if it appears to the Authority that an offence under the Act has been committed. The seizure of property or vehicle is, effected on accusation or suspicion of commission of an offence. Under sub-section (3-A) introduced by Amendment Act No. 44 of 1991, power has expressly been conferred on the specified Forest

Authorities to grant interim release of any captive animal or wild animal seized in commission of an offence on a condition of executing a bond by the person concerned that the said animal shall be produced before the Magistrate having jurisdiction to try the offence. Such a power in respect of certain properties including vehicles existed in sub-section (2) of section 50 prior to its deletion under Amendment Act No. 44 of 1991. The omission of sub-section (2) of section 50 by amendment has necessary consequence of taking away power of the prescribed Authorities under the Act to grant interim release of seized property including vehicle to the person claiming ownership to the same. The omission of subsection (2) of section 50 cannot, however, be construed to hold that the power to grant interim release already available to an established Criminal Court, meaning the Magistrate u/s 452 of the Code of Criminal Procedure, has also been taken away. No such intention can be gathered from any of the provisions of the Act quoted above. We on the contrary, find a clear indication in them that the power of the Magistrate as a Criminal Court, empowered to deal and try the offence under the Act is not in any manner affected. Sub-section (4) of section 50 requires that any person detained or things seized under sub-section (1) of section 50 shall forthwith be taken before a Magistrate to be dealt with according to law. It is not disputed on behalf of the State that by virtue of the provisions contained in sub-section (2) of section 4 of the Criminal Procedure Code any offence under the Act can be investigated, enquired into and tried under the Code. The Magistrate therefore, as a Criminal Court under the Code is empowered to try the offences and impose penalties and punishments provided by the Act on proving of commission of the offence under the Act.

Thus considering the rival contentions the reference decision of L.P.A. No. 152/1996 u/s 39-D of the Wild Life (Protection) Act, 1972 filed with the return by the counsel for respondent/State cannot stand since it has been set aside by the Full Bench Judgment (supra). Even then the petition deserves to be allowed in the light of the Full Bench Judgment (supra) where their Lordships held that the property including vehicle seized on excavation or suspicion of commission of an offence can be released pending trial in accordance with section 50(4) read with section 451 of the Code of Criminal Procedure.

Thus, considering the facts of the case and provisions of law on the anvil of the Full Bench Judgment, the impugned order dated 17-1-1997 (Annexure P/6) is hereby quashed and the respondents are directed to release forthwith the vehicles of the petitioners bearing Registration Nos. MP-19/1752 and MBA 8952.

The petition is allowed. No order as to costs.