
(1993) 09 KL CK 0035

In the High Court Of Kerala

Case No : W.A. No. 1026 of 1993-A

M. Salim, Sabeeda Industries

APPELLANT

Vs

The Dist. Judge and Others

RESPONDENT

Date of Decision : 17-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Forest Act, 1961 — Section 61B, 61D

Citation : AIR 1994 Ker 11 : (1994) 2 ILR (Ker) 24

Hon'ble Judges : M. Jagannadha Rao, J;K. Sreedharan, J

Bench : Division Bench

Advocate : S.A. Razzak, for the Appellant; M.C. John, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sreedharan, J.—Writ petitioner in O.P. No. 8243 / 1993-F is the appellant. In the Original Petition he questioned the validity of the order of remand passed by the District Judge, Pathanamthitta while disposing of C.M.A. 37/1990 filed u/s 61D of the Kerala Forest Act, hereinafter referred to as "the Act". Learned single Judge dismissed the Original Petition taking the view that the District Judge while exercising the appellate power u/s 61D of the Act can also exercise the inherent power to remand the case to the authorised officer for fresh disposal. This view is under attack in this appeal.

2. Writ petitioner-appellant before us is a registered dealer in wooden furniture. On getting information that teak wood and rose wood timber were illicitly collected by the writ petitioner from Reserve Forest, forest officials searched the premises of the writ petitioner. Sawn timber and unfinished furniture found in the premises were seized by the forest officers. On the basis that writ petitioner could not produce authentic records for the possession of the timber, steps were taken to confiscate the same as provided by Section 61A of the Act. Authorised officer, by Exhibit P6 order dated 10-11-1990, confiscated the entire seized

goods. Writ petitioner challenged the said order in C.M.A./37/1990 before the District Judge, Pathanamthitta. Learned District Judge by judgment dated 18-3-1993 came to the conclusion that the procedure adopted by the authorised officer was against all fundamental norms of judicial proceedings. Consequently the order of the authorised officer was set aside and the case was remanded to him to proceed with the same in accordance with law.

3. Learned counsel representing the writ petitioner-appellant raised two contentions before us. They are, that the District Judge, exercising the appellate power u/s 61D of the Act, has no power to remand the matter to the authorised officer for fresh disposal and that on the facts and circumstances of this case the learned District Judge was not justified in remanding the matter to the authorised officer. We shall proceed to deal with these arguments in detail.

4. A person aggrieved by an order passed; by the authorised officer confiscating the property u/s 61A of the Act or an order passed by the Conservator of Forests exercising the revisional jurisdiction u/s 61C of the Act is given right to prefer an appeal to the District Judge having jurisdiction over the area in which the property was seized, as per Section 61D of the Act. That District Judge shall pass such order as he may think fit, after affording an opportunity to the appellant, confirming, modifying or annulling the order appealed against. According to the learned counsel, the District Judge is exercising this appellate power as "persona designata". He has got only the powers conferred by the statute. He has no inherent power. The powers conferred on him by the section are to confirm the order appealed against, modify the same or annul it. If the District Judge finds sufficient reason for annulling the order, that order has to be vacated and the matter left there. According to counsel, the District Judge is not entitled to remand the case to the authorised officer for fresh disposal after setting aside the order appealed against. This argument, we are afraid, cannot be accepted.

5. District Judge is one of the existing judicial authorities exercising judicial powers under the Code of Civil Procedure. Such an authority is chosen by the legislature to discharge the appellate function u/s 61D of the Act. The District Judge is constituted the appellate authority u/s 61D of the Act for doing justice and must be deemed to possess all powers as may be necessary to do the right and undo wrongs committed by the authorised officer or the revisional authority exercising powers u/s 61A or Section 61C of the Act. The District Judge while exercising that jurisdiction, must be deemed to have inherent powers to advance the course of justice. So long as the District Judge is deciding legal disputes in exercise of the appellate power, he must have all the powers which are necessary for the administration of justice. The District Judge while exercising the appellate power, according to us, should be vested with all incidental and ancillary powers, so that it may effectively exercise its appellate function.

6. A Full Bench of this Court in N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others, had to consider whether the State Transport Appellate Tribunal while exercising the appellate jurisdiction under the Motor

Vehicles Act of 1939 has the power to remand the matter to the Regional Transport Authority for fresh disposal. While holding that a power of remand is available to the Tribunal functioning under the Motor Vehicles Act, this Court observed:--

"16. An appeal is a complaint to a superior body of an injustice done or error committed by an inferior one with a view to its correction or reversal. It is a creature of statute, not a constitutional or inherent right. But, as pointed out by Maxwell, where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (11th Edition, page 350).

17. A remand by an appellate court is usually made when the record before it is in such shape that the appellate court cannot in justice determine what final judgment should be rendered and the power to do so cannot but be an essential requisite of the very jurisdiction to entertain the appeal. It is an old maxim of the law that to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised; *cui jurisdictio data est, ea quogue concessa esse videntur, sine quibus jurisdictio explicari non potest*.

18. Kent says that the grant of a jurisdiction implies the grant of all the powers necessary to its exercise (1 Kent, Comm. 339). And Sutherland that where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication (3rd Edition, Vol. 3, Page 19)".

7. In *Aanandkumar Raghunath Ray Vs. The State of Maharashtra and Another*, a Division Bench of the Bombay High Court considered whether the District Judge exercising the appellate power u/s 61D of the Indian Forest Act (which is identically worded as Section 61D of the Kerala Act) has got the power to remand matter to the authorised officer. After referring to the Full Bench decision of the Kerala High Court referred to above, the Division Bench took the view that the power to remand the matter is implicit in the appellate power, since it is incidental. We are in respectful agreement with the said view expressed by the Division Bench of the Bombay High Court.

8. Section 61D of the Act allows the District Judge to pass such order as he may think fit confirming, modifying or annulling the order appealed against. The District Judge has been conferred the power to pass such order as he may think fit. That order, so passed, may be one confirming, modifying or annulling the order appealed against. From this provision, it is evident that the District Judge has been conferred with powers in the widest term. If after annulling the order the District Judge feels that justice cannot be done on the basis of the materials before him, then he can pass a consequential order of remand. The jurisdiction to pass such an order of remand is ancillary and incidental to the power of annulment of the order appealed against. In other words, the appellate authority

must be deemed to have the implied power to remand the matter if it is necessary to do justice between the parties. We could not find any provision in the Kerala Forest Act which imposes any restriction on the District Judge while exercising the appellate power from remanding the case. Under this circumstances, the District Judge must be deemed to have wide power as is reasonably necessary to give effect to the object of the statute. Such exercise of the power is necessary to effectively carry out the legislative intent, namely protection and management of forests in the State of Kerala, as is evident from the preamble to the Act. In this view of the matter, we hold that the District Judge exercising the appellate power u/s 61D of the Act has got the power to remand the matter to the authorised officer for fresh disposal.

9. Coming to the reason for ordering remand, we have to hold that the learned District Judge exercised his power of remand correctly. S.61B of the Act enjoins the authorised officer to give the person from whom the property was seized, a notice in writing informing him of the grounds on which it is proposed to confiscate the same. He must also be given an opportunity of making a representation in writing within a time that may be fixed in the notice. He must also be afforded a reasonable opportunity of being heard in the matter. Such a notice was not issued by the authorised officer to the writ petitioner. The learned District Judge also came to the conclusion that the authorised officer relied on the statements of witnesses which were recorded behind the back of the writ petitioner. No opportunity was given to the writ petitioner to cross-examine those witnesses. On account of these defects, the learned District Judge observed:--

"So the entire procedure is against the fundamental norms of judicial proceedings."

As per the provisions of the Act, the District Judge was not to exercise the powers of the authorised officer in the sense that no opportunity was to be given to the writ petitioner to put forth his case before him. In such a situation, the learned District Judge is not to annul the order passed by the authorised officer and leave the matter there. If it is so done, it will certainly go to defeat the provisions of the Act. It will result in miscarriage of justice. So, on the facts and circumstances of this case, we are convinced that this is a fit case where the learned District Judge was to remand the matter to the authorised officer for passing fresh order in accordance with law, after complying with the procedural requirements under the Act. In this view of the matter, we do not find any merit in the second point urged by the learned counsel either.

10. The result, therefore, is writ appeal fails. It is accordingly dismissed.