

(1985) 02 GUJ CK 0007
In the Gujarat High Court

Manubhai Babubhai Patel

APPELLANT

Vs

Deputy Conservator of Forests and Another

RESPONDENT

Date of Decision : 13-02-1985

Acts Referred:

Constitution of India, 1950 — Article 227
Forest Act, 1927 — Section 61A, 61A, 61D

Citation : (1985) 2 GLR 836

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—The petitioner has filed the present petition against the order of confiscation of the vehicle being the tempo bearing No. GTO 927 passed by the Deputy Forest Conservator, Valsad dated 7th June 1984 and also against the order dismissing the appeal filed by the petitioner against the order of confiscation, passed by the learned Sessions Judge, Valsad at Navsari dated 21-8-1984 in the Criminal Appeal No. 33 of 1984.

2. The short facts of the case can be stated as under:

3. That Mr. D.R. Bhagat, Range Forest Officer, Vansda got the information that forest wood would be stolen and removed from the Reserved Forest in the Tempo bearing No. GTO 927 during night time on 24th December 1983. On receiving the said information said Mr. Bhagat, Mr. M. A. Pathan who is the Forester of Sara Nursery and the persons of Village Sara came in the truck bearing No. GTO 2160 at about 2.00 to 3.00 a.m. on the said day and they saw the tempo bearing No. GTO 927. The tempo was facing Vansda and the rear portion thereof was open and certain persons were in the process of loading the logs in the said tempo. When they came near the said tempo the said persons left the log and ran away in the jungle. Thereafter the inquiry was made with Shri Manubhai Babubhai Patel, who is the present petitioner and owner of the tempo as well as the cleaner of the vehicle Shri Budhiyabhai and they have also made the Panchnama of the tempo as well as the cut materials of the teak tree lying there. On

considering the materials the Deputy Conservator of Forest has passed the aforesaid order u/s 61A of the Indian Forest Act, 1927 for confiscating the vehicle i.e. the tempo bearing No. GTO 927. The appeal was also preferred u/s 61 D of the said Act and the said appeal being the Criminal Appeal No. 33 of 1984 was dismissed by the learned Sessions Judge, Valsad at Navsari and hence, the present petitioner has approached this Court under Article 227 of the Constitution of India.

4. Shri H. L. Patel, the learned Advocate appearing for the petitioner states that there is no of evidence to show that the said tempo was used in committing the offence as required u/s 61A of the Indian Forest Act and therefore, the order of confiscation is bad and the orders passed by the Dy. Conservator of Forest as well as the learned Sessions Judge, Valsad in appeal should be quashed and set aside.

5. Shri S.R. Divetia, the learned Asstt. P.P. submits that when the order is passed by the learned Sessions Judge under Sub-section (1) of Section 61D of the Indian Forest Act it is final and that order cannot be questioned in any court of law. He further submits that as one piece of log was under the process of being loaded in the said tempo through the labourers it should be held that the said vehicle is used for commission of the offence and that when that evidence is there, the aforesaid orders should not be set aside.

6. Referring to the first contention raised by Shri Divetia that under Sub-section (2) of Section 61D of the said Act the order passed by the learned Sessions Judge in appeal is final and it shall not be questioned in any court of law, it is to be noted that this is the writ petition filed under Article 227 of the Constitution of India and under Article 227 every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. When the High Court has power of superintendence under Article 227 it cannot be said that Sub-section (2) of Section 61D of the Indian Forest Act takes away the powers of the High Court. When it is stated that it is final that means no further appeal or revision would lie and it cannot be questioned in any court of law means that no suit or other proceedings would be in any other court except the constitutional remedy provided under the Constitution of India, inasmuch as no provision of ordinary law can take away the Constitutional remedy. To interpret otherwise would mean that even the Parliament or Legislative Assembly can amend the provision of Constitution by ordinary procedure without following the procedure for the amendment of the Constitution of India. Hence the petition under Article 227 cannot be said to have been barred by Sub-section (2) of Section 61D of the said Act. In that view of the matter I do not find any merit in the first contention raised by Shri Divetia.

7. For proper appreciation of the second point it is necessary to quote Section 61A of the Indian Forest Act which reads as under:

61A. (1) Notwithstanding anything contained in the foregoing provisions of this

Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in; respect of any forest produce which is the property of the State Government, the officer seizing the property under Sub-section (1) of Section 52 shall without any unreasonable delay produce it together with all tools, ropes, chains, boats, vehicle and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forest (hereinafter referred to as "the authorised officer").

(2) Where the authorised officer seizes under Sub-section (1) of Section 52 any forest produce which is the property of the State Government or where any such property is produced before the authorised officer under Sub-section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

(3) (a) Where the authorised officer, after passing an order of confiscation under Sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses, relating thereto shall, where the order of confiscation made u/s 61A is set aside or annulled by an order u/s 61C or 61D be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

8. When the word "used" is used in the aforesaid section it would require that the factual and actual user thereof was made and not that it was about to be used or likely to be used. It would not include the intended use or preparation for the use. It also would not include within the scope of "used" even an attempt to use if at no point of time even the slightest use thereof is made. Therefore, the authorised officer will have the authority to seize along with the produce only tools, ropes, chains, boats, vehicle and catties which are factually used in committing the offence. Unless some factual user of the vehicle is made, at least by placing some material in the tempo, it cannot be seized and consequently it cannot be confiscated. Sub-section (2) of the aforesaid Section 61A makes the intention of the legislature very clear as the same word "used" is used for the purpose of passing the order of confiscation of the property so seized together with the tools, ropes, chains, boats, vehicles and catties used in committing such offence.

9. Shri H.L. Patel and Shri S.R. Divetia both have read before me relevant papers of the case. In the panchnama which was prepared at 3.00 a m. on 24th

December 1983 it is mentioned that once piece of log was lying near the trunk of the cut tree, other three logs were lying on the place, one log was lying near the tempo which the labourers were in the process of loading it in the tempo and the other four logs were lying near the second trunk of the cut trees. Thus, this panchnama discloses that nothing was found in the tempo itself. Even the statement of the cleaner Shri Budhiya recorded on that day also shows that they were preparing for loading one log in the tempo through four labourers.

10. In the statements of various persons it is only stated that they were preparing for loading one log in the tempo, but as the truck came the labourers ran away. So, no statement is pointed out to me from which it can be held that the tempo in question was actually used at least by placing one log therein. Unless the user thereof is made, it cannot be confiscated. In that view of the matter the order of confiscation is made without any evidence on the point of actual user of the tempo for the commission of the offence. Hence, the order of confiscation of the tempo bearing No. GTO 927 passed by the Deputy Conservator of Forest, Valsad which was confirmed in Criminal Appeal No. 33 of 1984 by the learned Sessions Judge. Valsad at Navsari is set aside. Rule is made absolute with the costs..

11. Shri Divetia at this juncture requests that the operation of this order be stayed for a period of three weeks from today. Accordingly, operation of this order is stayed for three weeks from today.