
(2017) 02 MAD CK 0077

In the Madras High Court

Case No : W.A.(MD) No. 1607 of 2016 and M.P.(MD) Nos. 12164 of 2016

M.I. Christopher

APPELLANT

Vs

The District Forest Officer, Dindigul Division, Dindigul District.

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Tamil Nadu Forest Act, 1882 — Section 49, Section 49-B

Citation : (2017) 3 MLJ 535

Hon'ble Judges : Mr. R. Subbiah and Mrs. J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. T. Lajapathi Roy, Advocate, for the Appellant; Mr. N.S. Karthikeyan, Additional Government Pleader, for the Respondents

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The appellant is the writ petitioner. This writ appeal has been filed by the appellant as against the order passed by a learned Single Judge of this Court, dated 25.10.2016 in W.P.(MD).No.5931 of 2016, whereby and where under the challenge made by the appellant against the confiscation order was rejected on the ground that there is an alternative remedy available under the Tamil Nadu Forest Act, 1882 against the impugned order.

2. The facts which are necessary for the disposal of the present appeal are as follows;

The appellant is the owner of a Skoda Etti Car bearing Registration No.TN-72-AX-2551. The said car was used by the appellant as a personal car. While so, on 24.07.2015, the said car was seized by the second respondent alleging that Moose (Kadaman) meat and head, and weapons were kept in the same in violation of the provisions of the Tamil Nadu Forest Act and the Wild Life Protection Act. In this regard, a case has also been registered in W.L.O.R. No. 02/2015, dated 24.07.2015. Hence, seeking interim custody of the above said car, the appellant has filed a petition under Section 451 of Cr.P.C. in

Cr.M.P.No.9377 of 2015. However, the same was dismissed. Aggrieved by the same, he has preferred an appeal in Crl.A.No.50 of 2015 on the file of the learned Principal District Judge, Dindigul. The said appeal was also dismissed vide order dated 16.02.2016 on the ground that the first respondent has already passed the confiscation order under Section 49 of the Tamil Nadu Forest Act (hereinafter referred to as "the Act"). In the meanwhile, the first respondent issued a show cause notice, dated 10.09.2015, seeking to explain as to why his car should not be confiscated within a period of 15 days. However, before the expiry of 15 days period, the first respondent issued the confiscation order on 21.09.2015. Thereafter, the appellant submitted his explanation on 23.09.2015. Since the impugned order has been passed before the expiry of the stipulated period and the explanation of the appellant has not been considered by the first respondent, the appellant has come up with the writ petition challenging the confiscation order, dated 21.09.2015.

3. After hearing both sides, the learned Single Judge dismissed the writ petition solely on the ground that the appellant is having appeal remedy under Section 49-B of the Act. Aggrieved by the said order, the appellant has filed this appeal.

4. The learned counsel appearing for the appellant submitted that the learned Single Judge has dismissed the writ petition solely on the ground that the appellant is having alternative appeal remedy under Section 49-B of the Act, but the same is not applicable to this case. He has further submitted that the impugned confiscation order has been passed in violation of principles of natural justice and therefore, the appellant has come up with the Writ Petition. In this regard, he has submitted that the first respondent has issued show cause notice on 10.09.2015 seeking to submit his explanation as to why his car should not be confiscated within a period of 15 days. But, even before the expiry of the said period, the first respondent has passed the confiscation order on 21.09.2015. The explanation submitted by the appellant, dated 23.09.2015, has also not been considered. It is a clear violation of principles of natural justice. That apart, the learned counsel for the appellant submitted that the confiscation order has been erroneously passed under Section 49- A(1) of the Act as the said proviso deals only with the offence committed in respect of any scheduled timber. Thus, he prayed to set aside the impugned orders.

5. Countering the submission made by the learned counsel for the appellant, the respondents by filing a detailed counter affidavit submitted that the appellant herein is the father of one of the occupants of the Skoda Etti Car. When the second respondent, along with his subordinate officers, was on patrol duty on 24.07.2015 at Virupatchi Beat, he stopped the said car and on inspection, he found the existence of moose (Kadaman) meat, moose head and two rifles in the car. There were totally seven persons in the car. While apprehending them, one person jumped and escaped from the car. Therefore, the other six persons were arrested and produced before the learned Judicial Magistrate, Oddanchatram and thereafter, they were remanded to judicial custody. Since the car belonged to the

appellant, a show cause notice was issued on 20.08.2015 calling upon him to submit his explanation within a period of 15 days. But, he has not come forward with his explanation. However, a second show cause notice was issued on 10.09.2015. But, suppressing the earlier show cause notice issued by the first respondent, the appellant has filed the writ petition as if for the first time the show cause notice was issued on 10.09.2015. In fact, there is no need to issue second show cause notice under the Act. Therefore, no reliance could be placed on the second show cause notice dated 10.09.2015. Hence, the first respondent has passed the impugned order on 21.09.2015. He has further submitted that in fact, the appellant has already approached the Sessions Court challenging the confiscation order and the same was rejected on 16.02.2016. Thus, he prayed for dismissal of this writ appeal.

6. By way of reply, the learned counsel for the appellant denied the receipt of the first show cause notice said to have been issued on 20.08.2015. He has further submitted that the confiscation order has not been challenged before the Sessions Court.

7. Keeping the submissions made on either side, we have carefully perused the entire materials available on record. It is seen from the record that the appellant has filed a petition in CrI.M.P.No. 9377 of 2015 before the learned Judicial Magistrate No.I, Dindigul, for interim custody of the vehicle, but the same was dismissed stating that the confiscation order has already been passed. Subsequently, the appellant has filed Criminal Appeal No. 50 of 2015 under Section 49-D of the Act before the Principal Sessions Judge, Dindigul, with mixed up prayer questioning the order passed in CrI.M.P.No. 9377 of 2015 and also the confiscation order. The learned Principal Sessions Judge dismissed the said appeal holding that the order passed by the Judicial Magistrate No.I, Dindigul in CrI.M.P.No. 9377 of 2015 need not be interfered with. Thus, it is clear that as on date, the validity of the confiscation order has not been decided on merits.

8. So far as the contention with regard to the violation of principles of natural justice is concerned, though it is stated by the respondents that the first respondent had already sent a show cause notice dated 20.08.2015 granting 15 days time to the appellant to submit his explanation, the same has been refused by the appellant. The respondents have not produced any document to show that the said show cause notice was served to the appellant. Further, there is also no explanation as to why the first respondent had sent the second show cause notice to the appellant on 10.09.2015. Having chosen to send the second show cause notice dated 10.09.2015 by giving 15 days time, the first respondent ought to have passed the order after expiry of 15 days time, particularly in the circumstances, where there is no proof to show that earlier notice was served upon the appellant. In the instant case, the appellant herein has submitted his reply on 23.09.2015 ie., before the expiry of 15 days time provided in the second show cause notice. But, even before that the confiscation order was passed. Therefore, we are of the view that the writ petition is maintainable on the ground

of violation of principles of natural justice.

9. In this regard, this Court is of the view that a reference could be placed on the judgment of the Hon"ble Supreme Court in *Satwati Deswal v. State of Haryana and others*, reported in (2010) 1 SCC 126, wherein the Hon"ble Supreme Court has held that it is well settled that a writ petition can be held to be maintainable even if an alternative remedy is available to an aggrieved party, where the Court or the Tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the Act were in question. In view of the above dictum laid down by the Hon"ble Supreme Court and in view of the discussion made earlier, we have no hesitation to hold that the writ petition is maintainable and the confiscation order is liable to be set aside on the ground of violation of principles of natural justice.

10. In view of the above, this writ appeal is allowed and order passed by the learned Single Judge is set aside and the impugned order passed by the first respondent is also set aside and the matter is remitted back to the first respondent to decide the issue on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim of the appellant and it is for the first respondent to decide the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is also dismissed.