

(1977) 10 KAR CK 0011
In the Karnataka High Court
Case No : WP.5944 of 1977

Mohammed Kunhi. B and Others

APPELLANT

Vs

The Divisional Forest Officer and Tree Officer, Chikmagalur

RESPONDENT

Date of Decision : 05-10-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Preservation of Trees Act, 1976 — Section 8

Citation : (1977) 2 KarLJ 431

Hon'ble Judges : Jagannatha Shetty, J

Judgement

1. This writ petition under Art. 226 is concerned with the validity of an order made by the Divisional Forest Officer and Tree Officer for Chickmagalur Division, rejecting permission for the petitioners to fell trees in their estate called "Byrapura Estate".

2. The question arises in the following way: "Byrapura Estate" bears Survey No. 6, measuring in all, 785 acres and 5 guntas, which is situate in Byrapura Village, Gonibeedu Hobli of Mudigere Taluk in Chickmagalur Dist. The petitioners became the owners of the estate in 1970. Out of that, an extent of 725 acres 5 guntas has been registered as an estate under the Cardamom Act, 1965 (Central Act 42 of 1965) and an extent of 60 acres has been registered as a coffee estate under the Coffee Act, 1942 (Central Act 7 of 1942). The petitioners filed a declaration before the Land Tribunal of Mudigere Taluk as required under S. 66(4) of the Karnataka Land Reforms Act, 1961, stating that they are entitled to retain the entire land as it is an estate. The Tribunal, after an enquiry, issued a certificate dt. 1st Feb, 1977 declaring that the petitioners are entitled to retain 7.20 acres of wet land, 88 acres of coffee land and 1.997.31 acres of cardamom land. The area permitted by the said certificate includes the area of 725 acres 5 guntas in Sy No.6 with which we are concerned in this writ petition.

The estate is evidently in a neglected condition. The petitioners want to improve it. They want to undertake a large scale replantation by clearing the undergrowth

and felling the overgrown trees. Such clearance has become necessary to provide proper shade to the coffee and cardamom estate it may be relevant to state in this context that the scientific method of shade management is necessary for coffee and cardamom estate for proper yielding. It will not be sufficient merely to plant shade trees and allow them to grow unchecked, as this is likely to lead to strong competition with the crop. It requires a scientific background. Webster and Wilson in their book "Agriculture in the Tropics" at page 244 state:

"It may also for necessary toundertake rational planting of a shade by planting initially at a high density to provide adequate shade quickly, subsequently thinning by stages and replanting at some of the thinned points in order to grow new trees to replace older ones when they get too large and have to be removed."

3. The petitioners are no doubt, entitled to retain the estate as it falls within the ceiling limits provided under the Land Reforms Act, 1961; but they have no right to fell any tree therein without the permission of the Tree Officer constituted under the Karnataka preservation of Trees Act, 1976 (Karnataka Act 76 of 1976). So, the petitioners applied to the respondent for permission on 24th May, 1977, to cut and remove the overgrowth any silviculturally matured trees, inter alia stating that they proposed to replant an area of 25 acres out of the existing area of 60 acres of coffee plantation and replant about. 120 acres of cardamom plantation. They had also stated in their application that they had purchased from the Cardamom Board 50,000 plants of cardamom for replantation, and they have raised about 15,000 offence feedings in their own nursery and they have already cleared the undergrowth in their estate. On that application, there was an enquiry by the Range Forest Officer of Mudigere Taluk. The Range Forest Officer visited the area proposed for replantation and recommended to the respondent for granting permission. But the respondent rejected the permission by endorsement dated 4th June, 1977, stating thus:

"No.Pmt.G1.5799/76.7 Divl Forest Office, Chickmagalur,Dt. 4-7-1977

Endorsement

With reference to your application dt.24-5-77 requesting for felling permission to fell trees in Sy.No.6 of Byrapura Village, Sri B. Abdulla Kunhi of Byrapura estate is informed that as the area is more than 20 acres and not a proper plantation of coffee and cardamom, the request for the grant of felling permission is rejected.

Sd/-.....4/7Divl Forest Officer, Chickmagalur Divn"

The validity of the aforesaid order is called into question by the petitioners on the ground that it is illegal, arbitrary and whimsical.

4. From the order of the Tree Officer, it is clear that he has rejected the application of the petitioners on the ground that the area of the estate is more than 20 acres and that it is not a proper plantation of coffee and cardamom.

The respondent, while resisting the petition, has filed a very detailed statement of objections. Firstly he has stated that the application of the petitioners was not bonafide. Their intention has been to exploit the forest wealth for their commercial purposes. They have not undertaken any replantation with cardamom or coffee. Secondly, he has stated that the petitioners have fabricated some documents to show as if they had purchased 50,000 cardamom plants and 15,000 coffee seedlings just to make it appear that they are intending to replant the area after cutting or removing the tree growth. He has further stated that the petitioners have not placed any material to show why they require permission to cut and remove the trees over an area of 145 acres at a stretch and whether they have got necessary resources, men and material and the required seedlings or plants for the purpose of replantation of the area. Thirdly, he has stated that the trees referred to in the petitioners' application are not silviculturally mature and therefore, they are not entitled to the grant of permission. He has further contended that the petitioners are not entitled to, as a matter of right, the grant of permission under the Preservation of Trees Act, and before granting the same, he has to consider whether their request is bona fide and whether the cutting and removing of the standing trees is scientifically necessary for the purpose of regulating shade for the cardamom and coffee plantation. Finally, he has stated that he has considered all aspects of the matter and rejected the application, after being satisfied that there is no necessity for cutting the said trees, but on the contrary, they are necessary to maintain the ecological balance in the area.

The petitioners have filed a reply statement denying the allegations made by the respondent and also reiterating their stand taken in the writ petition.

5. Before I consider the merits of the contentions, it will be necessary to refer to some of the allegations made by the respondent in the statement of objections. It is needless to state that the statement of objections should not contain reckless allegations, sweeping remarks or general denials. The respondent in this case appears to have indulged in these things. He is a fairly high officer. I wish he had taken more care while denying the allegations of the petitioners or attributing motives to them. It cannot be denied that the Byrapura Estate of which the petitioners are the owners, is a coffee and cardamom estate. It has been so recognised by the Land Tribunal which is a statutory authority under the Karnataka Land Reforms Act. The estate has been registered both under the Coffee Act and under the Cardamom Act. The petitioners have also made arrangements from the Cardamom Board for purchasing cardamom plants as seen from the letter of the Cardamom Board dt.3rd April, 1977, marked as Ext."G" and letter dt.31st May, 1977, marked as Ext."H". In spite of all this documentary evidence, the respondent has stated that the attempt of the petitioners was not bona fide, and they have fabricated the documents to create evidence for the alleged replantation. These statements are patently erroneous and contrary to the aforesaid documents.

6. Now, turning to the contention of the petitioners on the validity of the refusal

to grant permission it will be necessary to refer to the scheme of the Karnataka Preservation of Trees Act. It is a recent Act passed by the State Legislature with a view to make better provision for preservation of trees, to regulate the felling of trees, for the planting of adequate number of trees, to restore ecological balance and for matters connected therewith. The Authority constituted for the purpose of carrying into effect and responsible for all these matters is a Tree Officer. It is his duty to preserve all trees within his jurisdiction and to specify the standards regarding the number and kind of trees which each locality should have. Sec. 8 imposes a total ban on felling of trees by any person without the permission of the Tree Officer. The Section, so far as it is relevant, provides:

"8. Restriction on felling of trees:-(1) With effect on and from the appointed day, notwithstanding any custom, usage, contract or law for the time being in force, no person shall fell any tree or cause any tree to be felled in any land, whether in his ownership or occupancy or otherwise, except with the previous permission of the Tree Officer.

(2) Any person desiring to fell a tree, shall apply in writing to the concerned Tree Officer for permission in that behalf. The application shall be accompanied by a site plan or survey sketch specifying clearly the site or survey numbers, the number, kind and girth of the tree sought to be cut and the reasons therefor along with the consent of the owner or occupant.

(3) On receipt of the application, the Tree Officer may, after inspecting the tree and holding such inquiry as he deems necessary, either grant permission in whole or in part or refuse permission:

Provided that permission shall not be refused, if the tree- (i) is dead, diseased or wind-fallen; or (ii) has silviculturally matured; or (iii) constitutes a danger to life or property; or (iv) constitutes obstruction to traffic; or (v) is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or (vi) is required in rural areas to be removed either for extension of the cultivation in areas specified in Schedule II or for the bona fide use of the applicant."

According to the above provisions, a person who wants to fell a tree, shall apply to the concerned Tree Officer for permission in that behalf. The Tree Officer, on receipt of the application, may inspect the tree or hold any enquiry as he deems necessary and grant permission in whole or in part or refuse permission altogether. It is left to his discretion. But in respect of the matters falling under the proviso to S. 8(3), he has no such discretion. It makes it obligatory for him to grant permission. That is, when the tree is dead, diseased or wind-fallen, or it is silviculturally matured, or it becomes a danger to life or property or obstruction to traffic. Even when the tree is substantially damaged or destroyed by fire, lightning, rain or other natural causes; or when the owner requires its removal for extension of the cultivation in rural areas or for any other bona fide use. In all other matters, the Act vests wide discretionary power in the Tree Officer. In view of the change in economic, social, scientific and even climatic

conditions, the Act may be of necessity, but care must be taken to prevent the discretionary power of the Tree Officer being transformed into arbitrary power. The discretionary power is required to be exercised for the purposes for which it was conferred, and the repository of the power is expected to act in good faith and not arbitrarily or capriciously. If it is used for any other purpose or on considerations extraneous to the legislation which conferred the power, it will be a case of "abuse of power". The Court, of course, would not substitute its discretion for that of the Tree Officer, nor it will revise decisions taken lawfully, but would interfere with its exercise if it is sought to be exercised in an arbitrary manner, or in matters outside the limits of the discretionary authority conferred by the Legislature, or on considerations extraneous to those laid down by the Legislature.

7. Against the background of these principles, I shall now proceed to consider the validity of the impugned order. The respondent has refused permission on two tiny grounds; first, the area being more than 20 acres, and second, the area is not a proper plantation of coffee and cardamom. The first ground may be factually correct, but legally untenable. Survey No.6 has been accepted as an estate which the petitioners are entitled to retain as per the declaration made by the Land Tribunal under the Karnataka Land Reforms Act. The second ground, on the very face of it, appears to be on the misconception of the purpose for which the petitioners have asked of permission. They have asked for permission to cut silviculturally matured trees, and also other trees in order to provide proper shade management for replantation of coffee and cardamom. They have produced documentary proof of their bona fide intention. The Range Forest Officer, Mudigere Range who made an enquiry on the application of the petitioners has recommended their case in his report dt.29th June, 1977. The respondent has not even referred to that report, nor he has made any independent enquiry. He has also not exercised his discretion upon reasonable grounds. His decision has been influenced by considerations that could not have been lawfully taken into account and therefore not validly exercised.

8. In the result, the rule is made absolute, the impugned endorsement is quashed, and a direction shall issue to the respondent to consider the petitioners' application in accordance with law and in the light of the observations made in this order, within two weeks from the date of receipt of this order.

Petitioners are entitled to their costs. Advocate's fee Rs. 250.