

(1990) 06 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 10679 of 1981

M.S. Chokkalingam Chettiar	Vs	APPELLANT
State of Karnataka and others		RESPONDENT

Date of Decision : 10-06-1990

Acts Referred:

Karnataka Forest Act, 1963 — Section 104 (6), 104 A (4)
Karnataka Forest Rules, 1969 — Rule 127A

Citation : AIR 1991 Kar 116 : (1990) 2 KarLJ 456

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : K.S. Gowrishankar, for the Appellant; S.R. Nayak, Govt. Advocate, for the Respondent

Judgement

1. Inordinate delay and nonpayment of the value of 260 logs of rosewood by the respondents to the petitioner has driven the petitioner to this Court.

2. The following are the material facts of the case :

The petitioner is the owner of Yemmegundi Estate of Woolugailly village of Shuntikoppa in Coorg District, Essentially, the petitioner is a Coffee Planter and in order to provide shade to the plantation, he had grown a number of rosewood trees in the estate.

3. The Karnataka Forest Act, as amended by Karnataka Act No. 23/1974 regulates the trade and transportation of rosewood and "bite" trees under S. 104A(4) of the Act. The Act envisages that the State Government or the Officer of the State Government not below the rank of a Divisional Forest Officer is competent to purchase or transport any black-wood or bile trees or timber grown in the private estate under S, 104A(4) of the Act. The price of such tree or timber has to be specified by the State from time to time and pricing is conditional upon the factors contemplated under S. 104(6) of the Act. The State Government or the Officer as the case may be who is authorised to purchase is

bound by the price so fixed. Under Rule 127A of the Karnataka Forest Rules, 1969, the Officer In-Charge of the Government Depot is authorised to accept the bite trees or timber thereof brought to the depot during the business hours and he is expected to record measurements and classifications of timber and issue a receipt in Form No. 47 in token of receipt of the timber at the depot. For the purpose of payment of purchase price, the measurements recorded in the receipt is regarded as final.

4. In the instant case, after securing the permission of the Divisional Forest Officer in accordance with law, the petitioner got 42 rosewood trees felled from his estate, converted them into 206 rosewood logs of various sizes. These logs together measured 600 cmt of timber. In accordance with the directions of the Divisional Forest Officer (3rd respondent herein), the petitioner transported the aforementioned 206 rosewood logs equivalent to 606 cm and delivered them to the Government Depot at Kushalnagar on 9-3-1978, 10-3-1978 and during the months of January and February, 1979 and again on 24-3-1980 and 17-4-1980. The petitioner did not receive instantaneous payment of the price to which he is entitled. But a solemn assurance was given that the value of the timber will be paid within a month. As on to-day, the respondents arc yet to pay the price of rose-wood received from the petitioner. Barring a paltry sum of Rs. 4350/- towards part payment of the transport charges of timber conveyed from the petitioner's estate at Suntikoppa to Government Depot at Kushalnagar, nothing else was paid to the petitioner. Thereafter, petitioner wrote series of letters to respondents-2 and 3 demanding payment but in vain. It is also stated by the petitioner that the respondents sold 169 logs out of 206 logs received from the petitioner and the auction of the rose-wood fetched a sum of Rs. 1,50,979-54 ps., the auctions having been held on 12-3-1978, 20-9-1978 and 8-6-1979.

5. The petitioner is aggrieved by the appropriation of rosewood at the hands of the respondents and non-payment of the price of rosewood despite repeated requests and reminders made by him.

6. The learned Counsel appearing for the petitioner contended that the action of the respondents in appropriating 206 logs of rosewood belonging to the petitioner without payment of consideration is illegal and in contravention of S. 104A of the Act read with Rule 129 A of the Rules besides being violative of Art. 300A of the Constitution.

7. The petitioner has sought for a mandamus to the respondents to direct them to pay the value of 206 logs of rosewood equivalent to 606 cm of timber to the petitioner besides charges of extraction of timber together with the balance of transportation charges.

8. The point for consideration is, whether the petitioner is entitled to a mandamus against the respondents directing them to make the payments sought in this writ petition.

9. The learned Government Advocate appearing on behalf of the respondents

submitted that there is no intentional delay on the part of the respondents in making payment to the petitioner but the real difficulty is on account of non-receipt of information from the Revenue Department based on pahani and other documents as to whether or not the petitioner is the owner of the timber in question. However, it is necessary to point out at this stage that even after a lapse of nine years, the officials of the Forest Department have not opened their eyes to the grievance of the petitioner nor have they come forward with statement of objections to throw any light on the supposed difficulty encountered by the respondents in the matter of payment of price of timber.

10. There is no ambiguity in the provisions of law which relate to the felling of timber, transportation of timber, delivery of timber at the Government Depot, issue of receipt for having received timber, the price fixation at the relevant point of time and the duty to pay the stipulated price to the producer of timber who delivered it to the Government Depot. It is hardly necessary for me to extract the provisions of law both under the Karnataka Forest Act, 1963 and the Karnataka Forest Rules, 1969 to infer the liability of the respondents to pay the price of the timber in the instant case to the petitioner. There is an abject admission of the receipt of timber from the petitioner to the extent of 206 rose-wood logs measuring 606 cm. There is no denial of the price fixed at the relevant point of time nor is there any dispute regarding the ownership of the timber between the petitioner and any other rival claimant. On the other hand, the dispute is only in the mind of the respondents without any communication to the petitioner as to what the doubt is which has resulted in unreasonable delay in payment of the price which is claimed by the petitioner. In spite of the fact that the respondents and their officials have not filed the statement of objections or counter-affidavit before this Court, assuming for a moment that the respondents have entertained some doubt regarding the title of the petitioner to the timber delivered to the respondents, it transcends one's comprehension as to why there was no communication to the petitioner at all and why no clarification was sought from him if the respondents entertained any doubt regarding title of the petitioner to the rosewood received by the respondents from him. The conduct of the respondents and their officials concerned leaves much to be desired. I would go one step further and observe that the conduct of the officials concerned is not only questionable but also inconsistent with the principles of accountability. It is a typical case of bureaucratic resistance without reason and good sense. The Victorian style of administration seems to have survived even in post-independent India. The cult of mal-administration deserves to be given a quietus and the concerned officials owe an explanation for the inordinate and unreasonable delay resulting in withholding of the money due to the petitioner. If this substantial amount of money had been paid to the petitioner with promptness, the petitioner could have made effective use of the fund for his enterprise but even after a lapse of nine years, the money is withheld from the petitioner without any lawful justification. I may also observe that if the fund was available to the petitioner, as submitted by the learned Counsel for the petitioner,

it could have been kept in Bank deposit fetching him the bank rate of interest. Looking from any angle, the conduct of the respondents in retaining the amount to which the petitioner is entitled amounts to detention which is actionable in tort and refusal to part with the amount in spite of the demands, tantamounts to conversion, again being actionable in tort. In these circumstances, I am more than justified in holding that the respondents have misconducted themselves and are answerable to the petitioner for the deprivation of cost of timber to him without any lawful excuse. I am of the opinion that in the absence of any material whatsoever to the contrary and also in the absence of any written explanation forthcoming from the respondents or their officials concerned, there is established a case of executive excess warranting condemnation so that such incidents do not occur in future. Both from the point of view of vindication of the rights of the petitioner and from the point of view of deterrent effect on errant bureaucrats, I regard that this is a fit case wherein the Government would do justice in holding an enquiry against the concerned officials and take action against them for any culpability on their part or any improper performance of their duties. At the same time, I do not see any material to suspect either the bona fides or the title of the petitioner in the facts and circumstances of this case. No rosewood tree can be felled in a private estate in the absence of the officials of the Forest Department and without prior permission in accordance with law. The petitioner has gone through this legal formality and the rosewood trees were felled right under the nose of these forest officials. There was no occasion for the petitioner to stealthily bring about the felling of rosewood trees in the land not belonging to him and there was no chance for such a thing to happen since everything happened in the presence of the forest officials. The transportation of the felled trees was also carried out in accordance with law and rosewood was carried from the plantation to the Government Depot without any interruption en route. There is a tacit admission of the receipt of the entire lot of rosewood at the Government Depot and this is evidenced by the official receipt issued to the petitioner by the Officer In-Charge of the Government Timber Depot, This Timber Depot is maintained by the Forest Department at Kushalnagar. All that remains to be done is payment of the money for the timber received. The payment has been put off from time to time on some lame excuse or the other without issuing any endorsement in writing. I do not know what is the significance of secrecy. Openness is one of the main characteristics of Governmental conduct in a democratic system. Nothing prevented the officials from divulging to the petitioner as to what prompted them to withhold the payment to which the petitioner is entitled. The petitioner was kept guessing for a long period of nine years without even a line of reply from the respondents to the requests frequently made by the petitioner for payment of money due to him. In these circumstances, I do not think that it would be or unreasonable to draw a conclusion that the conduct of the respondents is susceptible to serious approach.

11. In the above circumstances and for the reasons stated above, I pass the

following :

ORDER

Writ petition is allowed and the respondents are directed to pay to the petitioner the sum of money equivalent to the value of 206 logs of rosewood measuring 606 cm of timber within 30 days from the date of receipt of a copy of this order together with balance of transportation charges to which the petitioner is entitled and further pay interest at the rate of 6% per annum on the value of 206 logs of rosewood equivalent to 606 cm of timber from the date of delivery of the rosewood to the respondents" Depot till the date of realisation. If there is any violation of the direction of this Court it is open to the petitioner to approach this Court for necessary action.

Respondents are liable to pay costs of Rs. 2000/- (Rupees Two thousand) to the petitioner. It is open to the State to recover the costs from the forest officials responsible for the delay in payment of the amount due to the petitioner.

12. Petition allowed.