

(1998) 08 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 305 of 1998

Nalin Rawal and Another

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 4, 5
Himachal Pradesh Land Preservation Act, 1978 — Section 21, 3, 4
Himachal Pradesh Land Preservation Rules, 1983 — Rule 2, 4

Citation : (1999) 1 ShimLC 35

Hon'ble Judges : D. Raju, C.J.; Lokeshwar Singh Pant, J

Bench : Division Bench

Advocate : Rupesh Kumar, for the Appellant; Sanjay Karol, General, for the Respondent

Judgement

Lokeshwar Singh Pant, J.—In the above writ petition, the Petitioners have prayed for directions to the Respondents to permit them to cut and remove some "Kahir" trees from their orchard land comprised in Khasra Nos. 7, 29-35, situate in village Keori, Tehsil Nalagarh, District Solan, H.P.

2. Petitioners alleged that they have purchased 91-13-0 bishwas of land in village Keori, Tehsil Nalagarh for the purpose of growing orchard. They have made development and planted various species of plants including mango, chikoo, papita, grapes and various types of citrus plants. For the purpose of raising orchard scientifically and economically, the Petitioners were advised to plant Khair trees as fillers along the berms. The Petitioners also alleged that there are about 900 fruit plants of various species and about 6000 Khair trees of various ages and sizes grown on the land. They have invested lacs of rupees in raising the orchard, laying of pipes, constructing for farm houses, construction of water tank etc. etc. The fruit trees have started bearing the fruits and they are being hampered by the standing Khair trees and some of the Khair trees, therefore, are to be weeded out in order to avoid the loss of the fruits. The Petitioners further

alleged that representation to the Respondents was made pointing out their requirement for removing Khair trees which were causing harm to their orchard. Their case was forwarded by the Divisional Forest Officer, Nalagarh to the Conservator of Forest, Bilaspur vide letter dated 6.6.1994 (Annexure P-6) but nothing positive came out of this. CWP No. 98 of 1991, came to be filed by Smt. Vimla Rawal, mother of Petitioner No. 1 which was dismissed as infructuous on 27.7.1997. After the disposal of the writ petition, Petitioner No. 2 made another representation to Respondent No. 2 on 10.7.1997 (Annexure P-8) requesting that some Khair trees were cut in the year 1994-95 as per felling programme and if this programme is continued, the next tree-felling would be in the year 2004-2005, whereas many of the Khair trees were required to be felled to provide sun rays and to remove the competition of fruit bearing plants in the orchard, because these trees are causing harm to the fruit trees, resulting in huge financial loss to the Petitioners. The Petitioners also alleged that the provisions of the Himachal Pradesh Land Preservation Act, 1978 and the Himachal Pradesh Land Preservation Rules, 1983 are oppressive as no guidelines have been provided which have to be adopted by the forest officials and further the object for enacting the Act is to provide for the better preservation and protecting of the area from erosion and from causing any damage to the land in the area. They further stated that the perusal of the provisions of the Act would show that they do not apply to the established orchards and the Petitioners are within their rights to maintain their orchards economically in the way which they are doing. Khair trees which are growing as fillers can be removed in the best interest of the growth of the orchard as and when required. They have also stated that 10 years felling programme imposing restrictions on felling of Khair trees is irrational because it ignores the fact that orchardist having planted other trees, there would be no set back to ecology if harmful plants like Khair trees are removed from the orchard. On these premises, the Petitioner seek the aforesaid relief.

3. In their counter, the Respondents have stated that if the Petitioners want to remove seedlings and saplings of Khair in order to properly space the Khair plants, then they do not require any permission. Even if they want to fell trees for their bona fide domestic use then they will have to seek permission from the competent authority as per provisions contained in the H.P. Land Preservation Act, 1978 and the Rules made thereunder. The Respondents have also stated that if the Petitioners want to sell their Khair trees from their private land then the permission cannot be allowed because the Petitioners had already felled 718 Nos. Khair and B.L. Misc. trees from their private land in question bearing Khasra Nos. 181/29, 185/70, 35, 5, 7 (out of total 92.6 bighas comprising all Khasra numbers viz. 5, 7, 26, 28, 181/29, 35, 63, 64, 65, 66, 67, 68, 69, 185/70 and 182/70) during the year 1994-95 when the area was due for felling under approved 10 years felling programme. As per rule and procedure made under the H.P. Land Preservation Act, 1978, felling from these Khasra numbers can now be allowed only after ten years i.e. in 2004-2005. Since whole area was due for

falling during 1994-95, the Petitioners could not be allowed deviation in felling programme up to two years i.e. up to 1996-97 and now the Petitioners can be allowed felling from all the Khasras only during 2004-05. The Respondents alleged that in the year 1997 the Petitioners applied to fell trees from their private land in violation of ten years felling programme which could not be allowed as same is in contravention of Standing Order No. 670 dated 13.8.1993 (Annexure R-2).

4. The Petitioners in their rejoinder reiterated their averments made in the writ petition and controverted the stand taken by the Respondents in their reply.

We have heard learned Counsel for the parties and carefully examined the material on record.

5. It is not in dispute that the area in question was open for felling trees during the year 1994-95 as per the approved ten years felling programme and the Petitioners were allowed felling of 718 Nos. Khair and B.L. Misc. trees from their private land in question. The Beat will be open for felling of the trees after ten years i.e. 2004-2005. u/s 3 of the Himachal Pradesh Land Preservation Act, 1978 (for short "the Land Preservation Act"), the State Government can issue notification if it appears that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become subjected to erosion. u/s 4 of the Act, the State Government is empowered to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters including the cutting of trees of timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in Clause (b) of this section, of any forest produce other than grass save for bona fide domestic or agricultural purposes of a right-holders in such area. The Government of Himachal Pradesh, Department of Forest Farming and Conservation, framed rules with the H.P. Land Preservation Rules, 1983, in exercise of the powers conferred u/s 21 of the Land Preservation Act. In Rule 4 of the Land Preservation Rules, procedure for issue of permits for removing of Forest Produce from area closed under Sections 4 & 5 of the Conservation Act has been prescribed. Under Rule 2, trees of all species for sale shall be felled by the owners in accordance with the felling cycle prescribed vide notification issued u/s 4 of the Land Preservation Act and permission for removal of trees for sale shall be accorded by various functionaries as per limit and extent prescribed under above referred notification.

6. In the present case, the State of Himachal Pradesh vide Annexure R-2 dated 13.8.1993 framed guidelines for regulating sale and felling of Khair trees throughout the State with a view to adopt uniformity growing on private land regulated according to the approved ten years felling programme framed under the Land Preservation Act and the Rules thereunder. In Clause 2.2 of the said guidelines the marking in private areas is to be done strictly on silvicultural principles. Exploitable diameter will be 20 cms. dbh and no clear felling of area shall be allowed even for purpose of raising of orchards. These guidelines have

been framed by the State Government under the provisions of the Land Preservation Act and Rules framed thereunder and the Petitioners have not based any challenge to these guidelines on any legal ground and have simply averred that no guidelines have been provided to be adopted for the forest officials. We are of the considered view that the Respondents have acted strictly in accordance with the provisions of the Act, Rules and guidelines referred to above in not granting permission for felling of Khair trees in favour of the Petitioners from their private land. We cannot command the Respondents by way of this writ petition to act contrary to the law and allow the Petitioners to cut and remove the Khair trees as requested by them. It is for the sanctioning authority to examine other aspects of the case in accordance with law for granting permission to cut and remove the trees from the private lands of the owners in the State if it is so permissible and if need be grant deviation from adhering to ten years felling programme. In the present case, we find that the Petitioners cannot claim as a matter of right permission for felling of the trees from their private land when the area is closed under ten years felling programme nor directions can be issued to the Respondents for granting deviation in their case. However, in the facts and circumstances of the case, no order is required to be passed in this writ petition, save and except, that the Expert Committee which was constituted by the Government of Himachal Pradesh (sic) Notification No. FFE-B(E)-76/96 dated February 1, 1997, will consider the case of the Petitioners and pass a reasoned order whether the land in question is forest land for the purpose of granting felling permission and whether felling order should be granted by way of deviation keeping in view the directions of the Hon'ble Supreme Court of India given in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, and Environment Awareness Forum Vs. State of Jammu & Kashmir and Others, The Expert Committee shall examine the matter within two months, uninfluenced with any observations made by us in this writ petition and the authorities concerned shall examine the case of the Petitioners on its own merit in accordance with law.

The writ petition is disposed of in the aforesaid terms. No costs.