
(2011) 07 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No. 603 of 2010

Namdeo Narayan Dekate

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Forest Act, 1927 — Section 61

Citation : (2012) BomCR(Cri) 77

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : S.S. Shinge, for the Appellant; D.B. Yengal, Assistant Public Prosecutor, for respondents 1 and S.R. Deshpande, for respondents 2, for the Respondent

Final Decision : Dismissed

Judgement

Bhangale A.P., J.—Rule. Rule is made returnable forthwith. Heard by the consent of the learned Counsel appearing for the respective parties. By this petition, the petitioner prays for quashing and setting aside the order dated 19th June, 2010 passed by the Additional Sessions Judge, Wardha in Criminal Appeal No. 82 of 2007 and the order dated 27/8/2007 passed by the Deputy Conservator of Forest, District Wardha in Enquiry No. 50 of 2004 whereby the seized property wood in FIR No. 105/8, dated 19/11/2004 i.e. material - 83 in number, admeasuring 2.310 Q.mts. and 882 pieces admeasuring 19.649 Q.Mts. of Survey No. 70, Mouza Garamsur was attached/confiscated to the Government.

2. The facts, briefly stated, are as under:

On or about 24/2/2000, Shri Shankar Saduji Dhandale resident of Garamsur/ owner of land Survey No. 70 at Garamsur had applied to Range Forest Officer and sought permission to cut 860 teak wood trees from his Survey No. 70 of Mouza Garamsur. He had got the field measured from TILR, Seloo town. Shri B.B. Kalbande, the Tree officer published "Jahirnama" on 20/11/2002 and gave

permission to cut 840 teak trees on 21/6/2004. The petitioner was given Power of attorney to cut the trees. The petitioner gave a complaint on 17/5/2005 that the wood cut down from Khasra was burnt out and he annexed a list of residual material along with the firewood and requested the Range Forest Officer to dispose of the case stating that the residual material was 1140 teak wood and Q.meter 25.383 and Firewood stock was $2 \times 1 \times 1 = 6.12$ Q.Mts. Earlier, Shri Shankar Dhandale had, on 13/8/1991, entered into Contract/Agreement with Ramesh Krishnaji Ghangare R/o. Ghorad about the standing trees in Khasra No. 70 and also gave an affidavit for trees transportation and had requested for the transit pass. He had also complained against the petitioner alleging that he had obtained signatures on the blank papers as also requested the R.F.O. to restrain the petitioner to cut the trees. On 19/11/2004, the Bit guard Shri Valke inspected Survey No. 70 in protected area No. 221 and found that 44 trees were illegally cut down from the Government Forest. The Bit guard had made Panchnama in presence of the panch and prepared Seizure Memo. FIR No. 105/8 was lodged on 19/11/2004. Shri Panmode R.F.O. made inquiry and submitted the report. It was found that illegal cutting of trees was done from the protected area of the forest attracting section 61 of the Indian Forest Act as the petitioner under the garb of the permission from the tree officer illegally cut the other trees in the protected forest area.

3. The grievance of the petitioner is that the petitioner was not given opportunity to prove his case/defense in view of the provisions of sections 61A and 61B of the Indian Forest Act. It is submitted that, after the due process of measurement of the field by TILR of Seloo on 19/12/2000, in presence of forest officials, the trees were cut from the land Survey No. 70 after the demarcation done by the forest officers and after the permission was granted on 21/4/2004 by the tree officer. Learned Advocate submitted that the petitioner has purchased the property (Trees which were cut) after paying due consideration on 7/9/2004 which ought not to have been confiscated by the forest department on 21/8/2007. Learned Advocate submitted that a bona fide purchaser was put to a loss of wooden logs of teak wood trees.

4. On the other hand, it is submitted on behalf of the respondent that land Survey No. 221, adjoining Survey No. 70 is reserved Forest land. The forest department never permitted) nor granted permission to cut the trees from the reserved forest land. Despite re-intimation to the petitioner to remeasure the Survey No. 70, he did not comply. As per Panchnama, 1140 trees were found cut down. The petitioner tried to conceal the fact by setting on fire the cut down trees. Inquiry No. 50 of 2005 was held, during which deceased Shankar had raised complaint with the forest officials against the petitioner herein that he (Namdev) had obtained signature of Shankar under the false pretext and he is forcibly cutting the trees. Spot inspection had revealed that 540 trees were cut from Survey Nos. 70 and 300 trees were standing on the field. Namdev had complained to Forest department that 180 trees had caught fire. Accordingly Panchnama was drawn. It revealed that, at the spot, 1140 teak wood logs were

found. The petitioner was given an opportunity of being heard at the inquiry. His Statement was recorded on 21/11/2005 and on 28/11/2006. Statement of Widow of Shankar (deceased) was also recorded before A.C.F. Wardha on 11/12/2006. She alleged that Namdev had cut the teak wood trees from the Government land. The legal representatives of Shankar had raised dispute about the teak wood allegedly cut by Namdev from land Survey No. 70. Since, prima facie, a forest offence appeared to have been committed in respect of the forest produce, the respondent had rightly initiated the action u/s 61A of the Indian Forest Act. The impugned order dated 27/8/2007 by the Deputy Conservator of Forest in Inquiry No. 50 of 2005 was passed after the petitioner was given reasonable opportunity of hearing as above. The Appellate Court did consider this by a well reasoned Judgment to dismiss the appeal. In my opinion, in the facts and circumstances revealed, fairness was shown by the decision making authority in this case to record the statement of the petitioner twice on 21/11/2005 and on 28/11/2006; hence, no breach of the principles of Natural justice can be complained of. No case is made out to interfere with the impugned orders by invoking extraordinary Jurisdiction.

For the reasons stated above, the Petition stands dismissed. No order as to costs. Rule is discharged accordingly.