
(1996) 11 KAR CK 0031
In the Karnataka High Court
Case No : Writ Petition No. 28810 of 1995

P.A. Belliappa and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 28-11-1996

Acts Referred:

Karnataka Preservation of Trees Act, 1976 — Section 8(4)(Ii)

Citation : (1997) 7 KarLJ 640

Hon'ble Judges : Tirath S. Thakur, J

Judgement

1. This petition seeks a declaration to the effect that the petitioner's application for permission to cut certain trees from their Coffee Estate is deemed to have been granted in terms of the provisions contained in Section 8(4)(ii) of the Karnataka Preservation of Trees Act. A mandamus directing the 2nd respondent to issue the release order and Mafi passes for transportation of the Timber has also been prayed for.

2. The petitioners claims to be the owner of a certain Coffee Estate situate in Mira Village of Madikeri Taluk. An application seeking permission to cut certain shade trees grown in the estate is said to have been filed by the petitioners before the 2nd respondent-Tree Officer concerned under the provisions of the Act aforementioned. This application, was according to the petitioners required to be considered and appropriate orders passed on the same within a period of one year from the date the same was filed failing which the application was to be deemed to have been granted. The petitioner's case in the present writ petition is that the Tree Officer concerned had neither informed them about the decision taken on the petitioner's application nor otherwise specifically granted or refused the permission applied for. According to them, the petitioners are in terms of Section 8(4)(2) of the Act entitled to a declaration that the permission applied for has been granted.

3. In the statement of objections filed on behalf of the respondents, it is stated that the 2nd respondent never received any application from the petitioners. On

the contrary, the said respondent claims to have received a communication from the Deputy Commissioner, dated 27th of July, 1991, a copy whereof has been produced as Annexure-B along with certain other documents including an application in Form No. 1 from the petitioner. It is urged that a deemed permission would arise only in case the application had been addressed to the competent Tree Officer complete in all respects. No such application having been addressed to the Tree Officer, the question of a deemed permission does not arise.

4. I have heard the learned Counsel for the parties.

5. There is nothing on record before me to suggest that the application said to have been made by the petitioner was actually presented to the Tree Officer concerned. As a matter of fact the application copy whereof has been produced as Annexure-A, to the writ petitions is addressed, the Tree Officer without so much as indicating the District concerned. There is no acknowledgement from the Tree Officer showing that the application was actually presented before him. That apart, before a presumption in terms of Section 8(4) of the Act, can arise, the applicant must conclusively establish that the application was not only filed to the competent authority but also that the same was accompanied by the prescribed documents such as the site plan or survey sketch specifying clearly the site or Survey No. the number, kind and girth of the trees sought to be cut and the reasons therefor. An application which is incomplete in terms of the particulars required to be furnished, or defective in that the same is not accompanied by the requisite documents, cannot give rise to any deemed permission. The provisions of Section 8(4) of the Act envisage a deemed permission only if the applicant has done all that is required to be done by him under Section 8(1) of the Act, for otherwise an application not addressed to or filed before the competent Tree Officer, incomplete in material respects may also give rise to a deemed permission which could not be the intention of the legislative while enacting the said provision. The provisions of Section 8 and in particular sub-sections (1) and (4), have to be given a strict interpretation to prevent any anomalous or absurd results flowing from the same. It is evident that before an applicant can take advantage of the neglect or omission of the Tree Officer in passing appropriate orders, he must satisfactorily demonstrate that he has done his part of the duty strictly in accordance with the requirements or the provision.

6. A copy of the application filed in the instant case does not however satisfy these requirements inasmuch as there is neither any site plan or survey sketch enclosed therewith nor is the kind and girth of the trees sought to be cut indicated. All that is claimed is a certain inspection of the trees was conducted through the Revenue Agency. This may be so but that would not be enough for a presumption to arise under Section 8. Submission of an application directly to the Deputy Commissioner, for purposes of getting an Inspection conducted is not the same thing as submission of an application to the competent officer under

Section 8. While the Deputy Commissioner, may have taken some steps for verification, it is not enough to attribute the same to the Tree Officer.

7. Learned Counsel next argued that the petitioner's application could at least now be directed to be considered and appropriate orders passed on the same. I am not inclined to grant this prayer either. So long as the application is not formally filed before the competent officer, the question of issuing any mandamus directing him to consider the same does not arise. It is open to the petitioner to file an appropriate application in the prescribed form supported by the prescribed documents seeking permission to cut and remove the trees in question, in which event the Tree Officer concerned is expected to take necessary action and dispose of the same in accordance with law.

8. With the above observations this writ petition fails and is accordingly dismissed but in the circumstances without any orders as to costs.