

(1999) 01 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 1765 of 1995

Paul D'Silva and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Karnataka Preservation of Trees Act, 1976 — Section 4 (ii), 8, 8 (4)
Karnataka Preservation of Trees Rules, 1977 — Rule 4 (1)

Citation : AIR 1999 Kar 384 : (1999) ILR (Kar) 4487 : (1999) 5 KarLJ 355

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri Madhusudan R. Naik, for the Appellant; Sri S. Mahesh, A.G.A., for the Respondent

Judgement

1. The petitioners are the joint owners of land bearing Sy. No. 1/3 of Thavoor Village, to an extent measuring 22 acres and 45 cents. The said land according to the claim made by the petitioners is a cardamom estate.

2. In this petition, the petitioners have prayed for a declaration that the deemed permission secured by the vendors of the land referred to above pursuant to the application filed by the vendors of the petitioners on 9th January, 1981 in Form No. 1 under Rule 4(1) of the Karnataka Preservation of Trees Rules enures to the benefit of the petitioners and for a further direction to the respondents not to obstruct the felling of the trees from the said lands, and to issue necessary "mafi" (transport) pass to enable the petitioners to transport the timber that they might fell from the land in question. They have also prayed for quashing of the endorsement dated 10th March, 1995, a copy of which has been produced as Annexure-G passed by the 2nd respondent during the pendency of the petition wherein the prayer of the petitioners seeking permission to cut the trees from the lands in question came to be rejected.

3. A few facts which are not in dispute and which are relevant for the disposal of this petition may be set out as hereunder:

The petitioners purchased the land in question by means of registered sale deed dated 18th February, 1982 from its original owners (1) Sri A. Palianappan, (2) Smt. Sulochana and (3) Smt. M. Valliamma. The original owners had filed an application on 29th January, 1981 in Form No. 1 seeking permission to cut the trees standing on the lands referred to above as provided u/s 8 of the Karnataka Preservation of Trees Act, 1976 (hereinafter referred to as "the Act"). The said application remained undisposed of for a period of one year from the date of the receipt of the application by the 2nd respondent; and therefore, it is the case of the petitioners that the permission sought by the vendors of the petitioners to cut the trees set out in Schedule-E to this petition is deemed to have been granted as provided under clause (ii) of sub-section (4) of Section 8 of the Act.

4. While it is not disputed by the respondents in the statement of objections filed by them that the vendors of the petitioners had made an application on 9th January, 1981 in Form No. 1 under Rule 4(1) of the Karnataka Preservation of Trees Rules, 1977 (hereinafter referred to as "the rules"), seeking permission to fell the trees set out in Schedule-E given to this petition as provided under clause (ii) of sub-section (4) of Section 8 of the Act and the said application remained undisposed of for a period more than one year from the date of the application and as such the vendors of the lands in question wherein the trees in question are located are entitled for the benefit of deemed permission in terms of clause (ii) of sub-section (4) of Section 8 of the Act, contended that the benefit of deemed permission acquired by the vendors of the petitioners will not be available to the petitioners. In other words, the only contention raised by the respondents to deny the relief sought for by the petitioners is that the petitioners being the subsequent purchasers of the lands in question along with the trees standing thereon, they cannot rely upon the benefit of deemed permission acquired by their vendors; and unless the petitioners obtained a separate permission, they are not entitled to cut and remove the trees standing on the land in question. It is also necessary to point out that it is not disputed by the respondents that the petitioners are the owners of the lands in question having purchased the same by means of registered sale deed dated 18th February, 1982 from its original vendors who had filed the application seeking permission to cut the trees in question.

5. Sri Madhusudan Naik, learned Counsel appearing for the petitioners submitted with reference to the provisions contained in Section 8 of the Act that the permission to cut the trees standing on the lands are granted with reference to the trees standing on the land; and the Act in question has been passed only to prevent indiscriminate felling of the trees by their owners and to have some control or check while granting permission to cut the trees. In other words, it is his submission that when the authorities grant permission to cut the trees it means that there cannot be objection to cut the trees; and even in cases where deemed permission is granted, it must be held that there cannot be any objection to cut the trees in respect of which permission has been sought; and under these circumstances, the subsequent purchaser of the trees along with the

lands would be entitled for the benefit of the permission earlier granted to the vendors of the lands and the trees; or the benefit of the deemed permission acquired by such vendors. He would also submit that the provisions contained u/s 8 has to be considered with reference to the right of a person to enjoy his property guaranteed u/s 300-A of the Constitution of India. It is also his submission that the petitioners being the purchasers of the lands in question along with the trees standing thereon have acquired all the rights and liabilities in respect of the lands in question which include the right to fell the trees which had enured to the benefit of the vendors of the lands in question by virtue of the deemed permission granted to them.

6. However, Sri Mahesh, learned Government Advocate strongly refuting the contention of Sri Naik submitted that the permission to cut the trees is granted u/s 8 of the Act with reference to a person though it relates to the trees standing on a land. Therefore, he submits that the petitioners are not entitled for the benefit of deemed permission acquired by their vendors.

7. In the light of the rival contentions advanced by the learned Counsel appearing for the petitioners, the only substantial question that would arise for my consideration in this petition is as to whether the petitioners who are the purchasers of the lands in question along with the trees in question are entitled for the benefit of deemed permission secured by the vendors of the petitioners to cut the trees in question? It is useful to refer to Section 8 of the Act before I proceed to consider the said question. The said Section 8 reads as follows:

"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 number, the number, kind and girth of the tree sought to be cut and the reasons therefore 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 of 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.

(4) If the Tree Officer fails to inform the applicant of his decision--

(i) in the case of an application in respect of a tree in an urban area and in a rural area of the kind specified in Schedule II, within sixty days; and

(ii) in the case of an application in respect of a tree in a rural area of the kind specified in Schedule I, within one year from the date of receipt of the application by him or, if the receipt of the application has been acknowledged by him from the date of such acknowledgment,

such permission shall be deemed to have been granted.

(5) Where permission to fell a tree is granted, the Tree Officer may grant if subject to the condition that the applicant shall plant another tree or trees of the same or any other suitable species on the same site or other suitable place within thirty days from the date the tree is felled or within such extended time as the Tree Officer may allow.

(6) Notwithstanding anything contained in sub-sections (1) to (5) but subject to such conditions and restrictions as may be prescribed, for bona fide domestic use of a family, one or more members of such family may, if they are otherwise entitled to do so, in the aggregate, fell, in a calendar year, such number of trees as would fetch not more than 2.8 cubic metres of timber and fifty poles and five tonnes of firewood.

(7) Nothing in this section shall apply to felling of Casuarina, Coconut, Erythrina, Eucalyptus, Glyrecidia, Hopea Wightiana, Prosipis, Rubber, Sesbania, Silver Oak and Subabul Trees".

As it can be seen from sub-section (1) of Section 8, the said sub-section (1) prohibits felling of any tree by any person whether in his ownership or occupancy or otherwise except with the previous permission of the Tree Officer. Sub-section (2) of Section 8 provides that any person desiring to fell a tree should apply in writing to the Tree Officer for permission on that behalf. It also provides for the procedure to be followed while making the application. Sub-section (3) provides for the procedure to be followed by the Tree Officer when an application is made. Proviso given to sub-section (3) of the Act provides that the circumstances set out in the said proviso, exists, the Tree Officer shall not refuse permission. Sub-section (ii) of Section 4 which is relevant for our purpose provides that if the Tree Officer fails to inform the applicant of his decision pursuant to the application to fell the trees in the case of in a rural area of the kind specified in Schedule I, within one year from the date of receipt of the application by him or, if the receipt of the application has been acknowledged by him from the date of such

acknowledgment, such permission shall be deemed to have been granted.

8. As observed by me earlier, there is no dispute that the vendors of the petitioners were entitled for the benefit of deemed permission to cut the trees as provided under sub-clause (ii) of sub-section (4) of Section 8 of the Act. It is also not in dispute that the petitioners had purchased the lands in question with the trees within about a month from the date of the benefit of the deemed permission secured by the vendors of the petitioners. No doubt, sub-sections (1) and (2) of Section 8 of the Act prohibits a person from felling any tree either in his ownership or otherwise without the previous permission granted by the Tree Officer. In my view, though the prohibition is on a person to fell the trees, the bar imposed to fell the trees as rightly contended by the learned Counsel appearing for the petitioners is with reference to the trees standing on the land. The prohibition is for felling the trees. The permission a person is required to secure is with reference to the trees standing on a land. The Tree Officer is required to apply his mind and consider the question whether the permission sought to fell the trees must be granted is with reference to the nature of the trees, location of the trees and other relevant factors with reference to the trees, and it is not with reference to the status of the person who makes an application. The Tree Officer has to keep in mind the public interest and the consequences that are likely to flow on the environment or the preservation of the trees in an area while granting such permission. All these factors would clearly indicate that the permission to be granted is with reference to the trees standing on the land though the permission is required to be given to a person who makes an application, but necessarily need not be the owner or occupier of the land. Therefore, in my view if a permission is granted to fell the trees or a person secures the benefit of deemed permission on account of inaction on the part of the authorities it must be held that there cannot be any objection for cutting the trees by such a person who secures such permission or in respect of which deemed permission is secured. In that situation, though there is no specific provision which provides that the permission granted to a person to fell the trees is transferable to the successor in interest of the land where the trees in question are standing. Since the rights in the properties are transferable, it must be held that the said rights include the right one has secured to fell the trees. If this interpretation is placed, in my view it would not cause any public injury as the permission is already got by a person who has acquired right to the trees. The only prohibition under the Act as noticed by me earlier is that the trees could be cut only after obtaining permission and not without it. If the interpretation suggested by the learned Additional Government Advocate is accepted, it would be asking the authorities to comply with the procedural requirements over again for the purpose of cutting the trees in respect of which the authorities had either positively granted the permission or in respect of which deemed permission had been obtained. This would cause unnecessary hardship to the parties without serving any benefit to anyone. Therefore, in the light of the discussion made above, I am of the view that the deemed permission accrued to the benefit of the

vendors of the lands in question where the trees in question are located, would also enure to the benefit of the petitioners who have undisputedly purchased the lands in question along with the trees in question.

9. One other aspect of the matter which may have to be referred to is with reference to Order-Annexure-G. Admittedly, the Order-Annexure-G came to be passed rejecting the claim of the petitioner for grant of permission during the pendency of the petition and long after the deemed permission which had accrued to the benefit of the vendors of the lands in question. Once the deemed permission has accrued, it is needless to observe that the order passed beyond the date fixed for securing the deemed permission must be held to be one without the authority of law. In this view, I am also supported by the Division Bench decision of this Court in the case of State of Karnataka Vs. Robert D'Silva, . In the said decision, at paragraph 12, the Division Bench of this Court has taken the view that any order passed subsequent to the deemed permission obtained is redundant in law. Therefore, the Order-Annexure-G is liable to be quashed. It is also necessary to notice the submission of the learned Government Advocate relying upon sub-section (5) of Section 8 of the Act which provides for imposition of condition by the Tree Officer directing the applicant to plant trees in the event of felling permission being granted. Relying upon this provision, learned Government Advocate also pointed out that since the petitioners are relying upon deemed permission, in the event of this Court granting the relief to the petitioners, this Court may direct the petitioners to plant equal number of trees in respect of which the petitioners are entitled for the benefit of deemed permission to fell the trees.

10. Sri Madhusudan Naik, learned Counsel appearing for the petitioners fairly submitted that the petitioners have no objection for this Court issuing such a direction. I find the stand taken by the learned Counsel appearing for the petitioners is fair and reasonable. In the light of what is stated above, I make the following order:

(i) Order-Annexure-G, dated 10th March, 1995 is hereby quashed. It is declared that the deemed permission to fell the trees situated in Sy. No. 1/3 of Thavoor Village as set out in Annexure-E given to the petition in respect of which the vendors of the petitioners have obtained deemed permission, has accrued to the benefit of the petitioners.

(ii) The respondents and their officers are directed not to prevent the petitioner from felling the trees situated in Sy. No. 1/3 of Thavoor Village as set out in Annexure-E given to this petition, provided they are cut within a period of six months from today.

(iii) However, it is made clear that the deemed permission granted to the petitioner only relates to the trees set out in Annexure-E given to this petition which are located in Sy. No. 1/3 of Thavoor Village.

(iv) On the petitioners felling the trees in question, the 3rd and 4th respondents

are directed to consider the application of the petitioners for grant of transport pass in accordance with the Karnataka Forest Act and Rules.

(v) The undertaking given by the Counsel for the petitioners, that the petitioners would plant equal number of trees which they would fell in Sy. No. 1/3 situated at Thavoor Village is placed on record and they are directed to comply with the said undertaking within four months from the date of transporting the felled trees.

(vi) In terms stated above, this petition is allowed and disposed of.

11. Sri S. Mahesh, learned Additional Government Advocate is given four weeks" time to file his memo of appearance.