

(2006) 03 KAR CK 0078
In the Karnataka High Court
Case No : Writ Petition No. 37904 of 2002

P.K. Abdul Zaleel

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Karnataka Preservation of Trees Act, 1976 — Section 21, 21 (1)

Citation : (2006) ILR (Kar) 1756 : (2006) 3 KarLJ 104 : (2006) 3 KCCR 1573

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

Bench : Single Bench

Advocate : T.I. Abdullah, for the Appellant; A.G. Shivanna, AGA, for the Respondent

Judgement

H.G. Ramesh, J.—In this writ Petition, the petitioner has challenged the order dated 19.9.2002 (Annexure-G) passed by the Tree officer and the Deputy Conservator of Forests, Madikeri ordering for recovery of a sum of Rs. 1,64,306/- from the petitioner on the ground that the Government had incurred the aforesaid loss as a result of the petitioner failing to get the unauthorisedly felled trees released as per the order dated 5.10.1994 passed by this Court in W.P. No. 19118/94 which is produced as Annexure B.

2. I have heard the learned Counsel appearing for the parties and perused the impugned order - Annexure-G.

3. Facts in brief: One K. Krishna Bhat had been granted permission to cut certain trees. On the allegation that he had cut certain trees unauthorisedly, proceedings were initiated in three cases in respect of 69 trees, 67 trees and 4 trees and the said Krishna Bhat offering to compound the offences arising there from, the respondents levied a composition fee of Rs. 5,000/-, Rs. 5,000/- and Rs. 500/- respectively. He sought for release of the said unauthorisedly cut trees in his land. Since permission was refused, he approached this Court and this Court in the aforesaid writ petition had ordered for release of the felled trees as per law. But he did not get the trees released by paying its value as per Section 21 of the

Karnataka Preservation of Trees Act, 1976 ("the Act"). Subsequently, the Tree officer has passed the order impugned herein for recovery of Rs. 1,64,306/- against the petitioner who is the power of attorney holder of the aforesaid Krishna Bhat, Hence, this petition.

4. Sri. T.I. Abdulla, learned Counsel for the petitioner submits that the petitioner is only a Power of attorney holder of Krishna Bhat and the proceeding initiated against him is not tenable in law. He also submits that the impugned order - Annexure-G passed by the Tree Officer is without the authority of law as the power to pass such an order cannot be traced to any provision of law.

5. Sri. A.G. Shivanna, learned Additional Government Advocate submits that the power to pass the impugned order could be traced to Section 21 of the Act and hence the impugned order does not call for interference.

6. Reference to Section 21 of the Act is necessary to examine the contention urged. It reads as follows:

21. Power to compound offences,- (1) The State Government may, by order, empower a Tree Officer. -

a) to compound on payment of a sum equivalent to twenty-five percent of the value of the property involved in the offence, any offence under this Act,

b) to release any property seized or liable to confiscation, on payment of the value thereof as estimated by such officer.

2) On the payment of such sum or such value or both, as the case may be, to such officer, the offender, if in custody, shall be released. The property, if any, seized shall be released and no further proceedings shall be taken against such offender or property.

7. On a reading of Section 21 of the Act, it cannot be said that it authorises the State Government to confer power on a Tree Officer to recover the loss suffered by the Government as a result of the offender failing to get the unauthorisedly felled trees released by paying its value. Section 21(1) of the Act only authorises the State Government to confer power on a Tree Officer to compound any offence under the Act subject to payment of the amount referred to therein and to order for release of any property seized or liable to confiscation on payment of its value as estimated by such officer. There is no compulsion under the Act for an offender to get the unauthorisedly felled trees released. It is left to him to seek for release of the property. Only if the offender seeks for its release, then he shall have to pay its value. Therefore, the impugned order - Annexure-G is without the authority of law and on that sole ground, it is liable to be quashed. I also find force in the contention that the penalty proceeding initiated against the petitioner on the ground of his being the Power of Attorney Holder of Krishna Bhat is not tenable in law.

8. So far as the relief sought for relating to refund of Rs. 20,150/- being the

value of the National Savings Certificates stated to have been deposited with The Tree Officer (respondent No. 2) in connection with some other proceeding. Sri Abdulla submits that the petitioner may be given liberty to make a representation to the said officer.

9. In the result, I make the following order:

(i) the impugned order dated 19.9.2002 - Annexure-G passed by respondent No. 2 is quashed;

(ii) the petitioner is given liberty to represent to respondent No. 2 for refund of Rs. 20,150/- being the value of the National Savings Certificates stated to have been deposited with him. On such representation, respondent No. 2 shall consider the grievance of the petitioner in accordance with law and shall pass appropriate orders within three months thereof.

Petition stands disposed of in the above terms. No costs.