

(2007) 07 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 2977 of 1995

Rameshwar Mantri

APPELLANT

Vs

Additional Commissioner, Amravati Division, Additional
Collector, Sub-Divisional Officer and Tahsildar

RESPONDENT

Date of Decision : 17-07-2007

Acts Referred:

Maharashtra Felling of Trees (Regulation) Act, 1964 — Section 2, 3
Maharashtra Land Revenue (Regulation of Right to Trees etc.,) Rules, 1967 — Rule 2,
2(1), 2(2), 3
Maharashtra Land Revenue Code, 1966 — Section 25, 25(2)

Citation : (2008) 1 ALLMR 274 : (2007) 5 BomCR 665

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : Pathan, for the Appellant; Mujumdar, A.G.P., for the Respondent

Judgement

A.B. Chaudhari, J.—By the present petition the petitioner has challenged the orders made by the Sub Divisional Officer, Mehkar who ordered seizure and auction of 40 babool wooden logs belonging to the petitioner and confirmed by the Additional Collector, Buldana as well as the Additional Commissioner, Amravati Division, Amravati in appeals.

FACTS:

2. The petitioner is owner of agricultural land bearing Gat No. 158 area 4.00 H.R. at mouza Sultanpur, tahsil Lonar, district Buldana. The petitioner engaged contractor Madangawali for felling 40 babool trees standing in his field and for sale thereof at Rs. 34,000/-. All the 40 trees were felled but the Tahsildar, Lonar seized those felled trees and reported to the S. D. O. who held under his order dated 07/9/1993 that the trees were felled by the petitioner without permission and hence were seized and put to auction which fetched price of Rs. 40,000/- which were deposited in the Government treasury and in addition, fine of Rs. 500/- was imposed. The petitioner preferred first appeal before the Additional

Collector where he did not succeed and, therefore, preferred second appeal before the Additional Commissioner, but without any success. The case of the petitioner was that the trees were causing obstruction for cultivation of his agricultural land and the portion under the trees was unutilized and thus become fallow. In order to remove the obstruction and bring the said portion under cultivation, he engaged the contractor for felling the trees. None of the revenue authorities accepted his case but they held that the petitioner had illegally cut 40 babool trees and the same was in violation of Section 25(2) of the Maharashtra Land Revenue Code (for short; the Code). Hence, this writ petition.

ARGUMENTS:

3. Mr. Pathan, learned Counsel for the petitioner submitted that 40 babool trees which were spread over in the field of the petitioner had made enough area uncultivable and as such because of those grown trees, crop in the said area was affected. Thus, the said trees caused obstruction in the smooth cultivation of his field and, therefore, in order to bring the said uncultivable land into cultivation, it was necessary for him to cut those trees and bring the land thereunder under cultivation. He then submitted that no permission for cutting babool trees is required as the babool trees are not scheduled trees within the meaning of definition of .tree. u/s 2(f) of the Maharashtra Felling of Trees (Regulation) Act, 1964 and, therefore, restriction of felling of the trees provided by Section 3 of the said Act is not attracted in case of non scheduled tree like babool tree. He then submitted that the impugned orders are therefore clearly illegal and liable to be quashed and set aside.

4. Per contra, learned Assistant Government Pleader Mr. Mujumdar vehemently argued that even if the trees are not scheduled trees, under the provisions of the Maharashtra Felling of Trees (Regulation) Act, the provisions of Section 25 of the Code enables the Government to restrict or prohibit cutting of trees and under the rule namely; The Maharashtra Land Revenue (Regulation of Right to Trees etc.,) Rules, 1967, the cutting of trees is regulated and in his submission Rule 3 clearly provides prior written permission from the Collector before cutting any tree including babool tree. Relying on Rule 2 read with rule 3 of the said Rules, 1967, Mr. Mujumdar vehemently argued that upon reading of these rules, in fact no tree can at all be cut or felled and there is blanket prohibition in cutting any tree without permission from the Collector as contemplated by rule 3. He also argued that the rule making authority obviously had in mind the environmental factors as well as ecology and hence impugned orders are liable to be maintained.

CONSIDERATION:

5. Having considered rival submissions made by the respective parties and having gone through the entire record, it would be useful to reproduce Section 3 of the Maharashtra Felling of Trees (Regulation) Act, 1964 and the definition of .tree.

3. Restriction on felling of trees. -

(1) Notwithstanding any custom, usage, or law for the time being in force, or the decree or order of a Court, or anything contained in any instrument to the contrary, no person shall fell any tree or cause such tree to be felled in any land, whether of his ownership or otherwise, except with the previous permission in writing of a Tree Officer duly empowered by the State Government in that behalf.

(1A) If any person wishes to fell a tree, he shall apply in writing to the Tree Officer empowered under subsection (1) for permission in that behalf.

1(f) .tree. means any tree specified in the Schedule; and the State Government may, by notification in the official Gazette, and to or modify the Schedule, after considering the necessity for the protection of any variety of trees; and the provisions of Sub-section (2) of Section 15 in so far as they relate to laying before, and modification by the State Legislature shall apply in relation to such notification as they apply in relation to any rule made under that section;.

6. Perusal of Section 3 shows that there is prohibition of any person from felling any tree whether of his ownership or otherwise except that the previous permission in writing of a Tree Officer. The definition of tree, however, shows that the restriction or prohibition, that is placed by the Legislature is with reference to the trees specified in the schedule of the Act or the trees added in the schedule of a notification in official gazette by the State Government. Now, admittedly, schedule to the said Act does not contain babool tree and hence, it will have to be held that insofar as cutting of babool tree is concerned, the said Act of 1964 does not have any application in respect of cutting of babool tree. Now, coming to the provisions of Section 25 of the Code as extracted below;

25. Right to trees in holdings:-With effect from the commencement of this Code, the right to all trees standing or growing on any occupied land shall vest in the holder thereof but if the State Government is of opinion that it is necessary to prohibit or regulate the cutting of certain trees for preventing erosion of soil, it may by rules prohibit or regulate the cutting of such trees.

(2) Nothing in Sub-section (1) shall affect in any area any right in trees in the holding of an occupant in favour of any person existing on the 1st day of October, 1955, but the occupant may apply to the Collector to fix the value of such right and purchase the right through the Collector in such manner as may be prescribed....

7. Reading of Section 25 shows that the State Government has been empowered to prohibit or regulate cutting of certain trees for prevention of erosion of soil by framing appropriate rules. The State Government has framed the Maharashtra Land Revenue (Regulation of Right to Trees, Etc.) Rules, 1967 and under the heading .A., i.e. Regulation of cutting of trees for prevention of erosion of soil, Rule 2 and 3 occur. Rule 2 Sub-rule 1 and 2 are quoted below:

2. Cutting of trees prohibited in certain cases.

(1) No tree within thirty meters of the extreme edge of the bank of any water-

course, spring or a tank shall be cut, except with the previous permission of the Collector.

(2) In any case not falling under Sub-rule (1), no tree in any holding or part of a holding containing uncultivable land in which economic cultivation of field crop is not possible shall be cut without the previous permission of the Collector, if the tree growth in that holding or part of holding is less in proportion than twenty trees per acre.

8. Now, in the instant case, Sub-rule (1) of rule 2 is not attracted because it is nobody's case that babool trees in question were on the bank of any water course, spring or a tank. Sub-rule (2) of rule 2, however, relates to felling of any tree which will of course include felling of babool tree. But, then Sub-rule (2) permits a cultivator, cutting of such trees including babool trees in any holding containing uncultivable land in which economic cultivation of field crop is not possible. And such cutting of trees without permission is made permissible if the population of such trees is less than twenty trees per acre. Now, in the instant case, the total area held by the holder, i.e. the petitioner is 4.00 hectare, i.e. about 10.00 acres and, therefore, looking to the number of 40 trees cut from the said holding, it falls obviously less than 20 trees per acre. The petitioner asserted his case accordingly before the authorities including the Additional Commissioner and in paragraph 3 of the order of the Additional Commissioner in the second appeal in the beginning itself there is reference to this assertion made by the petitioner. However, none of the revenue authorities considered the said submission in the light of Rule 2 (2) of the Rules, 1967 and thus, they fell in error. The submissions made by Mr. Mujumdar in the light of the above discussion are, therefore, not tenable.

9. In the result, writ petition is partly allowed. Impugned orders are quashed and set aside. Rule is made absolute in terms of prayer Clause (a). In accordance with the prayer (b) of the writ petition, the respondents are directed to return the amount of Rs. 32,000/- (rupees thirty-two thousand) and fine amount of Rs. 500/- only to the petitioner within a period of four weeks from the date of receipt of writ of this Court. In the circumstances of the case, there shall be no order as to costs.