
(1981) 02 KAR CK 0022
In the Karnataka High Court
Case No : WP. 176/81

Rose L Taur

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-02-1981

Acts Referred:

Karnataka Preservation of Trees Act, 1976 — Section 2(1)(F)

Citation : (1981) 1 KarLJ 587

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. The present writ petitioner, namely, Mrs. Rose L Taur resides in a premises bearing No. 430 in Jayanagar. The building belongs to one Sri Shivanna Gowda under whom the writ petitioner is a tenant. The landlord has sought for the eviction of the tenant and according to the writ petitioner, there is no love lost between them. There is a small compound enclosing the land appurtenant to the building and it appears that there is a pomegranate plant therein. The branches of the plant were spreading. The Electricity Department instructed the writ petitioner, according to her, to cut such of the branches which were likely to come in contact with the live wire of electrical energy that passes across the compound. Accordingly, the petitioner cut some of the branches in the interest of safety. This was wrongly reported by the landlord to the Forest Department respondent No. 2 stating that the writ petitioner had cut and removed the tree. Accordingly, a notice was served on the writ petitioner as per Annexure-A dated 28-10-80 which reads:

"It is understood that you have cut one tree in the above site without obtaining permission from this office which is against the Rule. Hence, you are informed to go over to this office within 3 days to show the cause for cutting the tree without proper permission from this office, failing which action as per Rules will be taken against you in the court of law. This may please be noted."

It is signed by the Asst. Conservator of Forests, the "Tree Officer."

2. Thereafter, the notice was suitably replied as per Annexure-B dt. 4-11-80. The

writ petitioner informed the officer that the tree was not cut; but that only some of the branches were chopped with a view to prevent them from coming in contact with the live electric wire and that she was not liable for any action. Ultimately, the tree officer sent a notice dated 6-12-1980 to the present writ petitioner which reads:

"On perusal of your reply to the reference cited above, it is confirmed that the branches of a Pomegranate tree in the said premises has been cut and removed by you, which is an offence under Preservation of Trees Act, 1976. This has been agreed by you at this office on 4-11-80, when you visited. To dispose the case you are hereby informed to remit Rs. 25.00 through the challan sent herein on Reserve Bank of India counter duly signing on the challan, and the remitted challan may be sent to this office for closing the case departmentally, failing which action will be taken as per rules may be noted."

It is that order that was sent to the Writ Petitioner that is challenged in this Writ Petition as illegal and arbitrary.

3. In order to appreciate the contentions, raised before me, it is necessary to look into the Karnataka Preservation of Trees Act, 1976. In the Act the word "tree" is defined as follows:

""tree" means any woody plant whose branches spring from and are supported upon a trunk or body and which trunk or body is not less than five and a half centimetres in diameter and not less than one metre in height from the ground level and includes palms, bamboos, stumps, brushwood, canes and seedlings of such trees but does not include sandal and rose wood trees."

Further in Cl. (f) of S. 2(1) of the Act, "to fell a tree" is defined thus:

""to fell a tree" means severing the trunk from the roots, uprooting the tree and includes burning or cutting or girdling or applying arboricides to a tree to cause substantial damage thereto or destruction thereof."

Section 8 of the Act speaks of restriction on felling of trees. Sub-sec. (1) of that section reads:

"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."

S. 2(1)(h) defines Tree Officer; "tree officer" means a Forest Officer appointed as such by the Chief Conservator of Forests (General) for the purposes of this Act.

Section 22 speaks of penalty. It states:

"Any person who contravenes any of the provisions of this Act or order made thereunder shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or

with both. Upon such conviction the Court may order any property in respect of which the offence is committed to be forfeited to the State Government."

S. 21 of the Act speaks of power to compound offences. It states:

"(1) The State Government may, by order, empower a Tree Officer.-

(a) to compound on payment of a sum not exceeding five thousand rupees any offence under this Act....."

4. The learned Government Advocate submitted that the order issued by the Tree Officer is under S. 21(1) to compound the offence as requested by the present writ Petitioner.

5. The learned Advocate appearing for the writ petitioner, however, pointed out that no offence is ever committed by the present writ petitioner and therefore the question of compounding the offence would not arise on the facts of the case.

6. It is therefore, necessary for me to consider whether an offence at all is committed by the writ petitioner on the facts on record. In the notice issued as per Annexure-C it is stated by the Tree Officer thus:

"It is confirmed that the branches of a pomegranate tree in the premises have been cut and removed by you."

So even according to the Tree Officer what is cut and removed are the branches of the pomegranate tree. The Officer has nowhere stated that the plant could be termed as tree as defined in the Act. Secondly, in the Act cutting the branches of a tree would not amount to an offence. What is made an offence is felling of the tree as defined in the Act. Admittedly, there is no felling of tree on the facts of the case. Therefore, no offence is committed. If no offence is committed, there is no question of compounding the offence. The impugned order issued by the Tree Officer is, therefore, wholly arbitrary and capricious and it cannot be sustained.

7. In the result, the Writ Petition is allowed. The impugned order at Annexure-C dated 6-12-1980 is hereby quashed. No costs.