
(1989) 12 KAR CK 0018
In the Karnataka High Court
Case No : W.P. No. 9226/1988

Satinderpal Bhandari

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 06-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Forest Act, 1963 — Section 62, 71A(3)(B)

Citation : (1990) 1 KarLJ 195

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for the following reliefs;

"a) to issue a writ of mandamus directing the respondent No. 2 to take back the vehicle No. MWN 1594 of the petitioner from the purchaser and to hand over it to the petitioner;

b) to pay the compensation at the rate of Rs. 8000/- per month since the date of seizure of the vehicle bearing Registration No. MWN 1594 to the date of delivery of the vehicle to the petitioner; and

c) to direct both the respondent in case they fail to get the said vehicle from the purchaser to purchase a brand new truck and handover the same to the petitioner."

2. In the original petition, the petitioner had sought for certain other reliefs which he gave up, and by amending the petition, confined it to the aforesaid reliefs. During the course of hearing, Sri Kashinathrao Patil, learned Counsel for the petitioner submitted that prayers (a) and (c) may be treated as given up as the vehicle had been sold during the pendency of the proceedings. The submission is placed on record. The prayers (a) and (c) are treated as given up.

3. However, Sri Kashinathrao Patil, learned Counsel for the petitioner has pressed the prayer relating to compensation at the rate of Rs. 8000/- per month since

the date of seizure of the vehicle in question bearing Registration No. MWN 1594 to the date of delivery of the vehicle to the petitioner. The contention is that detention of the vehicle is violative of fundamental right guaranteed under the constitution in as much as the detention of the vehicle, according to learned Counsel, is an unreasonable restriction on the right to hold and use the property. Therefore, whenever the seizure of a vehicle continues unusually for a long time, the authority seizing and detaining the vehicle is liable to pay compensation to the party who is deprived of the use and enjoyment of the property. Learned Counsel has placed reliance on the decision of this Court reported in *Ananteshwara and Chandramouleshwara Temple v The Deputy Commissioner for Hindu Religious and Charitable Endowments, D.K. Mangalore and Others*, AIR 1989 Karnataka 157, and also of the Supreme Court in *M.P. Shanna v Satish Chandra* (AIR 1954 Supreme Court Page 300) and *The Transport Commissioner, Andhra Pradesh, Hyderabad and others v S. Sardar Ali, Bus Owner and 41 Others* (1983 (4) Supreme Court Cases 245). It is contended that in petition under Articles 226 and 227 of the Constitution, the Court can award compensation for the seizure and detention of the vehicle or any property. In support of this proposition reliance is placed on the decisions of the Supreme Court in *Rudul Sab v State of Bihar and Another* (AIR 1983 Supreme Court 1086), *Sebastian M. Hongry v Union of India* (AIR 1984 Supreme Court 1026), *Bhim Singh MLA v State of Jammu & Kashmir and Others* (AIR 1986 Supreme Court 494).

4. On the contrary, it is contended by Sri. T.R. Subbanna, learned High Court Government Advocate for the respondent that as the vehicle was involved in a forest offence, the authority exercising the power under the Karnataka Forest Act, 1963 (hereinafter referred to as the Act) was entitled to seize the vehicle and detain it. Accordingly, the vehicle was seized, a case was registered against the petitioner for the forest offence as the vehicle was found carrying forest produce, ie., Sandalwood billets; that pursuant to the seizure, proceeding for confiscation was also initiated under Section 71A of the Act and ultimately, the order for confiscation of the vehicle was passed on 13.09.1984. Thereafter, the vehicle was sold on 20th November, 1987 in public auction; that no doubt the petitioner challenged the order of confiscation before the Sessions Judge and the order of confiscation was confirmed by the Sessions Judge on 8-4-1987 in the appeal preferred under Section 71D of the Act. That thereafter, the vehicle was sold in public auction on 20th November, 1987. That no doubt in a Criminal Revision Petition No. 366/1987 filed by the petitioner challenging the order of the Sessions Judge, this Court allowed the Criminal Revision Petition on 23.8.1988 and set aside the order of confiscation and directed the release of the vehicle but the petitioner was not entitled to the release of the vehicle in view of the fact that during the pendency of the proceedings, the vehicle came to be sold by public auction. Therefore, it is further submitted that having regard to sub-section (3)(b) of Section 71-A of the Act the petitioner is entitled to the payment of the amount which was realised by the sale of the vehicle. In these circumstances, it is submitted that the question of awarding compensation does

not arise.

5. Section 62 of the Act empowers the Forest Officer or a Police Officer to seize the vehicle. Whenever there is a reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicles or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer. It is in the exercise of this power the vehicle in question was seized. Pursuant to the seizure, proceeding for confiscation was initiated. The vehicle was seized on 13.9.1984. It is submitted on behalf of the petitioner, the vehicle was directed to be released by this Court and in spite of that the vehicle was not released. It is also further submitted that this Court while setting aside the order of confiscation directed return of the vehicle in question by its order dated 23-8-1988 in Criminal Revision Petition No. 366/1987 even then the vehicle was not returned.

6. In this petition, there is no material placed under what circumstances the order passed by this Court for directing the release of the vehicle before the order of confiscation was passed, was not complied with. Therefore, it is not possible to record any finding whether there was any failure on the part of the authority in not releasing the vehicle or the authority acted with extraneous consideration with a view to deprive the petitioner the use of the vehicle. Therefore, I refrain from recording any finding on this contention.

7. As far as the order passed by this Court in Criminal Revision Petition No. 366/1987 on 23.8.1988 is concerned Clause (b) of sub-section (3) of Section 71A of the act itself provides that "where any confiscated property is sold, as aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or, other incidental expenses relating thereto, shall, where the order of confiscation made under section 71A is set aside or annulled by an order under Section 71C or 71D, be paid to the owner thereof or to the person from whom it was seized, as may be specified in such order." As per clause (a) of sub-section (3) of section 71A after passing an order of confiscation, the authorised officer is of the opinion that it is expedient in the public interest to sell the confiscated property or part thereof can be sold by public auction. That being so, the question of disobedience to the order dated 23-8-1988 passed in Criminal Revision Petition No. 366/1987 in not returning the vehicle does not arise because the vehicle was sold in public auction after the order of confiscation was confirmed in the appeal by the Sessions Judge. Under these circumstances, and in the light of the provisions contained in clause (b) of sub-section (3) of Section 71A of the Act, the petitioner would be entitled to be paid the sale proceeds of the vehicle after deducting the necessary expenses as mentioned in clause (b) of sub-section (3) of Section 71A of the Act. The order of this court dated 23-8-1988 passed in Cr.R.P. No. 366/1987 directing return of the vehicle shall have to be read and interpreted in the light of the provisions contained in clause (b) of sub-section (3) of Section 71A of the Act as the vehicle was sold after the order of confiscation was confirmed in the appeal by the Sessions Judge. The

respondents have never refused to pay to the petitioner the amount realised in the public auction.

8. In the absence of any material regarding the unauthorised or arbitrary or mala fide act of detention of the vehicle and in the light of the fact that the vehicle came to be confiscated on 13-9-1984 it is not possible to hold that the petitioner has made out any case for directing payment of compensation. The issue relating to compensation involves disputed questions of fact. As already pointed out, the vehicle had been seized as it was involved in a forest offence in exercise of the statutory power and it was confiscated. Therefore, under these circumstances, I do not think there is any case made out by the petitioner for awarding compensation as prayed for.

9. The decisions relied upon by the learned counsel that detention of the vehicle itself is violative of fundamental right do not support the proposition as no such absolute proposition is laid down in those decisions as contended by the petitioner. As long as the law provides for the seizure of the vehicle and that law is not held to be unconstitutional nor it is the case of the petitioner that Section 62 or 71A of the Act are unconstitutional, and it is also not the case of the petitioner that there is dishonest exercise of statutory power under Sections 62 and 71A of the Act and that such exercise of power suffers from lack of Bona fides and as such it is vitiated. Therefore, it is not possible to hold that the seizure of the vehicle in exercise of the power under Section 62 and confiscation under Section 71A of the Act are the acts which violated the fundamental right of the petitioner.

10. No doubt, the proposition that in a petition under Article 226 of the Constitution, the High Court can award compensation admits of no doubt. But the question would be whether this is a case for awarding compensation in a petition under Art. 226 of the Constitution. The Court has every power to award compensation, however, as already pointed out no case for compensation is made out. The Deputy Conservator of Forest, Shimoga Division, Shimoga, has also filed his affidavit which reads thus:

"I am presently working as Deputy Conservator of Forests and I am swearing to this affidavit based on the records and information available.

It is not true to say that the vehicle in question was unlawfully detained by the authorities. Even though the vehicle was released on 14.4.1985, the release was subject to certain conditions. One of the conditions was that the petitioner was required to produce the vehicle as and when the same was directed. The petitioner failed to produce the vehicle inspite of several directions. However, he produced the vehicle on 8.8.1986. On that day, an order came to be passed to take into custody the vehicle in question, in view of the fact that petitioner failed to comply with the directions issued on two previous occasions. The order sheet dated 8.8.1986 reveals this fact. Later, an order of confiscation was made which was confirmed by the District Judge.

In view of Section 71A(3)(b) of the Karnataka Forest Act, petitioner is entitled only to the sale proceeds which has been deposited. Petitioner is not entitled to any compensation as prayed in the petition. The action taken by the officers is in their official capacity and the powers vested with them and there was no illegality in the proceedings initiated against the petitioner. Therefore, the petitioner is not entitled for any compensation.

I further deny all other allegations made in the petition.

Therefore, I pray that this Hon"ble court be pleased to reject the petition, in the interest of Justice and equity".

11. For the reasons stated above, no ground for awarding compensation is made out. Therefore the petition is liable to be dismissed. In this view of the matter several decisions relied upon by the learned counsel for the petitioner do not bear on the point hence the same not discussed. The petition is accordingly dismissed.

Writ petition dismissed.