

(2005) 09 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 11773 of 2005

S.B. Ganesh

APPELLANT

Vs

The Tree Officer Conservator of Forests

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95
Karnataka Preservation of Trees Act, 1976 — Section 8

Citation : (2005) ILR (Kar) 6018 : (2006) 1 KarLJ 548

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Madhusudan R. Naik, for the Appellant; M. Kesava Reddy, AGA, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—Petitioner is the owner of lands measuring 60.63 Acres in S. No. 168, 0.49 Acres of land in S. No. 169, 0.79 Acres in S. No. 170, 0.49 Acres in S. No. 172, 5.85 Acres in S. No. 219/2, 1.12 Acres in S. No. 219/1, 2.18 Acres in S. No. 165/1 of Kulla No. 38 totally comprising an area of 11.55 Acres situate at Uluguly village of Somwarpet Taluk, Kodagu District. The petitioner was growing coffee in he said land. The yield of coffee being very poor, the petitioner sought permission u/s 95 of the Karnataka Land Revenue Act, for conversion of lands from agricultural to non-agricultural residential purpose, Accordingly he has obtained permission for conversion from agricultural to non-agricultural purpose. Subsequently he filed an application to clear the entire trees standing on the above said lands before the first respondent Tree Officer under the provisions of the Karnataka Preservation of Trees Act, 1976 to enable him to form a lay-out after removing the trees. The first respondent refused to grant permission to the petitioner to clear the trees as per its order dated 26.2.2003. Being aggrieved by the said order, the petitioner filed an appeal before the second respondent. The second respondent by his order dated 23.2.2004, as per Annexure-C dismissed the appeal of the petitioner. Being aggrieved by the said order, the present

petition is filed by the petitioner.

2. According to Sri. M.R. Naik, Learned Counsel for the petitioner, respondents 1 and 2 have committed an error in not considering the application filed by the petitioner for clear felling of the trees standing on the above said survey numbers. According to him, when once the revenue authorities have granted permission for conversion of the land from agricultural to non-agricultural purpose and due to development of Suntikoppa town the petitioner is unable to make use of the land for coffee growing and therefore it is incumbent upon the petitioner to convert the area into a residential area. According to him, both respondents 1 and 2 have failed to understand the provisions of Section 8 of the Karnataka Preservation of Trees Act, 1976 and therefore permission has not been granted in favour of the petitioner. He further submits that the appellate authority has not considered the other proposal submitted by the Learned Counsel appearing for the petitioner before the second respondent in clearing the entire area by keeping 1 Hectare of land and seeking permission to plant 5 trees per hectare and to remove the trees girth of 1.75 meters on the ground that the alternate proposal has not been considered by the second respondent, he requests this Court to set aside the order of the appellate authority and remit the matter back to the second respondent for fresh disposal in accordance with law.

3. Per contra, Mr. Kesava Reddy, learned Additional Government Advocate submits that clear felling permission cannot be granted for the purpose of forming a lay out. According to him no permission shall be granted u/s 8 of the Act, by the Tree Officer for the formation of a lay out. According to him permission can be granted for bonafide use of the owner or occupant and also it can be granted if the tree is dead, diseased or wind-fallen or has silviculturally matured or constituted a danger to life or property or constitutes obstruction to traffic or is substantially damaged or destroyed by fire, lightning, rain or other natural causes or is required to be removed either for cultivation, or change in crop cultivation in areas specified in Schedule II, (except where such removal does not involve felling of all trees in the areas proposed for cultivation, extension of cultivation or change in crop cultivation or for the bona fide use of the applicant).

4. Therefore, he requests this Court to dismiss the petition.

5. Having heard the Learned Counsel for the parties, what is required to be considered by this Court in this Writ petition is: whether for the formation of residential area, a Tree Officer can grant permission for clear felling of trees on a coffee growing land or whether the appellate authority has or has not considered the alternate submission of the petitioner?

6. The property in dispute is situated in a rural area and more fully specified in Schedule II of the Karnataka Preservation of Trees Act, 1976. Schedule I and II of the Act reads as under:

"SCHEDULE I (See Section 2(i)

Areas comprising lands under tea, rubber or cinchona cultivation including wood-lots and lands belonging to the State Government and released in favour of others.

SCHEDULE II (See Section (i))

Areas comprising lands other than those included in Schedule I."

The areas other than included in Schedule I are included in Schedule II. In Schedule I only the area comprising lands under tea, rubber or cinchona cultivation including wood-lots alone are included. Permission for felling can be granted u/s 8 of the Act by the Tree Officer only for two purposes, where the land is for the bonafide use of the occupant or for extension of cultivation or change in crop cultivation.

7. In the instant case, the petitioner is not seeking permission to fell the trees for the bonafide use. It is also not his case that he is changing crop cultivation or extending the existing cultivation. It is altogether for a different purpose, namely it is for the purpose of formation of a lay-out. The Karnataka Preservation of Trees Act, 1976 has been enacted to provide for the preservation of trees in the State for regulating the felling of trees and for planning to restore the ecological balance and other matters connected therein. In *B.M. Ranji Kariappa v. State of Karnataka* and Anr. 1990 (2) KLJ 351 this Court has discussed the object of enacting the Karnataka Preservation of Trees Act, 1976 which reads as under:

"4. The object of the Act is to provide for the preservation of trees in the State by regulating the felling of trees and for the plantation of adequate number of trees to restore ecological balance and other matters connected therewith. It became necessary to enact the law to prevent ecological disturbance and to maintain ecological balance. The ecological balance has been disturbed due to indiscriminate felling of large number of trees in the rural and urban areas due to growing pace of urbanisation industrialization and increasing population which has led to erratic rainfall, recurring famines and floods, soil erosion etc. The Act provides for constitution of Trees Authority for each urban area and for each rural area. According to the definition "urban area" means an area comprising a Municipal Corporation, a Municipality or a Notified Area Committee, Rural area means an area and of the kind specified in Schedules I and II. Thus the rural area has been divided into two parts as specified in Schedules I and II.

8. From the above said object it is clear to the Court that mainly to maintain the ecology the Act has come into force. Therefore no owner of land can fell the trees of his land without the prior permission of the Tree Officer. Section 8 alone deals with the proviso for granting of permission and restricting for felling of trees. When Section 8 provides for grant of permission either for bonafide use of the owner or occupation or for extension of cultivation or change in cultivation, there is no provision under the Act to grant permission to fell trees for formation of residential lay out. Therefore this Court is of the opinion that the application of the petitioner has been rightly rejected by respondents 1 and 2. Otherwise it

would take away the very purpose of the object of the Act. Therefore first point has to be held against the petitioner.

9. In regard to the alternate proposal submitted by the petitioner before the appellate authority, this Court is of the opinion that in view of the finding of this Court on point No. 1, alternate proposal cannot be considered by the appellate authority, when the lands are situate in rural area which falls under Schedule II of the Act, when it is not for change in crop cultivation, no permission can be granted.

10. In the result, this writ petition fails. Accordingly it is dismissed.