

(2012) 11 SHI CK 0069
In the High Court Of Himachal Pradesh
Case No : CWP No. 743 of 2011

Sh. Jagdev Makhaik

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Forest Act, 1927 — Section 2

Citation : (2012) 11 SHI CK 0069

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Tek Chand Sharma, for the Appellant; Ramesh Thakur, Assistant Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, Judge

1. Petitioner had applied for felling permission of trees standing on his land comprising Khasra No. 1458/2 and 1459. There after, he submitted an application for exporting the timber on 02.03.2010. He deposited the fee on 26.06.2010. The case of the petitioner was rejected on 16.07.2010. Mr. Tek Chand Sharma, learned counsel for the petitioner has vehemently argued that his client is entitled to export the Timber from his native place to Pinjore for construction of his own house. He also contended that once the petitioner has been called upon to complete the codal formalities, the respondent-State was bound to grant export permit.

2. Mr. Ramesh Thakur, learned Assistant Advocate General has vehemently argued that as per the provision contained in Rule-2 of the H.P. Land Preservation (Amendment) Rules, 1989, notified on 09.05.1989, the Timber cannot be permitted to be exported outside the State. He also relied upon the memo, dated 19.11.1990.

3. The Legislative Assembly has enacted the Act called "The Himachal Pradesh

Land Preservation Act, 1978" (hereinafter referred to as "the Act" for the sake of brevity). Section- 2 (C) of the Act defines "tree", "timber", "forest produce" and "cattle", respectively to have the same meanings severally assigned thereto in Section 2 of the Indian Forest act, 1927. The "right-holder" has been defined u/s 2-F, which includes:

- (i) persons not being tenants or mortgagees having rights to, or in land; and
- (ii) persons having rights of collection of forest produce or of grazing of pasture.

Sub-section (g) of Section- 4 of the Act provides that the State Government may, by general or special order, temporarily regulate, restrict or prohibit the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area to take any tree, timber or forest produce for their own use there from or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons. Section-21 empowers the State Government to make rules. In sequel to Section-21 of the Act, the State Government has framed the rules called "The Himachal Pradesh Land-Preservation Rules, 1983 (hereinafter referred to as "the Rules" for the sake of brevity). Rule 2(h) of the Act has been substituted vide notification, dated 09.05.1989 as under:

(h) term "bonafide domestic or agricultural purposes" shall include the removal and use of timber for construction work, or any other forest produce for bonafide domestic and agricultural purposes from one "mohal to another mohal" in which the owner possesses agricultural land or house within the State of Himachal Pradesh, but shall not include the use of firewood for burning of bricks, manufacturing of katha or any other manufacturing process except burning of charcoal for domestic local use; and

Similarly, an amendment has also been carried out in Rule-4 as under:

(a) in clause (b) of sub-rule (1), after the words "trees will be allowed" and before the sign " ", the word "except for bonafide domestic or agricultural purposes within the State of Himachal Pradesh", shall be inserted.

4. It is evident from the amendment carried out in the Himachal Pradesh Land Preservation (Amendment) Rules, 1989 that removal and use of timber for construction work or any other forest produce for bonafide domestic and agricultural purposes is restricted from one "mohal to another mohal" in which the owner possesses agricultural land or house within the State of Himachal Pradesh. It is also evident from the phraseology employed in Rule-4 that the trees are allowed to be felled only for bonafide domestic and agricultural purposes, that too, within the State of Himachal Pradesh. Thus, there is a ban on export of timbers outside the State of Himachal Pradesh. The principal Chief Conservator of Forests in his memo, dated 19.11.1990, has specifically observed that strict supervision is required to ensure that the timber is not allowed to be exported from one Revenue Estate to another Revenue Estate on the higher side.

It has also been highlighted in the memo that timber cannot be used for the construction of palatial houses for renting out and Hotels etc. The Principal Chief Conservator of Forests has also underlined that while allowing export of timber from the private areas to other places in the State for the construction of houses by the owner, the estimated quantity which may be required for the construction of personal residential houses has to be found out and only that quantity will be allowed to be exported. The copy of the export permit should also be sent to the D.F.O. of the area where the timber is required to be used by the person and D.F.O. of the area should be asked to enquire and report in due course of time that timber brought by the person has been used by him for the construction of personal residential house. The petitioner has been declined the permission on 16.07.2010 strictly as per law. Merely that the petitioner has been asked to complete the codal formalities, would not entitle him to get the export permit, which is prohibited under the law. There cannot be any estoppel against the Statute.

5. The petitioner has not challenged the validity of Rule 2 (h) and Rule-4 of the Himachal Pradesh Land Preservation Rules, 1983, which prohibits the export of timber/forest produce outside the State. The petitioner has no fundamental right to export the timber outside the State. Section 4 of the Himachal Pradesh Land Preservation Act, 1978 specifically provides that the State Government may, by general or special order, temporarily regulate, restrict or prohibit the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area to take any tree, timber or forest produce for their own use there from. The letter and spirit of the Himachal Pradesh Land Preservation Act and Rules is to preserve and conserve the forest wealth of the State of Himachal Pradesh. The restrictions imposed under these enactments are Constitutional. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this petition and the same is dismissed, so also the pending application(s), if any. No costs.