
(1988) 11 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 10367 of 1987

State of Kerala

APPELLANT

Vs

K.R. Gopalan and Another

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Forest Act, 1961 — Section 2(f), 27(i)(d), 61A, 61A(2), 61B(1)(c)

Citation : (1988) 2 KLJ 763

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P. Sukumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—By Ext. P1 order dated 1-8-1985 the Divisional Forest Officer, Trivandrum, Authorised Officer under the Kerala Forest Act, hereinafter referred to as "the Act", ordered confiscation of 14 items of ivory pieces u/s. 61-A (2) of the Act. First respondent, a licensed dealer in ivory goods and the owner of the items ordered to be confiscated, challenged" the order of confiscation before the District Judge, Trivandrum in C.M. Appeal No. 115/1985 as provided by Section 61D of the Act. The learned District Judge reversed the order of confiscation holding that the Authorised Officer, had not conducted a proper verification of the stock and the goods of the dealer with a sincere desire to find out the truth. The learned Judge also found that the Authorised Officer had not afforded an opportunity to the owner of the ivory articles to adduce any evidence or to examine any witness in support of his contentions. This order of the learned District Judge is under challenge. In Ext.Pl order, the Authorised Officer under the Act, observed:

Therefore u/s 69 of the K.F. Act the above articles are presumed to be Government property. The source of the above items can only be illicit, in nature and therefore I am convinced, that they are collected from Reserve Forests.

Therefore the opposite party has committed a forest offence u/s 27 (i) (d) of the K.F. Act.

Section 2(f) of the Act defines forest produce. It is an inclusive definition. Subclause (c) of clause (ii) of Section 2(f) takes in silk cocoons, honey and wax as forest produce. Under the repealed Travancore-Cochin Forest Act, 1951, (Act III of 1952), while defining the forest produce, wild animals and skins, tusks, horns, bones silk cocoons, honey and wax and all other parts of produce of animals were taken in within the definition of forest produce While exacting the Kerala Forest Act, interns other than cocoons, honey and wax alone were included by name as forest produce. Other items mentioned along with these items in Act III of 1952 were excluded from the purview of the definition. Therefore, the definition of forest produce in Section 2(f) does not take in its ambit ivory or tusk Consequently tusk of ivory cannot be termed as a forest produce.

2. Section 69 of the Act lays down a presumption regarding the owner-ship of the forest produce. When a question arises as to whether any forest produce is the property of the Central or State Government, such produce shall be presumed to be the property of the Central or State Government. This presumption U/S. 69 applies only to forest produce as defined by the Act-. If a question arises, in a preceeding under the Act, as to whether an article other than forest produce is the property of the Government, the party who asserts it to be so must establish it independently of the presumption. Tusk being not an item mentioned in the definition of forest produce, cannot fall within the mischief of that section. In the case of tuck, when there arose a question as to whether it is the property of the Stat,;, then the Officer who asserts it to be so, must establish the same by legally acceptable evidence. He cannot bank on the presumption. u/s. 69 of the Act. In the instant case there is no evidence worth the name to substantiate such a case. The Authorised Officer miserably failed, to show that the ivory in question belong to the State.

3. Section 61A of the Act allows ivory among many other things mentioned therein to be confiscated. In the case of ivory the officer must clearly enter a finding that it is a property of the Government. In the absence of such a finding, independent of the presumption u/s. 69, the Authorised officer was not justified in ordering confiscation. In the instant case the Authorised Officer had ordered confiscation without finding the pieces of ivory seized as property of the State Government but by resort to the presumption u/s. 69 of the Act. Such a procedure is un -supportable.

4. The learned District Judge while dealing with the nature of the ivory articles seized from the shop of the first respondent came to the conclusion that those articles were obtained by the dealer, licensee, flora valid sources. The learned Judge further found that the Authorised Officer did not afford the first respondent sufficient opportunity to let in documentary evidence and to examine witnessess in support of his case that the ivory seized from his shop were purchased validly.

u/s 61B (1)(c) of the Act the Authorised Officer is bound to give reasonable opportunity of being heard to the person whose articles are sought to be confiscated. If such an opportunity is not given, the order passed by the Authorised Officer should be taken as one passed without jurisdiction. Such an order cannot stand. On the basis of the evidence before court, the learned District Judge came to the conclusion that the Authorised Officer has not only failed to give opportunity to the 1st respondent to adduce evidence but also failed to properly consider the matter and came to the finding that the ivory seized is property belonging to the Government. This finding of fact is not open to challenge in this proceeding under Article 226 of the Constitution either. In view of what has been stated above, I find no merit in this Original Petition- It is accordingly dismissed. If the articles have not been released to the first respondent in pursuance to Ext, P2 order till date, they will be released to him forthwith.