

(1999) 09 KL CK 0044
In the High Court Of Kerala
Case No : O.P. No. 8580 of 1989

State of Kerala

APPELLANT

Vs

Smt. Margrate Joshy and Others

RESPONDENT

Date of Decision : 25-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
Kerala Forest Act, 1961 — Section 52, 61D

Citation : AIR 2000 Ker 114 : (2000) 1 ILR (Ker) 197

Hon'ble Judges : P.K. Balasubramanyan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : James Vincent, Govt. Pleader, for the Appellant; Mathai M. Paikeday, for the Respondent

Final Decision : Allowed

Judgement

Balasubramanyan, J.—This Original Petition is filed under Articles 226 and 227 of the Constitution of India challenging the decision of the District Judge Trichur in C.M.A. 75 of 1988, an appeal filed u/s 6 ID of the Kerala Forest Act. Appeal u/s 61D of the Act is to the District Judge having jurisdiction over the area in which the property to which the order relates has been seized. Under Sub-Section (2), Section 61D of the Act an order of the District Judge under Sub-section 1 shall be final. At the hearing of the Original Petition an objection was taken on behalf of the respondents that the order challenged was one passed by a civil Court and no writ of certiorari can be issued to the civil Court and therefore this Court could not exercise jurisdiction under Article 226 of the Constitution of India. The learned Judge after noticing the divergence of opinion in this Court regarding the maintainability of a petition under Article 226 of the Constitution of India has referred the Original Petition to a Division Bench for decision.

2. We may straightway notice that nobody had a case that this Court could not exercise Jurisdiction under Article 227 of the Constitution of India even if the

order were deemed to be one passed by the District Court in exercise of an appellate jurisdiction conferred by the statute concerned. It is therefore clear that this Court has always the jurisdiction to correct the errors amenable to correction under Article 227 of the Constitution of India. But since the question of the maintainability of an Original Petition under Article 226 of the Constitution of India has been raised and question has been referred to the Division Bench, we think that it is necessary to speak on that question before finally deciding this proceeding.

3. The Act merely confers the jurisdiction on the District Judge. When a statute confers Jurisdiction on the ordinary civil Court unless there is clear intention to the contrary it is understood as conferment of jurisdiction on the civil Court even though the statute may designate the Judicial officer as the person competent to hear the appeal. Under the Indian Telegraph Act by Section 16 jurisdiction is conferred on the District Judge to entertain a claim for enhancement of compensation for the trees cut for the drawing of a line. When a contention was raised that a revision u/s 115 of the CPC will not lie against the decision of the District Judge passed in a proceeding initiated u/s 16 of the Indian Telegraph Act, this Court held in *Kerala State Electricity Board Vs. C.G. Narayanan*, that when a District Judge is called upon to decide a matter relating to compensation for the infringement of a civil right namely compensation for civil trespass that has been committed under the cover of the Telegraph Act he is deciding that question in his judicial capacity as a District Court and since the District Court is subordinate to the High Court a revision u/s 115 of the CPC was maintainable. In *The Deputy Conservator of Forests, Nemmara Vs. K.S. Sarojini and Another*, it was held that the statutory provision in Section 61D of the Forest Act was indicative of the fact that the appellate jurisdiction had been conferred on the District Court and not on the District Judge as *persona designata*. This Court referred to the principle stated in *National Telephone Co. Ltd. v. Postmaster General* 1913 AC 546 to the following effect

"When a question is stated to be referred to an established Court without more, it in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches".

This Court also referred to the decision of the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, . In *Varkey Abraham Vs. Wild Life Preservation Officer, Thekkady and Another*, this Court again held that the District Judge while exercising powers u/s 61D of the Forest Act was exercising jurisdiction as a District Court and has all the powers which are vested in a Court under the CPC while dealing with an appeal u/s 61D of the Act. It was therefore held that Article 226 of the Constitution of India could not be invoked seeking the issue of a writ of certiorari to challenge a decision rendered by the District Judge in an appeal u/s 61D of the Forest Act.

4. In *Gopalan v. Aboobacker* (1995) 2 KLT 205 (SC), the Supreme Court held that an appellate authority constituted u/s 18 of the Kerala Buildings (Lease and Rent Control) Act being the District Judge, he was exercising power as a District Court and he could not be deemed to be a *persona designata*. The Supreme Court referred to its earlier decisions including the decision in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, in support. This Court had occasion to consider the question whether the Appellate Officer constituted under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 who is the District Judge was acting as a District Court or only as *persona designata*. This Court in *Sidharthan v. Estate Officer* (1995) 2 KLT 907 after referring to two of the decisions referred to earlier and also the observations of the Division Bench in *Sreenivasa Kammath v. Anantha Kammath* (1992) 1 KLT 190 held that the appeal lies under that Act to the District Court and hence a petition under Article 226 of the Constitution of India was not maintainable to challenge the decision rendered in appeal.

5. The learned Judge who made the reference noticed that in two decisions of this Court petitions under Article 226 of the Constitution had been entertained and decided on merits. It is seen that in those decisions the question whether a petition under Article 226 of the Constitution of India is maintainable was not directly in issue. In *Divisional Forest Officer v. Pushpant* 1983 KLT 951 question was whether the Original Petition under Article 226 of the Constitution of India should be filed by the Divisional Forest Officer or by the State and the learned Judge held that the Divisional Forest Officer could not maintain a Writ Petition. In the decision in *State of Kerala v. Sukumara Panicker* (1987) 2 KLT 341 this aspect was not referred to and that was concerned with the question whether the value of the contraband goods seized under the Forest Act had any relevance to the power of confiscation of the vehicle conferred on the concerned authority by the Act. But of course that was a case in which a petition under Article 226 of the Constitution of India was entertained and allowed by the Single Judge and the Full Bench was dealing with an appeal therefrom u/s 5 of the High Court Act.

6. In the context of the provisions of the Forest Act with particular reference to Section 61D of the said Act, we have no difficulty in agreeing with the views expressed in *The Deputy Conservator of Forests, Nemmara Vs. K.S. Sarojini and Another*, and in *Varkey Abraham Vs. Wild Life Preservation Officer, Thekkady and Another*, that the appeal u/s 61D of the Forest Act is to the District Court and a decision rendered by the District Court in exercise of jurisdiction u/s 61D of the Act is not amenable to challenge under Article 226 of the Constitution of India since no *certiorari* will issue to a civil Court as has been laid down by the Supreme Court. The invocation of the jurisdiction of this Court under Article 226 of the Constitution of India is hence not justified.

7. Since the appeal is to the District Court and the District Court is a Court subordinate to the High Court, it is obvious that a revision u/s 115 of the CPC can be maintained in this Court. The finality referred to in Section 61D (2) of the

Act does not exclude the revisional jurisdiction of this Court u/s 115 of the CPC on the scheme of the Forest Act. As we have already observed, certainly the correctness of the decision of the District Judge in an appeal u/s 61 D of the Forest Act can be scrutinised by this Court in exercise of its Jurisdiction under Article 227 of the Constitution of India. Since this Original Petition has been pending in this Court from the year 1989 and both Articles 226 and 227 of the Constitution of India have been invoked while filing the Original Petition, we think it appropriate to consider whether the exercise of our jurisdiction under Article 227 of the Constitution of India is warranted, in the case on hand. Directing the petitioner at this distance of time to file a revision u/s 115 of the CPC would only unnecessarily delay the proceeding and adoption of such a course does not appear to us to be justified. We therefore propose to consider the jurisdictional sustainability of the order of the District Court in exercise of our jurisdiction under Article 227 of the Constitution.

8. 14 teak logs were seized. Those 14 logs were forest produce and they belonged to the Government. Those teak logs were therefore confiscated. The order of confiscation passed by the Divisional Forest Officer, Trichur is not questioned before us. The Forest officer also held that the vehicle in which the logs were sought to be transported was also liable to be confiscated in terms of Section 61A of the Forest Act. Relying on the materials made available before him including the fact that the Jeep in question was found loaded with two of the teak logs at the time of detection, the Divisional Forest Officer held that the jeep was liable to be confiscated. The Officer relied on the fact that the jeep was parked on the road side at mid night near a slack of teak logs two of which had been loaded into the vehicle at the road side near Puduruthy Government Teak Plantation. Though an attempt was made by the owner of the jeep to show that the jeep was at the relevant time in Ernakulam, that attempt did not succeed. That aspect also was taken note of by the Forest officer. It is in that context that the Divisional Forest Officer orders the confiscation of 14 teak logs and the Jeep KEE6665 along with its accessories. It was this order that was challenged in appeal before the District Court, Trichur u/s 61D of the Act. The learned District Judge also agreed with the Divisional Forest Officer that the case of the owner of the vehicle that the vehicle was in Ernakulam at the relevant time had not been established. The learned District Judge thereafter proceeded to pick holes in the materials relied on by the Divisional Forest Officer and proceeded to set aside the order for confiscation of the vehicle by stating that although strictly speaking the proceeding before the authorised officer is not a criminal proceeding, confiscation being a penal provision, the allegation has to be strictly proved as in a criminal case beyond doubt. According to the learned Judge reliable or trustworthy evidence was riot forthcoming. He was therefore unable to sustain the order of the Divisional Forest Officer. The question is whether the interference by the appellate authority calls for interference in this proceeding under Article 227 of the Constitution of India.

9. The materials relied upon by the Divisional Forest Officer clearly showed that

the jeep in question was parked at mid night near the Government teak plantation and by 14 teak logs stacked on the road side. The evidence indicates that two of the teak logs had been loaded into the vehicle when it was sighted by the forest authorities. On seeing the forest authorities two logs already loaded were also jettisoned by the driver of the jeep and his helpers and they fled the scene. Though the jeep in question was chased by the forest authorities, they could not take the jeep into custody since the vehicle in which they were chasing the jeep could not catch up with the confiscated jeep. The attempt made by the owner of the jeep to show that the jeep could not have been in the vicinity of the teak plantation has failed even according to the appellate Court. It is therefore clear that the finding of the Divisional Forest Officer that the jeep was standing on the road near the teak plantation, that it was standing adjacent to stacked teak logs two of which had been loaded and when sighted by the forest authorities the said two logs were also Jettisoned from the jeep clearly stand probalised in the circumstances of the case*. The appellate authority was not justified in stating that the owner of the jeep was not given an opportunity to challenge the statement of the forest officials. No material is placed before us to show that the owner of the jeep did not have sufficient opportunity before the Divisional Forest Officer as postulated by the appellate Court.

10. In *State of Kerala v. Sukumara Panicker* (1987) 2 KLT 341 a Full Bench of this Court has stated that the power vested in a public official for seizing a vehicle used in a forest offence is to effectuate or aid the enforcement of public duty and considered in the backdrop of Article 51A(g) of the Constitution, long title and preamble to the Forest Act and the mischiefs sought to be remedied by the amending Act it refers to a compellable or obligatory duty to exercise the power on fulfilment of the conditions specified in the Section. It was for the officer concerned to consider in each case having regard to all the circumstances whether the confiscation of the vehicle is to be made. But it left no room for doubt that the power vested in the authorised officer u/s 61A of the Act can be exercised bearing in mind the policy and purpose and the background of the Act. Section 61A itself was enacted to effectively check illicit removal of forest trees and with a view to provide deterrent provision for effectively preventing such illicit removal. With respect we feel that in the light of the object sought to be achieved by the Act, the theory propounded by the District Court that the alleged user ought to be proved beyond reasonable doubt like in a criminal case cannot be sustained. The circumstances and probabilities of the case clearly showed that the vehicle was involved in transport of timber illicitly cut from a Government teak plantation and was in fact loading the logs in question when it was sighted and chased and under such circumstances it is established that the vehicle was used in connection with the committing of a forest offence. Obviously teak logs are forest produce and it has been found by the District Judge all that those logs belong to the Government and their confiscation was justified. Under such circumstances we are of the view that the learned Judge was in error in interfering with the decision of the Divisional Forest Officer directing confiscation

of the vehicle. According to us the appellate Judge has misconceived his jurisdiction u/s 61D of the Act and has exceeded his jurisdiction in setting aside the order of confiscation passed by the Divisional Forest Officer.

11. We therefore set aside the decision of the District Judge and restore the decision of the Divisional Forest Officer dt. 7-9-1998. We would have normally remanded the proceeding to the District Court for a fresh decision in the light of our conclusion that the exercise of jurisdiction by that Court is not proper. But we must take note of the fact that this proceeding was initiated in the year 1985 and even in this Court the Original Petition had been pending for the last ten years. We are therefore not remitting the proceeding back to the District Court for a fresh decision since we are satisfied that the order of the Divisional Forest Officer is fully justified.

In the result, we allow this Original Petition and setting aside the order of the District Judge, Trichur in C.M.A. 75 of 1988 restore the order of the Authorised Officer and Divisional Forest Officer, Trichur in Offence No. T.O. 7772/1. We make no order as to costs.