

(2000) 08 MAD CK 0020

In the Madras High Court

Case No : W.A. No. 464 of 2000 and CMP. No. 4241 of 2000

The Committee Constituted Under Section 2A of the Tamil Nadu Hill Areas (Preservation of Trees) Act 1955 and Collector of Nilgiris and The Government of Tamil Nadu

APPELLANT

Vs

Jacob Sebastian

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Tamil Nadu Rosewood Trees (Conservation) Act, 1994 — Section 1(3), 12, 2A, 3

Citation : (2000) 08 MAD CK 0020

Hon'ble Judges : V.S. Sirpurkar, J;V. Kanagaraj, J

Bench : Division Bench

Advocate : Titus Jesudoss, for the Appellant;

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The writ petition was filed by one Jacob Sebastian praying therein for a writ of mandamus directing the first

Respondent, committee constituted u/s 2-A of the Tamil Nadu Hill Areas (Preservation of Trees) Act 1955 to issue permission to the Petitioner, as

prayed for in his application dt.4.5.1988, to cut and remove rosewood trees being the excessive shade trees in the coffee plantation in Survey No.

556/1, Cherangode Village, Gudalur Taluk, Nilgiris District.

2. The learned single Judge of this Court by the impugned judgment allowed this writ petition. In the writ petition, the learned single Judge wholly

relied upon the judgment of the Division Bench of this Court passed in W.A. No. 1312 of 1991 wherein the Division Bench had taken a view that

there was no provision inhibiting such cutting of trees belonging to rosewood species. The Division Bench had also made a reference to G.O Ms.

No. 512 which had set out the decision of the Government with regard to the shed regulations in the plantations amongst other species and the

Division Bench further noted that 100 shed trees per hectare should be retained and it is only for reducing the number of excess trees over the

figure of 100 trees, permission would be required from the concerned authorities. The Division Bench found that there was no distinction made in

respect of any species so that the cutting of rosewood trees would be totally prohibited. The Division Bench in that case then went on to observe

that since it was not claimed by the Respondent, the forest department, that the cutting of 171 trees for which permission was sought would bring

the number of trees below 100 trees per hectare, there was no question of refusing the permission even to cut rosewood species. It is only on that

basis, the learned single Judge allowed the writ petition and granted the permission to cut three rosewood trees.

3. Mr. Titus Jesudoss, Learned Counsel appearing on behalf of the Appellant committee, first Respondent in the writ petition, however brings to

our notice that the aforementioned judgment of the Division Bench was challenged by the committee before the Apex Court vide Civil Appeal No.

9096 of 1995 arising out of SLP No. 22667/95. He points out that the aforementioned judgment of the Division Bench was set aside by the Apex

Court and, therefore, the learned single Judge could not have relied upon the judgment.

4. We will not go into that question as to whether the learned single Judge should have relied upon the Division Bench judgment because the fact

remains that before the learned single Judge, it was not pointed out that the judgment was upset by the Apex Court. As it is, from the judgment of

the Apex Court, it is clear that before the Apex Court, both the sides had agreed on some compromise, according to which the State Government

offered to pay compensation on account of the loss caused to the coffee plantation because of the shed by the aforementioned 164 rosewood

trees for which permission was sought for by the Petitioner and granted by the Division Bench. It seems that both the sides had agreed in as much

as the Petitioner therein, the owner of the trees, had agreed that he would not cut the rosewood trees if he receives the compensation for the loss

caused by the shed of 164 rosewood trees. Ultimately, the Supreme Court, on this agreed proposal, went to assess the loss. Such is not the

question involved in the present matter. The Supreme Court judgment would be of no help to the Appellant herein as, firstly it was an agreed

judgment and the Apex Court did not go into the question as to whether the permission was rightly granted by the Division Bench in that case. In

fact, in paragraph 1 itself, the Supreme Court says, ""This Court, without deciding the question of law arising in the appeal, granted to the

Respondents four weeks time to file an affidavit explaining its case about the trees in detail and stating why the offer of the State should not be

accepted.

It is clear from this that the Supreme Court did not go into the correctness or otherwise of the Division Bench Judgment. Therefore, there would be

no question of our holding that the learned single Judge should not have relied upon the judgment of the Division Bench in W.A. No. 1312 of

1991. Ordinarily, therefore, the order of the learned single Judge could have been affirmed on account of the judgment in W.A. No. 1312 of

1991. It will be seen in that judgment that the Division Bench had specifically observed. There has been no distinction between one species of tree

and the other. Hence, it is not possible to bring in the theory that in respect of rosewood trees, there cannot be cutting of them. It is not claimed by

the Respondents that the cutting of the 171 trees for which permission was negatived will bring the number of trees below 100 trees per hectare.

Such being the position legal and factual, we are not able to subscribe our support to the line of thinking of the learned single Judge when he

imposed a qualification with regard to the trees belonging to rosewood species. Accordingly, this Writ Appeal is allowed.

(Emphasis supplied)

These observations in the judgment of the Division Bench absolutely make it clear that the Division Bench, had granted the permission in that case

negating the stand taken by the learned single Judge in that case that an exception could be made in the case of rosewood trees. The Division

Bench, therefore, went on only with the question of the permissible number of trees which could be cut according to G.O.Ms. No. 512,

Unfortunately, the matters did not stop there. If the Division Bench's judgment remains in the fray, ordinarily it would have been binding on us as

the previous judgment. However, the legal situation has changed in as much as

now there has been a complete ban on the cutting of the rosewood trees because of the Tamil Nadu Rosewood Trees (Conservation) Act 1994 (Act 1 of 1995). Section 3 of this Act specifically provides for a total prohibition of cutting etc. of Rosewood trees. Section 3 reads as under:

Section 3: Prohibition of cutting etc., of Rosewood trees:

Notwithstanding anything contained in any law for the time being in force or in any custom or usage, or in any judgment, decree or order of any Court or other authority, no person shall cut, feel, girdle, lop, tap, uproot or burn or otherwise damage any rosewood tree in any forest or do any act likely to endanger its existence or result in the extinction of its species.

Provided that dead or fallen rosewood tree may be removed with the permission of the prescribed authority in accordance with such rules as may be prescribed.

It is now, therefore, clear that a living rosewood tree cannot under any circumstances be cut and even a committee constituted u/s 2(a) of Hill

Areas (Preservation of Trees) Act would not be in a position to grant any such permission. It is an admitted position that the Petitioner had sought

permission to cut live rosewood trees and not merely dead wood. The prohibition is total in respect of the living trees of rosewood species. By

Section 12 of this Act, the provisions of the Act over-rule the other laws or any custom or usage or contract or judgment/decreed or an order.

Therefore, the ban of cutting of the rosewood trees is total and complete. Unfortunately, this Act was not brought to the notice of the learned single

Judge who disposed of the writ petition only on the basis of the Division Bench judgment of this Court. The judgment of the learned single Judge

was given on 14.02.2000 and on this day, the Act was very much on the statute book. Therefore, there was a complete ban and further there is no

question of application of the Division Bench judgment rendered in W.A. No. 1312 of 1991. The Learned Counsel for the Appellant, Mr. Titus

Jesudoss has pointed out that he has raised this question in the appeal. Unfortunately, for us the Respondent is not present inspite of notice, nor is

there any representation on his behalf. We had to therefore consider the question with the help of the Learned Counsel for the Appellant only.

5. In view of the specific prohibition provided in Act 1 of 1995, vide Section 3 and Section 12, there would be no question now of giving any

permission as has been done by the learned single Judge. The order of the learned single Judge is therefore to be set aside as per incuriam of Act 1

of 1995, which would have binding effect. Section 1(3) of the Act specifically provides that the Act shall come into force at once and remain in

force for a period of fifteen years. The Act was already there on the statute book when the matter was decided by the learned single Judge. The

order would, therefore, have to be set aside and it is accordingly set aside and the writ petition has to be dismissed. The writ appeal is therefore

allowed. The order/judgment of the learned single Judge is set aside and the writ petition is directed to be dismissed, but, in the circumstances

without any orders as to costs. Connected C.M.P. is also closed.