

(1980) 11 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 1591 of 1979

The Deputy Conservator of Forests, Nemmara

APPELLANT

Vs

K.S. Sarojini and Another

RESPONDENT

Date of Decision : 25-11-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, 151
Kerala Forest Act, 1961 — Section 61D

Citation : AIR 1981 Ker 44

Hon'ble Judges : T. Chandrasekhara Menon, J

Bench : Single Bench

Advocate : T.C.M. Menon, A.A.G, for the Appellant; M.N. Sukumaran Nair, N.A. Muralidharan and B. Raman Pillai, for the Respondent

Final Decision : Dismissed

Judgement

T. Chandrasekhara Menon, J.—The Deputy Conservator of Forests, Nemmara is the petitioner in this writ petition where he challenges the validity of the order of the District Judge, Palghat in I. A. No. 419 of 1979 in appeal filed u/s 61D of the Kerala Forest Act (for short "the Act"). A case of illicit transport of some timber logs in a taxi car was detected by the Beat guards of the Thiruvazhiyad Beat on 14-10-1978 at 2 a. m. near a culvert at Talipadam road side. As the persons who were in the car did not produce any transport permit at the time of the detection of the offence when they were asked to produce the same it was reasonably suspected that the vehicle concerned was being used for the commission of an offence in respect of a forest produce. Consequently the vehicle was seized by the Beat guards along with the timber logs kept inside. After investigation and enquiry into the matter as empowered under the Act the petitioner passed an order dated 20-2-1979, a copy of which is marked in this case as Ext. P-1, confiscating the car along with all its accessories and timber. Aggrieved by this order the first respondent filed an appeal before the District Court, Palghat u/s 61D of the Act. Along with the appeal she also filed an interlocutory application requesting the Court to stay the operation of Ext. P-1 order till the disposal of the

appeal. The District Court passed an order to the following effect :

"The Deputy Conservator of Forests, Nemmara is directed to release the car to the petitioner on executing a bond with 2 solvent sureties each in the sum of Rs. 10,000/-".

A copy of the order has been marked as Ext. P-2.

2. It is contended by the petitioner that this order is illegal and without jurisdiction and he seeks to quash the same. According to him, the District Court failed to note that there is no provision in the Act making any provisions of the CPC applicable to a proceedings under any of the provisions of the Act. Therefore, neither Section 151 nor Order 41, Rule 5 of the CPC which had been invoked in the interlocutory application would be applicable. As per the provisions of the Act there is no power on the part of the Appellate Court to pass an interlocutory order in an appeal filed against an order of confiscation passed by a competent officer. The petitioner would, therefore, contend that the District Judge should not have passed an order on the application which is not based on any of the provisions of the Act. A further grievance of the petitioner is that the Court below has not incorporated sufficient conditions to safeguard the interest of the Government if ultimately the appeal happens to be dismissed.

3. In considering the question, I think, it will be useful to refer to Section 61D of the Act. Section 61D reads as follows.

"61D. Appeal-- (1) Any person aggrieved by any order passed u/s 61A or Section 61C may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property to which the order relates has been seized and the District Judge shall, after giving an opportunity to the appellant to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2) An order of the District Judge under Sub-section (1) shall be final."

This provision gives the jurisdiction in the matter of appeal to the District Judge having jurisdiction over the area in which the property to which the order relates has been seized. In *Themmalapuram Bus Transport Ltd. Vs. The Regional Transport Officer, Malabar and Another*, M. S. Menon, J. as he then was said :

"The power to stay is a necessary corollary to the power to entertain an appeal or revision. Its exercise stops further proceedings."

The same Judge has elaborated the principle in *Kunjukrishnan Vs. State of Kerala and Others*, . Speaking on behalf of the Full Bench M. S. Menon, C. J. stated therein :

"An appeal is a complaint to a superior body of an injustice done or error committed by an inferior one with a view to its correction or reversal. It is a creature of statute, not a constitutional or inherent right. But, as pointed out by Maxwell, where an Act confers a jurisdiction, it impliedly also grants the power of

doing all such acts, or employing such means, as are essentially necessary to its execution (11th Edition, page 350).

A remand by an appellate court is usually made when the record before it is in such shape that the appellate court cannot in justice determine what final judgment should be rendered and the power to do so cannot but be an essential requisite of the very jurisdiction to entertain the appeal. It is an old maxim of the law that to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised; *cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest*.

Kent says that the grant of a jurisdiction implies the grant of all the powers necessary to its exercise (1 Kent, Comm. 339). And Sutherland that where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication (3rd Edition, Vol. 3, Page 19)". In that case, on that view the Full Bench held that the power to remand is available to a tribunal functioning u/s 64 of the Motor Vehicles Act, 1939 and that the said power is incidental to and implicit in the appellate jurisdiction created by that section. The Supreme Court had to consider similar questions in *J. T. Officer v. Mohd. Kunhi* AIR 1969 SC 430 . There it is held that :

"...the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory."

In regard to the power to grant stay the Supreme Court refers to the decision in *Polini v. Gray* (1879) 12 Ch D 438 it was stated :

"It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, that the successful party is to reap the fruits of that litigation, and not obtain merely barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of Appeal before the second trial, as to the Court of last instance before the hearing of the final appeal."

Justice Grover speaking for the Supreme Court has also quoted Domat's Civil Law, Cushing's Edition, Volume 1 at page 88 where it has been stated:

"It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

4. In this case another principle also may be apposite in the light of the fact that the appellate jurisdiction had been conferred on the District Judge having jurisdiction over the area where the seizure has been made. The statutory provision is indicative of the fact that the appellate jurisdiction has been conferred on the District Court and not on the District Judge as a *persona designata*. If that be so the well settled principle stated in *National Telephone Co. Ltd. v. Post master-General* 1913 AC 546 becomes applicable. Therein it is stated :

"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 principle has been followed in many other decisions. AIR 1948 12 (Privy Council) , *Secretary of State for India v. Chellikani Rama Rao* AIR 1916 PC 21 and *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, are some of them. Therefore, it will not be correct to state as the petitioner seems to contend that Section 151 and Order 41, Rule 5 of the CPC will not be applicable. In any view of the matter the District Judge has got inherent jurisdiction to grant stay. It might be noted that Section 151 does not confer any inherent rights on the Court. It only says that the right of inherent jurisdiction which is already there in all Courts is saved. Inherent jurisdiction is there even with Tribunals of limited jurisdiction.

5. In the light of the above discussion I find no merit in the contentions raised by the petitioner that the District Court has no right to grant stay. If the petitioner's apprehension is that the District Judge has not incorporated sufficient conditions to safeguard the interest of the Government if ultimately the appeal happens to be dismissed, it is open to him even now to move the District Court for imposition of the necessary conditions to safeguard those interests. The O. P. is dismissed with costs.