
(1994) 01 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 5375 of 1989-M

Varkey Abraham

APPELLANT

Vs

Wild Life Preservation Officer, Thekkady and Another

RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Forest Act, 1961 — Section 61D

Citation : AIR 1994 Ker 304

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : P.V. Baby, for the Appellant; G.P. and Shakeela, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—This writ petition is to quash Ext. P9 judgment of the District Judge, Thodupuzha. That judgment was rendered in C.M.A. No. 54/87 filed by the writ petitioner against the order of the Wild Life Preservation Officer, Vallakkadavu confiscating some pieces of teak wood timber and other finished articles u/s 61A of the Kerala Forest Act, 1961 (for short the "Act").

2. The facts of the case can be capsulized thus: The Assistant Wild Life Preservation Officer, Vallakkadavu had entertained some doubt about the genuineness of certain piece of teak wood timber, one Almirah, one cot etc. kept in the premises of the petitioner. The petitioner claimed title in respect of those goods. However, the officer having not satisfied with the claim, seized those goods under a mahazar. The goods were forwarded to the authorised officer for necessary action. On 25-7-1981 the petitioner filed a petition before the Field Director (Tiger Project), Kottayam praying to release seized goods. However, the goods were not released; on the other hand, the officer ordered confiscation u/s 61A(2) of the Act. The petitioner, thereafter filed a CM Appeal before the District Judge as 19/1983 challenging the order of confiscation. That appeal was allowed and the order of confiscation was set aside. It appears, the Department then filed

a writ petition before this court as O.P. No. 2901/85. This court as per Ext. P3 judgment allowed the authorities to continue further proceedings according to law. Thereafter fresh enquiry was started. Ultimately the authorised officer found that the seized goods are the property of the Government and ordered the confiscation accordingly. That is Ext. P6 order. That order was challenged by the petitioner in C.M. Appeal No. 54/87 u/s 61D of the Act. The 2nd respondent District Judge dismissed the appeal as per Ext. P9. judgment.

3. The present petition has been filed under Articles 226 and 226 of the Constitution. The remedies under Articles 226 and 226 of the Constitution available to a citizen are distinct and separate. In this connection it is well to be recalled that an order under Article 226 is appealable u/s 5 of the High Court Act whereas in the case of an order under Article 227 no such appeal will lie before Division Bench. Therefore it is necessary to examine whether the writ petition is sub-stantially coming within the purview of Articles 226 and 226. This can be done only by perusing the pleadings and relief sought for by the petitioner. The substantial prayer in the writ petition is to quash Ext. P9 judgment of the District Judge by issuance of a writ of certiorari/There is no particular pleading in the writ petition pointing to invoke the Power of Superintendence of the High Court under Article 226. After hearing the arguments and after examining pleadings and relief sought for in the writ petition, I am satisfied, this petition substantially comes within the purview of Article 226 of the Constitution.

4. The next question that arises for consideration is whether a writ of certiorari can be issued in this case. The 2nd respondent, District Judge is exercising the powers as provided u/s 61D of the Act. In the absence of any provision in the Act prescribing the powers with regard to various procedural matters, the District Judge has to exercise all powers which are vested in a court under the CPC 1908 while dealing with an appeal u/s 61D of the Act. In that situation the appeal under the said section has to be dealt with by the District Judge as a civil appeal before the District Court in the ordinary course. Therefore it cannot be said that a judgment passed u/s 61D by the District Court is not a judgment of the Civil Court. The District Judge therefore cannot be said to be functioning in the facts of this case as a "persona designata" like Subordinate Judge exercising powers of appellate authority u/s 18 of the Kerala Building (Lease and Rent Control) Act, 1965.

5. A Division Bench of this Court in Union of India v. Vijaya Mohini Mills reported in 1992 (1) KLT 404 held that a writ of certiorari is not maintainable in respect of a judgment or order passed by a civil court. In other words a writ of certiorari cannot be issued to a civil court. The learned counsel appearing for the petitioner submitted before me that the decision of the Supreme Court, in Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others, , State of M.P. v. Babu Lal, AIR 1977 SC 1718 and Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, took a different view. I am not inclined to accept this submission, for the reason that the Division Bench has considered all

the aforesaid decisions in "Vijaya Mohini Mills" case, supra. The matter is concluded by the decision of the Division Bench in the aforesaid case. A similar view has been adopted earlier by this Court in Nallya Kova v. Administrator 1968 KLT 60. That being so, I am not inclined to consider this writ petition on merits in as much as no relief can be granted to the writ petitioner in this case. The Original Petition is accordingly dismissed. No order as to costs.