
(2013) 06 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 311 of 2012

Vasant

APPELLANT

Vs

The Tahsildar and The Sub-Divisional Officer

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Constitution of India, 1950 — Article 51A(g)
Maharashtra Felling of Trees (Regulation) Act, 1964 — Section 15, 2(F), 3, 5
Maharashtra Land Revenue Code, 1966 — Section 1, 24, 27, 3, 328

Citation : (2013) 4 ABR 996 : (2013) 5 ALLMR 219 : (2013) 4 BomCR 450 :
(2013) 6 MhLj 196

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : C.K. Shinde, for the Appellant; K.J. Ghute-Patil, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. With the consent, heard finally. This writ petition takes exception to the order dated 05.01.2012. By the impugned order, the Sub-Divisional Officer, Karjat, partly allowed the appeal filed by the petitioner and thereby the order of the Tahsildar imposing fine is set aside and the matter is remitted back to the Tahsildar for drawing fresh panchnama for re-enquiry in the matter.

2. The petitioner-herein is running the saw-mill under the licence issued in his favour by the Forest Department. It is the case of the petitioner that, his licence is renewed time to time. On 15.12.2011, on the instructions issued by the Tahsildar, Revenue Officer sealed the saw-mill machine of the petitioner.

3. It is the case of the petitioner that, the saw-mill machine of the petitioner was sealed without giving any notice and opportunity of hearing to the petitioner. On 15.12.2011, the special squad deputed by the Tahsildar, visited the saw-mill of the petitioner and prepared panchnama alleging that 212 trees have been

unauthorizedly cut by the petitioner and brought for sale at his saw-mill. Those wooden logs have been seized under the panchnama.

4. On 16.12.2011, the Tahsildar issued show cause notice to the petitioner asking his explanation as to why fine should not be imposed under Sections 24 and 27 of the Maharashtra Land Revenue Code (Hereinafter referred to as "MLR Code" for short) for alleged unauthorized cutting of the trees by the petitioner and keeping the same for sale in the premises of the saw-mill.

The petitioner has filed his say. The Tahsildar had passed an order imposing fine of Rs. 2,12,000/- by invoking provisions of the Maharashtra Felling of Trees (Regulation) Rules 1967 (Hereinafter referred to as "Rules 1967" for short).

5. Being aggrieved by the said order, the petitioner filed an Appeal before the Sub-Divisional Officer, which came to be allowed.

6. The learned counsel appearing for petitioner submits that, the order passed by the Tahsildar is illegal and without jurisdiction. The Tahsildar has no jurisdiction under Sections 24 and 27 of the MLR Code. It is submitted that, as per the provisions contained in section 15 of the Maharashtra Felling of Trees (Regulation) Act 1964 (Hereinafter referred to as "Act 1964" for short), the "Tree Officer" is competent authority. The Tahsildar does not fall within the purview of Tree Officer. The Sub-Divisional Officer has recorded the finding that the order passed by the Tahsildar is as per the Rules, 1970. However, under the said rules, the Tahsildar is not competent to pass such order. It is only the Sub-Divisional Officer, who is competent authority.

7. The learned counsel appearing for petitioner submitted that, the Rules of 1970 are framed by the State Government under Sections 328 and 329 of the MLR Code. Sub-section 2 of Section 34 of MLR Code defines the term "Sub-Divisional Officer". The Tahsildar is not included in the said definition, and therefore, as per Rules 1970, the action of respondent No. 1 is beyond authority and jurisdiction.

8. The learned counsel appearing for petitioner invited my attention to the grounds taken in the writ petition and annexures thereto and rejoinder-affidavit filed by petitioner and also the relevant provisions of MLR Code and other provisions of the relevant Acts and submits that, this petition deserves to be allowed.

9. In support of the contention that, the petitioner was not involved or instrumental in unauthorizedly cutting the tress and keeping the same for sale in the premises of the saw-mill, learned counsel appearing for petitioner invited my attention to the provisions of Sections 24 and 27 of the MLR Code and submitted that, in the facts of present case, the provisions of both Sections are not attracted. The learned counsel for petitioner placed reliance on judgment of this Court in the case of Balwant Gajanan Sathe Vs. Sub Divisional Officer and Others, , in particular, para no. 4 of the said judgment and submitted that, the petitioner was not involved or instrumental in illegally felling the tress, and

therefore, there is no question of violation of any provisions of the Act 1964 or the provisions of MLR Code.

10. It is submitted that, the said wooden logs, which are seized by the authority, have been brought by other persons, which are having marks of the Forest Department, therefore, the said wooden logs were accepted by the petitioner in the saw-mill. It is submitted that, the petitioner is not responsible for the act/action of those persons, who have brought the said wooden logs in the premises of his saw-mill. It is submitted that, since the Tahsildar has no jurisdiction to entertain the controversy involved in the matter, the order of the Sub-Divisional Officer sending the matter back to the Tahsildar for re-enquiry is unsustainable. Therefore, the learned counsel for petitioner prays that petition may be allowed.

11. On the other hand, learned AGP appearing for respondents invited my attention to the affidavit-in-reply filed on behalf of respondent No. 1 by one Mr. Kundlik Kashinath Bhand, who is presently working as Awwal Karkun (Supply) in the office of Tahsildar, Jamkhed, as authorized officer.

12. The learned AGP further invited my attention to the averments in the said affidavit-in-reply. It is submitted that, the petitioner in contravention with conditions in licences running the saw-mill found in possession of 212 wooden logs illegally and unauthorizedly. The Tahsildar has drawn the panchnama and seized the said wooden logs. It is submitted that, the petitioner being the saw-mill owner cannot escape from his responsibility from explaining the unauthorized and illegal possession of 212 wooden logs of various fruit bearing trees. It is submitted that, at the time of recording statement of the petitioner, he did not state that, wooden logs are having marks of Forest Department. He has also not stated the name of owner. No any such marks of Forest Department was found at the time of inspection.

13. It is submitted that, all wooden logs found to be recently cut from the trees. The learned AGP submitted that, the petitioner was found in possession of 64 logs of Mango trees, 6 logs of tamarind trees and 142 logs of Neem trees. Thus, this fact is not denied by the petitioner specifically. The some of the trees are protected trees u/s 2(F) and schedule of the Act 1964.

14. The learned AGP further submitted that, after issuing show cause notice to the petitioner by the Tahsildar, the petitioner was given personal hearing and thereafter, the Sub-Divisional Officer has passed the impugned order. It is submitted that, the seal of the saw-mill of the petitioner is removed in pursuant to the order passed by the Sub-Divisional Officer. It is submitted that several organizations and Eco friends made the complaints in respect of illegal felling, cutting of the trees from Jamkhed Taluka and some of the complaints were sent to the Collector making the same allegations.

15. It is submitted that, since the authorities received several complainants about illegal felling and cutting of the trees from Jamkhed Taluka, the Government authorities had taken search and after noticing illegal act of the

petitioner and other saw-mill owners, initiated the action against them under the law. The saw-mill was seized for the purpose of preventing the wrong-doer from destroying the evidence and prevented from indulging illegal act of cutting, transporting and possessing wooden logs.

16. It is submitted that, 212 wooden logs were unauthorizedly found in the premises of the saw-mill of the petitioner and the petitioner did not prove the ownership of other persons and also fail to show any evidence of permission. It is submitted that, the action taken against the petitioner is in accordance with relevant provisions of MLR code and also under the provisions of Maharashtra Land Revenue (Regulation of Cutting and Supply of Woods etc.) Rule 1970 and also 1967 Rules. There is a provision of delegation of powers and accordingly the powers were delegated to the Tahsildar and the Tahsildar has taken action against the petitioner.

17. It is submitted that, there are similar provisions under the Maharashtra Land Revenue Code 1966 like Rules 1970, which empowers revenue authority to control and regulate the cutting and supply of the trees and also having the powers to impose the penalty on wrong doer. It is submitted that, the appeal filed by the petitioner was allowed and the Tahsildar is directed to make re-enquiry. It is submitted that, merely, the matter is remitted back to the Tahsildar for re-enquiry would not cause prejudice to the interest of the petitioner and he will have an opportunity to participate in the enquiry and therefore, this writ petition at the instance of the saw-mill owner, who has contravened the terms of licence, may not be entertained. It is submitted that, Section 5 of the Act 1964 empowers the Revenue Officer, Forest Officer and Police Officer to report in respect of any contravention of Section 3 of the Act 1964. It is submitted that, u/s 5 of the Act 1964, there is reference to Revenue Officer and if definition of Revenue Officer is read in the Maharashtra Land Revenue Code, the Tahsildar is covered under the said definition, therefore, the Tahsildar is empowered to exercise the powers under Sections 24 and 27 of the MLR Code.

18. Learned AGP relying upon the affidavit-in-reply filed on behalf of respondent No. 1, written points for consideration and also various provisions of Maharashtra Felling of Trees (Regulation) Act 1964, so also the provisions of Maharashtra Land Revenue Code, 1966 and relevant Rules of 1970 submitted that writ petition is devoid of any merits, and the same may be rejected.

19. I have carefully heard the learned counsel for the parties. With their able assistance, I have perused the licence and entire documents placed on record, including original record produced before this Court and also relevant provisions of the Maharashtra Felling of Trees (Regulation) Act 1964, so also the provisions of Maharashtra Land Revenue Code, 1966 and relevant Rules of 1970. At the outset, it would be appropriate to reproduce herein below the conditions of licence to erect, operate the machinery/saw-mill for cutting or converting of timber has been issued in favour of the petitioner. It reads thus:-

Conditions

1. This licence shall remain in force for the period commencing from Saturday, January 01, 2011 and ending on the Saturday, December, 31, 2011.

2. The licence may erect operate the machinery/saw mill required for cutting or converting of timber within 80 kms of Reserved forest at Jamkhed (hereinafter referred to as the saw-mill) which will consist of cutting of sawing machine of the following description:

Description of the cutting of sawing machine.

3. The licence shall not alter the location of the saw mill without obtaining the prior written permission of the Deputy Conservator of Forests.

4. The licence shall maintain such registers and submit such periodical returns as may be directed by the Deputy Conservator of Forests within whose jurisdiction the saw mill is located.

5. The licence shall see that-

(a) The site of the saw mill including the yards for storage of round timber sawn timber and waste wood is enclosed within a fence fitted with proper gates.

(b) all the round timber, sawn timber and wood waste is properly stacked, according to the instructions that may be issued from time to time by the supervisory staff so as to facilitate shock taking.

(c) timber for sawing or conversion is not accepted unless it bears property mark and it covered by a forest transit pass or other documentary evidence such as a cash receipt from the timber merchant.

(d) timber which does not conform to the requirement of clause (c) is not accepted for conversion and intimation in respect of such timber is forthwith given to the supervisory Forest Guard of the nearest Forest Officer.

(e) the saw mill as well as the timber stored within the premises of the saw mill is open to inspection at all times by any Officer of the Forest Department or by any member of supervisory staff appointed for this purpose.

(f) the licence and the registers maintained under condition 4 are produced for inspection on demand by any authority aforesaid.

(g) The saw mill shall not be operated in the period from sunset to sunrise without a valid written permission from the Licensing Authority. However, in case the saw mill Licensee feels that the saw mill is required to be operated during this period in order to complete customer's urgent work then he should apply in advance in writing to the Licensing authority and obtain its advance written permission. He should also note the time and date of operating the saw mill during the said period in the Remarks column of the Register to be maintained in the saw mill.

6. The licence shall be transferable and where is transferred, the transferor shall, on transfer of the licence, forthwith informs the Deputy Conservator of Forests of such transfer and the transferee shall hold the licence for the period shown therein.

Seal of the Forest Office.

20. Upon careful perusal of condition No. 5 reproduced herein above, and particularly, clause (c) of condition No. 5 provides that, timber for sawing or conversion is not accepted unless it bears property mark and is covered by a forest transit pass or other documentary evidence such as a cash receipt from the timber merchant. The clause (d) further provides that, timber which does not conform to the requirement of clause (c) is not accepted for conversion and intimation in respect of such timber is forthwith given to the supervisory Forest Guard of the nearest forest Officer. Clause (e) provides that, the saw mill as well as the timber stored within the premises of the saw mill is open to inspection at all times by any Officer of the Forest Department or by any member of supervisory staff appointed for this purpose. The authority can also inspect the licence and registers maintained by saw-mill owner. Therefore, licence issued to the petitioner to run the saw-mill is subject to conditions stated herein above.

21. Upon perusal of Exhibit-A of the compilation of the petition i.e. copy of the licence issued to run the saw-mill, the same is valid for the period of one year. It is specifically mentioned in condition No. 1 of the said licence that, licence shall remain in force for a period commencing from Saturday, January 01, 2011 and ending on the Saturday, December, 31, 2011.

22. The contention of the petitioner that the Tahsildar was not empowered to make enquiry or had no jurisdiction to cause enquiry is devoid of any merits. On careful perusal of provisions of Section 3 of the MLR Code, 1966, the same provides for restriction on felling of the trees. Relevant clause (1) and 1(A) of the said provisions reads as under:-

3. Restriction on felling of trees:

(1) Notwithstanding any custom, usage, or law for the time being in force, or the decree or order of a Court, or anything contained in any instrument to the contrary, no person shall fell any tree or cause such tree to be felled in any land, whether of his ownership or otherwise, except with the previous permission in writing of a [Tree Officer] duly empowered by the State Government in that behalf.

(1-A) If any person wishes to fell a tree, he shall apply in writing to the (Tree Officer) empowered under sub-section (1) for permission in that behalf.

23. From careful reading of Sections 1 and (1-A) of Section 3 of MLR Code, it is abundantly clear that no person shall fell any tree or cause such tree to be felled in any land, whether of his ownership or otherwise, except with the previous permission in writing of a [Tree Officer] duly empowered by the State

Government in that behalf. Sub-section 1-A provides that if any person wishes to fell a tree, he shall apply in writing to the (Tree Officer) empowered under sub-section (1) for permission in that behalf.

24. Section 5 of the MLR Code makes it clear that, every Revenue Officer, Forest Officer and Police Officer shall be bound to give immediate information of any contravention of Section 3 to the Officer empowered under the section and of the intention of preparation to commit such contravention which may come to his knowledge; and further to take all reasonable measures in his power to prevent such contravention, which he may know or have reason to believe is about or likely to be committed. Subsection 2 of Section 5 of the Act reads as under:-

(2) Any Revenue Officer, not below the rank of an Aval Karkun or Naib-Tahsildar, Forest Officer not below the rank of a sub-Inspector may enter upon any land, where he has reason to believe that any tree has been or is being felled, in loppings thereof, together with its produce and tools, boats (vehicles and other conveyances) used in committing such contravention, place on such property a mark indicating that the same has been so seized and shall make a report of such seizure to the [Tree Officer empowered] u/s 3.

25. Upon careful reading of sub-section 2 of Section 5, it is abundantly clear that any Revenue Officer, not below the rank of an Aval Karkun or Naib-Tahsildar, Forest Officer not below the rank of a sub-Inspector may enter upon any land, where he has reason to believe that any tree has been or is being felled, in loppings thereof, together with its produce and tools, boats (vehicles and other conveyances) used in committing such contravention, place on such property a mark indicating that the same has been so seized and shall make a report of such seizure to the [Tree Officer empowered] u/s 3.

Therefore, conjointly reading of the provisions of Sections 3 and 5 of the MLR Code would make it abundantly clear that, the Tahsildar being Revenue Officer is empowered to make enquiry in respect of felling of the trees and to take all necessary measures as contemplated under the relevant provisions.

26. By the impugned order, the Sub-Divisional Officer has partly allowed the appeal filed by the petitioner-herein. Possession of the machines in the saw-mill is given to the petitioner after removing seal put up by the Tahsildar. Tahsildar, Jamkhed and also the Forest Officer, Jamkhed are directed to make re-enquiry after following procedure, draw the panchnama having regard to the provisions of Maharashtra Land Revenue Code and also Forest Protection Act and then only pass appropriate orders as per the relevant provisions of law and rules. It is difficult to comprehend that, how the petitioner is aggrieved by the direction of the Sub-Divisional Officer to the Tahsildar to conduct re-enquiry under the relevant provisions and pass appropriate orders.

27. Upon careful perusal of entire material placed on record, it appears to this Court that, the order impugned in this petition deserves no interference. There is no harm to the petitioner, if he faces re-enquiry. The petitioner will get

opportunity to participate in the re-enquiry and put his defence during the re-enquiry by the Tahsildar and Forest Officer. The petitioner cannot escape from his responsibility, who found in possession of a huge quantity of 212 wooden logs, which prima facie he could not show that the said are legally possessed by him.

28. Upon careful perusal of condition of the licence issued in favour of the petitioner, there is no manner of doubt that the petitioner was obliged to make enquiry from the concerned Forest/Revenue Officers of the area, whether they have issued transit pass to carry such wooden logs, whether such wooden logs are prepared after taking due permission by the persons who have cut the trees. It is not only that, it is the duty of the Officers to protect the trees and prevent felling of illegal trees but every citizen of this country has an obligation to protect the forest. The relevant provisions of Article 51A(g) of the Constitution of India is reads thus;

51A: Fundamental duties: It shall be the duty of every citizen of India.

(a)...

(b)...

(c)...

(d)...

(e)...

(f)...

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

29. Therefore, taking overall view of the matter, this Court is of the opinion that, the petitioner cannot escape from enquiry. On the contrary, the petitioner should extend co-operation for re-enquiry by the Tahsildar and the concerned Forest Officer. It is beyond comprehension to understand that, the petitioner allowed 212 wooden logs to bring inside in the premises of his saw-mill without making enquiry from the concerned Officers, whether such wooden logs are prepared from legal or illegal felling of the trees by the persons, who have brought it to the sawmill of the petitioner.

30. By no stretch of imagination 212 wooden logs can be allowed inside saw-mill without verifying from the concerned Forest/Revenue Officers, whether the said wooden logs are prepared after taking due permission from the concerned Officer for cutting trees to prepare such wooden logs. It is matter of the concerned, that, the forest cover is being reduced because of illegal felling of the trees, and therefore, in the facts of the present case, when there are 212 wooden logs found in the premises of the saw-mill of the petitioner, the authorities were perfectly justified in invoking jurisdiction, making enquiry and taking steps as permissible under law.

31. Since the matter relates to the cutting of the trees, transporting the said trees to the saw-mill of the petitioner, and admittedly 212 wooden logs are found in the premises of saw-mill of the petitioner, it is desirable that enquiry should be concluded within stipulated period. Accordingly, the State Government Officers who are seized with enquiry are directed to complete the same after giving reasonable opportunity to the petitioner to put forth his contention and take appropriate decision within two months from today. Therefore, viewed from any angle, this petition praying for not conducting the re-enquiry into the matter by concern Officers, deserves no consideration, and accordingly stands rejected. No costs.