
AIR 1998 Guw 35

Gauhati High Court

Case No: Civil Rule No. 2024 of 1997

Surma Valley Saw Mill
(P) Ltd. and Others

APPELLANT

Vs

State of Assam and
Others

RESPONDENT

Date of Decision: July 25, 1997

Acts Referred:

- Assam Forest Regulation (Amendment) Act, 1995 - Section 49

Citation: AIR 1998 Guw 35

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: Mills Hazarika and D. Thakhur, for the Appellant; H.N. Sarma, Addl. Sr. Govt.
Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.K. Patnaik, J.

In this application under Article 226 of the Constitution of India, the petitioners have prayed for quashing the letter dated 4-3-1997 issued by the Deputy Ranger, Sadar Beat, Karimganj, and for declaration that the action of the respondent-authorities in sealing the peeling machine of the Saw Mill of the petitioners is illegal and ultra vires, and for a direction on the respondents not to close down the mill of the petitioners.

2. The facts briefly are that the petitioner No. 1, M/s. Surma Valley Saw Mill Private Limited, is a private limited company registered under the Companies Act, 1956, and owns a Saw Mill which is situated at Bhanga Bazar in the Karimganj District of Assam. The said Saw Mill of the petitioner No. 1 has been leased out to the petitioner No. 2, M/s. Tea Agency and Trading Centre, which is a Partnership firm registered under the Partnership Act, 1932. The petitioner No. 3, Sri Govinda Das Daga, is the Manager of

petitioner No. 2 firm. In the aforesaid Saw Mill, logs and timber are converted into sectional pieces which are further converted to veneer sheets and the rejected logs are sawn for its own purposes. The case of the petitioners is that they purchase logs and timber from sellers having valid transit passes and the said purchase is made at the premises, of the aforesaid Saw Mill. On 4-3-1997, 5-3-1997 and 6-3-1997, one Sri. A. Purkayastha, Forester I, attached to Sadar Beat, Karimganj, seized logs/timber from the aforesaid Saw Mill of the petitioners at Bhanga Bazar and from the nearby river ghat. Thereafter, a letter dated 4-3-1997 was addressed by one Sri A. Choudhary, Deputy Ranger, Sadar Beat, Karimganj, to the Manager of the aforesaid Saw Mill asking him to stop conversion and peeling of timber/logs until verification of the timber/logs in the aforesaid Mill was completed. Then, on 6-3-1997, one officer of the Forest Department, Karimganj, came to the aforesaid Saw Mill and sealed the peeling machine by which processing work in the Mill was being carried out. In the circumstances, the petitioners submitted a petition dated 26-3-1997 to the Divisional Forest Officer, Karimganj, for release of the logs, and other items of timber as well as release of the main machine of the Saw Mill sealed on 6-3-1997. But the peeling machine of the Saw Mill was not released and as a result the aforesaid Mill of the petitioners continued to be closed. Aggrieved by the aforesaid action of the respondents, the petitioners have moved this Court for appropriate relief.

3. At the hearing of the Civil Rule, Ms. M. Hazarika, learned counsel appearing for the petitioners, vehemently contended that the only power that is available to the authorities to seize the machines is u/s 49 of the Assam Forest Regulation and under the said Section 49 as amended by the Assam Forest Regulation (Amendment) Act, 1995, the machinery which are used in the commission of a forest offence can be seized by any Forest Officer. According to Ms. Hazarika, only the machinery which are used for cutting or felling tree or timber and other such illegal activities inside the forest can be seized under the said amended Section 49 of the Assam Forest Regulation, but the machinery comprised in a Saw Mill located outside the forest area cannot be seized under the said amended Section 49 of the Assam Forest Regulation (for short, "the Regulation"). In support of this contention, Ms. Hazarika, referred to the provisions of Section 25 of the Regulation, and submitted that the said section prohibits some acts in the reserved forest. She argued that Clause (d) of Section 25 prohibits a person from cutting any tree or injuring by fire or otherwise in reserved forest and hence cutting any tree in the premises of the Saw Mill located outside the reserved forest would not amount to a forest offence. According to Ms. Hazarika, therefore, the machinery of the Saw Mill located outside the reserved forest cannot be held to have been used in the commission of a forest offence and, therefore, cannot be seized under the amended Section 49 of the Regulation. In support of her aforesaid submission, she cited a judgment of the Madhya Pradesh High Court in the case of [Kamlesh Kumar Chhabra Vs. State of M.P. and Others](#), in which it has been held that only property in respect of which an offence, is committed can be seized u/s 52 of the Indian Forest Act, 1927.

4. In reply to the afore said submission, Mr. H. N. Sarma, learned, Additional Senior Government Advocate, Assam, contended that while interpreting the amended Section 49 of the Regulation, the purpose of the Regulation has to be kept in mind and as the purpose of the Regulation is to prevent commission of forest offences, even machinery located outside the forest area but used for the purpose of and in aid of commission of forest offence can be seized u/s 49 of the Regulation. Mr. Sharma has further stated that although no counter-affidavit has been filed by the respondents, records of the case have been produced to show that the machinery of the Mill of the petitioners have been used for the purpose of commission of forest offence. That apart, in case the petitioners were aggrieved by seizure, they had alternative remedy u/s 49-A, 49-B and 49-C of the Regulation introduced by the Amendment Act of 1995 and hence the writ petition should be dismissed on the ground that alternative remedy is available to the petitioners against the seizure.

5. Amended Section 49(1) of the Assam Forest Regulation is quoted hereinbelow :

"49(1). When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, boats, motorized boats, vessels, cattle, carts, rafts, machinaries, vehicles, trucks, ropes, chains or any other implements, articles or materials used in the commission of such offence may be seized by any Forest Officer not below the rank of a Forester or any Police Officer not below the rank of a Sub-Inspector of Police."

6. It is not disputed by Ms. Hazarika, learned counsel for the petitioner, that once a machinery is used for commission of a forest offence, it is liable to be seized under the aforesaid amended Section 49 of the Regulation. Mrs. Hazarika, however, contends that the machinery of a saw mill located outside the forest area cannot possibly be used in the commission of a forest offence and, according to her, it is only the machinery which are used inside the forest area for cutting, felling and other activities prohibited by the Regulation can be said to have been used for commission of a forest offence. The expression "Forest offence" has been defined in Section 3 (5) of the Regulation as an offence punishable under the said Regulation or any Rule thereunder. Section 34 (1) of the Regulation states that no person shall make use of any forest produce of any land at the disposal of the Government and not included in a reserved forest or village forest, except in accordance with rules to be made by the State Government, and Section 34 (2) (c) provides that such rules may, with respect of such land, regulate or prohibit the felling, cutting, girdling, marking, lopping, tapping, or injuring by the fire or otherwise of any trees, the sawing, conversion and removal of timber, and the collection and removal of other forest produce. Section 35 (2) of the Regulation empowers the State Government to attach to the breach of any rule u/s 34 any punishment not exceeding that mentioned in Sub-section (1) of Section 35. In exercise of the said powers u/s 34, the State Government has made Rules relating to Unclassed State Forest (in the plains districts of Assam and the North Cachar Hills) under Rules 33, 34(2)(c), (e) (g), (h) and 35 (2) which, inter alia, provide that no trees, reserved or unreserved, shall be felled, cut, girdled,

marked, tapped or injured by fire or otherwise and no timber shall be sawn, converted or removed and no other forest produce collected and removed except under and subject to the condition of a trade permit as prescribed in Appendix-B to the Rules, which may be granted by the Divisional Forest Officer, Deputy Commissioner or other officer specially empowered in this behalf. Rule 12 of the aforesaid Rules further provides that if any person infringes any of the above rules he shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. It is thus clear from the aforesaid provisions of Sections 34 and 35 of the Regulation that any timber that is sawn or converted or removed contrary to the conditions of trade permit is a forest offence and such forest offence can be committed not only inside the forest area but also outside the forest area. Accordingly, if the machinery of a saw mill such as that belonging to the petitioners have been used for sawing or converting any timber contrary to the trade permit, it can be held that the machinery have been used for the purpose of committing a forest offence and such machinery are liable to be seized under the amended Section 49 of the Regulation. .

7. Again Section 40 (1) of the Regulation says that the control of all rivers and their banks as regards the floating of timber, as well as the control of all forest produce in transit by land or water, is vested in the State Government, and that the Government may make rules to regulate the transit of any forest produce, and Section 40(2)(1) provides that such rules may, among other matters, prohibit absolutely, or subject to conditions, within specified local limits, the establishment of sawpits and saw mills, the converting, cutting, burning, concealing marking, or super marketing of timber, the altering of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber. Similarly, Section 40 (2)(m) provides that such rules may, among other matters, regulate the use of property-marks for timber and the registration of such marks, etc. In exercise of the said powers u/s 40 of the Regulation, the State Government has made the Transit Rules, which, inter alia, provide that all traders wishing to transport timber from the forests, shall have their property marks registered in the Divisional Forest Office concerned in the manner prescribed in the Rules and all timber in the transit shall bear the registered property marks, and no transit pass shall be issued for such timber in transit Unless it bears a registered property mark. The aforesaid Transit Rules further provide that no timber which is in transit or intended for transit shall be marked except with a registered property mark, and no one shall super-mark, alter or efface any mark on such timber, and the possession or carrying of hammers or other implements used for the impression of marks which have not been registered in the manner prescribed is strictly prohibited. Rule 17 of the Transit Rules further provide that any person infringing any of the above rules may be punished with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both. It is thus clear that violation of transit rules providing for registered property marks on the timber that is transported or in transit is a forest offence and such a forest offence may be committed not only inside the forest area but also outside the forest area.

8. From the records as produced before me by Mr. H. N. Sarma, learned counsel appearing for the State-respondents, it appears that various logs/timber were seized on 4-3-97, 5-3-97 and 6-3-97 as they did not bear any Government hammer impression nor bear any authorised figure or any property mark hammer impression of the petitioners' Mill, and that the logs were not found entered in any of the Registers of the mill and that the Mill-authorities could not produce any document supporting the ownership/possession of the unmarked logs and sawn timber. From the records as produced before me it appears that the Forest Officer has taken a view while seizing the said logs and timber that offences u/s 34 (2) (c), 35, 24, 25 and 41 (2) of the Assam Forest Regulation have been committed. Thereafter, on 8-3-97, machinery of the Saw Mill of the petitioners including the peeling machine have been seized under the aforesaid amended Section 49 of the Regulation. From the records, it appears that the machinery were seized as the Forest Officer was of the view that the machinery were used on 4-3-97, 5-3-97 and 6-3-97 and on earlier dates for commission of forest offences. It is, therefore, clear that the Forest Officers have seized the machinery of the Saw Mill of the petitioners as they had reason to believe that the machinery were used in the commission of forest offences under Sections 34(2)(c), 35, 24, 25 and 41 (2) of the Assam Forest Regulation. Hence, assuming that Ms. Hazarika is right in her contention that offences under Sections 24 and 25 of the Regulation can be committed only within the reserved forest, offences under Sections 24(2)(c), 35, 40 and 41 (2) of the Assam Forest Regulation read with the Rules made thereunder can be committed with the use of machinery of a saw mill located outside the forest area.

9. I am, therefore, inclined to hold that the machinery of a saw mill located outside the forest area can be seized under the amended Section 49 of the Regulation if the same have been used in the commission of forest offence such as those u/s 34 (2)(c) read with Section 35 of the Regulation and u/s 40 read with Section 41(2) of the Regulation and the Rules made thereunder. In the case of [Kamlesh Kumar Chhabra Vs. State of M.P. and Others](#), cited by Ms. Hazarika, the Madhya Pradesh High Court held that u/s 52 of the Indian Forest Act, 1927, forest, produce in respect of which there is reason to believe that a forest offence is committed can be seized along with the tools, articles or vehicles employed in committing the forest offence. The language of the amended Section 49 of the Assam Forest Regulation as I have held above, enables, the Forest Officer to seize machinery including a machinery used in a saw mill located outside the forest area if there is reason to believe that the same has been used in the commission of a forest offence.

10. For the reasons stated above, I am not inclined to quash the seizure and sealing of the machinery of the Saw Mill of the petitioners by the respondents. By this Judgment and Order, however, I have not expressed any opinion as to whether or not any forest offence has in fact been committed by using the machinery of the Saw Mill of the petitioners. This is a factual question which will have to be decided by the authorities under the Assam Forest Regulation, and it will be open for the petitioners to seek their remedy under the

Assam Forest Regulation including those under Sections 49-A, 49-B and 49-C introduced by the Assam Forest Regulation (Amendment) Act, 1995. To enable the petitioners to seek their alternative remedy, I direct the respondents to furnish within a period of 15 days from today copies of offence reports No. KS/1 and No. KS/2 dated 10-4-97 and the seizure lists of items seized on 4-3-97, 5-3-97, 6-3-97 and 8-3-97 from the Saw Mill of the petitioners which were produced before this Court,

11. With the aforesaid observations and direction, the writ petition stands disposed of. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.