(1993) 11 KL CK 0041

High Court Of Kerala

Case No: O.P. No. 7412 of 1989-G

Bhargavan and Others		APPELLANT
	Vs	
Authorised Officer and Others		RESPONDENT

Date of Decision: Nov. 23, 1993

Acts Referred:

- Kerala Forest Act, 1961 - Section 52(1), 61, 61A, 61A(2), 61D
- Kerala Forest Produce Transit Rules, 1975 - Rule 11, 23, 3, 3(1)

Hon'ble Judges: K.J. Joseph, J

Bench: Single Bench

Advocate: P. Vijaya Bhanu, for the Appellant; Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

K.J. Joseph J.

1. There are 3 Petitioners in the above Original Petition. The first Petitioner is the owner of a lorry bearing registration No. KLU 7270. The registration of the above lorry stands in the name of one Lalithambika. The first Petitioner had purchased the said lorry although the registration has not been transferred in his name. The 2nd Petitioner is an owner of a timber depot at Quilon and the 3rd Petitioner is the owner of a furniture depot.

2. In the auction conducted by the Forest Department, one Shajahan had purchased some teak poles from the government teak plantation. For transporting the said teak poles, the Forest Range Officer, Neduvathumuri Forest Range, issued a permit on 18th June 1987. The validity of the above permit was till 25th July 1987.

3. These teak poles were kept in the depot belonging to the 2nd Petitioner. Out of the teak poles, 100 teak poles had been sold by the 2nd Petitioner to the 3rd Petitioner and the same had been transported in the lorry belonging to the first Petitioner bearing registration No, KLU 7270 to Chovallur in Trichur District. It is the

case of the Petitioners that the 3rd Respondent had hired the said lorry and transported the teak poles on the strength of the above permit and on the basis of a cash bill issued by the 2nd Petitioner in favour of the 3rd Petitioner. The lorry was seized by the Forest officials on 28th July 1987 from Chovoor near Trichur. According to the forest officials, a forest offence has been committed in respect of the 100 teak poles which belong to the Government without any valid permit for transporting the same. The lorry as well as the teak poles were produced before the first Respondent, authorised officer. The authorised officer has issued a show cause notice to the Petitioners directing them to show cause why the lorry should not be confiscated u/s 61A of the Kerala Forest Act. As stated earlier, the forest offence alleged to have been committed by the Petitioners with the help of the driver and cleaner of the lorry is transporting the teak poles without any valid permit as required under Rule 3(1)(iii) of the Kerala Forest Produce Transit Rules, 1975. Out of the 100 teak poles, it was found by the forest officials that 6 teak poles are the property belonging to the Government. It is also alleged that the first Petitioner who is the owner of the said lorry did not take any precautionary measures against the use of the lorry in committing the forest offence.

4. The first Petitioner had submitted a detailed explanation wherein he has stated that he has not committed any forest offence. He has taken sufficient precautionary measures against the use of lorry in committing any forest offence. The teak poles were purchased by the 3rd Petitioner from the 2nd Petitioner and the same was transported under a permit. The teak poles were originally purchased by the above-named Shajahan from the Neduvathumuri Forest Range and kept in the depot of the 2nd Petitioner and hence no forest offence has been committed by them. The first Petitioner also contended before the first Respondent that the driver has transported the teak poles on the strength of a valid transit permit and on the basis of the bill issued by the 2nd Petitioner.

5. The first Respondent considered the matter and found that out of the 100 teak poles seized under the mahazar, 6 teak poles are not the teak poles removed from the Neduvathumuri Range and the balance 94 teak poles are those collected and removed from the Neduvathumuri Range on the basis of the auction. He has also found that the 6 teak poles are the property belonging to Government as contemplated in Section 69 of the Kerala Forest Act, since no private proprietoryship right on those poles could not be proved. Hence, he found that the 6 teak poles out of the 100 teak poles seized as per the mahazar are liable for confiscation to Government u/s 61A of the Act. He has further found that the remaining 94 teak poles are the property of the 3rd Petitioner. The first Respondent in his order also found that the driver of the vehicle used the lorry for transporting of teak poles without any valid permit and the permit handed over by the driver to the forest officials at the time of seizure was the permit by the Forest Range Officer, Neduvathumuri Forest Range issued on 18th June 1987 for transporting the teak poles from the plantation, Padma to Quilon and validity of the above pass lad

expired on 25th July 1987. But the authorised officer further found that the teak poles involved in the case was seized on 28th July 1987 from Chovoor near Trichur and therefore, the authorised officer found that the transportation of the entire 100 teak poles seized under the mahazar was without any valid permit as required under Rule 3(1)(iii) of the Kerala Forest Produce Transit Rules, 1975. He has also found that the first Petitioner who is the owner of the lorry has permitted to use the vehicle with full knowledge for commission of the forest offence and the vehicle has been used for transporting the teak without any valid permit. The first Respondent further found that the owner of the vehicle did not take any precautionary measures against the use of the lorry KLU 7270 for committing the above offence and hence the lorry also is liable to be confiscated. The first Respondent thus passed Ext. P-l order dated 6th September, 1988 ordering confiscation of the above 6 teak poles to Government. He has also ordered confiscation of the lorry bearing registration No. KLU 7270 along with all its accessories to Government.

6. Petitioners had questioned the validity of the above order before the appellate authority u/s 61D of the Kerala Forest Act. The appellate authority viz. the District Judge considered the matter in detail and found that if the 3rd Petitioner had taken reasonable care, it would have come to his knowledge that on the strength of the permit produced before the forest officials, the teak poles could not be transported from Quilon to Trichur. He has also found in his judgment that the permit used for transporting the teak poles from Quilon to Trichur was not valid and hence the forest officials were justified in seizing the lorry and timber. But the appellate authority found that the forest officials have no case that 6 teak poles pertained to teak trees illegally removed from any reserve forest area and therefore, he disagreed with the finding of the authorised officer in respect of the ownership of the above 6 teak poles and found that the finding of the authorised officer that the six teak poles were Government property cannot be sustained. But according to the apppellate authority, it is of no consequence at all since the offence allegedly committed is its transportation from Quilon to Trichur in violation of the Foreset Produce Transit Rules. The appellate authority further found that whether the timber was Government property or private property is immaterial and since the teak poles were transported without any valid permit, a forest offence has been committed and therefore, the appellate authority confirmed the order of confiscation passed by the first Respondent, the authorised officer u/s 61A of the Kerala Forest Act. The appellate authority also concurred with the finding entered into by the authorised officer that neither the owner of the vehicle nor the driver of the vehicle was taken any reasonable or necessary precaution against the use of the vehicle for commission of the forest offence. Thus, the appellate authority dismissed the appeal filed by the Petitioners u/s 61D of the Act as per Ext. P-2 judgment dated 3rd August 1989. The Petitioners challenge the validity of Exts. P-l and P-2 orders before this Court in this proceedings.

7. I heard the learned Counsel appearing on behalf of the Petitioners as well as the Government Pleader on behalf of the Respondents. Even though notice was served on the Respondents 1 and 3 and Government Pleader entered appearance on behalf of those Respondents, so far no counter-affidavit has been filed in the case by any of the Respondents. Therefore the only question to be decided in this ease is whether the Petitioners have committed any forest offence and whether the order of confiscation of the lorry u/s 61A of the Kerala Forest Act is justifiable on the facts and circumstances proved in the case.

8. Admittedly, both the authorities have found that 94 teak poles out of the 100 teak poles transported belong to the 3rd Petitioner. The finding of the authorised officer that the remaining 6 poles are property belonging to the Government was considered in detail by the appellate authority and found that the above finding that six teak poles were Government property cannot be sustained. Therefore, according to the appellate authority, 6 teak poles do not belong to the Government and hence it is not the property of the Government. The above finding is binding on the Respondents. The State has not questioned the validity of the above finding in Ext. P-2 regarding the ownership of the 6 teak-poles before this Court. Therefore the above finding has become final. Going by the said finding, it has to be found that the ownership of the 100 teak poles do not vest in the Government and hence it is not a property of the Government as contemplated u/s 61A of the Kerala Forest Act. But the appellate authority justified the order of confiscation of the vehicle on the ground that the transportation of the entire 100 teak poles from Quilon to Trichur was without any valid permit issued under the Kerala Forest Produce Transit Rules and therefore, according to the appellate authority, the order of confiscation passed by the authorised officer in Ext. P-l is justified.

9. Therefore, the next question to be considered is whether transportation of the teak poles belonging to the 3rdPetitioner from Quilon to Trichur is justified and whether there was any valid permit for transporting the same. It is also to be considered whether the Petitioners have committed any forest offence in respect of the above transportation and even if, the transportation of the teak poles is made without any valid permit, whether the confiscation ordered by the authorised officer and confirmed by the appellate authority is justified under the provisions of the Kerala Forest Produce Transit Rules, 1975.

10. Section 61A of the Kerala Forest Act is extracted below:

61 A Confiscation by Forest Officers in certain cases.-Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under Sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by

notification in the. Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer). (2) Where an authorised officer seizes under Sub-section (1) of section 52 any timber, charcoal, firewood or ivory which the property of the Government, or where any such property is produced before an. authorised officer under Sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

As can be seen from Section 61 quoted above, confiscation of the lorry is justified where a forest offence is believed to have been committed in respect of the timber or the teak pole which the property of the Government. u/s 61A(2) of the Act, if the authorised officer is satisfied that a forest offence has been committed in respect of such property (property of the Government referred to in Sub-Section (1), then only the authorised officer can order confiscation of the property seized with the vehicle used in committing such offence to the Government.

11. The finding of the appellate authority is that the entire 100 teak poles seized by the forest officials belong to the 3rd Petitioner and it is not the property of the Government. Therefore, in the light of the categoric finding of the appellate authority which is binding on Respondents 1 and 3, it cannot be said that the order of confiscation passed by the authorities is justified in this case on that ground. The authorised officer gets jurisdiction and power to order confiscation of a vehicle only in case a forest offence is believed to have committed in respect of the property of the Government. Admittedly, as per the judgment of the appellate authority, the teak poles are found to be not the property of the Government and threfore, the authorised officer has no jurisdiction to pass an order of confiscation of the lorry u/s 61A(2) of the act on that ground. In the light of the finding of the appellate authority in Ext. P-2 that since teak poles are not properties belonging to Government, the appellate authority is not justified in confirming the order of confiscation passed by the authorised officer.

12. The appellate authority concurred with the order of confiscation passed by the authorised officer only on the ground that the Petitioners have committed the forest offence in respect of the timber by transporting the same from Quilon to Trichur in violation of the Kerala Forest Produce Transit Rules. Section 61A of the Act empowers the authorised officer to order confiscation of the vehicle only if he is satisfied that a forest offence has been committed in respect of the property of the Government and not in respect of a property, not belonging to the Government.

Therefore, the next question to be considered is whether, under the Kerala Forest Produce Transit Rules, 1975, an order of confiscation of the lorry can be passed for violation of any of the above Rules. Rule 3(1) of the above Rule is extracted below:

Rule 3. Import, export and transport of timber and other forest produce.-(1) No person shall;

(i) import timber or other forest produce in to the State; or

(ii) export timber or other forest produce from the State; or

(iii) transport timber or other forest produce by land, by rail or by water in any part of the State, unless such timber or other forest produce is accompanied by a pass required by these rules, and unless the timber is stamped by a Government stamp or a stamp registered as laid down in Rule 11.

Under the above rule, a person can transport timber or other forest produce by land, by rail or by water in any part of the State only on the strength of a pass issued under the above rules. Rule 23 of the above rules deals with the penalty for the contravention of any of the provisions of the above rules. Rule 23 of the rules is extracted below :

Rule 23. Penalties.-(1) Whoever commits any contravention of any of the provisions of these rules shall on conviction by a Magistrate be punished with imprisonment for a term which may extend to six months or with a fine which may extend to rupees five hundred or both.

(2) In cases where any offence was committed after making preparation for resistance to the execution of any law or any legal process or where the offender has been previously convicted of a like offence, the convicting Magistrate may impose double the penalty specified in Sub-rule (1).

Therefore, for transporting the teak poles, which are found to be not the property of the Government, without any valid permit or pass as required under Rule 3(1)(iii) of the rules, the maximum penalty that can be imposed on the person who has violated the rule is imprisonment for a period of six months with fine which may extend to rupees five hundred or both by a Magistrate on conviction of the accused therein and there is no question of passing an order of confiscation of the lorry for violation of the above rules. The learned Government Pleader appearing on behalf of the Respondent did not point out any other provision of law which would enable the authorised officer to order confiscation of the lorry for violation of the Forest Produce Transit Rules. Therefore, the order of confiscation of the lorry passed by the. 1st Respondent, authorised officer in Ext. P-l and Ext. P-2 judgment passed by the appellate authority confirming the order of confiscation are clearly illegal and passed without jurisdiction. Exts. P-l and P-2 are therefore, quashed as illegal and passed without jurisdiction. The 1st Respondent is therefore, directed to release the lorry KLU 7270 and the 6 teak poles ordered to be confiscated as per Exts. P-l and P-2 orders immediately. In case, the lorry had already been released to the registered owner of the Vehicle on furnishing the Bank Guarantee as ordered by this Court in C.M.P. No. 22523/89, the said bank guarantee also shall be released

immediately on receiving a copy of the judgment.

The Original Petition is allowed, but in the circumstances, there will be no order as to costs.