



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICITON**

CIVIL APPEAL NOS. 9751-9752 OF 2011

**The Divisional Forest Officer, Munnar, Kerala,
and another**

..... Appellants

Versus

P.J. Antony, etc.

..... Respondents

JUDGMENT

SANJAY KUMAR, J

1. These appeals arise out of the judgment dated 13.08.2010 passed by the High Court of Kerala at Ernakulam in W.P. (C) Nos. 18493 and 19478 of 2006. Thereby, the High Court allowed the writ petitions and set aside the order of confiscation of sandalwood dated 23.02.2004, which had been confirmed by the learned District Judge, Thodupuzha, in C.M.A. No. 39 of 2004. In consequence, the Forest Department of the State was directed to proceed on the basis of the application made by the writ petitioners in accordance with Government Order dated

03.04.1973. Aggrieved by this judgment and the directions therein, the State of Kerala and its Divisional Forest Officer, Munnar, filed these appeals.

2. P.J. Antony and Cheriyan Kuruvila, the respondents in the present appeals, were the petitioners in W.P. (C) Nos. 18493 and 19478 of 2006 respectively before the High Court. P.J. Antony claimed ownership and possession over 4.70 hectares of land in Survey Nos. 86/3 and 86/4 of Marayoor Village while Cheriyan Kuruvila claimed title and possession over an extent of 1.09 hectares in Survey No. 86/5 of Marayoor Village. P.J. Antony submitted application dated 13.12.2000 to the Tahsildar, Devikulam, for issuance of a certificate for handing over the dried and fallen sandalwood trees in his land to the Forest Department. A similar application was also filed by Cheriyan Kuruvila. These applications were made in accordance with the scheme envisaged under G.O (MS) No. 126/773/AD, Agriculture (Forest) Department, dated 03.04.1973, which empowered the Forest Department to auction sandalwood trees grown on private lands and pay 70% of the sale proceeds to the landowners leaving the remaining 30% with the Department.

3. Thereupon, the Taluk Surveyor inspected the lands on 22.01.2001 and submitted a report, confirming that there were sandalwood trees fallen and lying in the said lands. He also prepared rough sketches of the topography of the lands in question, indicating therein the number

and the location of the sandalwood trees found by him. In Survey No. 86/3, he confirmed that 16 sandalwood trees were lying dried and fallen, while in Survey No. 86/4, there were 34 such trees. In all, 50 sandalwood trees were stated to have been found in P.J. Antony's land, dried and fallen. As regards Survey No. 86/5, pertaining to Cheriyan Kuruvila, the Taluk Surveyor confirmed that there were 26 sandalwood trees lying dried and fallen therein. The location of these trees was also indicated in the rough sketch. Earlier thereto, the Village Officer inspected the lands on 10.01.2001 and he prepared a tabular statement indicating the details of the sandalwood found, including the dimensions thereof. The Tahsildar, Devikulam, addressed letter dated 29.01.2001 to the Village Officer, Marayoor, in the context of the applications submitted, referring to the Village Officer's Report dated 10.01.2001 and the Taluk Surveyor's Report dated 23.01.2001, and directed that necessary Village Certificates could be legally issued in relation to the 50 sandalwood trees found in a dried and fallen condition in the residential property comprised in old Survey No. 30/1. A similar order was passed in relation to the application of Cheriyan Kuruvila. Thereupon, Certificate dated 20.03.2001 was issued by the Village Officer, Marayoor, noting that the lands of P.J. Antony in Survey Nos. 86/3 and 86/4 fall in old Survey No. 30/1 and that 50 sandalwood trees were found in a dried and fallen condition therein and certified that necessary steps could be taken

for conducting an auction in relation to those trees. He also confirmed therein that the certificate was issued for the purpose of producing the same before the Range Officer, Marayoor Forest. A similar certificate was issued in relation to the 26 sandalwood trees, lying dried and fallen in the land of Cheriyan Kuruvila in Survey No. 86/5 of Marayoor Village.

4. Thereupon, P.J. Antony and Cheriyan Kuruvila submitted a joint application on 25.03.2001 to the Divisional Forest Officer, Devikulam, through the Range Officer, Marayoor Forest. Therein, they stated the details of the sandalwood trees lying in their respective properties and requested the authorities to inspect the same to facilitate their entering into an agreement with the Forest Department. They enclosed therewith the Survey Sketches dated 22.01.2001 of the Taluk Surveyor, Devikulam, along with the Certificates dated 20.03.2001 issued by the Village Officer, Marayoor. It is their case that, as no action was taken upon the said application, they were constrained to stack the dried and fallen sandalwood trees at one place in the property of P.J. Antony.

5. While so, by Mahazar dated 11.07.2001, the Range Officer, Marayoor Forest, seized the sandalwood trees. Therein, he stated that, on getting secret information that sandalwood trees had been illegally uprooted and kept in the house of P.J. Antony, an inspection was conducted and 77 number of sandalwood trees, 41 pieces of sandalwood, 7 sandalwood stumps and 56 small roots were found

illegally kept in the backside of the courtyard of House No. 1 in Ward No. 5 of Marayoor Panchayat. The details of the seized sandalwood were set out at length. Thereupon, the Divisional Forest Officer, Munnar, passed confiscation order dated 16.01.2002 in relation to the sandalwood seized on 11.07.2001. This order was set aside by the Conservator of Forest, High Range Circle, Kottayam, *vide* order dated 25.11.2002 in exercise of revisional power, and the Divisional Forest Officer, Munnar, was directed to conduct a *de novo* enquiry in the matter and pass appropriate orders. In consequence, the Divisional Forest Officer, Munnar, reconsidered the case but again confirmed the seizure and confiscation of the sandalwood, by her order dated 23.02.2004. Aggrieved thereby, P.J. Antony and Cheriyan Kuruvila filed C.M.A. No. 39 of 2004 before the learned District Judge, Thodupuzha. By Judgment dated 05.11.2005 passed therein, the learned District Judge confirmed the confiscation order and dismissed their appeal. This led to their filing writ petitions before the High Court of Kerala, which resulted in the passing of the impugned judgment.

6. What weighed primarily with the learned Judge in allowing the writ petitions was that there was no evidence of any 'forest offence' having been committed, whereby the power of confiscation under Section 61A (2) of the Kerala Forest Act, 1961 (for brevity, 'the Forest Act') could have been invoked. The learned Judge took note of the steps taken by

P.J. Antony and Cheriyan Kuruvila before the Revenue officials and the fact that an application was submitted by them to the Range Officer, Marayoor Forest, and observed that the statements in the Mahazar dated 11.07.2001 and in the order of confiscation that, on getting secret information that sandalwood trees were illegally stacked in the premises of P.J. Antony, the Range Officer had effected the seizure, were not acceptable on facts. The learned Judge noted that, during the course of the enquiry, the Range Officer had himself admitted receipt of the application submitted by P.J. Antony and Cheriyan Kuruvila but claimed that he could not proceed with the matter on account of financial difficulties of the department. It was also taken note of that, after the seizure of the sandalwood, the Range Officer registered a case alleging an offence under the Kerala Preservation of Trees Act, 1986 (for brevity, 'the KPT Act'). Support in this regard was drawn from the statement of the Range Officer that the trees were 'unauthorizedly' stacked in the premises. Further, the learned Judge was not persuaded to agree with the Forest Department that a presumption could be drawn under Section 69 of the Forest Act, as to the commission of a 'forest offence'. The learned Judge was of the opinion that the offence, if any, would only be in relation to the provisions of the KPT Act and, therefore, the same could not be treated as a 'forest offence' under the Forest Act. The learned Judge also noted that the presumption under Section 69 of the

Forest Act could only be in relation to 'forest produce' being treated as the property of the Central or State Governments and there could be no presumption thereunder regarding commission of a 'forest offence'. The learned Judge was not prepared to accept that the moving of the trees, by itself, would amount to a violation of Rule 3 of the Kerala Forest Produce Transit Rules, 1975, whereby it could be held that a 'forest offence' was committed, as the lands in question belonged to P.J. Antony and Cheriyan Kuruvila, who were closely related to each other, and were adjacent lands. The contention of the Forest Department that the sandalwood may have been collected from other patta lands or revenue poramboke or reserved forest lands was rejected by the learned Judge, as months before the seizure on 11.07.2001, P.J. Antony and Cheriyan Kuruvila had informed the Revenue officials about the trees and sought necessary documentation to approach the Forest Department to undertake sale of the trees. It is on this reasoning that the learned Judge set aside the confiscation order which had been confirmed in appeal by the learned District Judge, Thodupuzha, in C.M.A. No. 39 of 2004.

7. The confiscation order dated 23.02.2004 reflects that P.J. Antony and Cheriyan Kuruvila had to approach the High Court at every turn to ensure that a proper hearing was afforded to them. So much so, that they had to obtain an order from the High Court even for examination of the Range Officer, Marayoor Forest, to whom they had submitted their

application. Further, we may note that the Divisional Forest Officer, having extracted the statements made by the Tahsildar, the Taluk Surveyor and the Village Officer, brushed them aside nonchalantly, though nothing worth the name was elicited in their cross-examination to dilute what they had stated, in the context of their inspection of the lands in question and their confirmation that they had found 76 fallen and dried sandalwood trees in those lands. The documents of the Revenue officials were rejected on mere surmises and by misreading the contents thereof. On that basis, the Divisional Forest Officer baldly concluded that the documents were insufficient to correlate the sandalwood trees with the settlement patta lands and they did not prove the ownership of P.J. Antony and Cheriyan Kuruvila over the sandalwood. Surprisingly, though the Mahazar dated 11.07.2001 categorically mentioned the number of trees seized as 77, the Divisional Forest Officer enhanced the figure to 84 sandalwood trees with no logical basis therefor. Further, she went to the extent of doubting the ownership of P.J. Antony and Cheriyan Kuruvila over the lands in question, which was entirely beyond her ken. This speculation on her part was despite the clear certification by the Revenue officials that the subject lands were patta lands belonging to P.J. Antony and Cheriyan Kuruvila. In appeal, the learned District Judge was more influenced by the fact that the sandalwood in question had been stacked in the backyard of P.J. Antony's house without

authorization. Noting incorrectly that the Tahsildar had not been examined, the learned District Judge affirmed the self-serving findings of the District Divisional Forest Officer, Munnar.

8. Though it was vehemently contended before us on behalf of the appellants that there is no acceptable explanation from P.J. Antony and Cheriyan Kuruvila as to how the sandalwood trees had fallen down and that there were no whirlwinds in the year 1996, as claimed by them, we are of the opinion that much would not turn upon this factual aspect. It is an admitted fact that earlier, during the year 1995, sandalwood trees which had grown in the lands of P.J. Antony were sold in consultation with the Forest Department as per the Government's scheme. This fact is sufficient to indicate that sandalwood trees did grow in these lands. The documentation of the trees found in these lands in the year 2001, certified by the Revenue officials, is not liable to be rejected or eschewed as the Forest Department was unable to elicit anything to the contrary in the cross-examination of these officials.

9. More damaging is the fact that Udaykumar, Range Officer, Marayoor Forest, who had received the application submitted by P.J. Antony and Cheriyan Kuruvila on 25.03.2001, admitted his signature therein, affixed in proof of his having received the same. During his chief examination, he stated that he had forwarded the said application with a covering letter to the Divisional Forest Officer for sanction and necessary

further action, but he had not received any reply. He conceded that the Department's being in a financial crisis may have been the reason for no further proceeding being initiated. He confirmed that the certificates issued by the Village Officer had been submitted along with the application. He also affirmed that collection of the trees from various places and stacking them at one place was in violation of the KPT Act. Conveniently, during his cross-examination, he gave evasive replies as to the forwarding of the application of P.J. Antony and Cheriyan Kuruvila to the Divisional Forest Officer, but his admissions are sufficiently damaging in themselves. Those admissions are more than enough to decimate the case sought to be put forth by the Forest Department that a 'forest offence' was committed by P.J. Antony and Cheriyan Kuruvila.

10. Be it noted that Sections 52 and 61A of the Forest Act, dealing with seizure and confiscation of sandalwood etc., require the officer concerned to come to the conclusion that there was a 'reason to believe' that a 'forest offence' has been committed. Section 2(e) of the Forest Act defines a 'forest offence' to mean an offence punishable under the Forest Act or any Rule made thereunder. However, it is an admitted fact that the offence, if any, committed by P.J. Antony and Cheriyan Kuruvila in relation to the movement of the fallen and dried sandalwood, so as to stack it at one place, would be relatable to the KPT Act and would not constitute an offence under the Forest Act. Even at this stage, there is no

answer forthcoming from the Forest Department as to how a 'forest offence' is made out in the case on hand.

11. A feeble attempt was made by the Forest Department to claim that a presumption would arise under Section 69 of the Forest Act, whereby commission of a 'forest offence' could be inferred, but we are not persuaded to agree. Section 69 merely states that, when a question arises as to whether any 'forest produce' is the property of the Central or State Governments, such produce shall be presumed to be the property of the Central Government or State Government, as the case may be, until the contrary is proved. In ***Bharath Booshan Aggarwal vs. State of Kerala***¹, this Court observed that the presumption under Section 69 of the Forest Act is a remarkable one and the burden of proving the foundational facts, which would give rise to the presumption, would be upon the prosecution. In the case on hand, the contrary to such presumption is adequately proved beyond reasonable doubt. The joint application dated 25.03.2001 made by P.J. Antony and Cheriyan Kuruvila, duly supported and confirmed by the documentation of the Revenue officials, are sufficient to show that these sandalwood trees belonged to them.

12. Further, as was pointed out by this Court in ***Aslam Mohammad Merchant vs. Competent Authority and others***², whenever a statute

¹ 2021 SCC OnLine SC 881

² (2008) 14 SCC 186

provides for 'reason to believe', either the reasons should appear on the face of the notice or they must be available in the materials which are placed before the authority. On similar lines, in ***N. Nagendra Rao & Co. vs. State of Andhra Pradesh***³, this Court observed that even though the formation of an opinion as to the expression 'reason to believe', may be subjective, it must be based on material on the record and cannot be arbitrary, capricious or whimsical. Even before us, the Forest Department has no cogent basis for its arguments and contentions and would base its case on the speculative surmise that the sandalwood may have been brought to the lands of P.J. Antony and Cheriyan Kuruvila from reserved forest lands or from elsewhere. No material whatsoever is available with the Forest Department to support such an argument.

13. It is indeed surprising, if not shocking, that the Forest Department in the State of Kerala had not maintained a record of the sandalwood trees growing in reserved forest lands and also private patta lands. There was no marking of such trees to identify them for the purpose of such record. Our attention was drawn by the appellants themselves to the Division Bench judgment dated 27.06.2006 of the High Court of Kerala at Ernakulam in OP No. 20858 of 2001, filed in public interest by a voluntary organization, viz., Nature Lover's Movement, Thiruvankulam. This petition was filed in the context of illegal felling and removal of

³ (1994) 6 SCC 205

sandalwood trees from the forest lands in Marayoor and Chinnar Forest Ranges as well as adjacent villages. A departmental enquiry was sought against the Forest Officers and staff of Marayoor and Chinnar Forest Ranges in Munnar Forest Division in this regard. The Division Bench directed the constitution of a monitoring cell headed by the Chief Conservator of Forest, Vigilance, consisting of officers of integrity and uprightness, and also the numbering and marking of all sandalwood trees. It is in this context, perhaps, that the failure of the Forest Department in keeping track of and maintaining a clear record of the sandalwood trees in the year 2001 needs to be understood.

14. Viewed thus, we are of the opinion that the learned Judge of the High Court of Kerala at Ernakulam was fully justified, on facts and in law, in setting aside the confiscation order dated 23.02.2004 along with the judgment dated 05.11.2005 in C.M.A. No. 39 of 2004 of the learned District Judge, Thodupuzha, confirming the same, and directing further steps to be taken as per the scheme obtaining in G.O (MS) No. 126/73/AD, Agriculture (Forest) Department, dated 03.04.1973, issued by the Government of Kerala.

These appeals are, therefore, utterly devoid of merit and are accordingly dismissed. The Forest Department shall proceed in accordance with the Government's scheme and conclude the same

expeditiously and, in any event, not later than three months from the date of receipt of a copy of this judgment.

Though eminently deserving, we desist from saddling the appellants with costs. Parties shall bear their respective costs.

Pending applications, if any, shall also stand dismissed.

.....,J
(A.S. BOPANNA)

.....,J
(SANJAY KUMAR)

May 14, 2024;
New Delhi.