

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH  
AT JAMMU**

LPA No.110/2022  
CM No. 6305/2022

**Reserved on: 11.08.2023**

**Pronounced on: 17.08.2023.**

UT of J&K and another

...Appellant(s)

Through:-Mr. Amit Gupta, AAG.

**Versus**

Jammu and Kashmir Special Tribunal Jammu and another

...Respondent(s)

Through:-Mr. Vishal Sharma, Advocate for R-2.

**Coram:- HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE  
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGEMENT**

**Tashi Rabstan, J:-**

**01.** Judgement dated 08.10.2021, that came to be passed by the learned Single Judge, thereby dismissing the writ petition, OWP No.670/2008, filed by appellants, is impugned in the present intra court appeal.

**02.** The appellants assail the impugned judgment dated 08.10.2021, *inter alia*, on the following grounds:

- 1. That the order impugned is ex-facie bad, contrary to the facts of the case and law on the point and same therefore, deserves to be set-aside.*

2. *That Sh. Roop Chand, father of Sh. Girdhari Lal Parihar had violated the permission accorded for felling of 12 dry deodar trees and 03 dry kail trees 15 in number as granted by the Divisional Commissioner, Jammu vide order No.1257/4051-56 dated 14.03.1996 and the Deputy Commissioner, Doda vide order No.118-21/SQ dated 22.04.1996 under the J&K Specified Trees Act, 1969. Sh. Roop Chand resorted to illegal and unauthorized felling of additional 10 Nos. of green standing deodar and kail trees alongwith felling of sanctioned 15 dry deodar and kail trees.*
3. *That after felling of those trees (both green and dry) and extraction of timber, Sh. Roop Chand approached the DFO Kishtwar to issue Form-25 for transporting the referred timber stocks from his proprietary land to his residence in Kishtwar. The then DFO Kishtwar directed the Range Officer, Nagseni to verify the stocks and furnish the report in the matter. The Range Officer, Nagseni registered a Misc. case No. 01/1996-97 and seized all extracted stuff on spot and kept under superadnamaas it had mixed stocks of timber extracted from sanctioned dry trees and illegally extracted timber from green trees. Accordingly, DFO Kishtwar refused to issue the requisite permission for transportation.*
4. *That the DFO, Kishtwar vide letter No.1658-62 dated 24.08.1996 took up the matter with the Divisional Commissioner, Jammu to initiate appropriate action against Sh. Roop Chand for his violating the permission granted.*
5. *That the Hon'ble High Court vide its order dated 08.10.2021 disposed of the instant writ petition OWP No.670/2008 titled Divisional Forest Officer &Anr. v. J&K Special Tribunal and Another. The operative part of the judgment is reproduced as follows:*

*“.... In view of the above, I find no infirmity or illegality in the order impugned passed by the*

*Tribunal. This petition is, therefore, found to be without merit and is, accordingly, dismissed.*

*Having regard to the fact that the litigation on a very simple and short point has been pending adjudication since 1996, I deem it appropriate to direct the petitioners to comply with the judgment of the Tribunal within a period of four weeks from the date of this judgment. And, in case the seized timber has been perished or is not in a deliverable state, respondent no.2 shall be paid the present market price of the timber so seized and withheld by the petitioners, illegally and un-authorisedly....”*

6. *That the order has been passed without taking into consideration the submissions submitted by the appellants before the Single Bench and the order has been passed against the directions passed by the Hon'ble Supreme Court in various judgments. It is submitted that the Hon'ble Supreme Court has time and again reiterated in many judgments that felling of green trees are against the Forest Act and since the appellants has performed their duties well within the ambit of Forest Act the respondents has no right to interfere or challenge the action of the appellants by filing a separate writ petition on issue it was already decided. It is submitted that the respondent no.2 has cut down green trees which were neither permitted by the Forest Department nor by the concerned authority. Hence, violated the norms established under law, therefore, the court below has not addressed the submissions of the appellant in the right perspective and passed the impugned judgment which is to be set-aside.”*

**03.** Shorn of subsidiary details, the actual manifestation of the controversy involved in the writ petition is that way-back in the year 1996, the

respondent no.2's father, namely, late Sh. Roop Chand Parihar had filed an application before Deputy Commissioner, Doda, for grant of permission in his favour, to lift timber of Three dry Kail trees fallen due to natural calamity in land measuring 04 Kanals falling under Khasra No.765/617/216 situated at Village Bhatan Tehsil Kishtwar, owned and possessed by Late Roop Chand, father of respondent No.2.

**04.** On 22.04.1996, the requisite sanction was granted in favour of father of respondent no.2 by Deputy Commissioner, Doda, acting under J&K Preservation of Specified Trees Act, 1969, to lift the timber within a period of one month. And before that on 14.03.1996, a permission was also granted by the Divisional Commissioner, Jammu, for felling 12 dry Deodar trees by respondent no.2's father from his proprietary land.

**05.** It seems that father of respondent no.2 fell 12 number of Deodar trees and collected 03 numbers of dry Kail trees as per permission and converted them into scants. In order to transport the said scants to his residence from his land, father of respondent no.2 had applied for permission in Form No.25. The permission, however, was refused by the Divisional Forest Officer, Forest Division, Kishtwar. Dissatisfied therewith, father of respondent no.2 filed a writ petition, OWP No.807/1996, seeking passing of a direction against Divisional Forest Officer, Kishtwar, for permission by issuing Form No.25 in his favour.

**06.** Pursuant to an order passed by this Court in OWP No.807/1996, the court of Sub Judge, Kishtwar, was directed to protect the timber, so lying, by making suitable arrangements and also to arrange transportation of timber from the land of father of respondent no.2 and store the same in the premises

of the Forest Department. The writ petition was finally disposed of on 13.11.1998. DFO, Kishtwar, was directed to treat the writ petition as representation and dispose of the same in view of judgment of the Supreme Court in *T. N. Godavarman Thirumulkpad v. Union of India and Ors.* **1997 (2) SCC 267.**

**07.** On appeal by father of respondent no.2, the Division Bench of this Court vide judgment dated 28.04.1999 disposed of LPA(W) No.607/1999, directing the appellants herein to consider issuance of Form No.25 in respect of fallen trees under Land Transport Rules, providing further that the timber, if allowed to be transported, be transported through State Forest Corporation or departmentally. This option was, however, left at the discretion of the Chief Conservator of Forests, Jammu, to take a final decision in the matter. In terms of directions passed by the Division Bench of this Court, the father of respondent no.2 had filed an application before the DFO, Kishtwar, who vide order dated 14.07.1999 rejected the same and, simultaneously, submitted the case of alleged illegal felling of trees to Divisional Commissioner, Jammu, for taking action against father of respondent no.2.

**08.** The rejection by DFO, Kishtwar, was challenged by father of respondent no.2 in OWP No.1088/1999, but in vain as the petition filed by him did not fructify.

**09.** Against the order of learned Single Judge in OWP No.1088/1999, the father of respondent no.2 filed an appeal and in the meanwhile, he departed for heavenly abode and respondent no.2 succeeded him. However, said Letters Patent Appeal came to be dismissed on 12.12.2001.

**10.** The order dated 14.07.1999 passed by DFO Kishtwar was thrown to challenge by availing statutory remedy by respondent no.2 by filing a revision petition before the J&K Special Tribunal. The revision came to be allowed by an order passed by the Special Tribunal.

**11.** The Tribunal vide its order dated 15.05.2008 while allowing the revision filed by respondent no.2, directed the release of seized timber which pursuant to the order passed by this Court in OWP No. 807/1996 was stored at the Forest Yard/office Kishtwar.

**12.** The order dated 15.05.2008 of the Special Tribunal was challenged by the DFO Kishtwar and Chief Conservator of Forests, Jammu, through writ petition, OWP No.670/2008, before learned Single Judge. The learned Judge Single, by passing a detailed judgment, dismissed the writ petition of the appellants, which judgment is now the subject matter of challenge before us.

**13.** Having heard learned counsel for the parties and perused the impugned judgment and the relevant record appended with the appeal, we are of the view that the controversy involved in this appeal has rightly been put to quietus by the learned Single Judge.

**14.** Learned Single Judge has rightly held that the Divisional Forest Officer or any other Forest Officer has no jurisdiction under the Act of 1969 which was enacted by the State Legislature to make provision for preservation of certain species of trees and for regulating of felling and export thereof and has further held that both Kail and deodar trees are specified trees in terms of Section 2(e) of the Act of 1969.

**15.** The case of the appellants is that respondent no.2 is not entitled to any permission for transportation of timber extracted from the specified trees on

the ground that the timber was extracted in contravention of the permission granted under the Act of 1969. Such a contravention is required to be dealt with under Section 13 of the Act of 1969 read with Rule 15 of the Rules of 1969 by the prescribed Authority. The prescribed authority under the Act of 1969 would be one, prescribed under the Rules of 1969 and not the authority prescribed under the Forest Act. It is for this aforesaid enunciation of the Rules, the learned Single Judge held the refusal to grant permission to respondent no.2 for transportation of timber wrong and misconceived.

**16.** The Authorities under the Forest Act were not competent in law to enter into the private land of respondent no.2 and seize the timber on the ground that the same had been extracted in contravention of the provisions of Act of 1969.

**17.** The learned Single Judge is, therefore, correct in its conclusion that the very premise on which the permission for transportation of timber was refused by DFO, Kishtwar, was contrary to the provisions of Act of 1969 and the Rules framed thereunder.

**18.** A bare perusal of Rule 15(2) of the Rules of 1969 would show that the role of the Forest Department is to receive the confiscated timber against payment of its value and nothing more. It enjoys no legal authority or jurisdiction either to initiate an action or direct the prescribed authority under the Act of 1969 to proceed against the defaulter for contravention of the provisions of the Act of 1969 or the permission for felling of trees granted by the prescribed authority.

**19.** In this view of the matter, the learned Single judge has rightly held irrational and illegal the refusal by DFO, Kisthwar, to grant permission to

the father of respondent no.2 to transport the timber extracted by him pursuant to valid permission granted by the prescribed authority under the Act of 1969.

**20.** In view of the preceding analysis, we hold that the judgment impugned does not suffer from any illegality or perversity warranting interference of this Court. The appeal *sans* any merit and is dismissed as such.

**21.** No order as to costs.

**(Rahul Bharti)**  
**Judge**

**(Tashi Rabstan)**  
**Judge**

Jammu  
17.08.2023  
Raj Kumar

Whether the order is reportable? Yes

