

Case No :WP(C) 0000374/2014

Party Name : CHAKAMJOY REANG & 14 ORS Vs THE STATE OF TRIPURA & 4 ORS

THE HONBLE MR. JUSTICE S.TALAPATRA

Heard Mr. Somik Deb, learned counsel appearing for the petitioners as well as Mr. T.D. Majumder, learned G.A. appearing for the respondents.

The undisputed fact that has been expounded in the writ petition is that the Government had allotted land in favour of the petitioners and over that land they had grown up some valuable trees. They applied for permission to the Divisional Forest Officer, the D.F.O in short, for felling down some trees. In terms of the prayer made by the petitioners, a joint verification was carried out on 27.01.2014 towards granting Tree Registration Certificate, the TRC in short. Before such registration was granted to the petitioners, the petitioners in violation of the guidelines of the Government of Tripura, Forest Department which has been published vide Notification dated 20.10.2010 in terms of the judgment and order dated 12.05.2011 delivered in W.P.(Civil) No.202 of 1995 by the apex court had felled down a good number of trees. In the guidelines, for purpose of felling trees even on those standing on the private land, it has been provided that after joint verification, the TRC is to be issued in favour of the owner of the trees meaning the owner of the said private land. Thereafter, the competent authority, the Divisional Forest Officer would take stock of and would permit the number of trees which shall not exceed 30 in total at a time, to be felled down by the owner of the land. Even the D.F.O. may refuse such felling, after assigning the reasons. If the permit for felling down is accorded in favour of the owner of the trees, then the Divisional Forest Officer would issue the transit permit for transportation of the timber from the location to the other destination.

In the case in hand, the petitioners violating the provisions of the guidelines as published by the notification dated 20.10.2010 felled down the trees, even not registered.

Mr. Somik Deb, learned counsel appearing for the petitioners has submitted that the petitioners do not confront that position of fact but for such violation, consequence that may visit has been provided in the guidelines at Para-8.2(a) which reads as follows:

"8.2 On enquiry, if the trees are found felled down:

a. Private land, the Authorized officer shall be at liberty to release the timber obtained from such trees, to the legal title holder(s), after recovery of an amount equal to 25% of the royalty payable for the tree/timber. However, such released timber shall not be eligible for purchase or use by any wood based unit, traders or registered timber transporters."

Mr. Deb, learned counsel appearing for the petitioners has further submitted that it is the obligation of the competent Forest Officer when he would notice the violation in the matter of felling down of the trees without proper permit, he would seize the trees but in this case, they have not acted in terms of the said guidelines. As a result, the timbers are still lying on the land from where those were felled down by the petitioners. Mr. Deb, learned counsel has further submitted that the petitioners have agreed to pay 25% of the royalty as is required to be paid for felling down the trees and their transit.

From the other side, Mr. T.D. Majumder, learned G.A. appearing for the State-respondents has submitted that if the petitioners are ready to pay an amount, equal to 25% of the royalty for the trees/timbers, then appropriate action may be taken by the competent authority, the DFO, Amabassa Forest Division, Dhalai, Tripura. Mr. Majumder, learned G.A. has pointed that the petitioners have already applied to the D.F.O, Ambassa to issue necessary direction 'as per tree felling guidelines from private plantation'. Mr. Majumder, learned G.A. has further submitted that the petitioners cannot be given any relief inasmuch as they have violated the rules and the directions of the apex court.

Having regard to the contentions raised by the learned counsel appearing for the parties, this Court is of the view that the DFO is under obligation to act in accordance with the said Para-8.2(a) of the guidelines inasmuch as the petitioners have admitted their action by filing the application dated 14.08.2014, Annexure-R/11 in series.

At this point, Mr. Somik Deb, learned counsel has referred to the communication dated 16.08.2014, Annexure-P/7 in series to the writ petition, where the D.F.O, Ambassa Forest Division had communicated to one of the petitioners as follows:

"On enquiry, if the trees are found felled from private land, the Authorized Officer shall be at liberty to release the timber obtained from such trees, to the legal title holder(s), after recovery of an amount equal to 25% of the royalty payable for the tree/timber. However, such released timber shall not be eligible for purchase or use by any wood based unit, traders or registered transporters."

In the considered, the contention of the petitioners cannot be sustained as the competent authority has already decided what has to be done with the felled trees. But the grievance now falls to a very short compass as Mr. Deb, learned counsel has pointed out that even though the said communication was made on 16.08.2014, till date no further action has been taken from the end of the competent authority, the D.F.O. Mr. Majumder, learned G.A. has pointed out that the D.F.O. or the officers subordinate to him could not act in accordance with the communication dated 16.08.2014 in view of the interim order passed by this Court on 16.09.2014.

The following interim direction has been passed by the order dated 16.09.2014:

"Meanwhile, parties are directed not to sell off the trees involved in the instant writ petition."

The restraint order is directed virtually against the writ petitioners. In no manner, it restrains the competent authority, the D.F.O or its officer to recover @25% of the royalty inasmuch as in terms of the said Para -8.2(a) of the guidelines, the petitioners cannot sell those timbers but those are to be used only by them or conversely there cannot be any sale.

Having held so, the D.F.O, Ambassa Forest Division, Dhalai, Tripura is directed to complete the exercise of recovery of the amount equivalent to 25% of the royalties against the felled trees within a period of 6(six) weeks from today. The D.F.O may also give necessary direction to any other officer to complete the process. The petitioners are also directed to cooperate with the Forest Officers when they would visit the field and identify the trees/timbers for purpose of assessing the royalty.

With this observation and direction, this writ petition is allowed to the limited extent as indicated above and accordingly, this writ petition stands disposed of.

There shall be no order as to costs.