

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8430 OF 2018

DEVKUBAI SHEKURRAO TEMBRE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Shri Deshmukh R.S.
AGP for Respondents 1 to 3 : Shri Bhagat N.T.
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: March 27, 2019
...

PER COURT :-

1. The petitioners, original decree holders, are aggrieved by the order dated 28.3.2018, passed by the executing Court below Exhibit 50 in RD No.206 of 2013.

2. I have heard the learned Advocates for the petitioners and the learned AGP on behalf of the respondents.

3. The petitioners were the original plaintiffs in RCS No.299 of 2009. By judgment dated 2.5.2011, the suit was decreed and the following operative order was passed:-

" The suit is decreed.

Defendant Nos.2 and 3 are directed to grant permission

for cutting all the teak wood trees in the land Survey Nos.6C and 6/D, as per the map, Exh.54 and 55, situated at Village Shaikh-Farid-Vazra, Taluka Mahur, District Nanded.

The map (Exh.54 and 55) shall form the part of decree for the purpose of identification of the property. Parties to bear their own costs. Decree be drawn accordingly. "

4. The defendants preferred RCA No. 63 of 2011, which was dismissed by the appellate Court, vide judgment dated 23.4.2013. Second Appeal No.778 of 2013 was also dismissed by judgment and order dated 4.2.2014.

5. The judgment debtors preferred a Review Application No.174 of 2014 and the following order was passed by this Court:-

"11. In view of this, the impugned order requires minor correction The appeal is partly allowed. The impugned order is substituted as under:-

The appellants - defendants shall decide the application moved by the respondent - plaintiff under Section 3 of the Act seeking permission to fell trees on lands bearing Survey No.6/C and 6/D of village Shaikh-Farid-Vazra, on merits within a period of six (6) weeks from today."

6. Pursuant to the above, respondent No.3 passed an order on 29.10.2014, rejecting the application filed by the decree holders,

thereby refusing permission to cut down 86 and 123 trees.

7. It is the contention of the petitioners that they were not aware of this order and they moved a second application before the same respondent No.3, dated 9.10.2017, for seeking permission to cut down the said trees. By an order dated 13.12.2017, respondent No.3 permitted the petitioners to cut down 86 and 121 trees.

8. The learned AGP submits that the appropriate authorities have initiated action against the said officer, who has granted the said permission, inasmuch as, a criminal offence has been registered against the petitioners for playing a fraud and surreptitiously obtaining the permission for cutting down such trees. This step has been taken as the petitioners have already chopped down all the said trees.

9. Learned Advocate for the petitioners denies all such attributes and contends that he is not aware about any such criminal case.

10. The issue before this Court is with regard to the executing Court having rejected application Exhibit 50, filed by the petitioners seeking a direction that respondent No.3 should be directed to mark the 'santak' on the log of those trees, which have already been

chopped down. A further request was made to allow the petitioners to transport the said logs. By the impugned order, the executing Court has concluded that such a permission cannot be granted taking an over all view of the documents and the facts of this case.

11. The petitioners contend that after they realized that the order dated 29.10.2014 rejecting permission to cut down the trees was passed, they have preferred an appeal before the Collector, Nanded on 16.2.2018, under the impression that the District Collector is the appropriate forum. They have received a communication dated 5.3.2018, issued by the District Collector, Nanded and addressed to the Deputy Conservator of Forests that the said appeal would lie before the Deputy Conservator of Forests, respondent No.2 herein.

12. The learned AGP points out paragraph No.5 of the affidavit-in-reply, filed by Shri Rajendra Pundalik Nale, who is the Assistant Conservator of Forests at Kinwat, wherein, it is contended that the logs of wood are considered to be perishable timber, which have been seized under Section 52 of the Indian Forests Act, 1927. It is further stated that the said logs are kept for sale in the Rajgadh Forest Depot.

13. Considering the entire fact situation as recorded above and in view of the appeal filed by these petitioners pending before

respondent No.2, I do not find that the impugned order would call for any interference.

14. The writ petition is, therefore, disposed off. However, since the appeal is pending before the appropriate forum and keeping in view the stand taken by the respondents that the petitioners have surreptitiously acquired an order of felling the trees, it would be just and proper for the competent authority to decide the appeal preferred by these petitioners on its own merits, by considering all the contentions and allegations of the litigating sides.

15. Since the timber is perishable and would go waste if kept lying down at a particular depot and considering that the Forest Department intends to sell the said timber, I deem it appropriate to direct the respondents to ensure, as per Rules, that the said timber is sold or auctioned, subject to the condition that the timber would not be sold below the prevailing market price. The proceeds of such sale can be deposited in the executing Court. Needless to state, the executing Court would invest the said amount in any nationalized bank in a fixed deposit and the petitioners would not be permitted to withdraw the said amounts until the decision in RD No.236 of 2013. The executing Court would consider the decision of the appellate authority on the pending appeal of these petitioners, while deciding

the execution proceedings.

16. It is expected that the appellate authority - respondent No.2, would decide the appeal filed by the petitioners under the Maharashtra Felling of Trees Act, 1964 as expeditiously as possible, and in any case, on/or before 31.7.2019. Subject to the further litigation in connection with the appeal, the executing Court would endeavour to decide RD No.206 of 2013, on/or before 31.12.2019.

(RAVINDRA V. GHUGE, J.)

...

akl/d