

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1541 OF 2022**

Sunil s/o. Anandrao Yadav

.. Petitioner

Versus

The State of Maharashtra & Anr.

.. Respondents

Mr.Ganesh A. Gadhe, Advocate for the petitioner.

Mr.Y.G. Gujarati, APP for the respondents/State.

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| <b>CORAM</b>         | <b>:</b> | <b>KISHORE C. SANT, J.</b> |
| <b>RESERVED ON</b>   | <b>:</b> | <b>15.02.2023</b>          |
| <b>PRONOUNCED ON</b> | <b>:</b> | <b>10.04.2023</b>          |

**PC :-**

01. Heard learned Advocates for the parties. By consent taken up for final disposal.

02. By way of filing this petition the petitioner – owner of the vehicle has approached this Court challenging a judgment and order dated 01.10.2022 passed in Criminal Appeal No.21 of 2021 by the learned Additional Sessions Judge, Kopergaon. The learned Additional Sessions Judge by way of the impugned judgment and order has rejected the appeal of the petitioner that was filed under section 61-D of the Indian Forest Act, 1927. By

dismissing the appeal, the learned Appellate Court confirmed the order dated 23.09.2021 passed by the learned Assistant Conservator of Forest, Rahuri under section 61-A (Maharashtra Amendment) of the Indian Forest Act. The order was passed directing to attach the immovable property of the petitioner for recovery of compensation of Rs.53,70,000/- for illegally felling of trees in the reserved forest, damaging bio-diversity, damaging home land of the wild life, taking of Murum to the extent of 2685 brass and other forest produce. The Range Forest Officer, Kopargaon has been directed to take entry in the revenue record about the said charge pursuant to section 85 of the Indian Forest Act.

03. The facts in short are that the petitioner is engaged in the business of providing poclain machines etc. for the work of levelling of land to the agriculturists. One Mr. Nivrutti Rambhau Amle had applied to the District Collector, Ahmednagar for allotment of land for his cultivation after his retirement from Army. The application was forwarded by the Army Office on 01.12.1965 to the District Collector. The Collector allotted land in Gat No.77 of village Shingnapur, Tal. Kopargaon to the extent of 6 acres. The Tahsildar, pursuant to the allotment, had passed an order dated 13.11.1967. The name

of Mr. Nivrutti Amle also came to be recorded in the revenue record by way of mutation entry No.1262 dated 26.08.1993.

04. The owner—Mr. Nivrutti Amle wanted to get the land levelled and also to get water reservoir raised in the land. He entered into an agreement with one Krushnai Infrastructure, Pune for the said work. Pursuant to the work given to the petitioner, said work was done by the petitioner as per the order. He carried out work in July-August, 2021. He was, thereafter, called to answer a show cause notice from the Assistant Conservator of Forest (Forest and Wild Life), Rahuri issued under section 61 of the Indian Forest Act. It is stated in the notice that the poclain machine manufactured by Tata Hitachi company, Hyva dumper and other vehicle came to be seized on 03.08.2021 as those were found being used in the reserved forest land, doing illegal excavation of Murum and same is used for construction of express highway. It was stated that as to why the vehicle should not be taken in possession of the Government. One another notice came to be issued on 25.08.2021 purportedly a notice under section 61-A on the said charges. The petitioner approached the concerned authority by submitting that he had done the work as assigned by the owner of the land. On the land there is no entry showing

that the land is forest land etc. However, the learned Authority passed an order stating that the land is a forest land and therefore the petitioner is liable for the action. The order was passed on 23.09.2021. The petitioner challenged this order in the Sessions Court by filing Criminal Appeal. The learned Sessions Judge, as stated above, rejected the appeal. Thus, the petitioner is before this Court.

05. Some admitted facts are that (i) the petitioner used his poclain machine and other vehicles for the work of levelling of the land and for excavation of murum and for construction of pond in the farm of Mr. Amle; (ii) there is no entry in the revenue record showing the land is a reserved forest land and (iii) the land is allotted by the Government on 02.12.1967 to Mr. Amle under the provisions of Maharashtra Land Revenue Code by ascertaining the ownership of the State Government over the land under the scheme for welfare of Army personnel.

06. Thus, on all these admitted facts the petitioner has come to this Court. The learned Authority relied upon the report received by the Range Forest Officer, Kopargaon, spot panchanama, panchanama of vehicle seizure,

the statements those were recorded by the Range Forest Officer, the Government Notification No. 6F dated 01.03.1879, possession receipt given by the Circle Officer, Kopargaon dated 05.01.2021, letter by the Range Forest Officer dated 13.08.2021 and report submitted by the Surveyor (Forest) Ahmednagar. It is submission of the petitioner that though all the facts are admitted, however, for want of knowledge and as there is no entry showing the land to be a forest land in the revenue record, the petitioner cannot be held guilty for the offence. The finding by the learned Authority that the offence under section 52(1) of the Indian Forest Act is proved is not correct. The findings of the Sessions Judge is that the authority has rightly exercised the power under section 52(1) of the Indian Forest Act and sub section (2)(a) (Maharashtra Amendment) of the said Act, which prescribes that there has to be a reason to believe that the "forest offence" has been committed in respect of the "forest produce" together with all tools, boats, carts used in committing such an offence. It is held that the land Gat No.77/3 was forest land and property is vested in Forest Department. The learned Sessions Judge also considered provisions of the Act. It is held that in revenue entry the land is shown to be forest land in the plan prepared for ten years by the Forest Division, Sangamner.

07. The main ground raised in the petition and during the course of arguments is that respondent No.2 issued an order under section 61-A of the Forest Act and has confiscated the vehicles. It is submitted that in view of section 62-B, no action of confiscation can be taken under section 61-A without issuing a show cause notice. It is case of the petitioner that in the notice dated 17.08.2021 it is only mentioned as notice under section 61. In the notice dated 25.08.2021 for the first time it is mentioned that an action will be taken under section 61-A. Thus, prior notice was necessary before confiscation of the vehicles. In this case, it is seen that no notice under section 62-B was given. Further case of the petitioner is that he was only doing the work of agricultural farm and he did not in-fact remove Murum from the land to any other place. The next point he raised for consideration is that as per record the land was given in possession of Mr. Amle on 02.12.1967 as he had served in the armed forces. When the land was given, there was no entry as forest land in the revenue record. From the record it is seen that it is only after the petitioner started doing work in the land, a letter was issued by the Range Forest Officer to Tahsildar on 03.09.2021 requesting to take entry in 7/12 extract showing the land to be a forest land. Thus, when the

Government itself had granted said land, there was no entry of showing land to be a forest land, there is no question of owner or the petitioner having knowledge of land being forest land. He submits that there is no notification issued under section 4 or 5 of the Forest Act declaring said land to be a forest land. It is further pointed out from Mutation Entry No.4462 that entry as 'reserved for forest' is deleted from 7/12 extract pursuant to decision in the appeal passed by the learned Sub-Divisional Officer, Shirdi dated 31.05.2022.

08. The learned APP submits that the Tahsildar was not a party before the authority. The land was declared to be forest land in 1879 by the then Government and the same was published in the gazette in 1879. He submits that the panchanama clearly shows that the vehicles were found committing offence. From the panchanama it is clear that not only mineral was excavated from the land but even trees were felled and the forest land was cleared. It is only for the Central Government to de-reserve the forest land and therefore when the land was declared as forest land, no authority can deal with the said land. So far as giving land to Mr.Amle is concerned, he submits that in-fact the land was a forest land. No authority under the State Government could have given the land to Mr. Amle. He submits that when the land was allotted

to Mr. Amle, probably record of 1879 was not available, however, assuming that those were not available, still from the other papers it is clear that the land was forest land. He submits that therefore the learned Sessions Judge has rightly considered the case and the appeal and rightly passed the impugned order. It was duty of the petitioner to verify all the entries. Though there were lapses on the part of revenue authority, that cannot help the petitioner. He supports the action taken by respondent No.2 and the judgment and order passed by the learned Sessions Judge.

09. So far as section 61-B of the Forest Act is concerned, it reads as under :-

61B. Issue of show cause notice before confiscation under section 61-A :—

- (01) No order confiscating any forest produce or tools, ropes, chains, boats, vehicles, carts, cattle or any contrivances shall be made under section 61A except after notice in writing to the person from whom it was seized and considering his objection, if any:

Provided that, no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any.

- (2) Without prejudice to the provisions of sub-section (1), no order shall be made under section 61A, if the owner of the tools, rope, chain, boat, vehicle, carts, cattle or any other contrivance proves to the satisfaction of the authorised officer that it was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the tools, rope, chain, boat, vehicle, carts, cattle or any other contrivance and that

each of them taken all reasonable and necessary precautions against such use.

10. In notice dated 25.08.2021 and 17.08.2021 though it is seen that it is not specifically mentioned that the notice is under section 61-B, however, it does find that the Forest Officer in the body of the notice stated as to why no action under section 61-A be taken. This Court finds that there is no substance in the ground that without giving notice under section 61-B, no action under section 61-A could have been taken.

11. This Court has considered the record and the submissions. From the 7/12 extract it is clearly seen that the name of members of Amle family are shown as occupants of land Gat No.77/3. No entry as forest land is seen in the 7/12 extract. From the letters dated 05.10.2021 and 03.09.2021 it is clear that the RFO had requested the Tahsildar to take entry in the name of the Government in the revenue record. The petitioner is right in submitting that he has carried out the work pursuant to the agreement with the occupant of the land. It is clear from the record that the land was given to Mr.Amle by the State Government itself. Thus, if the authorities were not aware that the land is declared as forest land, since 1967 when the occupant was in

possession, it is difficult to believe that the forest office did not notice the said possession and still no action was taken. It is difficult to accept now that the petitioner would get knowledge that the land is forest land when there were no entries in the 7/12 extract showing that the land is forest land.

12. However, one fact is clear that use of vehicle in the land was found on 03.08.2021. Further it is clear from the record that by letter dated 03.09.2021, the RFO informed the Tahsildar to show the land as forest land. Till that period, the land was not shown as forest land. Further it is seen that by mutation entry No. 4462 pursuant to order dated 31.05.2022 the entry showing the land as forest land is deleted. This entry as reserved forest land was taken pursuant to Mutation Entry No.4396 dated 14.10.2021 in respect of land Gat No.77/1, 77/2, 77/3 and 77/4. Even now the entry as forest still is in dispute.

13. The learned Advocate for the petitioner has relied upon judgment reported in AIR 1998 AIR (SC) 2927 in the case of Assistant Forest Conservator Vs. Sharad Ramehandra Kale. In the said case, it was held that the authorities have failed to establish that the owners of the truck had any

knowledge that the truck is likely to be used for carrying forest produce. This finding was based on the evidence on record. In that case the High Court set aside the order of confiscation on the ground that the authorities failed to establish knowledge on the part of the owner. The said order was confirmed by the Hon'ble Apex Court.

14. Another judgment cited is reported in 1965 AIR (SC) 147, in the case of Union of India, representing the Union Territory of Tripura Vs. Abdul Jalil & Ors., wherein question as regards violation of section 26(1) of the Forest Act was considered. In the said case, it was held that in absence of any notification, the accused could not have been held guilty of the contravention of section 26(1)(a), clause (d) and (h). The accused persons were held guilty of offences under section 26(1) of the Forest Act, 1927. The learned Sessions Judge dismissed their appeals. However, Revision Application preferred by the accused to the Judicial Commissioner was allowed acquitting the accused persons.

15. I find that both the judgments are applicable to the present case as in this case also no knowledge to the petitioner is seen that the land is

forest land.

16. In this case, though there is no notification, it was observed that the authorities were not aware of any such notification and there was no entry in the revenue record. By a positive act the Government had allotted the land to Mr. Amle and thus there is no question of the petitioner reasonably having knowledge of such notification. Thus, this Court holds that the petitioner cannot be faulted with for any action falling under section 26 of the Indian Forest Act. In this view of the matter, this Court holds that the order passed by respondent No.2 and the learned Sessions Judge in appeal needs to be quashed and set aside by directing release of vehicle in favour of the petitioner.

17. Hence, following order :-

- i. The criminal writ petition stands allowed in terms of prayer clause (B).
- ii. The vehicles confiscated by the authorities be released on executing a security bond in the sum of Rs.10,00,000/- (Rupees Ten Lakhs).

**[KISHORE C. SANT, J.]**