

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 505 OF 2023

Shri Amrutrao Tanbarao Rane,
61 years of age, son of Tanbarao
Rane, Resident of House No. 57,
Ravan, Keri, Sattari, Goa. ... PETITIONER

Versus

1. The Conservator of Forests,
Office of the Conservator of
Forest, 4th Floor, Junta House,
Panaji, Goa – 403 001.
2. The Deputy Conservator of
Forest, office of the Dy.
Conservator of Forest, North Goa
Division, Ponda, Goa.
3. The Range Forest Officer,
Keri, Goa. ... RESPONDENTS

Mr Ashwin D. Bhobe with Ms Annelise Fernandes,
Advocates for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for
the Respondents.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 27th SEPTEMBER 2023

ORAL JUDGMENT: (per Bharat P. Deshpande, J.)

1. Rule. The rule is made returnable forthwith. Heard the matter with the consent of the learned Counsel for the parties finally at the admission stage itself.
2. The Petitioner is challenging the inaction on the part of Respondent Nos. 1 and 2 to issue transport pass/transit pass/forest pass for the trees which were cut/fell as per the permission granted to the Petitioner.
3. Mr Bhobe, appearing for the Petitioner, strongly contended that the Petitioner vide his Application dated 09.10.2020 addressed to Respondent No. 2 requested for grant of permission to fell trees from the private property known as Cumarwado, Gharbat in Survey No. 62/2 situated in Ravona village, Sattari Taluka. After verification and satisfaction of such Application, permission to fell trees was issued by Respondent No. 2 bearing No. DCFN/KERI/34/2021-22/225 dated 04.06.2021, with terms and conditions mentioned therein. The Petitioner, vide his Application dated 26.07.2021, requested for a grant of extension of time to fell the trees. Accordingly, vide the letter dated 16.08.2021, Respondent No. 2 granted an extension of time by a period of 30 days to fell the trees. Accordingly, the Petitioner cut the trees from the said property within the extended time period.

4. Mr Bhobe would then submit that the Petitioner, vide his Application dated 15.03.2022, applied for the removal of forest produce. After satisfaction, such permission to transport was granted by Respondent No. 2 vide its order dated 28.03.2022. Such permission to transport was granted by way of road as mentioned in Condition No. 3 and on obtaining the transit pass. Accordingly, the Petitioner applied for the forest pass vide his Application dated 11.05.2022. Similarly, vide his Applications dated 15.06.2022 and 24.06.2022, the Petitioner applied for issuance of a transport pass and forest pass to transport the felled trees. There was no response from the office of Respondent No. 2. Mr Bhobe would then submit that the Petitioner, through his Advocate, issued notice dated 12.09.2022 asking Respondent Nos. 2 and 3 to issue transit pass to transport the felled trees as early as possible as there was a risk of damage or deterioration of the logs or felled trees lying in the property.

5. Respondent No. 2, vide his letter dated 02.11.2022, called upon the Petitioner to submit the certified copy of the Court's order and to certify that no litigation is pending in respect of the said trees.

6. Mr Bhobe would then submit that in response to such letter dated 02.11.2022, the Petitioner replied on 05.12.2022, thereby enclosing the copy of the judgment and decree dated 11.06.2020 passed in Regular Civil Appeal No. 106 of 2020 and

a copy of the order dated 04.03.2022 passed by this Court in Second Appeal No. 5 of 2022.

7. Mr Bhobe would submit that despite all these orders in favour of the Petitioner and there being no stay operating against the Petitioner, no transit pass was issued only on the ground that the Petitioner failed to certify that no litigation is pending. He submits that such a condition is arbitrary and violative of the rights of the Petitioner. He then submitted that the trees/logs lying on the property are perishable items, and due to the passage of time, some of the logs are already infested by white ants and are of no use. He submits that if no transit passes are issued, the remaining logs will be of no use. He submits that the condition that no litigation is pending is unnecessary, especially when the judgment and decree are passed in favour of the Petitioner, and the Court passes no stay order. He then submitted that no order is passed by any Court restraining the Petitioner from lifting or transferring such logs. Mr Bhobe submitted that the Petitioner is even ready to furnish a bond equivalent to the amount of logs to the satisfaction of Respondent No. 2.

8. Mr Faldessai appearing for the Respondents tried to submit that the concerned Officer from the Forest Department failed to give him instructions. However, Mr Faldessai fairly admitted that such a condition as far as the present Petitioner is concerned, is unwarranted and arbitrary.

9. We have perused the entire record along with the permission granted to the Petitioner to fell trees dated 04.06.2021 and thereafter, the extension of time vide order dated 16.08.2021. Similarly, the office of Respondent No. 2 issued permission for removal/disposal/transportation of forest produce vide order dated 28.03.2022. Condition Nos. 2 and 3 show that the mode of transport permitted was road, and the Petitioner was asked to give the vehicle details as per the transit pass.

10. Admittedly, the civil proceedings though, are pending in this Court, there is no order of stay against the Petitioner. Regular Civil Appeal No. 106 of 2020 filed by one Sanjay Rane against the Petitioner and others has been dismissed by the District Court vide judgment and order dated 11.06.2020.

11. The sum and substance clearly goes to show that Respondent No. 2 granted permission to the Petitioner to fell trees. Such permission was granted only after satisfaction and verification of the facts mentioned in the Application for permission to fell trees. It is not the case of Respondent Nos. 1 and 2 that such permission was challenged before any other Court.

12. The fact remains that after the grant of extension to fell trees, the Petitioner in fact cut the trees and thereafter sought permission for transportation which was granted by giving the description of the material, the volume and the trips required for

removal of such material. The condition was to obtain a transit pass by giving the details of the vehicle, the name of the driver etc. It is not in dispute that the Petitioner vide his Application dated 15.06.2022 requested for issuance of a transit pass. Respondent No. 2 vide letter dated 02.11.2022 called upon the Petitioner to submit the certified copy of the orders passed by the Civil Court which he produced.

13. Similarly, vide the same letter dated 02.11.2022, Respondent No. 2 asked the Petitioner to certify that no litigation is pending before any Court with regard to the wooden logs. The Petitioner vide his letter dated 05.12.2022 clearly intimated to Respondent No. 2 about the civil matters pending, the judgment passed in Regular Civil Appeal No. 106 of 2020, Second Appeal No. 5 of 2022 and that no stay has been granted. Thus, it is clear from the record that litigation is pending with respect to the said property. However, there is no restraint order passed by any Court against the Petitioner. In such circumstances, asking the Petitioner to give or certify that no litigation is pending was clearly arbitrary and unreasonable. It also shows non-application of mind on the part of the authority when the authority then knew that civil proceedings were pending and therefore, they called upon the Petitioner to submit the certified copy of the order dated 11.06.2020.

14. Apart from this, we found that non-issuance of transit pass only on the ground that the Petitioner failed to give/certify that

no litigation is pending would be unreasonable, arbitrary and more so without applying the mind. We say so because the material i.e. the wooden logs are admittedly perishable goods. If no permission is granted only on the ground that the Petitioner failed to certify that no litigation is pending, would be allowing such material to deteriorate, perish or damage. Admittedly, the litigation is pending that too within the knowledge of Respondent No. 2, however, there is no order restraining the Petitioner from transporting such wooden logs, which he cut as per the permission granted by Respondent No. 2.

15. At the most, Respondent No. 2 could have considered granting a transit pass by asking the Petitioner to furnish a bond equivalent to the amount of the material lying in the said property. Simply keeping quiet or not deciding the Application for long clearly shows insensitiveness and inaction on the part of Respondent No. 2.

16. When the notice was issued by this Court, we were expecting a reply to be filed on behalf of the Respondents. Nonetheless, we expected that some plausible reasons would come from the Respondents for not issuing the transit pass. However, it is surprising to note that Respondent No. 2 even failed to give proper instructions to the learned Additional Government Advocate, Mr Faldessai in the matter and as to why no orders were passed in the matter of Application for transit pass filed by the Petitioner. It is expected from the concerned Officer to

dispose of such Application as expeditiously as possible and by applying its mind since the wooden logs are admittedly perishable material and due to passage of time there is even possibility of deterioration/damage/perishing of such material. In such circumstances, the Petitioner will be at a loss. Such inaction on the part of Respondent No. 2 clearly affects the rights of the Petitioner in transporting the said material.

17. Learned Counsel Mr Bhobe would submit that the Petitioner is ready to furnish a bond of ₹ 70,000/- which is the approximate value of the goods/logs lying in the property, within a period one week from today so that permission could be granted to him by way of transit pass to transport such wooden logs by road.

18. We think that the submission of Mr Bhobe in this respect is quite reasonable considering the fact that the litigation is pending between the parties and that the wooden logs if kept in the property till disposal of the Second Appeal, there is every possibility of being destroyed/damaged.

19. Inaction on the part of Respondent Nos. 1 and 2 certainly affects the rights of the Petitioner in disposing of the wooden logs inspite of the fact that permission to fell the trees and transport the wooden logs was granted by the concerned authority about a year back.

20. Having said so, we are inclined to allow the present Petition as per prayer clause (a), which reads thus:

“(a) For a writ of mandamus, direction, order or any other writ, directing the Respondent nos. 1 and 2 to extend the time period for transportation of forest produce as indicated in the permission removal/disposal/transportation of forest produce bearing no. DCFN/KERI-34/2021-2022/954 dated 28.03.2022 and direct the Respondent nos. 2 and 3 to issue transport pass/transit pass/forest pass for transportation of the said forest produce within a stipulated time this Hon’ble Court may deem fit, proper in the facts and circumstances of the case.”

21. Apart from this, the Petitioner shall furnish an indemnity bond amounting to ₹70,000/- to the satisfaction of Respondent No. 3, within a period of one week from today so that a transit pass could be issued immediately on furnishing such bond. We make it clear that the transit pass shall be only with respect to the trees which were fell by the Petitioner as per the permissions granted to him vide permission dated 04.06.2021 together with transportation permission dated 28.03.2022.

22. Rule is made absolute in the above terms. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.