

Madras High Court
Dr.K.M. Subash vs Forest Range Officer on 11 January, 2008
DATED: 11-01-2008

CORAM:

THE HONOURABLE MR.JUSTICE R.REGUPATHI

CrI.O.P.No.8670 of 2006

1.Dr.K.M. Subash,

2.Mani Lal .. Petitioners

Versus

Forest Range Officer

Bitharkadu,

Gudalur-643 212

The Nilgiris .. Respondent

Prayer: Petition filed under Section 482 Cr.P.C seeking for the reliefs as stated therein.

For Petitioner : Mr.S. Giridharan

For Respondent : Mr.P. Kumaresan

Addl.Public Prosecutor

O R D E R

This petition is filed, seeking for a direction to call for the records relating to the O.R.No.38/2005 (On the file of respondent and quash the same.

2. The petitioner is alleged to have committed an offence punishable under Secs.3(2) r/w 7(1) of The Tamil Nadu Preservation of Private Forests Act, 1949. A complaint has been preferred by the respondent against the petitioners and the allegation is that the petitioners have installed 5 batteries and established electric fence around their Estate by name Bolson Estate bearing Survey No.507. It is also alleged in the complaint that the conduct of establishing electric fence around the private Estate will be the violative of the Orders passed by the Hon'ble Supreme Court in W.P.No.202/95 and also violative of Secs.32 and 33 of Wild Life Act, 1972.

3. The learned Magistrate, Gudalur, on receipt of the complaint, has taken the case on file and initiated proceedings against the petitioners.

4. The learned counsel for the petitioners submits that the petitioners are the owners of Bolson Estate bearing Survey No.507. It is not disputed that the petitioners have installed Solar Water Pumping System and Solar Power fencing on the "Subsidy cum lease" program of M.N.E.S (Ministry of Non-Conventional Energy Sources) I.R.E.D.A (Indian Renewable Energy Resources Development Authority) Delhi, wholly owned by the Government of India. It is further submitted that the petitioners have entered into a lease

agreement with the Agencies on 24.5.2003. Under such circumstances, the respondent Officials trespassed into their private forests and inspite of furnishing all the particulars a false and concocted case has been filed against the petitioners.

5. The learned counsel for the petitioners further submits that on perusal of the Provisions of Sec.3(2) of The Tamil Nadu Preservation of Private Forests Act, 1949, an offence is not made out. An application dated 21.1.2006 has been filed before the Wild Life Warden and the authorities in their proceedings L.Dis.D2/53/2006 dated 22.1.2007 passed the following order. "With reference to your request made in the reference 1st cited, the permission is hereby accorded for providing a low voltage (below 12V) solar powered fencing around your patta land after giving sufficient clearance from the Sanctuary boundary. The boundary should be demarcated clearly before erection and got verified by the Ranger and there should not be any encroachment over the F land. For any illegal drawal of power as well as death injury of wildlife due to improper solar powered fence, the owner will be responsible as per Wildlife Protection Act, 1972.

6. Therefore, it is submitted that the allegations and materials collected against the petitioner do not constitute an offence alleged and sought to quash the proceedings.

7. Per contra, the learned Additional Public Prosecutor submits that though the petitioners are the owners of a private forest land, as per the Act, installation of electric fence around the private estate, previous sanction of the Committee constituted under the Act must be obtained and since it has not been obtained on 26.6.2005, the offence is substantiated. Moreover, for the purpose of installation of such electric fencing, ground has been cleared by the petitioners and even under such circumstances, the offence is substantiated.

8. I have perused the materials available on record and heard the submissions made.

9. Sec.3(2) of The Tamil Nadu Preservation of Private Forests Act, 1949 reads as follows:

(2) No owner of any forest and no person claiming under him, whether by virtue of a contract, licence or any other transaction entered into before or after the commencement of the Tamil Nadu Preservation of Private Forests Act, 1946, or any other person shall without the previous permission of the Committee (cut trees or reads) or any Act likely to denude the forest or diminish its utility as such. Provided that nothing contained in this sub-section shall apply to the removal of dead or fallen trees or to any act done for the usual or customary domestic purposes or for making agricultural implements.

10. For violation of Sec.3(2), penalty is provided under Sec.7 of the Act, which reads as follows:

"Penalties: (1) Whoever contravenes the provisions of sub-section (1) or sub-section(2) of section 3 or any of the terms of a notification under section 6 shall be punishable with imprisonment which may extend to two years or with fine which may extend to five thousand rupees or with both."

11. It is not the case of the prosecution that any wild life sustained injury or died on account of installation of electric fencing. Admittedly, electric fencing has been installed after entering into lease agreement with an Agency constituted by Central Government. Though it is alleged that sanction has not been obtained from the Committee constituted under the Act, on perusal of the provisions, such sanction must be obtained, if the Act likely to denude the forest or diminish its utility as such. In the proviso to Sec.3(2) it has been specifically stated that nothing contained in this sub-section shall apply to the removal of dead or fallen trees or to any act done for the usual or customary domestic purposes or for making agricultural implements.

12. The installation of Solar Water Pumping System & Solar Power Fencing must be construed as agricultural implements. Moreover, it is not in dispute that such Solar Power Fencing output is pulsating D.C.current of 5000-6000 Volts which is not fatal to animals.

13. During the course of enquiry before the learned Magistrate, the batteries which were seized by the respondent have been returned back to the petitioners for reinstallation. Further, on subsequent date, an order has been passed on 22.1.2007 by the Wild Life Warden permitting the petitioners providing a low voltage solar powered fencing around their estate.

14. Under such circumstances, I do not find any substance of merit in the allegation made in the complaint by the respondent for prosecuting the petitioners under Sec.3(2) r/w 7(1) of The Tamil Nadu Preservation of Private Forests Act, 1949 and therefore, I am of the considered view that the proceedings initiated by the respondent is liable to be quashed and accordingly it is quashed.

15. In result, the petition is allowed. Consequently, connected M.P is closed.

sr

To

1. The Forest Range Officer

Bitharkadu,

Gudalur-643 212

The Nilgiris

2. The Public Prosecutor, High Court,

Madras.