

State of Karnataka and others

Vs

Southern India Plywood Co., Peramanoor,

Civil Appeal No. 3122 of 1983

(M. H. Kania, R. M. Sahai JJ)

06.09.1990

ORDER

1. Pursuant to an agreement between the parties and a further allotment, trees of the species described in the agreements comprising 3000 cubic meters of softwood in all were permitted to be cut and removed by the respondent. The rate for the payment of the wood was fixed by the agreement. It has been found by the High Court that the respondent felled trees of the species described and the total amount of wood collected from the trees felled was not in excess of 3000 cubic meters, although the felling was done from areas other than those specified in the agreement as there was a mistake in the fixing of the areas from which the trees could be cut. The High Court has further found these trees were felled by the respondent with the full knowledge and consent of the concerned Forest Officers. Because of certain proceedings the wood was not allowed to be removed by the respondent for some time and was stored in the godowns of the appellants. By the impugned judgment the Karnataka High Court held that the respondent was entitled to remove this wood at the rate agreed upon between the parties under the said agreement.

2. Learned counsel for the appellants submits that under the provisions of section 101A(2) of the Karnataka Forest Act, 1963, the respondent can be permitted to remove the wood only at the rate current at the time of the removal and hence, the respondent is liable to pay for the wood at a higher rate., Sub-section(2) to section 101A of the said Act was inserted by the Karnataka Forest (Amendment) Act, 1980, which was first published in the Karnataka Gazette Extraordinary on February 23, 1981. In our view, it is not open to the appellants to raise this contention for the first time in this Court as he is seeking to do. An examination of the merits of this submission would require an investigation of facts as it would be necessary to determine as to when the wood was cut, when it was ready for removal and when it was removed, as section 101 A(2) is prospective in operation. As the question was not raised before the High Court that investigation has not been done at all. We may, more over, point out that even from the averments made in the Special Leave Petition it appears that the entire quantum of the wood in question was cut prior to January 31, 1981 whereas the amendment to the provisions of section 101A of the Karnataka Forest Act amending the provisions of section 101A and inserting subsection (2) therein on which learned Counsel for the appellants seeks to rely did not come into effect till 23rd February, 1981, being the date on which the Karnataka Forest (Amendment) Act, 1980 was published in the Official Gazette, after receiving the assent of the President of India. In these circumstances, there is no merit in the appeal and it is dismissed. There will be no order as to costs.

Appeal dismissed.

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