



2025:KER:5106

RFA No.389 of 2003

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 22ND DAY OF JANUARY 2025 / 2ND MAGHA, 1946

RFA NO. 389 OF 2003

**AGAINST THE ORDER/JUDGMENT DATED 11.04.2003 IN OS NO.44
OF 1992 OF ASSISTANT SESSIONS COURT/SUB COURT/COMMERCIAL
COURT, MANJERI.**

APPELLANTS/DEFENDANTS IN THE O.S

- 1 STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR, MALAPPURAM**
- 2 DIVSIONAL FOREST OFFICER (NORTH) NILAMBUR**
- 3 FOREST RANGE OFFICER
EDAVANNA RANGE, NILAMBUR**

**BY ADV GOVERNMENT PLEADER
SPL.GP.NAGARAJ NARAYAN**

RESPONDENT/PLAINTIFF IN THE O.S

**V.P.ABOOBACKER
S/O MUHAMMED ALIAS CHERIYAPPU HAJI OWNER OF V.P.SAW
MILL, KUNDUTHODU, P.O, ERANHIKODE, EDAVANNA
AMSOM, ERANHIKODE DESOM IN ERNAD TALUK**

**BY ADV SRI.K.M.SATHYANATHA MENON
GP T S JIBU**

**THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 22.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**CR****J U D G M E N T**

Dated this the 22nd day of January,2025

This appeal is at the instance of the defendants in O.S.No.44/1992 on the files of the Sub Court, Manjeri. The defendants are State of Kerala represented by the District Collector, Malappuram, the Divisional Forest Officer, (North) Nilambur and the Forest Range Officer, Edavanna Range, Nilambur.

2. The facts of the case are as under:

The plaintiff filed the present suit for mandatory injunction seeking return of the machineries seized by the third defendant, Forest Range Officer, on the allegation that those were items involved in a crime in O.R.No.90/1989 and for the damages arising out of the suit. According to the plaintiff, Rs.700/- per month for 29 months towards rent was lost on account of seizure of the machineries and Rs.30,000/- loss was incurred towards deterioration of the value of the seized machineries.



Accordingly, the plaintiff claimed the said amount along with interest at the rate of 12% per annum. The plaintiff's case is that those machineries were illegally seized by the third defendant and later, those machineries were confiscated illegally. Challenging confiscation, the plaintiff filed C.M.A.Nos.37/1992 and 38/1992 and the same were allowed and accordingly, confiscation proceedings were set aside on the finding that the same were illegal. According to the plaintiff, due to illegal seizure and confiscation of the machineries, the plaintiff lost rent for a period of twenty nine months and also sustained damages on account of the deterioration of the machineries which were seized and confiscated.

3. Defendants entered appearance and filed written statement and the trial court extracted the contentions in the written statement in paragraph No.3 of the judgment as under:

3."Defendants filed written statement raising the following contentions: The third defendant and his staff while conducting night patrolling duty on 12.09.1989 got a secret information that the timber cut and removed from the government forest were being illegally converted to



pieces for transportation in the plaintiff's saw-mill and the third defendant and his staff went to the saw-mill and found that a log of Irul timber was converted into smaller sizes for facilitating easy transportation. Further search conducted by them reveal that seven more than logs of timber was found there. The persons who running the saw-mill were also present there and further questioning he came to know that eight pieces of Irul timber traced out by the forest officials were not covered by any valid documents and they were converted to smaller pieces for transportation and using tools installed in the saw-mill at the dead hours of the night and since the officials believed that there is prima facie offence committed in respect of the timber 8 pieces of Irul timber together with the machineries were seized under section 52(1) of the Kerala Forest Act and they produced before the authorised officer. Since a case under section 61(a) of the Act was registered and investigation was conducted and the processes has to be completed an order was issued for confiscating the timber along with machineries. The allegation that the action of the third defendant is illegal and unwarranted is not correct. The officials has taken only legal actions in accordance with the provisions of the Kerala Forest Act. The defendants has not prolonged the passing of the order of confiscation illegally. The timber and tools were confiscated to the Government on 20.05.1992



and the plaintiff is not entitled to get any relief as claimed in the plaint. So the suit is liable to be dismissed."

4. The trial court recorded evidence after framing necessary issues. The plaintiff got examined as PW1 and Exts.A1 to A8 were marked. No oral evidence was tendered by the defendants. Finally, the trial court found that the plaintiff is entitled to Rs.20,300/- towards rent suffered for a period of twenty nine months at the rate of Rs.700/- per month and also found that the plaintiff is entitled to get the value of machineries to the tune of Rs.30,000/- and also interest on the rent at the rate of 6% coming to the tune of Rs.1,323/-. Thus, decree was granted as under;

"In the result, suit is decreed in part with costs. The defendants are directed to pay Rs.51,623/- to the plaintiff with interest at the rate of 6% per annum on the principal amount of Rs.50,300/- from the date of suit till realization. The plaintiff is entitled to get proportionate costs of the suit from the defendants. "

5. Now the defendants assail the verdict of



the trial court and the main contention raised is that the court below found that there was no evidence in the circumstances to see that defendants 2 and 3 were not acting in good faith in pursuance of the provision of the Kerala Forest Act, 1961 (for short, 'the Act, 1961' hereinafter). The further contention is that, no suit shall lie against any public servant for any act done or omitted or ordered to be done, in good faith, in pursuance of the the Act, 1961, as contemplated under Section 74 of the Act, 1961. According to the defendants, there was already a judgment by the District Court, Manjeri to return the articles. Therefore, the suit is barred by *res judicata*. On the above grounds, the learned Special Government Pleader would submit that the trial court went wrong in granting decree, and the suit is liable to be dismissed by allowing this appeal by giving protection under Section 74 of the Act, 1961 to the *bona fide* acts of defendants 2 and 3.

6. Whereas, it is submitted by the learned counsel for the plaintiff that since the seizure and confiscation of the machineries were found to be illegal by



the District Court, Manjeri, the defendants are bound to compensate the loss and the same alone at the bare minimum was allowed by the trial court as per the verdict impugned. Therefore, no interference in the trial court judgment is necessary.

7. In the instant case, the plaintiff is the owner of P.V. Saw Mill at Eranhikode and the saw mill with its machineries was rented out by the plaintiff to one Kannangadan Muhammed for a period of two years initially as per lease deed dated 04.03.1988. Ext.A1 is the rent deed so executed on 12.09.1989. While so, in connection with O.R.No.90/1989, the 3rd defendant seized the timber and machineries in the saw mill, suspecting involvement of those items in an offence under the Act, 1961. The Mahazar regarding seizure was prepared and the same is marked as Ext. A2. Ext. A4 is the show cause notice issued by 2nd defendant to the plaintiff. Ext.A5 is the reply sent by the plaintiff to the second defendant dated 02.07.1991. Ext. A6 is the copy of section 80 C.P.C. notice sent by the counsel for plaintiff to the defendants with postal receipts and acknowledgment



dated 01.11.1991. Ext.A7 is the reply sent by the first defendant to the counsel for plaintiff to Ext.A6 notice. Ext.A8 is the certified copy of judgment in C.M.A.Nos.37/92 and 38/92 by the District Court, Manjeri regarding the appeal filed against the order of confiscation.

8. As per Ext.A8, the confiscation of the articles by the 3rd defendant was set aside. The specific case of the plaintiff is that, the seizure and confiscation are illegal and therefore, the suit amount claimed is entitled by the plaintiff. The contention raised by the defendants is that the timber and machineries were seized based on a secret information received on 12.9.1989 while the 3rd defendant and his staff while doing patrol duty, who found that timber cut and removed from the forest land was illegally converted into pieces for transport at the saw mill of the plaintiff. Accordingly, on finding involvement of those items and the machineries, those items were seized and the said action is a *bona fide* one protected under Section 74 of the Act, 1961.



9. The trial court relied on the rent agreement to hold that the agreed rent was Rs.700/- per month. Accordingly, considering the loss of rent for a period of twenty nine months because of closure of the saw mill in consequence of the seizure of the machineries, Rs.20,300/- was granted towards loss of rent. Relying on Ext.A2 Mahazar, where the value of the machineries was depicted as Rs.35,000/- as against claim of Rs.30,000/- claimed by the plaintiff, the trial court granted Rs.30,000/-. The trial court also granted interest on the rent at the rate of 6% and the amount so arrived at is Rs.1,323/-.

10. Now, the crucial question that falls for consideration are;

1) Whether the trial court is justified in holding that the plaintiff is entitled for the suit amount for which decree was granted ignoring the protection under Section 74 of the Act, 1961?

2) What is the impact of Section 74 of the Act, 1961 and what are the instances where an action of the public servant/forest official is to be treated as an act done or



omitted to be done in good faith for the purpose of Section 74 of the Act, 1961?

3) Whether the indemnity provided under Section 74 of the Act, 1961 for the act done in "good faith" by the public servant/forest officer is absolute?

4) Whether the decree and judgment impugned would require interference?

5) Reliefs and Costs.

11. Section 74 of the Act, 1961 provides that no suit or criminal prosecution or other proceeding shall lie against any public servant for any act done, or omitted or ordered to be done, in good faith, in pursuance of this act. Relying on Section 74, it is pointed out by the learned Special Government Pleader that the seizure of the machineries and timber suspecting its involvement in an offence under the Act, 1961 is an act done in good faith by the defendants 2 and 3 and therefore, the said action is protected from challenge and no suit would lie against the same. Therefore, the present suit is not maintainable.

12. Adverting to this contention, it is noticeable that Section 74 provides indemnity for acts done in good faith



by the public servant/forest officials, but acts done not in good faith will not receive the protection under this section. Though the word "good faith" is not defined in the Indian Penal Code, 1860, Section 52 of the Indian Penal Code, 1860, gives only a negative definition by saying that 'nothing is said to be done or believed in good faith which is done or believed without due care and attention' which implies genuine effort to reach the truth and not ready acceptance of ill-natured belief. The expression "good faith" in criminal jurisprudence has a definite connotation and its import is totally different from saying that the person concerned has honestly believed the truth of what is said as observed by the Apex Court in the decision reported in **AIR 2001 SC 2374, *In re S K Sundaram's*** case. In civil proceedings, "good faith" refers to the legal principle that parties involved in a law suit should act honestly, fairly and without an intention to deceive or take unfair advantage of the other party, essentially, meaning they should conduct themselves with sincerity and without malicious intention. Thus, either in civil proceedings or in criminal proceedings, careless and negligent act as well as



deliberate invocation of official power to wreck vengeance would not come under the term "good faith". In such cases, the indemnity to a public servant/forest officer provided under Section 74 of the Act, 1961, would not be available. Now, the contention raised by the defendants is that the persons who run the saw mill owned by the plaintiff were present at the saw mill during dead hours of the night in engaging conversion of 'irul' timber traced out by the forest officials and it is at this juncture, the officials *prima facie* believed the same as timber illegally cut and removed from the forest and accordingly, crime registered under Section 61A of the Act, 1961 and the machineries were seized under Section 52(1) of the Act, 1961. It is true that when there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any forest officer or police officer. Section 53 of the Act, 1961, deals with power to release property seized under Section 52, on execution of bond by the owner thereof, for



the production of the same so released, if and when required before the Magistrate having jurisdiction to try the offence, on account of which the seizure has been made. In the instant case, the suit was filed on 15.2.1992. Ext.A8 is the certified copy of judgment in C.M.A.Nos.37/1992 and 38/1992, dated 30.3.2002, whereby the District Judge, Manjeri set aside the order of confiscation. It is true that before that, the present suit was filed seeking return of the machineries. Even though it is argued by the learned Senior Government Pleader that as per Ext.A8 also the machineries were ordered to be released, the suit filed thereafter is barred by *res judicata*, it is discernible from the decree that the suit was filed on 15.2.1992 and the confiscation order was passed on 30.3.2002. Thus, the suit is not barred by *res judicata* or in any other manner. The case of the plaintiff is that on account of seizure and confiscation of the machineries of the saw mill which was given on rent as per Ext.A1 rent deed to Kannangadan Muhammad, the rent at the rate of Rs.700/- per month for a period of 29 months was lost due to closure of the mill in view of the seizure. He also



would contend that the value of machineries as per Ext.A2 mahazar is stated as Rs.35,000/-.

13. In the instant case, merely suspecting the involvement of the machineries of the plaintiff in an offence under the Act, 1961, the forest officials seized the same and subjected the same to confiscation. Later, a competent court set aside the confiscation, finding the same as illegal. When an order of confiscation is set aside, the same presupposes the fact that the seizure and confiscation are illegal. It is true that in cases where the act done by the public servant/forest official is found to be done in good faith, Section 74 of the Act, 1961, would grant indemnity to the public servant/forest official against civil proceedings/criminal proceedings. But as already pointed out in such cases, whether the act was done or omitted to be done or ordered to be done in "good faith" is to be addressed from the circumstances of each case and no hard and fast rule to be declared. To put it otherwise, the protection provided under Section 74 of the Act, 1961, is not absolute though the same protects a forest officer from legal proceedings if he acted in good



faith while performing the official duties under the Act, 1961. Therefore, a court can examine the actions if there is evidence of malicious intent or deliberate negligence and carelessness. That is to say, when it could be found that the forest officer acted in good faith on genuine belief, the said act alone would be protected, and Section 74, and is not a shield for the forest officer/public servant to do anything without rational application of his cognitive faculty on the premise of protection given under Section 74 of the Act, 1961. Therefore, if forest officers who are accountable for their actions, do certain acts in blatant disregard to the ordinary care and caution, and with wrong or malicious intent, the said actions would not get indemnity or protection under Section 74 of the Act, 1961.

14. In the instant case, the seizure and confiscation of the timber and machineries were challenged before the District Court and the same were set aside finding illegality. If so, in the case at hand, the actions of the defendants 2 and 3 are illegal acts for which protection under Section 74 of the Act, 1961 cannot be extended. Viewing from another angle, if the protection under



Section 74 of the Act, 1961, is absolute any mischief and shabby actions of the forest officer which would result in unliquidated/liquidated damages to the person affected could not be addressed. Therefore, blanket protection under the caption "good faith" cannot be granted to the forest officers. If such a procedure is permitted, the forest officers would get an unbridled freedom to seize any articles under the guise of involvement in an offence under the Forest Act and in such cases, if at a later stage, a competent court finds the procedure and seizure to be illegal, the persons affected by such acts done by the forest officers would be in peril and there will be no remedy for them to compensate their losses. In the instant case, the seizure was at the instance of the 3rd defendant who suspected involvement of the machineries in O.R.No.90/89, but as per Ext.A8, the District Judge found in the negative and set aside the seizure as well as the confiscation. In such a case, by merely giving protection under the caption of "good faith", a person who suffered loss and filed a suit to get the articles or claim damages thereof, could not be denied. Thus, in the instant



case, the available evidence would suggest that the plaintiff sustained Rs.20,300/- towards rent for twenty nine months and also Rs.30,000/- as claimed towards the value of the machineries. Therefore, the trial court rightly granted decree, bifurcating the amount as discussed in the order.

15. In view of the matter, the decree and judgment of the trial court do not require any interference and the same are to be confirmed. Considering the nature of contentions, the plaintiff is entitled to get proportionate cost of the proceedings throughout.

In the result, the appeal fails and is dismissed with proportionate cost of the plaintiff to be realised from the defendants.

Registry is directed to forward a copy of this judgment to the trial court, forthwith.

Sd/-
A.BADHARUDEEN
JUDGE

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APPENDIX OF RFA 389/2003

PETITIONER ANNEXURES

ANNEXURE A2(A)	CERTIFIED COPY OF THE CONFISCATION PROCEEDINGS AS ORDER T.11129/1989 DATED.20.05.1991ISSUED BY THE DIVISIONAL FOREST OFFICER, NILAMBUR,NORTH.
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