1987 (2) K.L.T.341 (FB)
Paripoornan, Fathima Beevi & Sreedharan J.J.
STATE OF KERALA V. SUKUMARA PANICKER

Forest Act, 1961 (Kerala), S.61 A – Power of confiscation of vehicle – Nature and ambit of – Value of contraband goods compared to the value of the vehicle is not a relevant factor.

Forest produce, like timber, is a valuable public property. The preservation of forests and its wealth is most essential for the welfare of humanity. It should be preserved in public interest. So the provisions of the Forest Act should be so construed as to effectuate the mandate enshrined in Art. 51 A (g) of the Constitution. In order to protect such public property and to ensure that offences against such property are not committed, very wide powers are given to authorized officers, under S.61 A of the Act. The very nature of the offence calls for imposition of deterrent punishment, viewed in the background and history of the legislation. The property seized, which is the subject matter of a forest offence together with all tools, vehicles etc., used in the commission of such offence may be ordered to be confiscated by the authorized officer. The language used in S.61 A (2) of the Act is no doubt "permissive" . But the power is vested in a public official, to effectuate or aid the enforcement of "public duty" – and considered in the backdrop of Art. 51 A (g) of the Constitution, the long title and preamble to the At and the mis-chiefs sought to be remedied by the Amendment Act (Act 28 of 1975) – it has to be held that it refers to a compellable or obligatory duty to exercise the power on fulfillment of the conditions specified in the section. It is for the officer concerned to consider in each case having regard to all the circumstances, whether confiscation of the vessel is to be made. But, it leaves no room for doubt that the power vested in the authorized officer under S.61 A of the Act should be exercised bearing in mind the policy and purpose and background of the Act. S. 61 A itself was enacted to effectively check such illicit removal and with a view to provide deterrent provisions for effectively preventing such illicit removal. Any act done or conduct pursued in the matter of illicit removal should be so effectively dealt with, which will also prevent recurrence. This is an important or vital aspect to be borne in mind while exercising the powers under S.61A (2). To state that the order of confiscation is illegal and unsustainable if the value of the contraband alleged to have been carried in the vehicle is negligible compared to the value of the vehicle, is an over statement of the law not warranted by S.61 A (2) of the Act. No question of proportionality between the offence committed and the punishment levied can arise can arise in ordering confiscation of the vehicle used in connection with the forest offence.

1984 KLT 1021	(paras 4, 5 & 6)
1967 SC 276; 1979 SC 1767;	Overruled
1982 KLT 518; 1976 (3) All ER 4f52f;	
(1984) 3 All ER 935	

Referred to

Interpretation of Statutes – Preamble - Reliability.

A preamble is a key to open the mind of the Legislature though it cannot be used to control or quality precise and unambiguous language of the enactment. We must approach the provisions of the Act in the light of the policy and purpose deducted from the terms of aforesaid long little and the preamble and must understand the construct the various provisions of the act as will substantiously sub survey the policy and purpose (Para 4).

1970 EC 540; (1326) 162 E.R. 456	Relied on
Advocate General (K. Sudhakaran)	For Applicant
M.M. Abdul Aziz	For Respondents

JUDGMENT

Paripoornam, U. State of Kerala – petitioner in OP. No.8122 of 1985-D-is the appellant in this Writ Appeal. The Original Petition was filed to quash Ext. P2 order passed by the District Judge, Thodupuzha in disposing of the appeal (C.M.A. No.28 of 1983), filed under S.61 D of the Kerala Forest Act, preferred against Ext.P1 order dated 20-10-1983 of the Authorised Officer – Divisional Forest Officer, Munnar, Devicolam confiscating vehicle KEE.8538. The registered owner of the said vehicle (Tempo Van) was the first respondent in the OP. and is also the first respondent in this Writ Appeal.

2. The short facts, necessary for the disposal of this Writ Appeal, are as follows:

The first respondent, a retired Constable, was the owner of a tempovan No.KEE.8538. The van was used to transport 36 pieces of teak materials without a valid permit. The transport was admitted. But, the first respondent pleaded that he was not aware of the fact that the transport of teak was not supported by any valid permit. After enquiry, the Authorised Officer found that the van was used for the commission of a forest offence, with the knowledge of the driver-cum-owner for the transport of 36 Nos. of teak pieces illicitly felled, converted and removed from Nermugham portion of Inchathotty beat of the Neriamangalam Range. It was held that the forest offence was one punishable under S.27 of the Kerala Forest Act and the violation of the provisions of the Kerala Forest Produce Transit Rules stood proved and that the van KEE 8538 was used for the commission of such offence with the knowledge of the driver-cum-owner. So, by Ext. P1 order, the Authorised Officer directed that the tempovan KEE 8538 along withy all other accessories and the seizures in the Van at the time of seizure on 12-7-1983, he confiscated to Government under S.61A of the Kerala Forest Act. The first respondent filed CMA.28 of 1983 before the District Judge, Thodupuzha and assailed Ext.P1 order. The learned District Judge held that there is no evidence to prove that the first respondent had taken all necessary precautions as against the use of the vehicle for illicit transport of the forest produce. However, the learned District Judge noticed that the value of the article carried in the vehicle was only Rs. 5000/-, but the value of the vehicle was Rs.40,000/- . As per Exts. A1 and A2, produced in Court, the value of the vehicle was about Rs.70,000/-. Placing reliance on the ratio of the decision

reported in Pushpan V. State of Kerala (1984 KLT 1021) to the effect "that the confiscation of the vehicle is illegal and unsustainable and if the value of the contraband alleged to the value of the vehicle", the learned District Judge held that the confiscation of the vehicle is unsustainable Ext. P1 order passed by the Authorised Officer was set a side. The State field OP. No.8122 of 1985 and assailed the aforesaid order (Ext. P2) passed in appeal by the District Judge. Bhaskaran Nambiar, J. held that in view of the Division Bench decision reported in Pushpan's case (1984 KLT 1021), which is binding on him, the decision of the District Judge cannot be interfered with. However, the learned Single Judge noticed the submission of the State that the decision in Pushpan's case (1984 KLT 1021) requires reconsideration. Aggrieved by the decision of the learned Single Judge, the State has filed this writ appeal. By order dated 9-12-1985, their Lordships the Chief Justice and Mr. Justice K. Sukumaran admitted the writ appeal and referred the matter to a Full Bench, by the following order of reference.

"An important question about the correctness of the princip0le laid down by the Division Bench of this Court reported in 1984 KLT 1021 regarding the power of confiscation under S 61 A of the Kerala Forest Act, arises for consideration in this case.. We are therefore of the opinion that this is a fit case for being referred to the Full Bench,. Hence we refer this case to the Full Bench. Hence we refer this case to the Full Bench".

3, We heard the learned Advocate General, who appeared for the appellant-State as also Mr.M.M. Abdul Aziz, who appeared for the first respondent. The learned Advocate General contended that the Division Bench decision of this Court in Pushpan's case (1984 KLT 1021 requires reconsideration. It was argued that regard being had to the object and scheme of the Act, once it is found that a forest offence has been committed in respect of any property, it is pen to the authorized officer to order confiscation of the property seized along with all tools, including the vehicle, which was used in committing the offence. There need not be any proportion between the value of contraband goods carried in the vehicle and the value of the vehicle. The value of the vehicle is totally an irrelevant consideration. On the other hand Mr.M.M. Abdul Aziz, counsel for the first respondent, submitted that the power to confiscate the vehicle, in exercise of the powers under S.61 A (2) of the Act, is really discretionary and the only criterion to be adopted is whether the value of the contraband goods is substantial compared to the value of the vehicle. In the alternative, Mr. Aziz submitted that in exercising the power under S.61 A (2) of the Act, the value of the contraband goods carried in the vehicle compared to the value of the vehicle is a very relevant factor to be considered. It is not irrelevant.

4. In order to understand the rival contentions of the parties, it will be useful to quote S.61 A and also S.61 B of the kerala Forest Act. They are as follows:

"61 A. Confiscation by Forest Officers in certain cases Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under Sub-section (1) of S.52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the Government in this behalf by notification in the Gazette,

not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorized officer).

(2) Where an authorized officer seizes under sub-section (1) of S 52 any timber, charcoal, firewood or ivory which is the property of the Government or where any such property is produced before an authorized officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorized officer may, whether or not a prosecution is instituted for a commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

61 B. Issue of show cause notice before confiscation under S.61 A (1) No order confiscating any timber, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle shall be made under S.61 A unless the person from whom the same is seized –

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such timber, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle;
(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and
(c) is given a reasonable opportunity of being heard of in the matter.

2. Without prejudice to the provisions of sub-section (1) no order confiscating Any tool, rope, chain, boat5, vehicle or cattle shall be made under S.61 A if the owner of the tool, rope, chain, boat5, vehicle or cattle proves to the satisfaction of the authorized officer that it was used in carrying the timber, charcoal, firewood or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chair boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use".

The title to the Kerala Forest Act, 1961 (Act 4 of 1962) is as follows:

"As Act to unify and amend the law relating to the protection and management of forests in the State of Kerala".
The preamble to the Act states as follows:

"Whereas it is expedlent to unify and amend the law relating to the protection and management of forests in the State of kerala".

S.61 A was inserted by Act 28 of 1975. It was ordinance No.5 of 1975, which later became Act 28 of 1975. The preamble to ordinance No.5 of 1975 is to the following effect:

…….Been large scale illicit removal of timber, charcoal, firewood and ivory……. from the forests in the State.

AND WHEREAS the existing provisions of law are found inadequate t5o effectively check such illicit removal;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action."\

As stated in Brett V. Brett (1826) 162 ER. 456 at p.458):

"It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself".

A preamble is a key to open the mind of the Legislature, though it cannot be used to control or qualify precise and unambiguous language of the enactment (Tribbuban Parkash v. Union of India-AIR 1970 SC. 540 at p.543). We must approach the provisions of the Act in the light of the policy and purpose deducible from the terms of the aforesaid long title and the preamble and must understand and construe the various provisions of the Act, as will substantially subserve the policy and purpose. It is evident that Ss.61 A and 61 B were inserted at a time when there were large scale illicit removal of timber, belonging to the Government, from the forests in the State and the then existing provisions of law were found inadequate, necessitating the enactment of deterrent provisions for effectively preventing such illicit removal. Forest produce, like timber, if a valuable public property. The preservation of forests and its wealth is most essential for the welfare of humanity. It should be preserved in public interest. In Part IVA – "Fundamental Duties" in the Constitution of India, Article 51 A (g) enjoins, that it shall be the duty of every citizen of India, to protect and improve the natural environment including forests, lakes, rivers etc. So, the provisions of the Kerala Forest Act, 1961 should be so construed as to effectuate the said mandate of the Constitution of India. When timber or any other goods which is the property of the Government, is illegally or clandestinely removed or an offence is committed in respect of the said property, the said unauthorized action or offence should be viewed with serious concern. In order to protect such public property and to ensure that offences against such property are not committed, very wide powers are given to authorized officers, under S.61 A of the Act. The very nature of the offence calls for imposition of deterrent punishment, viewed in the background and history of the legislation. The property seized, which is the subject matter of a Forest offence, together with all tools, vehicles etc., used in the commission of such offence may be ordered to be confiscated by the authorized officer.

5. The provisions of similar legislations have come up before Courts, S.11 of the Opium Act, 1878 which provided for confiscation of the vessels or conveyance used in carrying it, came up for consideration before the Supreme Court in State of M.P. v. M/s. Azad Bharat Finance Co. (AIR 1967 SC 276) S.11 of the Act was to the following effect:

"SW.11. In any case in which an offence under Ss.0.9A, 9-B, 9-C, 9-D, 9-E, 9-F and 9-G has been committed, the property detailed herein below shall be confiscated.

(d) the receptacles, packages and coverings in which any opium liable to confiscation under this Section is found, and the other contents (if any) of the receptacle or package in which such opium may be concealed, and the animals, carts, vessels rafts and conveyances used in carrying it."

After adverting to various aspects of the matter, the Supreme Court held as follows:

"Bearing all these consideration in mind, we consider that S.11 of the Madhya Bharat act is not obligatory and it is for the Court to consider in each case whether the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case."

Similarly , S.7(1) of the Essential Commodities Act along with the proviso, came up for consideration in Sat Pal V State of Haryana (AIR 1979 SC 1767) S.7 (1) (b) of the Act authorizes the Court to forfeit the vessel or other conveyance used in carrying the property in respect of which the order was contravened. The proviso enabled the Court to direct that forfeiture is not necessary in respect of the whole or any part of the property or other conveyance for reasons to be recorded. The Supreme Court held that the section and the proviso showed that the Court has undoubtedly a discretion in suitable cases for not imposing the pe3nalty of confiscation. In that case, the appellant was not a party to the proceedings and he was not given an opportunity to show cause to the Court the circumstances under which the order of confiscation could be passed. There was no evidence to indicate that the truck which was used to carry the product was hired with the knowledge or concurrence of the appellant. In those peculiar or special circumstances, the Court observed as follows:

"The truck of the appellant was a very valuable property and to order its confiscation merely because an attempt was made to export cattle fodder through it, would indeed be a very harsh order so as to work serious injustice to the appellant".

Construing Ss.65,678 and 67 C of the Abkari Act (Kerala), which enabled confiscation of the conveyance, a Division bench of this court in Vamadevan Pillai V. State of Kerala (1982 KLT 518 at p.522) observed as follows:

"If the authorized officer had any discretion not to confiscate, the facts indicate that the discretion would have been exercised in favour of the petitioner. In other words, the authorized officer indicates beyond doubt that there is a case of an innocent party who had unfortunately to face the serious consequence of confiscation for a technical offence with which he was not personally concerned. The car is quite valuable and the value of the II plastic cans of toddy has no comparison with the value of the car. The owner of the car was found to be innocent and it was further found that the driver was using the car not during the course of the employment. The appellate authority only finds that the driver could have been instructed to give the key to the workshop in the evenings. Taking into account these facts and the view expressed categorically by the authorized officer in Ext. P1 that he is directing confiscation only because confiscation is a must, we think this is a case where we are called upon to interfere with Ext P1 order as confirmed by Exts P2 and P3"

The Division Bench referred to the decision of the Supreme Court in Sat Pal V. State of Haryana (AIR 1979 SC 1767) in reaching the said conclusion. The

decision of the Supreme Court in Sat Pal's case (AIR 1979 SC 1767) and of this Court in Vamadevan Pillai's case (1982 KLT 518) turned on peculiar facts and the said decisions cannot be relied on as authorities for the proposition that in every case where in the value of the contraband goods is negligible compared to the value of the vehicle, in which the goods were carried confiscation of the vehicle cannot or may not be ordered. Moreover, the legislation, in question, by its very nature, scheme and background should receive a must more strict interpretation and offences under the Forest Act should be dealt with differently and in a deterrent manner. The statutes considered in the decision of the Supreme Court and in the decision of this Court, are far different in content, purpose and object. S.61 A deals with the procedure relating to confiscation by an authorized officer, in certain cases. The power has to be exercised when "forest offence" is believed to have been committed in respect of certain property of the government. It is only when the authorized officer is "satisfied" that such offence has been committed in respect of such property, he may order confiscation of the property so seized with all tools and vehicles used in committing such offence. A reading of S.61 A (2) of the Act shows that the power vested in the authorized officer to confiscate the vehicle is discretionary. It should be exercised judicially and reasonably, bearing in mind the purpose and object of the legislation, which we have adverted to earlier. The language used in S.61 A (2) of the Act is no doubt "permissive". But the power is vested in a public official, to effectuate or aid the enforcement of "public duty" – and considered in the back group of Art.51 A (g) of the Constitution of India, the long title and preamble to the Act and the mischief sought to be remedied by the Amendment Act, (Act 28 of 1975) – we are of the view, it refers to a compellable duty or obligatory to exercise the power on fulfillment of the conditions specified in the section. It is for the officer concerned to consider in each case having regard to all the circumstances, whether confiscation of the vessel is to be made. But, it leaves no room for doubt in our mind that the power vested in the authorized officer under S.61 A of the Act should be exercised hearing in mind the policy and purpose and background of the Act which we have enumerated herein above. Illicit removal of the government property is a matter which should be viewed with serious concern. S. 61 A itself was enacted to effectively check such illicit removal and with a view to provide deterrent provisions for effectively preventing such illicit removal should be so effectively dealt with, which will also prevent recurrence. This is an important or vital aspect to be borne in mind while exercising the powers under S.61 A (2) of the Act. S 61 B (2) gives an opportunity to the owner of the vehicle to prove his innocence or absence of complicity in the matter and to substantiate that he was diligent in taking precautions against unauthorized use of the vehicle.

6. Viewed in the above background and context, with great respect to the learned Judges who decided Pushpan's case (1984 KLT 1021), the observations therein to the effect, that "it is well settled that the confiscation of the vehicle is illegal and unsustainable, if the value of the contraband alleged to have been carried in the vehicle, is negligible compared to the value of the vehicle", has been too widely stated and does not represent the law correctly. In our view, at the most, the said factor may not be totally an irrelevant one, in adjudicating the question as to whether the vehicle may be confiscated in exercise of the powers under S.61 A (2) of the Act, in all the circumstances of the case,

But this is again a matter to be primarily considered by the authorized officer, in the light of the policy, object and purpose of the Act, taken as a whole, which we have enumerated herein above. To go beyond and to state that the order of confiscation is

illegal and unsustainable if the value of the contraband alleged to have been carried in the vehicle is negligible compared to the value of the vehicle, is an over statement of the law not warranted by S. 61 A (2) of the Act, in the light of the preamble, object and scheme of the Kerala Forest Act, which we have extracted herein above.

7. We are aware of the trend in recent judicial thought that if a punishment is "altogether excessive" and "out of proportion" to the occasion, the Court can interfere. The revocation of a market trader's license which entailed deprivation of his livelihood was held to excessive penalty in relation to an offence committed by the trader which was indulgence in abusive language. (See R.V. Barnsley M B C 1976 (3) All ER.452). See also CCSU V. Minister for the Civil Service – (1984) 3 All E.R. 935 at p.95) where the question was left open. But, the question that arises in this case is far different. Here, the offence committed and proved is a "forest offence". One of the punishments levied is confiscation of the vehicle, which was used in committing the offence. The offence is one against public interest and a serious one. The only question is whether confiscation of the vehicle, used in the commission of the said offence, is justified. No question of proportionality between the offence, is justified. No question of proportionality between the offence committed and the punishment levied can arise, in ordering confiscation of the vehicle used in the commission of the forest offence. So, the larger question which arose for consideration in Barnsley's case (1976 (3) All E.R.452) does not arise herein.

8. The District Judge, Thodupuzha, in this case, allowed the appeal and held that the confiscation of the vehicle is unsustainable solely based on the observations in Pushpan's case (1984 KLT 1021), referred to above. We have held that the observation of the Division Bench in Pushpan's case (1984 KLT 1021) does not represent the law correctly. The learned Single Judge refused to interfere with Ext. P2 Judgment, passed by the District Judge, since the felt bound by the observations of the Division Bench decision in Pushpan's case (1984 KLT 1021). Since we have he3ld that the observation of the Division Bench in Pushpan's case (1984 KLT 1921) has not laid down the law correctly, the order of the District Judge, evidenced by Ext. P2, is patently unsustainable and illegal. We quash Est. P2. We also set aside the judgment of the3 learned Single Judge, under appeal.

9. The writ appeal is allowed. There shall be no order as to costs.

Endt. on C4-26009/85 dt. 8-3-88

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For Chief Conservator of Forests.