
(2010) 09 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 8163 of 2002

Jojoy Jacob

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 72
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 3, 3(1), 6, 8
Kerala Private Forests (Vesting and Assignment) Rules, 1974 — Rule 2A

Citation : (2011) 1 KLT 79

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Bechu Kurian Thomas, Prakash Puthiadam and Gikku Jacob, for the Appellant; P.M. Poullose, Spl. Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—Prayer sought in this Original Petition is to quash Ext.P5, a notification issued under Rule 2A of the Kerala Private Forests Vesting and Assignment Rules, 1974 hereinafter referred to as the Rules for short.

2. Briefly stated, facts of the case are that the Petitioners are owners of 50.1 acres of land situated in Survey Nos. 509/1, 509/2 and 509/3 of Thodernadu Village in Mananthavady Taluk, Wayanad District. It is stated that in respect of the said land, the Petitioners' predecessors in interest, being cultivating tenants, were issued Exts.P3 to P3(c), certificates of purchase under the provisions of the Kerala Land Reforms Act, way back in 1973. According to the Petitioners, they purchased the property, which was already a coffee plantation, by six sale deeds executed in 1992.

3. It is also their case that before the sale deeds were executed in their favour, they had obtained NOC from the Forest Department for getting the property conveyed in their favour. On purchasing the property, they got the property mutated in their names and were paying tax in respect of the land.

4. While they were thus enjoying the property, in 2001 their possession was

obstructed by the Respondents. Thereupon, they filed O.S. Nos. 135/2001 to 140/2001 before the Munsiff Court, Mananthavady. In the suits, the Defendants therein filed written statement contending that the land is a private forest vested in the State u/s 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as the Act for short) and that a notification under Rule 2A of the Rules was issued on 4.5.2001 and was published in the news papers on 7.5.2001. Ext.P4 is the copy of the written statement filed in O.S. No. 135/2001. In the light of the contentions so raised in the written statement and as the Munsiff Court lacked jurisdiction to adjudicate the issues raised, the suits were dismissed. It was thereupon that producing the notification relied on by the Defendants in the Suits as Ext.P5 herein, this Original Petition has been filed.

5. Main contention raised by the learned Counsel for the Petitioners is that the property was already the subject matter of proceedings under the Kerala Land Reforms Act. It is stated that recognizing the fact that the Petitioners' predecessors were cultivating tenants as on 1.1.1970 the property was assigned to them in 1973. It is stated that the property continued to be coffee plantation as before. Therefore, according to the Petitioners, the property having been recognized by the Government, as a plantation as on 1.1.1970, it could not have been treated as a private forest as on 10.5.1971, the appointed date under the Act. It is also their contention that u/s 6 of the Act, demarcation of boundaries of a private forest vested has to be done as soon as may be after the appointed date. It is stated that Rule 2A of the Rules require that once the boundary is demarcated, notification should be published immediately thereafter. It is contended that as against these statutory requirements, Ext.P5 notification was issued only on 04.05.2001, almost after 30 years from the appointed date. It is stated that for that reason, there is noncompliance with the statutory provisions and therefore, the vesting and the consequential actions are illegal. In this context, learned Counsel for the Petitioners also relied on the judgment of this Court in O.P. No. 28097/2000 dated 27.9.2006. It was further contended that having regard to the long lapse of time, the Petitioners are seriously prejudiced. According to the learned Counsel, even if the Petitioners are to move the Tribunal constituted u/s 8 of the Act for settlement of disputes, in order to seek exemption from vesting, the Petitioners will have to prove that the land in question was a plantation as on 10.5.1971. It is stated that at this distance of time, it is impossible for the Petitioners to adduce evidence on the said question of fact. Learned Counsel for the Petitioners therefore contended that Ext.P5 notification and all other proceedings initiated against them should be declared as illegal.

6. On the other hand, the stand adopted by the Government is that as On the appointed date the property in question is a private forest vested in the State under the provisions of the Act. It is admitted that the property was notified only in 2001 and that when the Petitioners tried to encroach into the forest land, a case was booked against them. The case of the learned Government Pleader is that even if it is true that proceedings were initiated against the land in question

under the provisions of the Kerala Land Reforms Act and purchase certificates were issued, that does not bind the Government and that it will not affect the vesting under the Act. It is also argued that the delay in issuing Ext.P5 notification will not invalidate the automatic vesting that has taken place u/s 3 of the Act and that at any rate, no prejudice, whatsoever, has been caused to the Petitioners.

7. Learned Government Pleader further contended that the judgment in O.P. No. 28097/2000 relied on by the learned Counsel for the Petitioners was rendered in the peculiar facts of the case and cannot be of any general application.

8. I have considered the submissions made by both sides.

Section 3 of the Act provides that notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, with effect on and from the appointed date, the ownership and possession of all private forests in the State, shall, by virtue of the provisions of the Act, stand transferred to and vested in the Government, free from all encumbrances and the right, title and interest of the owner or any other person in any private forest shall stand extinguished. From this provision itself, it is therefore evident that vesting takes place on the appointed date, viz., 10.5.1971, automatically and that with such vesting, the right, title and interest of everyone will stand extinguished. The effect of this provision has been considered by this Court in detail in the judgment in Ranga Sesha Hills (P) Ltd. v. State of Kerala (1991 (2) KLT 49), where it has been held that by virtue of Section 3(1) of the Act as on 10.5.1971, vesting takes place by operation of law and that no provision of the Act postpones the vesting to any day subsequent to the appointed date. This principle has been reiterated by the Apex Court in State of Kerala and Another Vs. Popular Estates and Another, , where it has been held that the scope of the Act is that upon the Act coming into force, all private forests would automatically vest in the State Government.

9. The scope of Section 3 of the Act being under stood as above, I shall now proceed to examine the scope of Section 6 of the Act and Rule 2A of the Rules. Section 6 provides for demarcation of boundaries, which reads as under: -

6. Demarcation of boundaries:

(1) As soon as may be after the appointed day, the custodian shall cause the boundaries of the private forests vested in the Government under Sub-section (1) of Section 3 to be demarcated.

(2) Notwithstanding the pendency of an application u/s 8 before the Tribunal, the custodian may, if he is satisfied that any land is a private forest vested in the Government under Sub-section (1) of Section 3, cause the boundaries thereof to be demarcated as if such land has vested in the Government under that Sub-section.

Rule 2A of the Rules also provides for demarcation of boundaries, which reads as

under: -

2A. Demarcation of boundaries:

(1) Demarcation of private forests in pursuance of Section 6 of the Act shall be effected by erecting by cairns along the boundaries.

(2) A notification specifying the details of the private forest, the boundaries of which have been demarcated such as survey and sub-division number if available and local name and describing its boundaries shall immediately be published simultaneously in the Village Office, Panchayat Office, Office of the Forest Tribunal, Range Office, Office of the Divisional Forest Officer and the Office of the Custodian.

(3) The fact that a notification has been published under Sub-rule (2) shall be published in two or more newspapers having circulation in the locality.

10. Section 6 of the Act therefore requires the Custodian to demarcate the boundaries of the private forests vested in the State u/s 3(1) of the Act "as soon as may be" after the appointed date. Rule 2A (1) of the Rules require that the demarcation shall be effected by erecting by cairns along the boundaries. Sub-rule (2) provides that once demarcation is done, notification specifying the details of the private forest shall be "immediately" published simultaneously in the Village Office, Panchayat Office, Office of the Forest Tribunal, Range Office, Office of the Divisional Forest Officer and the Office of the Custodian.

11. Therefore, once a private forest is vested u/s 3 of the Act, the Custodian is to demarcate the boundaries as soon as may be after the appointed date. Once the demarcation is done, the Custodian shall immediately publish the details by a notification in the manner as specified in Rule 2A of the Rules. It has been held by this Court as also the Apex Court in both the aforesaid judgments that issuance of notification is something which must follow demarcation of the boundaries which is the duty of the Custodian to perform as soon as may be after the appointed date when the land is vested. Thus the vesting of private forests and the demarcation of its boundaries or its notification are two different aspects, and the vesting is not dependent upon the demarcation of boundaries or issuance of the notification. It is true, as contended on behalf of the Petitioners, when the statute has used the expression "as soon as may be", it implies that there has to be promptitude in action. However, the fact that due to official inadvertence or negligence or mistake, demarcation of boundaries or publication of the notification has been delayed or that the demarcation has not been done as soon as may be after the appointed date, that will not in any manner invalidate the automatic vesting u/s 3 of the Act that has taken place as on 10.5.1971. Therefore, the delay in demarcation or publication of notification, by itself cannot come to the rescue of the Petitioners to contend that the steps taken by the Government in pursuance to the vesting of the property in question are invalid for that reason.

12. Now the question is whether due to the delay, any prejudice has been caused to the Petitioners or whether they have been disabled from establishing the case that the land is a plantation as on 10.5.1971. First of all prejudice is a question of fact, which should be established by one who pleads it. Section 8 of the Act provides for constitution of Tribunal and settlement of the disputes. If Petitioners have a case that the land is not a private forest or that it is not liable to be vested, it is for them to apply to the Tribunal and establish their case. This necessarily requires adjudication of facts and appreciation of evidence. In that adjudication, it is for the Tribunal to examine, whether due to the delay that has occurred, the applicant is prejudiced in establishing his case for any reason. It is always open to the Tribunal to appreciate the case in that manner and decide the issue in accordance with law and mould the reliefs that are to be granted. Therefore, the question whether any prejudice has been caused is a matter for the Petitioners to establish before the Tribunal, if and when an application is made by them u/s 8 of the Act. Hence, this contention also does not help the Petitioners to attack vesting of the property.

13. Now the further question is whether the proceedings under the Kerala Land Reforms Act in respect of the land in question in which purchase certificates were issued, will have any impact on the vesting and the proceedings taken under the Act. The case of the Petitioners is that their predecessors were issued purchase certificates u/s 72 of the Kerala Land Reforms Act recognizing the fact that they were cultivating tenants as on 1.1.1970. It is contended that if their status as cultivating tenants has been recognized as on 1.1.1970, the land in question could have been only a plantation as on 10.5.1971. Consequently, according to the Petitioners, the property could not have been a private forest as on 10.5.1971 to vest in the State. While appreciating this contention of the learned Counsel for the Petitioners, what is required to be examined is the impact of the proceedings under the Kerala Land Reforms Act against the proceedings under the Act. In my view, answer to this question has to be against the Petitioners in view of the law laid down by this Court and the Apex Court, which have consistently held that in a proceedings under the Act, the Government is not bound by any proceedings under the Land Reforms Act or the orders passed in such proceedings. Reference in this connection may profitably be made to the decisions in *K.D. Mani v. State of Kerala and Anr.* ILR 1987 Ker. 570, *Ahammed v. State of Kerala* 1988 (2) KLT 967, *State of Kerala and Anr. v. C.J. Alexander* 1993 (1) KLT 4 : ILR 1993 Ker. 731, *Smt. Kunjanam Antony (dead) by LRs. Vs. State of Kerala and Another, , State of Kerala and Another Vs. Popular Estates and Another, , State of Karnataka and Ors. v. I.S. Nirvane Gowda and Ors.* (2007) 15 SCC 744. In the light of the aforesaid binding precedents, the only possible conclusion is that proceedings under the Kerala Land Reforms Act, at best is only a piece of evidence which could be used by a claimant in a proceedings before the Forest Tribunal. Apart from this, it should also be noted that Section 3 of the Act, starts with a non-obstante clause, which also supports the aforesaid conclusion. In so far as the judgment in O.P. No. 28097/2000, relied on by the

Petitioners is concerned, it should be held that though in that case, a notification under Rule 2A was quashed, a close reading of the judgment shows that the facts in that case are incomparable with the facts of this case. Therefore, that judgment will not be of any assistance to the Petitioners.

14. Learned Counsel for the Petitioners then contended that under the Kerala Private Forests (Tribunal) Rules, 1972, an application to the Tribunal has to be filed in terms of Rule 3 thereof, which prescribes that the same shall be done within sixty days from 6.8.1981 or from the date of publication of the notification under Rule 2A of the Rules. It is contended that the Petitioners came to know of the notification only when the Defendants relied on the notifications in the written statement filed in the suits mentioned earlier, and that at this distance of time, an application will be time barred. The dispute in this Original Petition involves a large extent of land, which according to the Petitioners is a fully developed coffee estate and is not a private forest liable to be vested. It is a fact that immediately on the dismissal of the suits, they approached this Court and this Court entertained this Original Petition and interim orders were also passed. Therefore, even if they are not entitled to relief in this Original Petition, the Petitioners should not be denied the opportunity to prosecute their case before the Tribunal irrespective of the lapse of time.

15. In that view of the matter, I direct that if the Petitioners move the Tribunal constituted u/s 8 of the Act within 8 weeks from today, the Tribunal shall entertain the application and consider the case on merits. It is also directed that for three months from today, interim order of status quo passed by this Court on 26.3.2002, will remain force and it will be for the Petitioners to obtain appropriate interim orders from the Tribunal in the meanwhile.

16. This Original Petition is disposed of as above.