
(1997) 09 KL CK 0021
In the High Court Of Kerala
Case No : M.F.A. No. 652 of 1989

Merchiston Estate

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 3(2), 3(3), 8

Citation : (1997) 2 KLJ 421

Hon'ble Judges : N. Dhinakar, J;K.K. Usha, J

Bench : Division Bench

Advocate : C.K.S. Panicker and P.G.P. Panicker, for the Appellant; M.R. Sabu),
for the Respondent

Final Decision : Allowed

Judgement

N. Dhinakar, J.—The applicant in O.A. No. 100 of 1980 on the file of the Forest Tribunal, Palakkad, is the appellant in this appeal. The application was filed u/s 8 of the Private Forests (Vesting & Assignment) Act, 1971 (Act 26/1971) for short "the Act" praying for a declaration that the disputed items of land are outside the scope of Act 26/71 or alternatively exempting them from the operation of its vesting provisions. The Forest Tribunal by an order dated 16.4.1983 rejected the said application and the applicant filed an appeal before this Court in M.F.A. No. 359 of 1983. This Court by judgment dated 4.8.1988 set aside the orders of the Tribunal and remanded the matter back for fresh consideration and disposal as the Tribunal did not take into consideration the inspection report dated 26.5.1980 prepared by the Forest Tribunal. This Court while remanding the matter observed thus: What is the impact of the said inspection report, as to how far it is binding on the parties and what is the inference to be drawn from the inspection report and how far it is relevant in the final decision to be rendered, as all matters for the Forest Tribunal to decide in the first instance.

The Forest Tribunal after the remand while holding that the applicant has title to the disputed property held that the disputed areas are private forest and are

vested with the Government under the provisions of Act 26/1971. It further held that the applicant is not entitled for any relief either u/s 3(2) or u/s 3(3) of the said Act. Hence this M.F.A.

2. Before we venture to discuss the merits of the application we will consider the value of the (oral inspection report to which advertence was made by the Forest Tribunal. In *Ayisha v. Kunhathutty* (1973 KLT 57) it was held that the purpose of local inspection is not to bring fresh evidence on record or to substitute it for evidence but is only to assist in the appreciation of the evidence. Similar view was taken by another learned Judge in *Abdullakutty v. Land Tribunal. Beypore* (1974 KLT 4) when he observed that the local inspection must only be for the purpose of enabling the authority to assess the already existing evidence in the case. In *State of Kerala v. Nanu* (1991 (2) KLT 251) Division Bench after posing a question to itself "if at one stage when the Tribunal makes an inspection of the property for good reasons and if the Tribunal finds that there is no wild forest tree growth in the area in question and also there is no indication that there was forest tree growth in the property, can the court ignore it on the principle that the local inspection should not be used to contradict the legally admitted evidence" answered it by saying that "such an understanding of the law will be against realities and it will be superficial and hypertechnical. The prime devoir of the court is to do justice between the parties and in that process if a court forgets indubious facts, which it has seen by its naked eyes, on local inspection. It would be an abjurement and abnegation of reality." From the above it is clear that the local inspection report though cannot be used as evidence it can be used by the authority for assessing the already existing evidence in the case. The local inspection report can be used for the better appreciation of the said evidence on record.

3. The case of the applicant before the Forest Tribunal is that the disputed property is a tea estate and the same was purchased in the year 1954 as per Ext.A1. The estate is principally cultivated with tea and other plantation crops and has within its fold several patches of land covered with collutions of casuarina, albissis, gravilla, dadaps etc. and those patches of land lie inter spread among the tea fields. The above trees, according to the applicant, are raised and maintained as they are ancillary activities to the cultivation of tea. Those trees are also intended to serve as wind-belts to protect the estate from the fury of wind and supply perennial source of fire wood for a wide variety of purposes connected with the running of the estate. These lands in question, according to the applicant, forms an integral part of the estate without which the estate cannot be operated successfully and it has no resemblance to anything remotely to a forest. According to him, the disputed area, is strategically situated inside the estate and its possible loss will cause irreparable injuries to the estate. The said contention of the applicant was disputed by the respondent who stated that the disputed property was demarcated and surveyed in 1976-77 and a notification to that effect was already published. According to the respondent, the private forest so vested in the Government in the said survey numbers lies in

two blocks. According to the respondent, the area contains spontaneous tree growths of forest species like albisia, votley kara, moital, veppu, maruthu, irunakka, moongaperzhu and casuarina and the said disputed property lies contiguous to the "Paloda Reserve Forest."

4. After considering the rival contentions and the materials placed before it including the inspection report the Tribunal came to the conclusion that though the applicant has title to the disputed property it is a private forest and is vested with the Government under Act 26/1971 and that the applicant is not entitled to get any relief u/s 3(2) or 3(3) of the Act.

5. We have heard the counsel for the appellant and the Government Pleader for the respondent and perused all the materials. We may at the outset say that the Forest Tribunal has misdirected itself on a question of fact when it observed: It is very significant to note that there is no averment in the application that the disputed areas are planted with tea or any other crops.

As the applicant in his application has specifically stated in column (h) that "the properties are estate where tea and other plantation crops are raised." According to the Tribunal the applicant has developed his case in his oral evidence by stating that tea and coffee were planted in the disputed area and on this wrong assumption of fact it came to the conclusion that the disputed area is a private forest. As stated by us, the applicant has not improved his case in his evidence but only has reiterated what he has stated in his application filed u/s 8 of the Act. According to P.W.1 who was examined on the side of the applicant no part of the estate is lying waste and that the disputed area lie in 2 bits. The said two bits are inside the estate and surrounded by plantation crops. This evidence of P.W.1 is fully supported by the evidence of R.W.1, the Range Officer, who was examined on the side of the respondent when he stated in cross-examination that the disputed property is a tea estate and that the shade trees are required for tea estate. The evidence of P.W.1, supported by the evidence of R.W.1 to a great extent, is seen corroborated by the local inspection report dated 26.5.1980 prepared by the Forest Tribunal, Palakkad. The said report was prepared by the previous presiding officer of the Forest Tribunal wherein he has stated as follows:

The whole estate is a tea plantation. Patches or bits of land inside the tea area are subject matter of dispute here. There are casuarina in some bits and cocoanut and arecanut trees in the other bits. If these bits are taken away from the tea area and treated as vested forest there is every possibility of the tea areas being damaged. The case of the petitioner is that cocoanut and arecanut trees are improvements effected by them and casuarina trees have been planted for providing shade and for being used as fire-wood in the manufacture of tea.

On two sides of two bits the boundaries are reserve forests. Along those boundaries there are trees of forest species. According to the petitioner these trees stand there as wind belts and they are necessary for the protection of the tea area.

The said inspection of the disputed property was actually made in the presence of the Government Pleader, the advocate for the petitioner, the Supdt. of the Estate and the forest officials. While advertng to this inspection report the present presiding officer of the Forest Tribunal came to the conclusion that the disputed properties are not patches or bits inside the area as observed by his learned predecessor as according to him. The inspection report shows that on two sides of the two bits the boundaries are reserve forest. As two sides of the two bits have reserve forest as boundaries the Tribunal held that the disputed areas are not lying inside the tea area. We are afraid that we are not able to accept the said finding of the Forest Tribunal as in our view the Tribunal has once again misdirected itself on a question of fact. The inspection report only states that on two sides of the two bits the boundaries are reserve forest and not the disputed property is bounded on all sides by reserve forest. A perusal of Ext.A1, the document under which the applicant obtained title shows that the disputed property is mentioned as items 1 and 2 in the said document and for item 1 the property is bounded on the north by Ponmudi estate and on the east Survey No. 3996 and on the south and west by Government forest. Similarly item 2 shows that the said bit is bounded on the north by Ponmudi estate and on the estate by Government forest and Survey Nos. 4001, 4000, 4010 and 3999. On the south it is bounded by Government forest and Survey No. 4019 and on the west by Survey No. 3995. So even as per the document Ext.A1 executed in the year 1954 the property was not bounded on all sides by forest lands and the inspection report is only in consonance with Ext.A1. Under the above circumstances, the finding of the Tribunal that the disputed areas are not lying inside the tea area cannot be upheld. Just because a particular property, has a forest area as its boundary on two sides we are unable to come to the conclusion that the said property is a private forest and has vested with the Government. As observed by the Supreme Court in *Bhavani Tea & Produce Co. Ltd. v. State of Kerala* (1991 (1) KLT 666) we find it difficult to agree that wherever some forest was found inside the company's estate the Vesting Act, would apply. In the above case the disputed property consisted of several plots and while some plots were exempted some others were not, on the ground that they attract the provisions of Act 26/1971. The Supreme Court considered the contention that the disputed plots must be held to have been principally used for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon which are the crops envisaged under the Vesting Act and for the purposes ancillary thereto and if these plots were not exempted from vesting the company's plantations will be broken down in unity, contiguity and economy, and that for deciding the area principally cultivated, the plantations owned by the company must be taken as a whole and not piece by piece or plot by plot and upheld the said contention by stating that it is difficult to agree that wherever some forest was found inside the company's estate the Vesting Act would apply.

On the materials placed before us we are of the view that the order of the Forest Tribunal rejecting the application of the applicant filed u/s 8 of Act 26/1971 has

to be set aside and it is accordingly set aside and we declare the disputed property as items of land outside the scope of Kerala Act 26/1971.

This M.F.A. is allowed.