
(1995) 03 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 7518 of 1994

Mrs. Aliyakutty Paul

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Kerala Forest Act, 1961 — Section 2(f), 22, 66

Citation : (1995) 1 KLJ 713

Hon'ble Judges : P.V. Narayanan Nambiar, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : N. Nandakumara Menon and R. Anil Kumar, for the Appellant; S. Narayanan Poti Advocate General for State, for the Respondent

Judgement

Jagannadha Raju, J.—This Petition is filed by Mrs. Aliakutty Paul, who claims to be the lessee of Rosary Estate, which was originally said to have been leased to her husband, late P.D. Paul. Originally when the Original Petition was filed there were four prayers (a) to (d). Prayer (a) is to issue a writ of mandamus restraining the respondents from conducting the auction as per Ext. P8 notification. Prayer (b) is to issue a writ of mandamus restraining the respondents from removing coffee, rubber sheets, pepper, arecanuts and cardamom kept in large quantities in the godowns of Rosary Estate at Nelliampathy. Prayer (c) is for other and further reliefs that may be prayed for from time to time. Prayer (d) is to award costs of the proceedings. Subsequently, the Original petition was amended as per order in C.M.P. No. 23129 of 1994 dated 26.9.1994 and prayers (e) and (f) were added, Prayer (e) is to issue a writ of mandamus declaring the auctions of the estate produce conducted in the Rosary Estate on 7.6.1994 and on 3.8.1994 as illegal and void. Prayer (f) is to issue a writ of mandamus or order directing the respondents to hand over possession of the Estate produce auctioned by the second respondent on 7.6.1994 and 3.8.1994, and also to hand over the remaining estate produce which was kept in godowns and buildings in the Rosary Estate of the petitioner. The prayer further indicates that they should be handed over to the petitioner

unconditionally and forthwith.

2. This writ petition is one of the several writ petitions and litigations that have come up in connection with the Rosary Estate. The facts leading to the filing of the Writ Petition can be summarised in brief and it is unnecessary to set out in detail the lengthy original petition in this judgment. The facts in brief are as follows. On 13.1.1953 the Travancore Cochin Government proclaimed that it would sell by auction the leasehold rights for certain abandoned estates. One of the items which was put up for auction is Pullala Estate (West and East nelliampathy Hills) having an extent of 239.99 acres (139.29 +100.70 acres). The reserve premium per acre is Rs. 30/- It is the claim of the petitioner that her husband; P.D. Paul, was the successful bidder, and then it was found that West Pullala Estate of 139.29 acres was not available for being leased as it was in the occupation of others. It is claimed that instead of handing over 139.29 acres, the Government decided to handover 247.07 acres of reserve forest land now called Rosary Estate. The petitioner claims that P.D. Paul was put in possession of this Estate on 22.2.1955. It is the claim of the respondents that he was put in possession on 22.2.1955 as Mr. Paul has given an undertaking on 24.1.1955 to execute a regular registered lease deed and that he would abide by the decision of the Chief Conservator of Forests, with regard to general terms and conditions of lease. The property put in his possession was part of nelliampathy Reserve Forest. Subsequently, no lease deed was executed and on 15.11.1962 a draft lease deed was sent by the Divisional Forest officer to Sri. Paul indicating the period of lease as 40 years and not 99 years, as mentioned in Ext. P1. The fact remains that no lease deed was executed till this day. It is the claim of the petitioner that she has been paying lease rent every year. Mr. Paul, the husband of the petitioner, died on 13.9.1971. The petitioner as executor of his will came into possession of the property. She filed O.P. No. 2071 of 1987 to compel the Government to execute a lease deed for 99 years. That O.P. was dismissed by the High Court after elaborate consideration. Then W.A. No. 295 of 1988 was filed by the petitioner. The same was later withdrawn by the petitioner with a representation that the O.P. is withdrawn with a view to file a civil suit. The petitioner then filed O.S. number 136 of 1988 on the file of the Sub Court, Palakkad for specific performance to compel the Government to execute the lease deed. That suit was dismissed and appeal filed by the petitioner is pending as A.S. No. 74 of 1993 on the file of the District Court, Palakkad. Subsequently when steps were sought to be taken to evict the petitioner on the ground that she was illegally in possession of the reserve forest property, another suit, O.S. No. 23 of 1993 was filed for an injunction, to restrain the State Government and the forest officials from evicting her. In that suit, I.A. No. 185 of 1993 was filed for the grant of a temporary injunction. That suit is still pending.

3. On 11.5.1993, Ext. P2 notice was given to the petitioner directing her to remove movables and to vacate the estate. The petitioner gave Ext. P3 reply on 25.5.1993. On 17.6.1993 the Divisional Forest Officer passed Ext. P4 affirming Ext. P2 notice. On 5.10.1993 according to the petitioner possession of the estate

office and godowns was taken forcibly by the forest department officials. Immediately she filed O.P. NO. 13855 of 1993. She obtained interim stay in C.M.P. No. 25141 of 1993. Under Ext. P5 judgment dated 8.12.1993, O.P. No. 13855 of 1993 was allowed. Exts. P2 and P4 were quashed, but liberty was given to the State and the forest officials to evict the petitioner in accordance with law. W.A. No. 1670 of 1993 filed by the State against Ext. P5 ended in dismissal under Ext. P6 judgment dated 31.1.1994. The State approached the Supreme Court by way of SLP and ultimately the SLP was dismissed on 5.9.1994. During the pendency of the matter before the Supreme Court, the produce of the Estate kept in the godowns was put up for auction as per Ext. P8. Then the present O.P. was filed on 6.6.1994. In C.M.P. No. 13030 of 1994 orders were passed staying the confirmation of the sale, though the respondents were permitted to conduct the auction. The Court ordered that confirmation of the sale will be subject to further orders of the Court. It also directed that the articles shall not be removed from the godowns and stores where they were kept. Subsequently, reauction notice was issued, a similar order was obtained in C.M.P. No. 18492 of 1994 and the confirmation of the re-auction was also stayed. Actually the auctions were held on 7.6.1994 and 3.8.1994. As the auctions were conducted after the filing of the Original petition, the Original petition was amended as per the order in C.M.P. No. 23129 of 1994. Prayers (e) and (f) were incorporated in the O.P.

4. The Original Petition is resisted by the respondents by an elaborate counter filed by the second respondent. The elaborate counter mentions the development of events just now narrated and it asserts that as the property is reserve forest, and as the petitioner has no legal right to be in possession of reserve forest without a grant or contract in writing made by, or on behalf of, the Government. The petitioner is a trespasser and she is not entitled to the forest produce which was put up for auction. It is claimed that the action taken to evict the petitioner is proper and that the petitioner by reason of filing various Writ petitions, by filing different suits and by obtaining interim orders from different courts, managed to continue in possession unauthorisedly from 1955 to this day. Till this day, no lease deed was executed. There is no agreement between the parties regarding the terms of the lease. The parties are at variance with regard to the terms of the lease, and hence the petitioner is liable to be evicted u/s 66 of the Forest Act. The action taken by the forest officials to evict the petitioner is valid and legal. This Writ petition filed to stop auction of property to which the State is legitimately entitled, and to which the petitioner has no legal right, is devoid of merits. It has to be dismissed.

5. Before we deal with the question whether the petitioner is entitled to the reliefs prayed for in this O.P., it would be pertinent to refer to the provisions of the Kerala Forest Act, 1961 (Act 4 of 1962) hereinafter called the "Forest Act". "Forest produce" is defined u/s 2(f). The definition reads as follows:

Forest produce includes-

(i) the following whether found in or brought from, a forest or not; that is to

say,- timber, charcoal, wood-oil, gum, resin, natural varnish, bark lac, fibres and roots of sandalwood and rosewood; and

(ii) the following when found in, or brought from, a forest, that is to say,

(a) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees;

(b) plants not being trees including grass, creepers, reeds and moss and all parts or produce of such plants; and

(c) silk cocoons, honey and wax;

(d) peat, surface soil, rock and minerals (including limestone, laterite), mineral oils and all products of mines or quarries.

A careful analysis of this definition indicates that clause (i) deals with certain commodities which are not easily perishable, and which are the natural produce of the forest. Clause (ii) (a) deals with leaves, flowers and fruits and all other parts of produce which are the result of spontaneous growth in forest and the natural produce of the trees in the forest. Clause (ii) (b) deals with plants which are not trees, produce like grass, creepers, reeds, moss, etc. Sub-clause (c) of clause (ii) deals with silk cocoons, honey and wax which are normally found in the forest and which are the result of acts of insects and which are not the result of man's efforts. Sub-clause (d) of clause (ii) deals with peats, surface soil, rock and minerals, including limestones, laterite, mineral oils and all products of mines or quarries. One significant fact about this particular definition is that it does not include products which are the result of plantation, agriculture and cultivation. The definition of "forest produce" only includes articles which are normally found in the forest and which are the spontaneous and wild growth in the forest. The produce found stored in the godowns and stores in this case is coffee, cardamom, areca nuts, pepper and rubber sheets. These are all products which are obtained by raising plantations and by cultivating the plantations regularly. They cannot be termed as spontaneous or wild growth of a forest. It can safely be said that the various commodities stored in the godowns and stores of the Rosary Estate are not part of forest produce defined u/s 2(f).

6. Section 22 stipulates that no right of any description shall be acquired in or over a Reserved Forest except under a grant or contract in writing made by or on behalf of the Government. On the ground that in this case there is no lease executed between the Government and the so called lessee, the learned Advocate General contends that the petitioner is not entitled to any rights to the Rosary Estate, because it is part and parcel of a Reserved Forest. It is an admitted fact that the petitioner's husband, late P.D. Paul, was put in possession of this property on 22.2.1955. Under what circumstances he was put in possession and what are the consequences is a matter which has to be decided in the other litigations, that are now pending, namely, O.P. No. 14721 of 1994 and A.S. No. 74 of 1993. The fact remains that the land was in possession of late

P.D. Paul and subsequently of the petitioner from 22.2.1955 onwards. It is also an admitted fact that virgin reserve forest was converted into plantations and various plantation crops have been grown. A perusal of the Commissioner's report clearly shows that the petitioner and her men are attending to the plantations and they are gathering the produce and that the produce of the plantations has been kept stored in the godowns and stores. Paragraph 13 of the Commissioner's report also shows that even after taking possession of the property of 5-10-1993, the workers and staff were living in the Estate and that the wages are being paid to the workers by the petitioner, Sri. P.D. Antony, Superintendent of the Estate, is maintaining the Estate and its records. The Divisional forest Officer or the forest Range Officer did not tell the Commissioner that they have employed any workers in the Rosary Estate after 5.10.1993 and that they are paying wages of the workers employed by the petitioner. The Divisional forest officer and the Forest Range Officer admitted that they are not maintaining any daily records or documents regarding the works and workers of the Estate. The forest Range Officer only produced a photocopy of the mahazar dated 5.10.1993 prepared while taking over the Estate by the respondents on 5.10.93. In paragraph 14 the commissioner has stated that he is fully satisfied that the produce stored in the godowns/buildings in the Rosary Estate are collected by the petitioner by employing her own labourers who are still residing in the Estate even after taking over of the Estate by the respondents on 5.10.1993. Considering the nature of the produce that is now found stored and the Commissioner's report, it has necessarily to be stated that the produce is the result of the management of the Estate by the petitioner and her employees and workers. The forest department officials have not raised plantations, nor did they collect any produce either from the forest or from the plantations. Prima facie, the petitioner would be entitled to the produce stored in the stores, godowns and buildings in the Rosary Estate.

7. The questions as to whether the petitioner is in lawful possession of the Estate or whether she is in unlawful possession, and she is liable to be evicted by reason of Section 22 and 66 of the Forest Act are all questions which are to be decided in the other pending litigations. In such situation, the petitioner is certainly entitled to some of the reliefs asked for the this Writ petition. She is certainly entitled to first and second prayers which are to issue a writ of mandamus to restrain the respondents from conducting the auctions in pursuance of Ext. P8 notification and to issue a writ of mandamus or direction restraining the respondents from removing coffee, rubber sheets, pepper, areca nuts, cardamom stored in the godowns and stores of the Rosary Estate. After the original petition has been filed, as auctions were conducted on 7.6.1994 and 3.8.1994 certain complications have arisen. On 6.6.1994 itself this Court passed orders in C.M.P. No. 13030 of 1994 staying the confirmation of the sale. In C.M.P. No. 18492 of 1994, for the re-auction also, confirmation of sale has been stayed. The original petition has been amended to introduce prayers (e) and (f). Prayer (e) is to the effect that the auctions conducted on 7.6.1994 and 3.8.1994 are

illegal and void. In view of our findings, there is no difficulty for granting prayer (e). But it is very difficult for this Court to grant relief (f), which is a mandatory direction directing the respondents to hand over possession of the Estate produce to the petitioner unconditionally. The petitioner would get title to this property only when her rights are finally adjudicated the civil court and in the other O.P. Till then it is not open to this Court to grant relief (f) prayed for in the amended O.P. We feel that it would be just and proper for us to restrain the respondents from conducting auctions and to restrain the respondents from removing the produce kept stored in the godowns, stores and buildings of the Rosary Estate. The property should be kept under lock and key and under seal. The forest officials as well as the employees of the petitioner should watch that the produce is carefully preserved till the right and title to the property of the petitioner is finally decided in the other pending litigations. It is open to the petitioner to approach the civil court and claim a declaration of her title to the plantation produce kept stored in the godowns and stores of the Rosary Estate. As and when her title is declared, the petitioner would be entitled to take it away. Until then, it has necessarily to be preserved in safe custody.

In the result, the O.P. is allowed in part. There shall be a direction restraining the respondents from conducting the auction in pursuance of Ext. P8 notification. There shall be a writ of mandamus restraining the respondents from removing the coffee, rubber sheets, pepper, areca nuts, and cardamom kept stored in the godowns and stores of the Rosary Estate. There shall also be a declaration to the effect that the auctions conducted on 7.6.1994 and 3.8.1994 are illegal and void. The O.P. is dismissed with regard to other reliefs prayed for. Each party to bear its own costs.