
(1969) 08 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 2744 of 1968

O. Kammukkutty Haji

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 12-08-1969

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f)

Citation : (1969) KLJ 795

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, V.S. Moothath and N.R.K. Nair, for the Appellant;

Judgement

M.U. Isaac, J.—The petitioner is an owner of large extent of forest lands in Calicut District. The Madras Preservation of Private Forests Act, 1949 (hereinafter referred to as the Act) would admittedly apply to these lands. Section 3 of the Act reads as follows:-- 3. Preservation of private forests:--(1) (a) No owner of any forest shall, without the previous sanction of the District Collector, sell, mortgage, lease or otherwise alienate the whole or any portion of the forest.

Explanation:--Nothing in this sub-section shall be construed as preventing the owner from selling or otherwise dealing with the right to gather and remove forest produce other than trees and timber in the usual or customary manner, for a period not exceeding two years.

1(b) Any alienation in contravention of clause (a) shall be null and void--

(1) If the alienation is of any forest declared.....by the State Government to be a forest under clause (iii) of section 1(2) or of any portion of such a forest, and is made on or after the date on which the declaration takes effect;

(ii) If the alienation is of any forest in the districts of Malabar and South Kanara having a contiguous area exceeding 100 acres (not being the forest owned by a single person or by more than one person jointly before the commencement of

the Madras Preservation of Private Forests (Second Amendment) Act, 1954, or of any portion of such a forest, and is made on or after 24th June, 1953;

(iii) if the alienation is of any other forest, or of any portion of such a forest, and is made on or after the 16th August, 1946.

(2) No owner of any forest, and no person claiming under him, whether by virtue of a contract, licence or any other transaction entered into before or after the commencement of the Madras Preservation of Private Forests Act, 1946 (Madras Act XVIII) of 1946), or any other person shall, without the previous permission of the District Collector, cut trees or do any act likely to denude the forest or diminish its utility as a forest:

Provided that nothing contained in this sub-section shall apply to the removal of dead or fallen trees or to any act done for the usual customary domestic purposes or for making agricultural implements.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government may exempt any forest or class of forests or class of trees therein from all or any of the provisions of this section.

Section 10 of the Act empowers the Government to make rules for carrying out the purpose of the Act and that section reads:--

10. Power to make rules;--(1) The State Government may make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for--

(a) the classes or kinds of trees which may be permitted to be cut and the girth of such trees;

(b) the terms and conditions subject to which permissions may be granted;

(c) the procedure to be followed by the District Collector before granting permissions.

In exercise of the power conferred under the above section the Government have made rules, which have been amended from time to time. One of the amendments was made by G. O. Ms. 180/Agri. dated 23rd March 1968, regarding which a notification was published in the Kerala Gazette dated 9th April 1968. By this notification, rules 6 and 12 were substituted by new rules; and rules 18, 19 and 20 were inserted after rule 17. Rule 12, as it stood before the above amendment, provided that every application made u/s 3 of the Act for permission to alienate land or to cut trees for Punam or Kumri cultivation in Malabar and South Canara shall be affixed with a court-fee label of the value of Rs. 1/-. Rule 6 provided that every application other than an application referred to in Rule 12 shall be affixed with a court-fee label of Rs. 10/- which shall not be refunded even if the application is rejected. The amendments introduced by the

above notification are the following:--

1. For Rule 6, the following shall be substituted, namely:

6. Every application including appeal petitions, other than application referred to in rule 12 shall be affixed with court fee label for Rs.50.

2. For rule 12, the following shall be substituted, namely:

12. Every application to the District Collector for permission to alienate land or to cut trees for Punam or Kumri cultivation, as the case may be, in the districts of Palghat, Kozhikode and Cannanore, made u/s 3 of the Madras Preservation of Private Forests Act 1949, by the owner of a forest or any person claiming under him shall be affixed with court fee label for rupees five.

3. After rule 17, the following rules shall be added, namely:

18. Every application for permits for clear felling shall be affixed with court fee label at the rate of Rupees 25 (Rupees Twenty five only) per acre.

19. Every application for permits for selection felling shall be affixed with court fee label at the rate of Rs.20 (Rupees twenty only) per acre.

20. Every application for permits for other purposes shall be affixed with court fee label at the rate of Rs.5 (Rupees Five only) per acre.

In April 1968, the petitioner made an application to the second respondent, the District Collector, Calicut to grant him permission u/s 3(2) of the Act to fell and remove 570 selected and marked trees from an area of 150 acres of forest land belonging to him. That application was affixed with a court-fee label for the value of Rs. 10/- as required by Rule 6 as it stood before its amendment. The application was returned by the second respondent, stating that under the Rules as amended by the aforesaid notification, the application had to be affixed with a court-fee label at the rate of Rs. 20/- per acre. The reference is obviously to rule 19. Being aggrieved by the refusal of the second respondent to consider the petitioner's application on the above ground, the petitioner has filed this Original Petition for a declaration that Section 3(2) of the Act is illegal and unconstitutional, and that rule 19 of the Rules is void and ultra vires of Section 10 of the Act, and in the alternative to direct the second respondent to treat the petitioner's application made u/s 3(2) of the Act as valid and dispose of it in accordance with law.

2. Section 3(2) of the Act is attacked on the ground that it is violative of petitioner's fundamental right under Article 19 (1)(f) of the Constitution to acquire, hold and dispose of property. This right is subject to reasonable restrictions in the interest of the general public. The preamble of the Act shows that it is a law, made for preventing the indiscriminate destruction of private forests and interference with customary and prescriptive rights therein, and for certain other purposes. The restriction imposed u/s 3(2) is not absolute. It is regulatory in character and it is a necessary measure for preventing the

indiscriminate destruction of private forests. There can, therefore, be no doubt that the restriction, contained in Section 3(2) is a reasonable restriction in the interest of the general public. The attack made by the petitioner against the constitutional validity of the said provision has, therefore, no substance.

3. The petitioner's contention that rule 19 of the Rules is ultra vires of Section 10 of the Act seems to be well-founded. The levy under the above rule is a very onerous one; and it is made on an ad valorem basis. The petitioner, who has made an application for a permission to cut certain trees from 150 acres of his forest land, has to pay a sum of Rs, 3,000/- for his application being entertained.

The application may be allowed or dismissed by the District Collector. The impugned levy has no relation to the fate of the application. The first respondent, the state of Kerala, has filed a counter-affidavit, according to which the impugned levy is a fee, and the Government are entitled to make rules in exercise of the powers vested u/s 10 of the Act to impose the said fee. In support of its contention that the levy under rule 19 is a fee, the counter affidavit states as follows:--

The provisions of the Madras Preservation of Private Forests Act are being administered by the District Collectors with the assistance of the Divisional Forest Officers. The Government are incurring huge expenses for the rendering of services to the permit holders under the Madras Preservation of Private Forests Act and for taking supervisory and regulatory measures under the Act. The payer of the fee is benefitted by the services rendered by the department and by the control and regulatory measures taken by the department in relation to his business activities. On the basis of the figures for the last three years Government found that the average expenses incurred by the Department for rendering services to every acre of clear-felling area is more than Rs.27/-. Inasmuch as the payer of the fee is benefitted by the service rendered by the department Government thought it fit to amend the rules framed under the Madras Preservation of Private Forests Act by adding Rule 19 which provides that every application for permit for selection felling shall be accompanied with court label at the rate of Rs.20/- per acre. It is submitted that the fee collected is commensurate with the expenses incurred by the Government or the services rendered to the payer of the fee.

4. I am concerned in this case with an applicant for a permit to cut trees from his forest land. The services which are alleged being rendered are to permit holders. Admittedly, no services are rendered to applicants for permits, nor is there any scope for the same. Hence there is no question of levying any fee from an applicant for a permit u/s 3(2) of the Act. The impugned levy is liable to be quashed on this short ground.

5. The petitioner has filed a reply affidavit denying the averments in the counter-affidavit, and stating in particular that the Government are not doing any sort of service for the benefit of permit holders. The averments in the counter-affidavit

are as vague as they could be. It has not disclosed even the nature of the alleged services rendered by the Government, nor stated what they are. There is nothing before me to show that there is any scope for rendering any particular or special services to the permit holders or that the Government have been actually rendering any such services. The facts and figures said to be in the possession of the Government, which would show that the government have been incurring large expenditure for the services rendered by them, and that the fee levied is commensurate with the expenses incurred, have not been placed before court, nor even disclosed in the counter-affidavit. I am, therefore, unable to accept or act upon the assertions contained in the counter-affidavit.

6. It is one of the essential characteristics of fee that it should been-marked for the purpose for which it is collected. There is no dispute that the amounts collected under Rule 19 are not ear-marked for the alleged purpose for which they are collected. On the other hand, the whole amount goes to the general revenue of the State. The contention of the State that the amount collected under Rule 19 is fee is, therefore, devoid of any merit.

7. There is also no substance in the contention that the levy imposed under rule 19 is one which can be imposed by a rule made u/s 10 of the Act. This section does not specifically empower the Government to make rules for levy of any tax or fee; nor is such a levy necessary for carrying out the purposes of the Act, as far as they are discernable from its provisions. In the result, I hold that rule 19 of the Rules made under the Act is ultra vires of Section 10 of the Act; and I direct the second respondent to entertain the petitioner's application without the court-fee as required by the said rule and dispose of the same according to law. The respondents will pay the costs of the petitioner. Counsel's fee is fixed at Rs. 200/-.