
(2002) 02 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 858 of 1995

P.J. Mathew

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Citation : (2002) 2 KLJ 240

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : R. Ramadas, for the Appellant; Viju Thomas (G.P.), for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran

1. This Original Petition is filed seeking for quashing Ext.p6 and praying for a writ of mandamus directing the respondents to assign 4.05 acres of land in Sy.No.2045 of Palakkayam Village in Mannarkkad Taluk in favour of the petitioner on the basis of G.O. (MS) No.655/89/RD dated 31.8.1989. Consequential reliefs have also been prayed for. According to the petitioner, he had purchased the said parcel of land from one Chacko and who on his part had obtained the properties by an oral lease from Mankada Kovilakam. A purchase certificate dated 15-5.1976 is seen issued in his favour. However, it is not disputed that the petitioner had made an application before the Forest Tribunal, Palakkad under the Kerala Private Forests (Vesting and Assignment) Act, 1971 for a declaration that the property in question is not a vested forest as O.A.No.391/76. But, the Tribunal came to the conclusion that the said property stood vested as private forest, and the application was dismissed. This order was thereafter confirmed by this Court in appeal, on 30-10-1979.

2. The claim of the petitioner is that he was in possession of the land throughout. The present claim was on the strength of G.O. (MS) No.655/89 dated

31-8-1989. Petitioner had moved afresh claiming the benefits that were reserved by the above Government order. He submits that those who were in occupation of forest lands as on 1-1-1977 are entitled to get the, benefit of possession and assignment of such land in their favour, as per the said Government Order. Even though a copy of the said order was not produced by the petitioner, the Government had made available the same as Ext.R3-D appended to the counter affidavit. The petitioner has produced Exts.P2 and P3, which were clarificatory orders issued subsequent to Ext.R3-D. It is to be noted that the petitioner has succeeded in arranging for a joint inspection pursuant to the above claims put up and the Mahazar is produced as Ext.P4 which certifies that the petitioner was in possession of the property from 1977 onwards. However, the report shows that in 1977 the Forest Department was in possession of the land for arranging plantation of cashew and other crops. The cut off date of G.O. (MS) 655/89 is 1.1.1977. But, however, it was not certified that the petitioner was in possession of the properties as on the said day.

3. During the pendency of the application so filed by the petitioner, Forest Department had exercised their rights over the property and the Revenue Divisional Officer, Ottappalam, on an application filed by the petitioner, had directed them by Ext. P5 dated 16.4.1994 not to interfere with the possession. The petitioner had heavily relied on the report of the Tahsildar, Mannarkkad to show that himself and his predecessors were in possession of the land from 1956 onwards. But after hearing the petitioner and the Forests Officials, by Ext.P6 dated 16-8-1994, the Revenue Divisional Officer held that the petitioner had not succeeded in establishing his rights of ownership or possession over the properties. The files were closed. Challenging the order the petitioner submits that on the basis of the Government Order dated 31-8-1989 and on the basis of his possession the rejection was irregular exercise of power.

4. Relying on Ext.R3-D Government Order, the learned Government Pleader submits that the petitioner's claims were abinitio misconceived. It is pointed out that the said order specifically excluded cases in the nature of those projected by the petitioner. Para 4 is to the following effect:

4. With respect to vested forests the joint verification will be restricted to those areas which are not. covered by litigation before the Forest Tribunal or Courts of law."

The Government Pleader submits further that the observation in Ext. P6 to the effect that the petitioner may approach appropriate authority under Act 1971 has obviously come to be passed, since the petitioner had not placed the relevant materials before the Revenue Divisional Officer. As the matter had been concluded by the decision, by the appropriate authority, it could not have been possible for the petitioner to move de novo or by any collateral method. The attempt of the Government, by issuing Ext. R3D order, was to exclude the cases which had been subjected to adjudication, and it was never the intention of the Government to reopen the matters which were already closed or those which are

pending before the Forest Tribunal or Courts of law. The basic eligibility of the petitioner to claim any benefits under Ext. R3D were therefore non-existent. This appears to be the correct legal position.

5. It may also be examined whether the petitioner can urge any claims on the basis of the orders of the Land Tribunal, produced as Ext.PI. It does not disclose that any of the proper parties had been heard and their views ascertained before the orders were passed. The lands were forest lands, vested in the Government by statutory prescription. This aspect has not been gone into. The Government had not been made a party, and what is evidenced is a casual approach by the Tribunal. It cannot bind the Government, and can confer little rights on the petitioner. It is also to be noticed that the petitioner was aware of the situation, and this had prompted him to approach the Forest Tribunal, though the attempt had aborted. No valid rights could have therefore been gone in favour of the petitioner, by passing Ext.p1.

6. In the aforesaid circumstances, it may not be possible to concede the request of the learned counsel for the petitioner, that the matter should be appropriately considered by the Government once again even in the light of the possession that is claimed by him, but stoutly disputed. The petitioner has not been able to establish his possession nor is there any justification for an adjudication de novo.

7. Before concluding, one more aspect has to be noticed. Ext. R3-D appears to be an ambitious effort, and its bona fides susceptible to doubt. After the vesting and Assignment Act, the Government ought to have been reluctant to interfere in such matters, which ought to have been left to be examined by the Forest Tribunals. As I am not called upon to decide the validity of Ext. R3-D, I am not venturing to probe into it further, but would observe that scope for litigation and claims are unnecessarily cut open. For the purpose of this case, I hold that the petitioner has no sustainable rights emanating from Ext. R3-D for a consideration of his claims. Ext.p6 does not require interference. The Original Petition is dismissed, no. costs.