

(2000) 11 KL CK 0055

In the High Court Of Kerala

Case No : M.P.A. No"s. 768 of 1987-A and 97 of 1988

Ram Bahadur Thakur Pvt. Ltd.

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:

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

Citation : AIR 2001 Ker 89 : (2001) 1 ILR (Ker) 9 : (2001) 3 RCR(Civil) 4

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : Joseph Kodianthara, for the Appellant; James Vincent, Govt. Pleader and Joseph Vellappally, for the Respondent

Judgement

Radhakrishnan, J.—Appellant in M.F.A. 768/87 filed O.A. 72/1977 before Forest Tribunal, Palakkad u/s 8 of the Kerala Private Forest (Vesting and Assignment) Act, Act 26 of 1971, for exemption of 232.13 acres of land. Those areas were claimed as eucalyptus plantations, grass lands/waste lands, which were not enclaves within wooded areas, fire-belt, water sources and cardamom and coffee plantations. All the 232.13 acres were divided into 14 plots. Forest Tribunal vide its order dated 19-7-1980 had allowed the application holding that the disputed lands do not form part of a vested forest under the provisions of the Kerala Private Forests (Vesting and Assignment) Act, 1971. Matter was taken up in appeal by the state before this Court vide M.F.A. 177/ 81. Appeal was allowed by this Court and directed the Forest Tribunal to reconsider the matter afresh after giving an opportunity to the parties. Against the judgment of this Court in M.F.A. 177/81 the company preferred SLP. 14401/86 before the Supreme Court. Supreme Court disposed of the SLP stating that the competent authority would decide the matter objectively in accordance with law on the basis of the material placed before it in the light of Its own assessment.

2. The Forest Tribunal then heard the matter afresh and passed order dated 31st July, 1987. Out of the 14 items, with respect to items 1, 3 and 11 to 14 Forest

Tribunal took the view that those areas are waste lands which are lying adjoining or bordered by reserve forest that is enclaves with wooded area and therefore would satisfy the definition of private forest. With regard to item No. 10, forest Tribunal concluded that the company has failed to prove that the area was planted with coffee or cardamom prior to 10-5-1971. Items 2, 5, 7 and 8 were exempted by the Tribunal holding that they are either fire belts and almost lie inside the estate and necessary for the protection of the plantation and are principally surrounded by the company's tea area. With regard to Items 4 the Tribunal held it is a eucalyptus plantation subject to a maximum of 28.40 acres would be excluded from the vesting provisions. The Tribunal concluded that the balance areas have not been included in the Land Board proceedings, hence have to be surrendered as waste land within a wooded area. Item 6 was found to be building area and item 9 grass land. Consequently they were also exempted.

3. Appellant in M.F.A. 768/87, that is, Ram Bahadur Thakur Ltd., (hereinafter referred to as the Company) preferred appeal against the findings with regard to item Nos. 1, 3 and 10 to 14 and the State has preferred the appeal against the remaining items. Since common questions are involved in both these appeals they are disposed of by this common judgment.

4. Short facts which are necessary for disposal of these cases are as follows : Travancore Tea Estates Company Limited, was a company incorporated in the United Kingdom owned eight estates including Tungamullay estate comprising of a total area of 9338, 46.50 acres. All the estates were planted with tea. Subsequently cardamom was also planted. Ram Bahadur Thakur Private Limited is a company incorporated in India having its registered office at Kochi. The company purchased all the estates and assets belonging to Travancore Tea Estate Company. One of such estates purchased by the company was Thungamullay Estate in Vandiperiyar Village. According to the company the Thungamullay Estate like other estates of the company is principally planted with tea. Extent of the tea plantation comes to more than 340 hectares. The estate has also lands interspersed within the tea area and lands used for purposes ancillary to cultivation and manufacture of tea. Company has no land which falls within the definition of Kerala Private forest (Vesting and Assignment) Act, 1971, lands held by the company, according to them, are outside the purview of the said Act. However, the forest authorities have demarcated the land involved in the application presumably on the mistaken impression that the lands are private forest vested in the Government. Demarcation was done on 15th May, 1977. Since demarcation was wrongly done and that there is dispute with regard to the question whether lands are private forest or not company preferred an application u/s 8 of the Act for declaration that those lands are not private forest.

5. We have indicated that dispute is with regard to 14 items which form part of 232.13 acres referred to in the application. Though the application refers to a total extent is 232.13 acres, in this case, the counsel for the company stated that the company is concerned only with 159.50 acres of land now. Item Nos. 1, 3, 10

to 14 now cover 101 acres only since some portion of those items had been surrendered by the Travancore Tea Company as excess land.

6. We will first deal with item No. 1, 3 and 10 to 14 which we have already indicated that the Tribunal has found forms part of the private forest and consequently vested in the State. Counsel for the appellant company Sri. Joseph Kodiyanthara submitted that the finding of the forest Tribunal with regard to items 1, 3, and 11 to 14 that the waste lands lying adjoining/are bordered by reserve forest are not factually and legally correct. According to the counsel, a major portion of those items lies adjoining the plantation area of the company. Counsel submitted item No. 1, that is, 42.40 acres, is not a private forest. This land is reserved for expansion of the tea estate. Further, 34.97 acres out of 42.40 acres were taken possession of by the State vide its order in ceiling case No. H6. 195/72/P of the Taluk Land Board, Peermade. Remaining area is bounded by Thungamullay Tea Estate on the north as well as east. Only on the southern and western side there are Government Forest. Counsel submitted as far as company is concerned, out of 42.40 acres, 34.97 acres were held excess land and the company is in possession of the balance extent of land. With regard to item No. 2, which is approximately 2 acres of land in survey No. 67/15 in the north and east estates owned by the company and on the south is the land ordered to be surrendered to the Government under the Kerala Land Reforms Act so also in the west. With regard to item No. 3 counsel submitted, that is 5.03 acres, on the north, south and west are company's tea estates and only on the east is the Government property. Counsel submitted he is not very much concerned with this item since the property has already been surrendered. With regard to item No. 4 counsel submitted, on the south as well as west borders are the company's tea estate and only on the north and south Government Properties. This item covers an area of 66.40 acres, out of which 28.40 acres have already been exempted by the forest Tribunal after having found that the same is eucalyptus plantation. With regard to the remaining area company is not very much concerned since the area has already been surrendered as excess land to the State. With regard to item No. 5 counsel submitted, the same is fire belt and therefore to be exempted. So also item Nos. 6 and 7. Item No. 8 and 9 have already been exempted by the Forest Tribunal after having found the same is eucalyptus plantation.

7. Counsel for the appellant submitted that the Forest Tribunal has misdirected itself in treating item Nos. 1. 3 and 11 to 14 as enclaves merely on the ground that Government forest borders those items in some portions. According to the counsel, forest Tribunal failed to appreciate the scope of the definition of private forest u/s 2 of Act 26 of 1971. Counsel submitted there is a clear distinction between "private forest in the MPPF area" and the "remaining areas" as appearing in Section 2 (f) (1) and (2) of Act 26 of 1971. According to the counsel in order to claim exemption with regard to land covered by MPPF Act those lands must be used principally for cultivation of tea, coffee, cocoa, -rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such

crops or for the preparation of the same for the market. Counsel submitted as far as the company's lands are concerned they are not falling under the definition of "private forest" to which MPPF Act applies. Counsel drew a distinction between "Private Forest covered by MPPF Act and the remaining areas" u/s 2(f)(1) and (2) of the Act. Only forests not owned by the Government including waste land which are enclaves within wooded area would satisfy the definition of private forest. According to the counsel on a perusal of the C1 plan as well as other documents would show that none of the items including items 1, 3 and 11 to 14 are enclaves within wooded area. On the other hand, a major portion of all those items lies adjoining the plantation area of the company. Counsel submitted therefore Forest Tribunal has committed a serious error in treating those items as enclaves merely on the ground that some portions are bordering Government Forest. Counsel referred to a decision of this Court in *Merchiston Estate v. State of Kerala* (1997) 2 KLT 572. Counsel also made reference to Ext. A1 document by which the company obtained title to the property. Document shows that item No. 1 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. Item No. 2 is also bordered by the company's estate. Counsel therefore submitted that items 1, 3 and 11 to 14 are not private forest and the findings by the Forest Tribunal to that effect is illegal.

8. Counsel submitted with regard to item No. 10 that the Forest Tribunal has committed a grave error in concluding that the area has to be shown to be principally planted with cardamom prior to 10-5-1971 in order to claim exemption. According to the counsel entire item No. 10 lies within the company's tea estate. Counsel referred to Ext. C1 plan produced by the Advocate Commissioner and submitted trees standing thereon have been found to be planted by the company. Counsel submitted that even if it is found that the land was not planted with cardamom as on 10-5-1971, since those lands are not enclaves within wooded area but surrounded by the company's tea plantation the same would not satisfy the definition of private forest u/s 2 (f)(2) of the Act. Counsel also contended relying upon A1 to A4 that 46.75 acres of cardamom area was shown separately under Thungamullay Estate and those areas along with other cardamom area in total was shown as 455.17 acres. Referring to the order of the Taluk Land Board, counsel submitted that entire area was exempted by the Land Board treating the same as plantation. Counsel therefore submitted that the land in question was exempted as plantation under the Kerala Land Reforms Act as on 1-1-1970. Counsel submitted that the Tribunal committed an error in not referring to the statement filed along with Ext. A2. Counsel also submitted report of the non-official members of the Taluk Land Board, A3, the report of the forest Tribunal Local Inspection and the report of the Advocate Commissioner and the details given therein would indicate that the area in question was also planted with cardamom before the appointed day. Referring to the reports counsel submitted that there were old coffee plants in that area. Those areas were subsequently converted as cardamom. Report coupled with the decision of

the Taluk Land Board, according to the counsel, would show that the area was plantation prior to 10- 5-1971. Therefore the same cannot be treated as private forest within the meaning of Section 2 (f) (2) of the Act.

9. Learned counsel for the State Sri. James Vincent fully endorsed the finding of the forest Tribunal with regard to items 1, 3 and 10 to 14. He also disputed the correctness of the finding of the Tribunal with regard to items 2 and 4 to 9. According to the counsel, on the perusal of C1 plan would reveal that items 1 to 8, 11, 12 and 14 are not enclaves within the estate and only items 9, 10 and 13 are enclaves but items 1 to 8, 11, 12 and 14 are surrounded by reserve forest / vested forest lands and therefore no relief could be granted in respect of items 1 to 8, 11, 12 and 14. Learned Govt. Pleader submitted that the company purchased the land only in 1976. Therefore they are not legally entitled to maintain an application u/s 8 or claiming the benefit of exemption u/s 3. According to the learned Govt. Pleader exemption could be availed of only by those persons who had ownership and possession of the property in question as on 10- 5-1971. Learned Govt. Pleader referred to a decision of this Court in *Koya v. State of Kerala* (1987) 1 KLT 830. Learned Govt. Pleader also submitted with reference to paragraph 4 of the judgment in *M.F.A. 177/81* that after remand the company did not produce any documents to claim for exemption. Relying upon the Full Bench decision of this Court in *State of Kerala v. Chandralekha* (1995) 2 K.LT 152 counsel submitted that the burden is upon the company to show that the properties are not private forest and that they are entitled to get exemption. Counsel submitted this burden has not been discharged by the company. Learned Govt. Pleader relying upon the decision of the Apex Court in *Indian Oil Corporation Limited v. State of Bihar* AIR 1986 SC 1780, *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another*, and the judgment in Civil Appeal No. 12309/1996 submitted that since SLP was dismissed at the admission stage the observation contained therein cannot be of any consequence as far as the State is concerned since State was not a party to the SLP and that no notice was taken out to the State. Learned Government Pleader also submitted that even though PWs. 1 and 2 the previous managers of the estate have asserted that they have got licenses from the department to show that property was planted with cardamom no records were produced. Counsel submitted apart from the oral evidence of PWs. 1 and 2 there is no other independent evidence to establish the claim of the company. It is also his case no attempt has been made to reconcile the oral evidence of PWs. 1 and 2, Exts. A2 to A4 and A5. With regards to Items 4 and 7 learned Govt. Pleader submitted that the applicant has to substantiate his case, he also submitted that the company was not entitled to maintain an application under the Act since they purchased the property only in 1976. Reference was made to the decision of this Court in *M.S. Bhargavi Amma and Vs. State of Kerala and Another*, .

10. In order to appreciate the rival contentions it is necessary to understand the scope of definition of private forest as defined u/s 2 (f) of Act 26 of 1971. The said provision is extracted below for easy reference.

"2. (0 "Private forest" means -

(1) In relation to the Malabar district referred to in Sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956 -

(i) any land to which the Madras Preservation of Private forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding -

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964).

(B) land which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

Explanation :-- Lands used for the construction of office buildings, godown, factories, quarters for workmen, hospitals, schools and play-grounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining area in the State of Kerala any forest not owned by the Government including waste lands which are enclaves within wooded areas.

Explanation :-- For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs."

The above definition clause would show that Section 2 (f) (1) (i) A. B, C, D deals with lands to which Madras preservation of Private Forests Act, 1949 applied immediately prior to 10-5-1971. However, lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964) though to which Madras Preservation of Private Forest Act applied was excluded. Lands which are used principally for the cultivation of tea, coffee, cocoa, rubber cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market, included within the scope of Madras preservation of Private Forest Act, 1949 was also excluded. So also lands which are principally cultivated with cashew or other fruit bearing tree or are principally cultivated with any other agricultural crop and also sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of such building were excluded from the purview of definition of private

forest even though governed by the erstwhile Madras Preservation of Private Forests Act, 1949.

11. The definition clause 2 (f) (1) (11) also deals with lands in the Malabar district which were referred to in Sub-section (2) of Section 5 of the States Reorganisation Act but not covered by the Madras Preservation of Private forests Act, 1949. The definition clause shows that any forest not owned by the Government, to which the Madras preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas would also come within the definition of Private Forest. Therefore essentially Section 2 (f)(1) (i) ABCD deals with those lands situated in the Malabar district and governed by the Madras Preservation of Private Forest Act, 1949 and Section 2 (f) (1) (ii) deals with lands in the Malabar district referred to in Sub-section (2) of Section 5 of the State Reorganisation Act, 1956. but not covered by the Madras Preservation of Private forest Act, 1949. Waste lands which are enclaves within wooded areas also is a private forest within the definition of Section 2 (f) (ii) of the Act, We noticed that the land concerned in this case falls in the Idukky District. Section 2 (f) (2) deals with those lands in the State of Kerala excluding lands which were in the Malabar district governed by the M.P.P.F. Act or otherwise, but falls within the remaining area within the State of Kerala. Said provision says, any forest not owned by the Government in relation to the remaining areas in the State of Kerala including waste lands which are enclaves within the wooded areas satisfy the definition of private forest under Act 26 of 1971. We may mention the word "forest" as such is not defined either in Act 26 of 1971 or in the Kerala Forest Act, Act 4 of 1962. In State of Kerala v. Anglo American Direct Tea Trading Co. 1980 K LT 215 the meaning of the private forest was examined. The Bench held the term "private forest" has been used in the Act 26 of 1971 as lands other than those on which human skill, labour and resources have been spent for agricultural purpose. The definition clause of Section 2 (f) (2) uses the expression "any forest". The word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute. Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, relying upon Black's Law Dictionary stated the use of the word "any" in the context it has been used in wider sense extending from one to all. The meaning of word "any" has been considered by the Apex Court in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, and stated as follows :

"Unless the legislature had intended that both classes of tenants can be asked to vacate by the Rent Controller for providing the landlord additional accommodation, but it for residential or non-residential purposes, it would not have used the word "any" instead of using the letter "a" to denote a tenant.

The definition clause in Section 2 (f) (2) takes in waste lands which are enclaves within wooded areas also within the meaning of Private Forest.

12. Counsel for the appellant submitted that only waste lands which are enclaves within the wooded area alone would come within the meaning of private forest u/s 2 (0) (2). We are of the view it is difficult to accept the contention of the counsel. No such meaning could be spelt out of Section 2 (f) (2). The expression "any forest" u/s 2 (f) (2) is of the wider impact. The word "any" as we have already indicated has been used by the legislature to bring in all lands which could be treated as forest though not owned by the State. Legislature has used an inclusive definition thereby waste lands which are enclaves within wooded areas are also Included in the definition of private forest. When the legislature uses an inclusive definition it enlarges the meaning of the word or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.

13. Gajendragadkar, J. in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, dealing with the definition of "Industry" in the Industrial Disputes Act, 1947 observed : it is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation. The Apex Court again in *The Forest Range Officer and others Vs. P. Mohammed Ali and others*, held the word "include" when used in an interpretation clause, it seeks to enlarge the meaning of the words or phrases occurring in the body of the statute. Same is the view taken by the Apex Court in *Regional Director, Employees" State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another*, and also in *P. Kasilingam and others Vs. P.S.G. College of Technology and others*, . Therefore the mere fact that the definition clause specifically includes waste which are enclaves within the wooded areas also within the meaning of Private forest does not mean that all those waste lands which are not enclaves or not within the wooded area are not private forest.

14. Counsel for the appellant has referred to *Merchiston Estate case* (1997 (2) KLJ 572) (supra). We are of the view that the said decision cannot be understood to have laid down the proposition that the waste lands which are enclaves within a wooded area alone would form part of private forest or that just because of a particular property has a plantation as its boundary on two sides, it is necessary to be part of a plantation and therefore not a private forest. The *Bhavahi Tea & Produce Co. Ltd. v. State of Kerala* 1991 1 KLT 666 have not laid down a proposition that the definition of private Forest would take in only those waste lands which are enclaves within wooded area. We are of the view that waste lands though border the plantation could still be a private forest within the meaning of Section 2 (f) (2) of the Act if it has got the characteristics of a forest. We are of the view the burden is on the applicant to prove that waste lands bordering a plantation still form an integral part of the plantation. The Full Bench of this Court in *State of Kerala v. Chandralekha* (1995) 2 KLT 152 : (1995 AIHC

4946) held that a person who prefers a claim before the Tribunal that the property is not a private forest or that it has not vested under the Act has the burden to establish his case.

15. We may analyse the facts in the present case in the light of the above mentioned principle especially with regard to item Nos. 1.3, 11 to 14. With regard to item No. 1 we are concerned with balance area of 7.5 acres. Southern and western side of that item are Government forest. The commissioner in his report dated 25-3-1987 has stated with regard to item No. 1 that there are only three or four trees standing here and there which appeared to be a spontaneous growth. We may appreciate the evidence adduced in this case read with the explanation to Section 2 (f) (2). For the purpose of that clause land shall be deemed to be waste land notwithstanding the existence thereon -of scattered trees or shrubs. There is no evidence in this case to show that item No. 1 is necessary for the convenient enjoyment of the estate or that it is part of the plantation. In the absence of any evidence to show that item No. 1 is a plantation prior to 1 -5-1971 or necessary for the convenient enjoyment we are of the view that the said items satisfy the definition of waste land, even though the said land is not an enclave within the wooded area. We are therefore of the view even if item No. 1 is not an enclave within a wooded area still it is a waste land which forms part of forest and hence a private forest within the definition of Section 2 (f) (2) of the Act. We are of the view the Forest Tribunal was right in its conclusion that the applicant failed to prove that it forms part of his plantation or necessary for its protection or use.

16. With regard to item No. 3, learned counsel for the appellant stated that the same has already surrendered and therefore no relief could be granted with regard to item No. 3. With regard to item No. 4 which covers about 66.40 acres, appellant claims exemption only with regard to 28.40 acres. Balance extent of land has already been surrendered to State as excess land. Facts reveal that item No. 4 lies adjacent to the Estate Bangalow, staff quarters and it is a eucalyptus plantation which would be necessary for the fire wood purpose of the estate, namely, for the purpose of manufacture of tea and also for domestic needs of the staff. We find Tribunal was justified in treating the said area as eucalyptus plantation and excluding from the purview of the Act, in this connection it is relevant to note the decision of this Court in State of Kerala v. Anglo American Direct Tea Trading Co. 1980 KLT 215. It was held that a eucalyptus plantation within a tea estate in Travancore Cochin area would not vest under the provisions of the vesting Act. Reference may also be made to the decision of the Apex Court in State of Kerala and Another Vs. Nilgiri Tea Estates Ltd., , wherein the Apex Court relying upon the decision in The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc., reported as follows : (at p. 60 and 61 of AIR)

"Lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands. They would certainly not be to rests but the

statements in the petitions seem to suggest that operations were carried hereon for the express purpose of growing these plants and trees. However, lands which are covered by eucalyptus or teak growing spontaneously as in a Jungle or a forest, would be outside the purview of acquisition."

We noticed in the instant case, that the eucalyptus trees in the area is necessary for the fire wood purpose for manufacture of tea. Therefore we are of the view that the Forest Tribunal was justified in excluding that item.

17. Item No. 5 which covers 1.62 acres in Sy. No. 67/5 should also be treated as fire belt to protect the estate from fire. We do not find any reason to disturb the said finding. With regard to items 6 and 7 we noticed that those are waste land almost lying inside the estate which would necessary for protection of the estate. We do not find any reason to disturb the said finding. So also items 8 and 9 which are fire belt area do not touch forest area but is, bounded by eucalyptus on the one side and tea area on the side. This may be necessary for protection as well as use of the plantation. We are of the view that Forest Tribunal is justified in excluding those items.

18. We notice with regard to items 11 to 14 the commission report says that there are no trees or any other growth. Item No. 11 is 26.70 acres of land in survey No. 286. We noticed, southern boundary of said item is Periyar River and Government land. Item No. 12 is 40 cents in survey No. 212, item No. 13 is 2.50 acres in Sy. No. 67/10 and item No. 14 is 85 cents of land in Sy. 67/5. It was claimed that items 12, 13 and 14 are grass land interspersed within the lea estate. We noticed that item No. 11, 12 and 14 lie on the southern boundary of estate touching reserve forest. Commissioner in Ext. C2 has reported that there are no trees in items 11 to 14. We are of the view even if item No. 11 to 14 are not enclaves within a wooded area still forms part of private forest within the meaning of Section 2 (f) and therefore vests on the State. We arc of the view that the applicant has not discharged the burden of the showing that items No. 11 to 14 do not form part of private forest and that those items are integral part of the plantation.

19. With regard to item No. 10, we may notice that the said item lies within the company's tea estate. Ext. C1 plan produced by the Commissioner would establish the said fact. The report of the non-official members of the Taluk Land Board, the report of the Forest Tribunal Local Inspection and the report of the Advocate Commissioner would also indicate that those areas were also planted with cardamom prior to the ap- pointed day. Coupled with the report that those areas of properly was plantation of cardamom and also the fact that those areas come within the estate of the company we have no hesitation to hold that those areas are liable to be exempted. In this connection we may notice that the statement annexed to Ext. A2 return/objection would show that 46.75 acres of cardamom area was shown separately under Thungamullay Estate and this area along with other cardamom areas in total was shown to be 455.17 acres. The entire area was exempted by the Land Board under the Kerala Land Reforms Act

as plantation. Therefore learned counsel for the appellant is right in his contention that the land in question has been exempted as plantation under the Kerala Land Reforms Act, as on 1-1-1970 and consequently the said area cannot be treated as private forest under the provisions of the Vesting Act as on 10-5-1971. We noticed that the statement: annexed to Ext. A2 objection/return was not taken note of by the Forest Tribunal. Under circumstance we are inclined to take the view that item 10 has to be exempted in toto since it comes within the estate.

20. We are of the view that the learned Govt. pleader is not right in his contention that the appellant has no locus standi to maintain the application before the Forest Tribunal u/s 8 of the Act, or u/s 3 since the company is a transferee subsequent to 10-5-1971. We are of the view that j learned Govt. Pleader misunderstood the scope of Section 8. This is a case where there is genuine dispute as to whether the property in question is a private forest or not. It was under such circumstance, in order to resolve that dispute the application was preferred by the appellant. The company has not claimed exemption as such u/s 3 of the Act. According to the appellant the entire area belongs to the company and not vested on the State under Act 26 of 1971. We also notice the question of maintainability was also not raised by the State either before the Forest Tribunal or before this Court on earlier occasion as well. We find that contention has no basis. We reject that contention.

21. We therefore modify the order of the Tribunal to the extent of excluding item No. 10 from the purview of Act 26 of 1971 since item comes within the tea plantation and therefore not a private forest. In all other respect we confirm the order of the Forest Tribunal for the reasons indicated herein before. We therefore allow the appeal M.F.A. 768/87 to the extent indicated herein before and dismiss the State appeal, M.F.A. 97 of 1988.