

**(1995) 07 KL CK 0019**  
**In the High Court Of Kerala**  
**Case No : M.F.A. No. 865 of 1986**

|                             |    |            |
|-----------------------------|----|------------|
| State of Kerala and Another | Vs | APPELLANT  |
| C. Chandralekha and Others  |    | RESPONDENT |

**Date of Decision :** 05-07-1995

**Acts Referred:**

Kerala Land Reforms Act, 1963 — Section 3(1), 3(2), 3(3)  
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 2, 8  
States Reorganisation Act, 1956 — Section 5(2)

**Citation :** (1995) 07 KL CK 0019

**Hon'ble Judges :** M.M. Pareed Pillay, C.J.; P.A. Mohammed, J.; P. Shanmugam, J

**Bench :** Full Bench

**Advocate :** N. Sankara Menon, Government Pleader, for the Appellant; T.P.K. Nambiar V. Chithambaresh and T.C. Suresh Kumar, for the Respondent

**Final Decision :** Allowed

## Judgement

M.M. Pareed Pillay, C.J.—The Forest Tribunal, Palakkad allowed O.A. Nos. 37, 38, 39, 40 and 41 of 1982 holding that the Respondents could not establish that the lands scheduled in the Original applications form part of private forests coming within the purview of Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act 26 of 1971). The appeal by the State and custodian of vested forests is against the common order of the Forest Tribunal in the aforesaid original applications which were filed u/s 8 of the Act. Altogether 37 81 acres of land has been declared as not vested forests whereby allowing the original applications. Contention of the Appellants (Respondents in the original applications) is that the properties scheduled in the original applications are private forests to which the provisions of the Madras Preservation of Private Forests Act, 1949 applied immediately prior to the commencement of the Kerala Private Forests (Vesting and Assignment) Act, and as such the applicants cannot claim exemption from the vesting under the Act.

2. The question that has been referred to this Court is whether it is for the State

to prove that a particular land is vested forest or it is for the applicants to prove that the land in dispute is not a vested forest. Contention of the State is that the properties scheduled in the original applications are forest land with spontaneous growth and shrub jungle and that they were never brought under cultivation.

3. Learned Government Pleader submitted that Respondents could not have proved a negative fact and as the applicants have to establish their case to get exemption from the vesting under the Act, it is upon them to establish their contention that the properties are not private forests. Government Pleader also submitted that the finding of the Tribunal that the areas involved do not form part of the Kottamala Malavaram having an extent of 93.5 hectares (250 Acres) and that they do not come within the purview of the M.P.P.F. Act is erroneous and unsustainable.

4. Private forest is defined u/s 2(f) of the Vesting Act. The definition is as follows:

(f) "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) 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.

Explanation.- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds 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 areas 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;

5. Section 3(1) provides that notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of Sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished. A person can claim exemption provided it is established that the property held by him is under his personal cultivation and that he does not have land beyond the ceiling limits applicable to him under the Kerala Land Reforms Act. Section 3(2) reads:

(2) Nothing contained in Sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner Under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.

Cultivation includes cultivation of trees or plants of any species. [Vide explanation to Section 3(2)]. Section 8 provides that where any dispute arises as to whether any land is private forest or not or any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may, within such period as may be prescribed apply to the Tribunal for decision of the dispute. Section 8 makes the position clear that it is for the person who claims that the land is not a private forest or that the private forest has not vested in the Government to apply before the Tribunal for decision of the dispute. From a reading of the section it is apparent that the person who prefers a claim before the Tribunal that] the property is not private forest or that it has not vested under the Vesting Act has the burden to establish his case. As he alone can produce necessary evidence in support of his case it can never be held that the onus of proof is on the State to prove that the land in question is a private forest. As the owner of the land has to prefer his claim before the Tribunal that the land is not private forest or that the private forest has not vested in the Government, he has necessarily to establish that claim as he alone is in possession of data and materials to prove his case. The burden is squarely upon him to substantiate his claim. In *State of Kerala v. Kunhiraman* 1990 (1) KLT 383 a Division Bench of this Court held that the burden is on the claimants to prove that the land in question was not private forest on the appointed day.

6. We are unable to accede to the contention that merely on the denial of the applicants that the property is not private forest or that the private forest has not vested in the Government the onus is shifted to the State. As the original applications were filed by the applicants claiming that their properties do not come within the category of private forests and that they have not vested under

the Vesting Act, it is for them to establish their case before the Tribunal. As the Tribunal has not considered the matter in its correct perspective we hold that the appeal has to be allowed.

The appeal is accordingly allowed and the case is remitted to the Tribunal for de novo consideration bearing in mind the legal position regarding the onus of proof. Both sides will be at liberty to adduce fresh evidence before the Tribunal, if they so desire.