

(1989) 02 KL CK 0001
In the High Court Of Kerala
Case No : M. F. A. No. 633 of 1683

State of Kerala and Another	Vs	APPELLANT
T.U. Madhava Perumbra Nair		RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 3, 3(1), 3(3), 8

Citation : (1989) 1 KLJ 444

Hon'ble Judges : P.C. Balakrishna Menon, J; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : M.C. John, Government Pleader, for the Appellant; M.P.R. Nair and M.K. Chandramohan Das, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Menon, J.—The State and the Custodian of Vested Forests appeal against the decision of the Forest Tribunal allowing exemption of the disputed 8.29 acres of land u/s 3 (3) of the Kerala Private Forests (Vesting and Assignment) Act 26/1971. The Tribunal has found that the disputed extent of land is held under a registered document of title executed before the commencement of the Act, the petitioner intends to cultivate the land and he does not own or possess land in excess of the ceiling area applicable to him under the Kerala Land Reforms Act. The learned Senior Government Pleader appearing on behalf of the appellants does not dispute the petitioner's title, but he challenges the finding regarding the extent of land in his possession. Ext A6 is a registered partition deed of the year 1966. The Vesting Act came into force on 10-5-1971. The first ingredient of Section 3 (3) is therefore satisfied. The petitioner has deposed that he intends to cultivate the disputed extent of land and the total extent of land including the disputed area, in his possession is within the ceiling limit applicable to him under the Kerala Land Reforms Act. The Tribunal has on the basis of the documents Exts. A1 to A6 found that the total extent of land in the possession of the petitioner and his family is only 12.14

acres and that his family is entitled to hold 15 acres of land under the Kerala Land Reforms Act.

2. The learned Government Pleader submits that in the absence of a certificate as provided for under Rule 4 of the Kerala Private Forest (Exemption from Vesting) Rules, it is not open to the Tribunal to rely on other evidence to come to a finding that the total extent of land including the disputed area in the possession of the petitioner is within the ceiling limits applicable to him under the Kerala Land Reforms Act. An owner of land claiming exemption from vesting either under sub-section (2) or (3) of Section 3 is given a right to apply to the Custodian on or before 25th August 1974 in Form No. 1 specifying the lands in respect of which he claims exemption. Such an application as required by Rule 4 is to be accompanied by a certificate of the Tahsildar in Form No 2 to the effect that the applicant does not hold any other land in the Taluk. The Custodian on verification of the documents produced along with the application is empowered to make a declaration that the land referred to in the application does not vest in the Government u/s 3(1) of the Act. A certificate under Rule 4 is required only for the purpose of an application under Rule 3. The Rule does not apply to proceedings before the Forest Tribunal. The Tribunal adjudicates the dispute between the applicant and the Custodian and it is open to both parties to adduce evidence in support of their respective contentions. The certificate, if, produced before the Tribunal can only be an item of evidence in proceedings under Sec. 8 of the Act. If there is other evidence before the Tribunal to prove the requirements of sub-section (2) or (3) of Section 3, there is nothing in the Act or the Rules precluding the Tribunal from deciding the case on the basis of such evidence adduced before it. The Tribunal in the present case has decided the question of exemption u/s 3(3) of the Act on the basis of Exts. A1 to A6 and the oral evidence adduced on behalf of the petitioner. The decision of the Tribunal is unassailable on the evidence in the case.

We see no merit in the appeal. It is accordingly dismissed. No costs.