
(1992) 06 KL CK 0060

In the High Court Of Kerala

Case No : R.P. 128 of 1987 in MFA No. 42 of 1978

State of Kerala and Others

APPELLANT

Vs

K.M. Subramonian Namboodiri

RESPONDENT

Date of Decision : 15-06-1992

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 13, 2(f), 3, 3(1), 3(2)

Citation : (1992) 2 KLJ 458

Hon'ble Judges : T.L. Viswanatha Iyer, J; L. Manoharan, J

Bench : Division Bench

Advocate : V. Bhaskara Menon, Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—This is an application filed u/s 8C (2) of the Kerala Private Forests (Vesting and Assignment) Act, 26 of 1971, (the Act for brevity) for review of the judgment of this court dated December 10, 1981 in M.F.A. No. 42 of 1978. The application which led to the appeal was one filed by the respondent u/s 8 of the Act for exclusion of 8.69 acres of land u/s 3(3) on the ground that himself and his family had been holding this land under a valid registered document of title executed before the appointed day (namely 10 May 1971) that it was intended for cultivation by him, and that his holdings did not exceed the extent of the ceiling area applicable to hit family u/s 82 of the Kerala Land Reforms Act 1963. The Forest Tribunal accepted the contention and allowed the application. The appeal therefrom was dismissed by this court. In support of his contention for exclusion of the land from vesting in the Government, the respondent examined himself as P.W. 1 besides producing eleven documents to prove that fugitive cultivation had been carried on in the area. There was no evidence - oral or documentary - adduced on the side of the State. It was on the strength of the evidence thus available that this court upheld the finding of the Tribunal that the area - in dispute was under the personal cultivation of the

respondent and that it was excluded from vesting in Government u/s 3(3).

2. The State did not challenge this decision in appeal. They accepted it. It was long thereafter and taking advantage of the introduction of section 8C that the State and the Custodian of Vested Forests have filed this Review Petition. Section 8C (2) which is an extraordinary provision provides for a review under limited circumstances, and reads:-

8C (2). Notwithstanding anything contained in this Act, or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment, decree or order of any court or other authority, the Government, if they are satisfied that any order of the High Court in an appeal u/s 8C (including an order against which an appeal to the Supreme Court has not been admitted by that Court) has been passed on the basis of concessions made before the High Court without the authority in writing of the Government or due to the failure to produce relevant data or other particulars before the High Court or that an appeal against such order could not be filed before the Supreme Court by reason of the delay in applying for and obtaining a certified copy of such order, may, during the period beginning with the commencement of the Kerala Private Forest (Vesting and Assignment) Amendment Act, 1986 and ending on the 31st day of March 1987 make an application to the High Court for review of such order.

3. Two contentions are very strenuously urged by the learned Government Pleader Sri. V. Bhaskara Menon, appearing for the petitioners. It is his case that the burden of proving that the area in question was excluded u/s 3 (3) of the Act lay on the respondent and that that burden has not been discharged. This contention has, only to be stated and rejected. It is true that the burden of proving the exclusion is on the respondent. He has attempted to discharge that burden by examining himself, as also by producing numerous documents to prove that the area was under cultivation: The evidence on the side of the State was totally barren. The respondent's evidence was appraised, and the Forest Tribunal as well as this court came to the conclusion that the land had been under his cultivation. The question whether the evidence in the case was sufficient to discharge the burden or not is a matter pertaining to appreciation of the evidence in the case. This has already been done by this court with the resultant conclusion that the land was liable to be excluded u/s 3(3). Section 8C does not contemplate a review on the same materials. The question of review arises only if one or other of the circumstances mentioned in the section exists. The review petition is not an appeal from the judgment justifying a second look at the evidence, without any fresh material and without any of the conditions laid down in section 8C (2) existing. The petitioners have therefore to satisfy the court about the existence of the conditions specified in section 8C (2) before making a request to consider the matter afresh.

4. If the petitioners were aggrieved by the decision of this court and the appreciation of evidence therein, they should have gone in appeal against the

said decision. A remedy of review u/s 8C (2) is not available to them merely because the State feels the decision is wrong on the merits. Section 8C (2) envisages a review only if the decision of this court had been made on the basis of a concession made before it without the authority in writing of the Custodian or the Government, or due to the failure to produce relevant data or other particulars before the Tribunal or that an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy of the decision. What the Government Pleader would contend is that relevant material had not been brought to the notice of this court at the time the matter was argued earlier and therefore in law, there is a concession. Assuming that the proposition of law propounded is correct, we are not in a position to accept the submission of the Government Pleader on the facts of this case for the reason that this court did apply its mind to the evidence in the case and was satisfied that it was sufficient to sustain the respondent's claim that the land was under his personal cultivation. There is no question of any non - application of the mind or of this court's attention not being drawn to any part of the evidence in the case, even assuming that that was sufficient to be a concession in law. No fresh data, material or particulars as mentioned in section 8C (2) have been produced along with this review petition. We do not therefore find any substance in this first contention on behalf of the petitioners.

5. The learned Government Pleader submitted next that the exclusion u/s 3(3) and section 3(2) can be earned by following the procedure prescribed in the Kerala Private Forests (Exemption from Vesting) Rules 1974 (hereinafter referred to as the Exemption from Vesting Rules.) The learned Government Pleader would maintain that the exclusion u/s 3(3) (which he would claim to be an exemption) can be obtained only by presenting an application to the Custodian in Form No. 1 to these Rules specifying the lands in respect of which the "exemption" is claimed. Unless that procedure is followed, and that too within the time prescribed by the Rules, namely on or before 25 August 1974, the question of claiming any "exemption" u/s 3(3) does not arise. In other words, the contention of the Government Pleader is that there is an ousting of the jurisdiction of the Forest Tribunal to the extent that there is a claim u/s 3(2) or 3(3). A petition u/s 8 will not be for a claim u/s 3(2) or 3(3). He states therefore that the decision of this court as well as of the Forest Tribunal rendered in proceedings u/s 8 are void in law. This aspect of the matter, according to him had not been presented before the Bench when it rendered the decision in the appeal, and that constitutes a ground for review.

6. Having heard the learned Government Pleader, who fervently put forward this plea, at great length, we do not find out way to accept this submission. The question really pertains to the jurisdiction of the Forest Tribunal to decide the dispute in question. Before we deal with this point, we may refer to the scheme of the Act and to some of its salient provisions. Section 2(f) defines what is a private forest. 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 the 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. The appointed day is 10 May 1971. The section is explicit that the vesting of private forests in the government is subject to the provisions of sub-sections (2) and (3). Sub-section (2) provides that 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 Subsection (3) provides that nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him u/s 82 of the Act. The effect of these two sub sections is that land held by an owner under his personal cultivation, or Intended for his personal cultivation, shall not vest in the State, if the other conditions specified therein are also satisfied. It must be noted that sub - sections (2) and (3) lay down an exclusion from vesting, and not merely an exemption.

7. Section 6 of the Act specifies that as soon as may be, after the appointed date, the Custodian shall cause the boundaries of the private forests vested in the Government "under sub-section (1) of section 3 to be demarcated. This may be done despite the pendency of a petition u/s 8 before the Tribunal. Section 8 provides for settlement of disputes, for which purpose, Tribunals are constituted u/s 7. Sub-section (1) states that where any dispute arises as to whether (a) any land is a private forest or not; or (b) 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. An appeal lies to the High Court against this decision u/s 8A. These are some of the important provisions.

8. The disputes envisaged by section 8(1) fall into two categories; (1) whether any land is a private forest or not; a matter referable to section 2(f) of the Act; (2) whether any private forest or portion thereof has vested in the Government or not, which falls under sub-sections (2) and (3) of section 3. These are the two categories of disputes likely to arise for decision under the Act, and between them, they will exhaust all the categories of disputes that could arise for decision between the owners of the land and the government. Section 8 vests the Tribunal with the exclusive jurisdiction to decide both these categories of disputes, the jurisdiction of the civil courts being barred u/s 13. The jurisdiction of the Tribunal is thus comprehensive and all embracing. There is no exclusion in

the Act of the jurisdiction of the Tribunal to decide claims u/s 3(2) or 3(3) namely exclusion of lands used or intended for personal cultivation. Nor is there any provision anywhere in the Act which obliges the Tribunal to refer such a dispute for the decision of the Custodian of Private Forests, as u/s 125(3) of the Land Reforms Act, 1963. On the terms of section 8, the Tribunal jurisdiction to decide such a dispute is unquestionable and that jurisdiction is plenary and absolute, not hedged in by any condition, that it should be referred for decision by the Custodian or be rendered by following any particular procedure. We are of the opinion that it is the right of the owner to approach the Tribunal for decision of the dispute u/s 8 when once it is raised. That cannot be taken away by framing any rules. We are not in a position to accept the tall contention of the learned Government Pleader based on the Exemption from Vesting Rules that there is an exclusion of the jurisdiction of the Tribunal to that extent. Needless to say, the Rules cannot deprive the Tribunal of the jurisdiction which is otherwise vested in it under the Act.

9. We may also mention that if we do accept this contention of the Government Pleader, we will be depriving the Tribunal of its jurisdiction without at the same time providing for any reference therefrom to the Custodian in case such a dispute arises before it incidentally. In fact many of the land owners will be deprived of their remedy in view of the outer date of 25 August 1974 prescribed in the Exemption from Vesting Rules for an application thereunder.

10. The relative scope of section 8 and of the Exemption from Vesting Rules came up for consideration in O.P. No. 3073 of 1975 (*Balan v. State of Kerala*, 1976 KLT Short Note 18). A Bench of this court stated that the Rules were intended to provide the machinery, the flesh and blood as it were, to the skeleton that is contained in Section 6 authorising the Custodian to demarcate the boundaries of private forests. Section 6 is not in conflict with section 8 because the two have to co-exist and there are sufficient indications in the sections themselves as to the manner in which the Tribunal has to act. A determination of the demarcation of the boundaries u/s 6 by the Custodian is a tentative or preliminary demarcation apparently for the purpose of having some material on the basis of which actions can be proceeded with pending final determination of the matter by the Tribunal in that view of the matter, this court found no conflict between section 8 and the Exemption from Vesting Rules.

11. According to us, what the Exemption from Vesting Rules provide is an additional remedy by which the owner may get relief u/s 3(2) or 3(3) without approaching the Tribunal. It enables the Custodian himself to exclude the lands where it is due. It only provides an alternate forum for providing speedy relief to an owner by excluding the lands from the vesting even at the threshold. This apparently is the reason why a very short period of time was provided for making an application under those Rules namely on or before 25 August 1974. Failure to apply under those Rules cannot therefore deprive the owner of the benefit of an adjudication u/s 8(1)(b). It is clear from the decision in *Balan's*

case itself that this court had left the final determination of the questions arising under sections 2(f), 3(2) or 3(3) to the Tribunal.

We do not therefore find any merit in any of the pleas raised by the learned Government Pleader. None of the grounds specified in section 8C (2) of the Act exist for us to entertain this application for review. It is accordingly dismissed.