

(1988) 02 KL CK 0039
In the High Court Of Kerala
Case No : M.F.A. No. 315 of 1982

State of Kerala

APPELLANT

Vs

Alfred William Leslie

RESPONDENT

Date of Decision : 25-02-1988

Acts Referred:

Cardamom Act, 1965 — Section 11
Kerala Land Reforms Act, 1963 — Section 2
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 3, 3(1), 3(2), 3(3), 8

Citation : (1988) 02 KL CK 0039

Hon'ble Judges : V. Sivaraman Nair, J; P.K. Shamsuddin, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; Joseph Vadakkal, George K. Varghese, K.M. Joseph and M.A. George, for the Respondent

Judgement

Sivaraman Nair, J.—The State and the Custodian of the Vested Forests appeal a rather Curious decision of the Forest Tribunal, Palghat in O.A. No. 154 of 1979.

2. The Tribunal held that the applicants before him were entitled to exemption of the area scheduled to the application extending to 20.150 hectares (53 acres) in Sy. No. 924/1 of Kulathupuzha Village, Pathanapuram Taluk, from the provisions of Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act, 26 of 1971 (hereinafter to be referred to as Act 26 of 1971).

3. The Respondents had filed O.A. No. 154 of 1979 u/s 8 of Act 26 of 1971 claiming that the area of 53 acres was covered by shade-trees and that it was necessary for taking fuel for the tea factory. They further contended that they were holding less land than the ceiling area under the Kerala Land Reforms Act. The Appellants resisted the claim, since, according to them, the area was dense forest containing various forest species aged about 100 years or more. The Appellants also submitted that the area was not a cardamom plantation; and that even if the area had been planted with cardamom once upon a time, it had

reverted to nature and was a private forest, since it was a wooded area as on 10th May 1971. The Appellants contended further that the applicants had to prove that they were holding less land than the ceiling area.

4. 486 acres of land previously belonged to Leslie Estates Ltd., Alleppey. That company assigned its rights to Alfred William Leslie in the year 1946 under the original of Ext. A-1. He executed a settlement deed in 1954 in favour of his 8 children under the original of Ext. A-2. The children constituted a partnership firm on 27th July 1954. Subsequently, some of the partners constituted yet another partnership firm under Ext. A-3 dated 4th November 1960. That firm was called Leslie Estate. Consequent on the death of some of the partners, yet another partnership deed, Ext. A-4, was executed on 5th March 1974. The applicants before the Forest Tribunal were the partners as per that document.

5. The case advanced by the applicants before the Tribunal was that out of the 486 acres mentioned in Ext. A-1, 433 acres were planted with tea and the remaining 53 acres with cardamom, whereas the Appellants contended that 53 acres, which were encircled on all three sides by forests, were never planted and were, therefore, vested in the State.

6. The applicants examined the Managing Partner of the firm as P.W. 1 and produced Exts. A-1 to A-21 to prove their case that the disputed area was a cardamom plantation. We have already referred to Exts. A-1 to A-4, copies of the title deeds and the partnership deeds. Exts. A-6 to A-16 are said to be copies of correspondence which were made by the Manager of the Estate with its Managing Agents. Ext. A-6 to A-13 are communications relating to cardamom crops in Shendurni Estate for the years 1961 and 1962; Exts. A-14 to A-16 are similar letters regarding cardamom crops for 1963. Ext. A-17 is the Form No. III provisional plantation tax assessment regarding Shendurni Estates and Linwood Estate in respect of 769.29 acres. There is reference to income from cardamom in Ext. A-18 communication dated 4th May 1961 said to have been sent by the Chartered Accountant of the Company. Ext. A-19 is the statement of expenses in respect of Leslie Estate for the year 1961-62 indicating that some amount was spent for cardamom plantation during that year. Ext. A-20 dated 25th October 1962 is said to have indicated that 16.75 kgs. of cardamom was sold from Leslie Estate. Ext. A-21 letter dated 27th November 1961 is also said to refer to cardamom of Shendurni Estate. It was on the basis of these documents and the oral testimony of P.W. 1. Managing Partner of the firm, that the partners have sought to sustain their claim that 53 acres of Shendurni Estate belonging to the firm Leslie Estate was a cardamom plantation. Acting on these materials, the Forest Tribunal held, that there must have been cardamom plantation in the area upto 1963. The Appellants, who were the Respondents before the Tribunal contended, that the Tribunal should insist upon the applicants proving that as on the appointed date, 10th May 1971, the area in dispute was principally cultivated with "cardamom" and that in the absence of proof in that regard, the claim for exemption should not be granted.

7. We would have expected the Tribunal to have dealt with this objection of the present Appellants more seriously than he did. Dealing with this objection, what the Tribunal said was, "that aspect of the case is not properly proved by the Respondents." "Therefore, believing in the continuity of things, one can only hold that the cardamom plants which were therein 1963 would have continued to be there even on the appointed day!!" and "under the circumstances, I hold that the disputed area is an area planted with cardamom and therefore it is not a private forest on the appointed day.

8. The Government Pleader urged, that the above observations were absolutely and totally perverse. It was for an applicant, who claims exemption u/s 3(2) or 3(3) from vesting of a private forest, to plead and prove that exemption. In the present case, the claim of the applicants was for exemption u/s 3(2) or 3(3) of Act 26 of 1971. Private forests as defined in the Act were to vest in the state on the appointed date viz., 10th May 1971. The area with which we are concerned being in the erstwhile Travancore-Cochin State, to which the Madras Preservation of Private Forests Act did not apply, private forests meant "any forest not owned by the Government, including waste lands which are enclaves within wooded areas". It is true, that an area cultivated with plantation crops may not be a forest. If a person claims that an area, which was alleged to have vested in the State, was not a private forest, since it was cultivated with cardamom and was a cardamom plantation as on the appointed date, it was for that person to prove the existence of the plantation as on that date. It was not for the State to prove negatively that there was no such cardamom plantation as on the appointed date.

9. It is trite knowledge, that the cardamom plantation has to be registered u/s 11 of the Cardamom Act and that periodical returns have to be submitted to the Cardmom Board and the licensing authority. It has to suffer plantation tax. The yield has to be brought to tax under the Agricultural Income Tax Act. The Income from and the expenditure on the plantation have to be duly accounted for. All these documents are expected to be maintained and to be in the possession of the owner of the plantation. The applicants did not make any attempt to produce any of these documents before the Tribunal. Instead of insisting upon the production of these documents, the Tribunal found fault with the State and the Custodian for the reason, that "that aspect of the case is not properly proved by the Respondents". We need not reiterate the elementary proposition that it was for he who claimed an exemption to prove by affirmative and positive evidence, his entitlement for such exemption. The Tribunal put the burden on the wrong side and granted exemption due entirely to the absence of negative evidence.

10. Nor are we impressed by the assumption which the Tribunal has very liberally made "believing in the continuity of things", that the "cardamom plants which were there in 1963 would have continued to be there even on the appointed day". Cardamom is a plant which thrives in the shade. In a case where cardamom plantation is abandoned, or is not properly maintained, what may thrive may be forest species. The cardamom plants may, even if they survive, be

part of the wild nature. In a case where the plantation is abandoned and has returned to nature, the area may rather be forest than a plantation any longer. Whether the plants still survived and thrived and therefore the area still retained its character as a plantation, is again a matter of pleading and proof. No evidence was adduced as to whether there was any cardamom plant in the area concerned on the appointed date by any positive assertion of reliable witnesses, or even by local inspection by a Commissioner. The Tribunal just assumed, that there should have been cardamom plants on the appointed date since there were some in 1963. Those assumptions were absolutely unwarranted and could not have been substituted in the place of positive proof of an affirmative nature. The Tribunal has not cared for a moment to consider the absence of any evidence relating to the existence of cardamom plants in the area on the appointed date or immediately prior or subsequent thereto, their number, their age, their yield etc. We may not be far off the mark if we observe, that the Tribunal was more anxious to discover cardamom plantations in the disputed area even in the absence of any relevant evidence. We are at a loss to understand why he should have gone thus far out of his way.

11. We have perused the documents on which the Tribunal placed considerable reliance to find that the area in dispute was planted with cardamom and that the applicants were receiving income from that cardamom plantation. We need only state, that none of these documents have been co-related to the 53 acres in dispute. It is admitted, that in addition to Shendurni Estate, the applicants were having another estate in Kulathupuzha Village by name Linwood Estate. It might as well have been that the cardamom yield to which there was some reference in the communications was from other holdings of the firm. P.W. 1 was positive that Linwood Estate was also owned by the applicant firm-Leslie Estate-and managed by Aspinwal and Company, and that it was adjacent to the disputed area. He admitted, that Linwood Estate was sold in 1965. Curiously, the cardamom yield and all communications relating to cardamom of Leslie Estate also stop from somewhere about 1964. P.W. 1 stated, that after he took over management of the Estate, he had not sold any cardamom and that he had no records to show that after 1964, cardamom was sold. He stated, that from 1964 onwards, the plantation was neglected and nobody took the trouble of taking the produce. There are a few plants now; but not much. From 1964 onwards, he has not done anything in the disputed area. It is too hard to believe, that discontinuance of any reference to cardamom, almost simultaneously with the sale of Linwood Estate owned by the same applicants was only a co-incidence. It was unfortunate that the Forest Tribunal did not think it necessary to refer to these important aspects, which were obviously highlighted by the Appellants before him.

12. The Tribunal entered a finding in favour of the applicants on the alternative plea that they were entitled to exemption u/s 3(3) of Act 26 of 1971. It found that the applicants possessed only the disputed land in Kerala apart from other plantations. Thereafter, he obliged them with a finding that each of the then partners being entitled to hold 7 1/2 acres together they could have held 75

acres, whereas the disputed land was only 53 acres. Since this was less than the ceiling area for which they were eligible, the Tribunal found that one of the three requirements of Section 3(3) of the Act was satisfied. Exts. A-1 and A-2 being registered documents of title prior to the appointed date, he found the second requirement in their favour. The oral evidence of P.W. 1 on intention of the applicants to cultivate the land was taken to satisfy the third requirement. That was how the Tribunal held, that even if the disputed land was a private forest it was exempt from the vesting provisions in view of Section 3(3) of Act 26 of 1971.

13. It is true that the applicants had indicated in the Annexure to their application, that they were entitled to get exemption u/s 3 of the Act since they were in possession of lands less than the ceiling area. However, no particulars of the proceedings under the Land Reforms Act were given. Even in his evidence as P.W. 1, the Managing Partner of the Firm did not disclose details of the lands held by the applicants. As a matter of fact, there was no reference at all to the ceiling returns. In this state of the record, it is mystifying how the Forest Tribunal entered a finding that the applicants did not have lands in excess of the ceiling limit fixed under the Kerala Land Reforms Act.

14. A partnership firm is an "association of persons" and will therefore be a "person" as defined in Section 2 of the Kerala Land Reforms Act. The ceiling limit applicable to such a person u/s 82 of that Act is only 7-50 acres. The applicants had no case that the firm was dissolved on or before 10th May 1971 so as to enable each partner to claim land up to the ceiling limit applicable to each individual partner. The forest Tribunal completely overlooked this aspect in assuming that the ceiling limit applicable to the 10 partners of an existing firm was 75 acres and therefore the extent of 53 acres was within their ceiling limit.

15. We are left with the impression that the Forest Tribunal had gone out of his way to discover a cardamom plantation where there was hardly any, at least after 1964, even according to P.W. 1, the Managing partner of the firm. His finding that the applicants had less than the ceiling area of land by inflating the limit 10 times what the firm deserved seems to us to be unsupportable and therefore the finding that they satisfied all the requirements of Section 3(3) of Act 26 of 1971, making them eligible for exemption in respect of the disputed land is unsustainable.

16. We are deeply disturbed by the manner in which the Forest Tribunal dealt with a fairly large extent of land which ordinarily should have vested in the State and in respect of which, no exclusion, nor any exemption, could have been granted from the operative provisions of Act 26 of 1971. The only manner in which we can express our displeasure at the conduct of the proceedings before the Tribunal is to award rather heavy costs in allowing the appeal.

We, therefore, allow this appeal, set aside the order of the Tribunal in O.A. No. 154 of 1979 with costs, including Advocate's fee of Rs. 1,000.