

(2000) 08 KL CK 0077
In the High Court Of Kerala
Case No : M.F.A. No. 293 of 1987

State of Kerala

APPELLANT

Vs

Ayisha and Others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

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

Citation : (2000) 2 KLJ 328

Hon'ble Judges : M. Ramachandran, J; J.B. Koshy, J

Bench : Division Bench

Advocate : James Vincent Spl. Govt. Pleader - Forests, for the Appellant; K.P. Dandapani, Sumathi Dandapani and T.A. Ramadasan, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran, J.—The above appeal has been filed under Sec. 8A of the Kerala Private Forests (Vesting and Assignment) Act, 1971 by the State and the Custodian of Vested Forests challenging the common judgment in O.A. No. 244 of 1981 and connected applications of the Forest Tribunal, Kozhikode. There are no appeals filed from O.A. Nos. 248/81, 257/81, 260/81 and 166/81. Hence, they have become final. In view of the large number of respondents and abatement and impleadment proceedings, the appeal could be listed for final hearing after a good number of years. The Forest Tribunal had allowed the applications, but due to the peculiar facts of the case had directed that the parties can claim possession from the custodian only after production of the final decree in O.S. No. 39 of 1956 on the file of the Sub Court, Tellicherry. At the time of admission of the appeal, by order dated 9-4-1987 in C.M.P. No. 11407 of 1987 stay of passing of the final decree had been issued. It is submitted that the matter is remaining static thereafter. Mr. James Vincent, Special Government Pleader (Forests) had challenged the orders in the Original Applications mainly on four grounds. According to him, there was a basic error in the applications filed as the applicants did not satisfy the minimum eligibility prescribed by Sec. 3(2)

or Sec. 3(3) of the Act as they were neither owners of the vested forests nor in possession of the properties. According to him, the applicants had no title on the appointed day, viz. 10-5-1971. It was next urged by him that the pleadings and the evidence at best showed that the applicants had only intention to cultivate the properties and had never engaged in cultivation, entitling them to claim back the vested forest. He had also put up a contention that several of the applicants had earlier submitted applications before the Forest Tribunal, but the applications were rejected. It was also urged that the burden of proof that the applicants had only lands within the ceiling limit under the Kerala Land Reforms Act, had not been attempted to be discharged by them. It was his prayer therefore that the orders of the Tribunal be set aside as he had not properly adverted to the facts as also the principles of law while disposing of the applications.

2. Advocate Sumathy Dandapani had appeared for the respondents and opposed the appeal. She had submitted that the Tribunal had examined all the relevant aspects of the matter and that orders do not require to be interfered with. In view of the common nature of the contentions and that quite a few party respondents had not entered appearance, we are dealing with the issues as a whole.

3. The facts leading to the dispute are to be narrated. A private forest known as Ayyan Kunnu Mala was item 442 in partition suit No. O.S.39/1956 in the Sub Court, Tellicherry. The property measures a few square miles and is in the Aralam Village, Tellicherry Taluk. One of its boundaries is Karnataka State. Ext.P5 is the registered gift deed dated 30-12-1880 pertaining to the property executed by Parapravan Bavutti Hajee in favour of his wife and children. The respondents are members of the Tarwad and the property in question therefore had been obtained by the Muslim Marumakkathayam Tarwad by a registered deed. The suit referred to above was a partition suit, and the property, which subsequently vested in the Government, by Act 26/71 was the said item 442. A preliminary decree had been passed on 30-8-1965, allotting share to 79 members of the family. The applicants were 46 persons out of them and claimed that they were entitled to hold land within the ceiling limits prescribed by the Land Reforms Act. The extent of exemption claimed by the respective applicants varied depending the number of family members and were between 7.5 acres and 20 acres.

4. The Forest Tribunal examined the veracity of the claims and the objections put forward by the State. Except with regard to the applications wherein the Tribunal had observed that they had not proved their claims, it had been directed that the applicants could claim possession from the custodian of vested forests, after production of the final decree in the suit for partition. The operative portion of the order is extracted herein below:

I have already held that the petitioners can claim possession from the Custodian of Vested Forests only after production of a Final Decree conferring right over the area taken as vested forest. Subject to that finding I hold that 15 acres shown as Plot No. 1, 14.80 acres shown as plot No. 2, 15 acres of plot No. 3, 7.30 acres

forming part of plot No. 4, 14.80 acres of plot No. 6, 14.21 acres forming part of Plot No. 7, 14.625 acres of plot No. 8, 7.5 acres forming part of Plot No. 9, 15 acres forming part of Plot No. 10, 14.625 acres forming part of Plot No. 11, 15 acres of plot No. 12, 15 acres of plot No. 14, 14.85 acres forming part of Plot No. 15, 7.5 acres of plot No. 16, 7.5 acres of plot No. 17, 14.80 acres of Plot No. 19, 14.725 acres of Plot No. 20, 15 acres forming part of Plot No. 21, 15 acres forming part of plot No. 22, 14.625 acres forming part of plot No. 24, 15 acres of plot No. 25, 7.50 acres of Plot No. 26, 14.625 acres of Plot No. 27, 7.50 acres of Plot No. 28, 20 acres shown as Plot No. 29, 34.80 acres shown as plot No. 33, 15 acres shown as Plot No. 34, 15 acres shown as Plot No. 35, 15 acres shown as plot No. 36, 15 acres shown as plot No. 37, 7.5 acres shown as plot No. 38, 15 acres shown as Plot No. 39, 15 acres shown as Plot No. 40, 15 acres shown as Plot No. 41, 7.5 acres shown as Plot No. 42, 15 acres shown as Plot No. 43, 7.30 acres forming part of Plot No. 44, 15 acres shown as Plot No. 45, and 15 acres shown as Plot No. 46 are not liable to be vested". O.A. Nos. 248/81, 256/81, 261/81 and 266/81 are dismissed.

5. We are not inclined to interfere in the above order. Reasons for the conclusion are given below:

By Ext.P5 registered gift deed, dating back to the year 1880, an area of more than 3000 acres had been gifted to the Marumakkathayam Muslim family. It is therefore well near impossible for the State to take a stand that the applicants have no title. Ownership over the property was undisputed, and perhaps due to the vastness of the area and passage of time, there might have been trespass and portion of the properties might have been given on lease or licence. But, there had been no alienation and the property was one of the scheduled items in the partition suit (O.S. No. 39/56). It is indicative of the strong circumstance of ownership and legal possession. Further the term ownership is defined in the Kerala Private Forests (Vesting and Assignment) Act vide Section 2(c) in inclusive terms, as any person having right to possession and enjoyment of the private forest and person includes a Marumakkathayam tarwad or tavazhi. In the pending suit, the court had appointed three advocates jointly as receivers and it was during this period that Ordinance had come which was replaced by Act 21 of 1971. As prudent officers, the Receivers had filed original petitions so as to see whether the properties could be salvaged from vesting. The preliminary final decree in the suit had also been passed on.30-6-1972.

6. It cannot be denied that the area came within the MPPF Act. But the question is whether the applicants are entitled to claim possession. The State is not on good grounds when it contends that the applicants were not owners of the properties and that none of them were in possession. As pointed out by us earlier, the members of the tarwad were having absolute title over the properties, and during the pendency of the suit, the receivers were put in custody thereof. As such the members of the tarwad were in legal possession and that too well before 10-5-1971 and were owners, entitled to urge claims

under Sec. 3 of the Kerala Private Forests (Vesting and Assignment) Act.

7. The Government Pleader has strongly contended that in any view of the matter, as there were no cultivation by the applicants personally, they were not entitled to submit applications for exemption. At this juncture, Smt. Sumathi Dandapani pointed out that we have to appreciate the background of the enactment. Act 26 of 1971 was enacted to provide for vesting of private forests in the State Government for the assignment thereof to agriculturists and agricultural labourers for cultivation. The preamble of the statute highlights the circumstance that the private forests in the State of Kerala are agricultural lands. It is the intention of the Government, as disclosed from the preamble that such agricultural lands should be utilised so as to increase the agricultural production. The vesting of forests was with the above mentioned objective. The counsel had also relied on the decision reported in 1969 KLT 320 - V. Venugopala Varma Rajah v. Controller of Estate Duty. Lands which are used principally for the cultivation of tea, coffee, coco, rubber, cardamom or cinnamon and land used for the purpose ancillary to the cultivation of such crops stood excluded from the private forest. Likewise lands cultivated with cashew or other fruit bearing trees or other agricultural crops also stood excluded by the definition.

8. The purpose and scope of the definitions can appropriately be understood when Sec. 3 of the Act is examined. Subject to sub-sections (2) and (3) it is provided that notwithstanding anything to the contrary in any statute, contract etc. from the appointed day, ownership and possession of all private forests stand transferred to and vested in the Government. The right, title and -interest or owner or any other person stand extinguished. The exceptions are private forests under personal cultivation, within the ceiling limits, as also private forests held by an owner under a valid registered document of title executed before 10-5-1971. In the latter case, the expression used is intended for cultivation by him. The Forest Tribunal had scanned through the evidence available in the case. The appellants had brought in evidence their intention for cultivation, once the properties are restored to them, the twin conditions, according to the Tribunal, had been amply satisfied. We are endorse that view. The intention behind the legislation was for liquidating heavy holdings, and making available the land to landless labourers for cultivation. Such cultivation, in the lands made available to them was to be carried out on future dates by distribution of the lands which came to the possession of the State. Hence the intention of the erstwhile owners unambiguously brought out in their evidence cannot be rejected for technical or mechanical reasons. Being the owners of the properties which vested in the Government they have a right to put up a claim up to the limits prescribed by the statute, and basing on technical contentions their right to claim lands cannot be axed down. The intention for cultivation was the relevant factor, and we have to take notice of the prescription in the statute.

9. On behalf of the State, reliance was sought to be placed on the Full Bench decision in State of Kerala v. Chandralekha (1995 (2) KLT 152). The decision,

according to us, is authority for the proposition that the burden of proof to show that exemption is warranted entirely is with the claimant. On the facts of this case, we feel that the applicants have been able to discharge their duty, and all the applications were, under Sec. 3(3) of the Act. Another case cited was State v. Alexander (ILR 1993 (1) Ker. 731), Here also, the principle that has been laid down is that when a claim under Sec. 3(2) of the Act is projected, solid proof has to be placed to show that the property was under the personal cultivation of the claimant. In so far as the claims have been upheld in view of Sec. 3(3), the above decision can have no application here. The intention to cultivate the property, we feel adequately authorises the respective claimants to put forward claims for exemption.

10. The last submission urged in support of the appeal was that there were prior applications filed by several claimants, and the Tribunal had rejected them. The ground raised is that the applicants are estopped from raising a fresh claim. Principles of estoppel could not have been pleaded at all in these proceedings. No materials had been placed to show the nature of the contentions, and nature of the order. The Tribunal had adverted to the contentions and had rejected them. The earlier applications were rejected, according to the respondents on the finding that the properties were in the hands of third parties. We are therefore not impressed by the submission that the order has to be set aside for the technical reason urged.

11. On going through the records, it is seen that Advocate Commissioners, viz. Leo Bhagyanath and Abraham Thomas had been deputed to examine the properties, and prepare a sketch. Though the order does not refer to these aspects, it is seen that the report dated 15-7-1985 is meticulously prepared. The measurement of the vested forest in the applications is rather misleading. It is shown as 13 x 14 Sq.miles totalling 182 Sq.miles. In the counter statement, it is averred that a total of 27.7 Sq.miles of forests alone had vested in the Tellicherry Taluk. The report of the Commissioners shows that the vesting from the Marumakkathayam tarwad was 1470 hectares. It is also noticed by us that the Tribunal had made a local inspection of the area, on 8-5-1986. However, the adjudication could not have materially gained by this report, as the Tribunal was to decide the question of law that had been presented.

12. In the light of our findings as above, the appeal filed by the State is dismissed. But, nonetheless the Government Pleader was perfectly correct in pointing out that even in cases where the claimants were entitled to possession of land given back to them should only be to such extent that will be within the ceiling limit prescribed by the Land Reforms Act. We have pointed out that the property concerned was item No. 442 of the schedule in the partition suit. This obviously indicates that there were other items of properties to be partitioned and there is no worthwhile evidence on record to show the nature and extent of the other properties that were to be divided among the sharers of the tarwad. Therefore, we have to hold that the applicants will not be entitled to get

properties in excess of the limits prescribed by the Land Reforms Act. They have to make a declaration to the said effect, before receiving possession from the Authorized Officer. On the facts of the case, we direct the parties to suffer their respective costs.