

(1988) 09 KL CK 0027

In the High Court Of Kerala

Case No : M.F.A. No's. 556 of 1983 and 32 of 1987

State of Kerala

APPELLANT

Vs

Kombikhadeesa

RESPONDENT

Date of Decision : 20-09-1988

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 3, 82

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

Citation : (1988) 2 KLJ 579

Hon'ble Judges : V. Sivaraman Nair, J;M. Fathima Beevi, J

Bench : Division Bench

Advocate : P.K. Appa Nair, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—The State and the Custodian of Vested Forests are the appellants in the former appeal. The owner of a private forest who was the applicant before the Forest Tribunal is the appellant in the latter. Both of them assail the order of the Forest Tribunal, Kozhikode in O.A. 225 of 1976. The applicant claimed exemption in respect of 20 acres of land in Sy. No. 685/IA of Thariode Village, South Wynad Taluk in Kozhikode District. That application was considered along with O. A. No. 226/76. Both were dismissed by the Forest Tribunal on an earlier occasion. In M.F.A. Nos. 538 and 551 of 1978, this Court set aside that common order and remitted the matter for reconsideration to the Tribunal.

.....in order to enable the applicants to produce copies of the orders of the Taluk Land Board in regard to the determination of the ceiling area of the applicants. Any other evidence to substantiate their case of the extent of land possessed by them other than the private forest shall be produced by them if they so choose. They will also be free to prove the number of members of their family.

Pursuant to that judgment, the husband of the applicant was examined as PW. 1 The applicant also produced Ext. P1 proceedings of the Taluk Land Board, Ext. P2 jenmon assignment deed and Ext. P3 registered surrender deed. The Forest Tribunal, on an examination of the oral and documentary evidence, found that as on 10-5-1971, the petitioner was entitled to exemption of an area of 15 acres. And since only 10.32 acres were available as per Ext. P1 order, the Tribunal allowed the application in respect of 4.68 acres out of 47.96 acres which were admittedly private forest as defined in S. 2(f) of the Kerala Private Forest (Vesting & Assignment) Act, 26 of 1971.

The only point which the State Government and the Custodian Vested Forests urge in M. F. A. 556/83 is that the Tribunal should have found that area which the applicant was entitled to retain was the area determined in Ext. P1 proceedings of the Land Tribunal as on 1-1-1970. Appellants urge that the Tribunal went wrong in determining the area which the applicant was entitled to retain as 15 acres and that too as on 10-5-1971.

2. It is not disputed before us that the Act has to be applied as on the appointed day, specified in S.2 (a) of Act 26 of 1971. S. 3(3) provides that:

(3) 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 said Act.

There is no dispute that the applicant before the Tribunal was holding lands in excess of the ceiling area applicable to him under S.82 of the Land Reforms Act. 10.32 acres were agricultural land and 47-92 acres were exempted forest land. The argument of the Government Pleader is that 12 acres having been fixed as the ceiling area in Ext. P1 order, the applicant was entitled to exemption only to the extent of 1.68 acres of forest land.

3. It is not seriously disputed before us that as on 10-5-1971, the family consisted of five members. It is evident from S. 82 of the Land Reforms Act that the ceiling limit applicable to that family unit would be 15 acres. The only dispute is as to whether the ceiling limit shall apply as on 1-1-1970 or as on 10-5-1971.

4. On a reading of the provisions of Act 26 of 1971, we are of the opinion that the relevant date for determination of the extent of land which an owner of private forest as defined in the Act is entitled to retain must be the extent of the ceiling area applicable to him under S.82 of the Land Reforms Act on the appointed day, viz. 10-5-1971. In this view, we do not find any merit in M.F.A. 556 of 1983 filed by the State. The same is hereby dismissed. In M.F.A. No. 312/84, the claim of the applicant is that the ceiling area should have been fixed as 20 acres because the family consisted of more than six members. The Tribunal has considered this submission with reference to the number of members of the

family on the appointed day, viz. 10-5-1971. The fact that the family had added to its members after the appointed day is not relevant for determining the extent of the ceiling area on 10-5-1971. M.F.A. 312/84 therefore fails.

In the result, both the appeals are dismissed. In the circumstances of the case, there will, be no order as to costs.