
(2001) 09 KL CK 0030
In the High Court Of Kerala
Case No : M.F.A. No. 154 of 1991

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APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

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

Citation : (2001) 2 KLJ 584

Hon'ble Judges : P.R. Raman, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : V.V. Surendran and P.M. Padmanabhan, for the Appellant; P.K. Shakkeela (Govt. Pleader), for the Respondent

Final Decision : Allowed

Judgement

Abdul Gafoor, J.—The appellant's application filed under Sec. 8 of the Kerala Private Forest (Vesting and Assignment) Act, 1971 (hereinafter referred to as "the Act") was dismissed by the Tribunal on the ground of limitation, being beyond two months period made mention of in Rule 3 of Kerala Private Forests (Tribunal) Rules, 1972 (hereinafter referred to as Tribunal Rules). It was there upon that this appeal has been filed. Petitioner obtained possession of 1 Acre of land in Sy. No. 97/1B1 of Kottappady Village Vythiri Taluk as per Ext.A1 document No. 1481/1978 of Vythiri Sub Registry. She purchased the property from one Kannan who obtained it on the basis of Ext.A2 document dated 19-1-1974. After purchasing the property, Kannan had approached the Land Tribunal and obtained a purchase certificate - Ext.A3. When the petitioner was enjoying the property in question on the basis of these documents, there was obstruction from the Forest officials to enjoy a portion of the property extending about 45 cents. It was thereupon, she filed O.A.18 of 1988 before the Forest Tribunal, Kozhikode, which was later transferred to the file of the Forest Tribunal, Palghat and re-numbered as O.A.125 of 1990.

2. The petitioner had taken up a contention in the application that no notification

in terms of Rule 2-A of the Kerala Private Forest (Vesting and Assignment) Rules, 1974 (hereinafter referred to as the Vesting Rules) had been issued in respect of the property concerned as on the date of her application namely, 17-6-1988 and therefore the application was within time.

3. The application was contested by the respondents mainly on the ground that it was beyond the time limit prescribed in Sec. 8 and that application in terms of the said section shall be filed within the time prescribed therein. As per Rule 3 of the Tribunal Rules a period of 60 days is prescribed as the time limit to prefer an application under Sec. 8 of the Act. That time has to run either from 6-8-1981 or from the date of publication of the notification under sub-rule (2) of Rule 2A of the Vesting Rules. The respondent contended that Ext.RI is the notification published on 8-7-1977. So the appellant ought to have filed the application within 60 days therefrom. Admittedly, the application was filed on 17-6-1988. Therefore, it was beyond the time limit. The Tribunal considered this aspect and held that "the property shown in the petition schedule is a portion of Sy. No. 97/IB1 shown as item No. 74 of the said Ext.RI notification". The Tribunal did not advert as to whether the notification dated 8-7-1977 was really published and whether such publication had been informed to the concerned parties by appropriate publication in the two daily newspapers as provided for in sub-rule 3 of Rule 2A of the Vesting Rules.

4. It is contended by the learned counsel for the appellant that it was incumbent on the Tribunal before dismissing the application to find out what was the date of publication and whether the publication was made in the mode provided for in the said rule including as to whether there was the publication made mention of in sub-rule 3 of Rule 2A of the Vesting Rules so that the affected parties shall get information of the said notification and they can file application in time reckoning from the said date. The evidence on record and the details contained in the judgment impugned does not support a finding about the date of actual publication of the notification as provided in sub rule 2 or the publication of information regarding the notification as provided for in sub-rule 3 of Rule 2A of the Vesting Rules.

5. Almost a similar issue had been considered by a Division Bench of this court in a common judgment in M.F.A. No. 249 and 383 of 1988. This court came to the conclusion that "the question will arise as to whether the notification stated to have been published on 14-12-1981 satisfies the requirements of Rule 2A(2) and (3) has to be determined by the Tribunal. (emphasis applied) Sub-rule 3 mentioned above is in respect of publication of an intimation regarding publication of the notification under sub-rule 2. Therefore, before a party is sent out of court at the thresh-hold, it was incumbent on the Tribunal to examine these aspects as well. That is not seen examined in this case. Evidence also is not forthcoming with respect to these aspects. Following the aforesaid decision of the Division Bench of this court, we are of the view that the Tribunal has to examine that aspect and to decide as to whether the application was filed within

the time prescribed or not. Accordingly, we set aside the judgment impugned and remand the matter to the Tribunal to consider the aforesaid aspects. While deciding the question of limitation pleaded by the parties, the Tribunal shall allow both the parties to adduce evidence on that aspect. If it is found that the application was filed within time limit, the Tribunal shall also allow the parties to adduce further evidence if any, with regard to their claims as well. The Tribunal shall issue notice to the parties.

The appeal is allowed as above. In the circumstances of the case, there will be no order as to costs.