

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MFA.No. 93 of 2005 ()

**AGAINST THE ORDER IN OA 57/2002 OF THE FOREST TRIBUNAL, KOZHIKODE DATED
23-03-2005**

APPELLANTS/APPLICANTS.:

1. PAYYASSERI THANDUPARAKKAL HAMSA,
S/O.AHAMMEDKUTTY HAJI, AYANIKKADU AMSOM, PORUR DESOM
NILAMBUR TALUK, P.O.PORUR.

2. MANCHERI MUHAMMADALI, S/O.SAIDALAVI
KURIKKAL, AYANIKKADU AMSOM, PORUR DESOM
NILAMBUR TALUK.

3. PAYYERI THANDUPARAKKAL ABDUL KARIM,
S/O.HYDRU, AYANIKKADU AMSOM, PORUR DESOM
NILAMBUR TALUK.

4. NADUVILAKALATHIL HAWWA UMMA,
D/O.MUHAMMED AYANIKKADU AMSOM, PORUR DESOM
NILAMBUR TALUK.

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

RESPONDENT(S)/RESPONDENTS.:

1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM.

2.CUSTODIAN OF VESTED FOREST,
ARANYA BHAVAN, FOREST COMPLEX, OLAVAKODE
PALAKKAD.

R BY SPECIAL GOVERNMENT PLEADER SRI. MADHAVANKUTTY [FOREST]

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

~~~~~

M.F.A. No. 93 of 2005

~~~~~

Dated, this the 9th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

Applicants in O.A. No. 57 of 2002 filed before the Forest Tribunal, Kozhikkode are the appellants herein. The grievance is against dismissal of the O.A., seeking for a declaration that the scheduled property having an extent of nearly nine acres was never a private forest land vested with the Government under Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act, 1971, and the refusal to consider the claim for exemption under Section 3(2) of the Act, holding that the applicants were not having the title or possession as on the relevant date i.e. on 10.05.1971.

2. The property involved herein was actually having a total extent of nearly 10 acres of unsurveyed land in Edakkara Village of Malappuram district, which originally belonged to the Nilamboor Kovilakam, who was having 'jenmom' rights. Allegedly, on the basis of an oral lease from the Kovilakam in favour of one Puthanpeedika Moideen, the latter came to possess the land from the year 1963 and was residing in the property after erecting a shed, making improvements, and effecting cultivation; for which a lease rent of Rs.50/- per year was being paid. Subsequently, the aforesaid Puthanpeedika Moideen assigned his rights to three persons by name Ayamu, Saidali Kurukkal and Aythru as per Ext. A16 deed dated 06.04.1967. It was from the aforesaid three persons, that the property was purchased by the appellants/applicants, as per Ext. A1 sale deed bearing No. 5192/1982 of the SRO Nilambur in the year 1982. It is stated that the property was being cultivated with nearly 1400 rubber plants, 200 arecanut trees, 10 coconut trees, 10 jack trees, 200 cashew trees, 10 mango trees and such other trees. It is also stated that

there was no forest growth in the property and it was never part of private forest to have vested with the Government under Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 ['the Vesting Act' in short]

3. While so, there was an alleged threat from the part of the officials of the Forest Department to encroach into the property of the appellants/applicants. This was sought to be resisted by filing O.S. No. 250 of 1987 before the Munsiff's Court, Manjeri, for permanent prohibitory injunction, wherein an interim order of injunction was granted. In fact, the Statute provided for a remedy, if there was any dispute as to the actual facts and figures. But it was held by a Division Bench of this Court as per the decision reported in **1995 (2) KLT 26 [State of Kerala Vs. Komavally]** that, if no notification under Rule 2A of the of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 was issued in respect of a land, notifying it as a private forest, it was open for the Civil Court to exercise its jurisdiction. Subsequently, a Full Bench of this Court as per the decision reported in **1997 (2)**

KLT 513 [Bhargavi Amma Vs. State of Kerala] overruled the decision of the Division Bench reported in **1995 (2) KLT 26** (cited supra) and held that the jurisdiction stands exclusively vested with the Tribunal and not with the Civil Court. Based on the declaration as above, the suit filed before the Munsiff's Court, Manjeri was not pursued further and it came to be dismissed. It was accordingly, that the appellants approached the Tribunal by filing the concerned O.A., seeking for appropriate relief.

4. The main contention raised by the applicants was that the property was never a vested forest and that the same was in the personal cultivation of Mr. Moideen on the crucial date i.e. on 10.05.1971. The position continued after the assignment effected by Mr. Moideen in favour of three persons mentioned above viz. Ayamu, Saidali Kurukkal and Aythru vide Ext. A16, followed by the subsequent conveyance effected by them in favour of the appellants vide Ext. A1 in the year 1982. In order to establish the facts and figures, an Advocate Commissioner was got appointed and a report

was filed by the Commissioner along with sketch, which were marked as Exts. C1 and C2. Copies of the decree and judgment in O.S. No. 250 of 1987 of the Munsiff's Court, Manjeri were marked as Exts.A11 and A12, while copy of the order with respect to the additional issue raised in O.S. No. 250 of 1987 and Commission report and plan were marked as Exts. A13 to A15 respectively.

5. The claim was sought to be resisted from the part of the Department asserting that the property was vested with the Government under Section 3 (1) of the Vesting Act and that no circumstance to have extended the relief sought for, as envisaged under the Act, was specifically pleaded or established. It was also pointed out that the application was barred by limitation, simultaneously contending that the applicants did not have the 'locus standi' to file the petition. The property involved was stated as part of the total extent of 12,215 hectares of private forest and that same had vested with the Government under Section 3(1) of the Vesting Act, which was subsequently

notified as 'vested forest' as per the notification dated 11.01.1977.

6. The evidence adduced from the part of the applicants consists of the depositions of PW1 to PW13 and Exts. A1 to A16 documents, whereas the evidence tendered from the part of the Department consists of the oral deposition of the Forest Range Officer as RW1 and the documents produced as Exts. B1 and B2 (notification/sketch); apart from Ext.C1 Commission Report and Ext. C2 plan submitted by the Advocate Commissioner, which were marked as court exhibits.

7. On conclusion of the trial, the Tribunal considered the question of limitation as the first point. Referring to Rule 3 of the Kerala Private Forests (Tribunal) Rules stipulating the period of limitation for having filed a petition under Section 8 of the Vesting Act as 60 days from 06.08.1981 or from the date of publication of the notification, whichever is later, it was observed by the Tribunal that Ext. B1 certified copy of the notification produced by the respondents, though was dated

11.01.1977, the actual date of publication of the notification in terms of Rule 2A(2) and (3) of the Kerala Private Forests (Vesting and Assignment) Rules was not substantiated. The Tribunal also observed that the Statute contemplates publication at least in 'two newspapers' having circulation in the area and simultaneous publication in six other offices as well, as mentioned therein. Since the respondents failed to produce evidence as to the publication in terms of the relevant provisions of law, the point was answered against the respondents and held that O.A. was never barred by limitation.

8. Coming to the second point whether the applicants were entitled to have a declaration that 'A schedule' property was not a private forest as on 10.05.1971 and not vested with the Government, the Tribunal observed that the 'burden of proof' was with the applicants/petitioners, in view of the law declared by the Full Bench of this Court in **State of Kerala Vs. Chandralekha [1995 (2) KLT 152]**. Referring to the relevant provisions of law, pleadings and evidence forming

part of the records, the Tribunal observed that the Madras Preservation of Private Forest Act (M.P.P.F. Act in short) shall apply to A schedule property before 10.05.1971 and that the same was outside the purview of Section 2 (f) of the Vesting Act. Referring to the materials on record, the Tribunal also observed that the applicants had not pleaded or proved that the disputed property did not form part of the total 12,215 hectares shown in Ext. B2 sketch and notified as per Ext. B1. Similarly, though a Commission was taken, the Advocate Commissioner was never asked to ascertain whether the 'A schedule' property was part of the aforesaid 12,215 hectares or whether 'A scheduled' property lay contiguous with other forest area of 100 acres, while Ext. C2 plan clearly shows that the disputed property in fact shared the boundaries with forest. Based on such discussions, the Tribunal arrived at a clear finding that the applicants failed to prove that 'A scheduled' property was not within the purview of the erstwhile M.P.P.F. Act.

9. The Tribunal proceeded further to examine whether the petitioners' property would fall under any of the clauses (A) to (D) to Section 2 (f) (1) (i) of the Vesting Act. After a detailed discussion, it was held that the pleadings and evidence on record would not lead to any such inference and hence the point was answered against the claimants. Discussion was also made as to the contents of the title deeds and it was observed that, even in Ext. A1 executed in the year 1982, the property was described as 'barren land'. The limited scope of Ext. A16 (which was an unregistered document) was also discussed and a finding was rendered that the applicants/petitioners had never pleaded or adduced any evidence to bring out a case to have 'exclusion' under any of the Clauses A to D of Section 2 (f) (1) (i) of the Vesting Act. It was further observed that no reliance could be placed on Ext.A16 (un registered document) as it could not confer title to any person, who executed Ext.A1 conveyance in favour of the applicants. That apart, absence of permission of the District Collector to be obtained before the sale of

any private forest, as provided under Section 3(1) (a) of the Madras Preservation of Private Forests Act, was also adverted to, holding that alienation without any such permission is null and void as per Section 3(1) (b) of the M.P.P.F. Act.

10. Coming to the 'locus standi' of the petitioners/applicants and the right to claim for exemption either under Section 3(2) or 3 (3) of the Vesting Act, the Tribunal placed reliance on the decision rendered by a Division Bench of this Court in **1987 (1) KLT 830 [Koya Vs. State of Kerala]**, wherein it was held that the subsequent assignee to the property has no 'locus standi' to claim exemption. The petitioner had no right to the disputed property on 10.05.1971, as they came to the picture only by way of execution of Ext.A1, which was in the year 1982, and hence they cannot have a claim under Section 3 (1) or 3(2) of the Vesting Act. It was accordingly, that the O.A. was dismissed as devoid of any merit, which is under challenge in this appeal.

11. Mr. T. Sethumadhavan, the learned senior counsel appearing for the appellants submits that the reliance placed by the Tribunal on the decision rendered by the Division Bench of this Court in **Koya Vs. State of Kerala [1987 (1) KLT 830]** to non-suit the applicants with reference to the claim for exemption under Section 3(2) and 3(3) is not at all correct in view of the subsequent decision rendered by the Full Bench of this Court in **2008 (2) KLT 461 [Parameswara Sastrigal v. State of Kerala]**, whereby the decision in **1987 (1) KLT 830** (cited supra) was overruled. This being the position, the contention is that the matter requires to be reconsidered by the Tribunal as to the right to have the benefit of exemption. The learned senior counsel also submits that exemption is sought for, only with reference to Section 3(2) and that the circumstances under Section 3(3) are not involved in the instant case.

12. Sri. M. P. Madhavankutty, the learned Special Government Pleader appearing for the respondent/State submits that the plea raised with regard to 'limitation' is not

pressed. It is pointed out that the Tribunal has considered the merit of the case very meticulously and it has accordingly been observed in paragraph 14 of the Order, that the claimants are not entitled to have the benefit of exemption either under Section 3(2) or 3(3) of the Act. The question to be considered is, whether the relevant requirements have been satisfied by the appellants/applicants so as to obtain the benefit of exemption in the instant case. The discussion on the pleadings and evidence and contents of the documents produced clearly reveals that no such case was specifically pleaded or established to get the benefit of exemption under Sections 3(2) or 3 (3) of the Vesting Act, and as such, no purpose will be served by remanding the matter, merely with reference to the change in legal position brought about by the Full Bench of this Court vide the decision rendered in **Parameswara Sastrigal Vs. State of Kerala [2008 (2) KLT 461]**, overruling the verdict of the Division Bench reported in **1987 (1) KLT 830 [Koya Vs. State of Kerala]**, which has been relied on by the Tribunal. It was

accordingly, that the matter was heard in detail, with reference to the pleadings and evidence on record as revealed from the Lower Court Records procured already.

13. The scope of scrutiny is confined to the circumstances under Section 3(2) of the Act, as conceded by the learned senior counsel for the appellants, stating it point blank that there is no case for the appellants under Section 3 (3), but for the claim under Section 3(2) of the Act. Before appreciating the factual position, it is necessary to have a look into Section 3 of the Vesting Act, which is extracted below for convenience of reference :

3. Private forests to vest in Government : (1)

Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to 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 this 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.

(2) 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.

Explanation :- For the purposes of this sub section, "cultivation" includes cultivation of trees or plants of any species.

(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 documents 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 under Section 82 of the said Act.

(4) Notwithstanding anything contained in the

Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or sub-section (3), be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be "other dry lands" specified in Schedule II to the said Act."

As per the Scheme of the Statute, the vesting takes place immediately on commencement of the Act and it is never adjourned to the date of issuance of notification. In other words, vesting is automatic, as declared by a Division Bench of this Court in **Ranga Sesha Hills (P) Ltd. Vs. State of Kerala [1991 (2) KLT 49]** and affirmed by a Full Bench of this Court as per the decision reported in **1997 (2) KLT 513 (F.B.) [Bhargavi Amma Vs. State of Kerala]**. The burden of proof is upon the party who claims that the property is not a vested forest, which is the law declared by another Full Bench of this Court in **State of Kerala Vs. Chandralekha [1995 (2) KLT 152]**.

14. The term 'private forest' is defined under Section 2 (f) of the Vesting Act and the only exclusions to get outside the purview of the term 'private forest' are those as mentioned under 'A to D' thereunder. Section 2 (f) reads as follows :

"2. Definitions - In this Act, unless the context otherwise requires :

(f) "private forest" means -

(1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganization Act, 1956 (Central Act 37 of 1956) -

(i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day, excluding -

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964);

(B) lands which are used principally

for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

Explanation :- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops.

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop, and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such building;

(ii) any forest not owned by the

Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

Explanation : For the purpose of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs.

A reading of the provision clearly reveals that properties having a contiguous area of 100 acres in the districts of Malabar and South Kanara, to which M.P.P.F. Act would apply, satisfy the term 'private forest'. It is very much obligatory for the applicants to have specifically pleaded and proved that the property was not governed by the M.P.P.F. Act or that they do not fall under any of the exclusion clauses A to D to Section 2 (f) (1) (i). On going through the pleadings and

proceedings, it is seen that no specific pleading was raised in this regard and no evidence was adduced. It was in the said circumstances, that the Tribunal arrived at a clear finding, in paragraph 8 of the impugned verdict, that the petitioners failed to prove that the M.P.P.F. Act did not apply to the property. The evidence before the Tribunal, particularly observations made by the Advocate Commissioner who conducted the spot inspection, and such other materials were meticulously analysed and an inference was drawn by the Tribunal that there was no evidence to hold that the property was cultivated with 'Rubber' as on '10.05.1971', the appointed day. It has also been specifically observed that the petitioners had no case that any rubber was planted before 10.05.1971. PW1 has not deposed that A scheduled property was being used as on 10.05.1971 for personal cultivation of rubber. The factual position with reference to the parameters under Clauses A to D has been specifically discussed in paragraph 10, 11, 12 and 13 respectively of the order under challenge and a clear finding has been rendered that those

clauses are not attracted to the case in hand, for want of specific pleadings and evidence. This Court does not find any reason to deviate from the inference drawn by the Tribunal and the finding of the Tribunal that the property in question is a 'vested forest' is sustained.

15. The next point to be considered is, whether the appellants are entitled to have any exemption with reference to Section 3(2) of the Act (there being no claim under Section 3 (3) of the Act). To claim exemption under Section 3 (2), the party shall prove that the land in question was under his personal cultivation and that the land was within the ceiling limit applicable under the Kerala Land Reforms Act. In the case of exemption under Section 3(3), there are three ingredients; viz; that the owner must have a valid registered title deed executed in his favour before the appointed day i.e. before 10.05.1971; that he must have an intention to cultivate the private forest in question and that land is within the ceiling limit provided under Section 82 of the Land Reforms Act.

16. Admittedly, in the instant case, the appellants did not have any title to the property as on 10.05.1971, as they obtained the same only by virtue of Ext. A1 executed in the year 1982. As such, the claim for exemption, if at all any, can only be with reference to Section 3 (2) of the Act and not under Section 3 (3), as fairly conceded by the learned senior counsel. But in respect of Section 3 (2), it will be enough, if it is established that the predecessor-in-interest was personally cultivating the land (within ceiling limits) as on 10.05.1971. The point to be considered is, whether the property was under the personal cultivation of the predecessor-in- interest as on 10.05.1971, which right could be transferred to the assignee in accordance with law, upon which the assignee would step into the shoes of the predecessor-in-interest by virtue of the law declared by the Full Bench of this Court in **Parameswara Sastrigal Vs. State of Kerala [2008 (2) KLT 461]**. This aspect has been considered by the Tribunal with reference to the contents of the various documents produced, arriving at a finding against

the appellants herein. If the finding rendered by the Tribunal is correct and sustainable, the matter does not require to be remanded and if only there is no discussion in this regard or if the discussion and the finding are wrong or perverse, would it turn to be a case for remanding the matter for fresh consideration.

17. This Court has perused the documents sought to be relied on in support of the above contention. The only document which is stated as executed prior to the appointed day i.e. on 10.05.1971 is Ext. A16 dated 06.04.1967, which is an assignment deed executed by Puthanpeedika Moideen in favour Ayam and two others. Admittedly, the consideration shown therein is Rs.5000/- and the conveyance was not a registered one. By virtue of the nature of transaction and the extent of consideration, it was a compulsorily registrable document, by virtue of Section 17 of the Registration Act 1908. Such unregistered document, which otherwise was compulsorily liable to be registered, cannot be relied in evidence by any Court of law, by virtue of the mandate of

Section 49(c) of the Registration Act. The Tribunal has considered the matter and observed in the order under challenge, that Ext. A16 cannot confer any title upon the vendor. Description of the property in the schedule to Ext.A1 assignment deed executed in favour the appellants itself shows that the property was a 'barren land'. Out of the total of nearly 10 acres, about 'one' acre was sold by the appellants to one Mr. Jose as per Ext.A2 document dated 20.06.1986. The remaining property was subjected to partition among the appellants themselves, as per Ext. A3 partition deed dated 15.11.1994. The separate extents of property earmarked, to be the shares of the appellants, have been given at serial Nos. 1 to 4 in the schedule. Description of the property in the said schedule, even in the year 1994 is as 'barren land' and it has not been mentioned in the schedule as a land in cultivation. We have also gone through depositions of the witnesses as well. No evidence let in by any of the witnesses examined, that the property was being cultivated as on 10.05.1971 i.e. appointed day. There is no

specific pleading as well. Unless it is pleaded and established that the property was under the personal cultivation on the appointed day, no benefit would have accrued to the predecessor-in-interest, to have had it conveyed or assigned to the vendors to Ext. A1 property and in turn to the appellants herein enabling them to be transposed as the original owners claiming exemption. In the absence of any evidence in this regard, no purpose will be served by remand, as the pleadings and evidence cannot be improved in any manner.

17. In the above circumstances, this Court finds that the observation made by the Tribunal that the claimants have not established the necessary circumstances to have sustained the claim for exemption under Section 3(2) of the Vesting Act does not require any interference. The appellants have not specifically pleaded or proved that they are entitled for the benefit under Section 3 (2) of the Vesting Act and to have it held accordingly. The verdict passed by the Tribunal is perfectly within the four walls of the law, based on the

M.F.A. No. 93 of 2005

: 25 :

pleadings and evidence on record, which is not assailable under any circumstances.

In the above circumstances, interference is declined and the appeal is dismissed as devoid of any merit.

Sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

Sd/-

**K. HARILAL,
JUDGE**

kmd