

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

MFA.(F.T.)No. 98 of 2013 ()

**AGAINST THE ORDER/JUDGMENT IN OA 6/2009 of TRIBUNAL FOR EFL CASES/IST ADDL.
DISTRICT COURT, KOZHIKODE DATED 29-04-2013**

APPELLANT/APPLICANT :

**RAJAGOPAL N.
S/O. LATE P.NARAYANAN NAIR, BABU VIHAR, KOWDIAR
THIRUVANANTHAPURAM, NOW RESIDING AT 'CHAITHRAM'
BNRA-82, JAWAHAR NAGAR, KOWDIAR P.O.
THIRUVANANTHAPURAM-3.**

**BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P**

RESPONDENTS/RESPONDENTS :

- 1. THE STATE OF KERALA
REP.BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF FOREST & WILD LIFE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM – 695 001.**
- 2. THE CUSTODIAN OF ECOLOGICALLY FRAGILE LAND
(THE PRINCIPAL CHIEF CONSERVATOR OF FOREST)
FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM-14.**
- 3. THE DIVISIONAL FOREST OFFICER
KOZHIKODE – 673 001.**
- 4. THE FOREST RANGE OFFICER
KUTTIYADI, PERAMBRA, KOZHIKODE DISTRICT – 673 001.**

R1 - R4 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FORESTS

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.F.A.(F.T.)No.98 of 2013

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Dated this the 3rd day of August, 2015

JUDGMENT

P.N.Ravindran, J.

This appeal filed under section 11 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 arises from the order passed by the Tribunal for Ecologically Fragile Land Cases (I Additional District Judge), Kozhikode on 29.4.2013 in O.A.No.6 of 2009. The appellant is the applicant therein. By the impugned order, the Tribunal constituted under section 9 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 allowed O.A.No.6 of 2009 in part and declared that the lands specified as plot numbers B and C in Ext.C2(a) plan submitted by the Advocate Commissioner appointed by the Tribunal, are not ecologically fragile lands and that the said lands have not vested in the Government pursuant to Notification No.C4-21437/00 dated 4.10.2000 issued under section 3 of the Act. The application was dismissed in respect of plots A, C1, D, E, F, G, H and I marked in Ext.C2 plan. The appellant has aggrieved thereby, filed this appeal.

2. The appellant's father, late P.Narayanan Nair was the owner of 404.60 hectares of land situate in R.S.No.175 of Kavilumpara Village in Vadakara Taluk, Kozhikode District. Consequent on the enactment of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act 26

of 1971) which came into force with effect from 10.05.1971, a dispute arose as to whether the said parcel of land is a private forest vested in the Government or not. The appellant's father thereupon filed O.A.No.101 of 1977 before the Forest Tribunal, Kozhikode under section 8 of Act 26 of 1971 for a declaration that 404.60 hectares of land referred to above, is not a private forest vested in the Government under the provisions of Act 26 of 1971. The Forest Tribunal dismissed the application. Aggrieved thereby, the appellant's father filed M.F.A. No.24 of 1980 in this court. By Ext.A1 judgment delivered on 10.10.1980, a Division Bench of this court held that 80 acres out of the lands involved in O.A.No.101 of 1977 on the file of the Forest Tribunal, Kozhikode is a rubber plantation and that it has not vested in the Government. The Division Bench directed the State of Kerala to demarcate the said parcel of land and to restore it to the possession of the appellant's father. Though the State of Kerala and the Custodian of Vested Forests filed R.P.No.116 of 1981 in M.F.A.No.24 of 1980 in this court invoking section 8C(2) of Act 26 of 1971, it was dismissed by Ext.P2 order passed on 15.03.1989.

3. In the meanwhile, on 15.09.1981, possession of 80 Acres of land was restored to the appellant's father as directed by the Division Bench of this court in Ext.A1 judgment. Even during the life time of the appellant's father, it was noticed that the lands restored to him on

15.09.1981 are not lands situate in R.S.No.175 of Kavilumpara Village, Vadakara Taluk, Kozhikode District. The appellant's father had by then clear-felled 65 acres out of the 80 acres of land restored to his possession and had commenced agricultural operations therein. His request for clear-felling the remaining 15 acres of land was rejected by the Forest Range Officer, Kuttiady. The appeal filed by him before the Divisional Forest Officer was also rejected. The appellant's father thereupon filed a revision petition before the State Government under section 7 of the Kerala Preservation of Trees Act, 1986. The Government after consultation with the Chief Conservator of Forests issued G.O.(Rt).No.290/92/F&WLD dated 11.08.1994, whereby, the Government held that since possession of 65 acres out of 80 acres was restored to the appellant's father and it had by then be cleared of tree growth, it will be more advisable to allow him to clear the remaining area, instead of granting another fresh area of 80 acres as proposed by the Chief Conservator of Forests. In view of the aforesaid appellate order, the appellant's father continued to be in possession and enjoyment of the lands situated in Survey No.276/1 and 276/2 which were restored to his possession on 15.09.1981.

4. The appellant's father late P. Narayanan Nair passed away on 10.10.1991. Thereafter, his family members entered into a family settlement on 19.02.1992 as per which the aforesaid parcel of land

was set apart and allotted to the share of the appellant. While matters stood thus, the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000 was promulgated by the Government of Kerala on 01.06.2000. After successive ordinances were promulgated, the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 was enacted and brought into force with retrospective effect from 02.06.2000. Pursuant thereto, the Custodian of Vested Forests issued Exts.B1 and B2 notifications on 04.10.2000 and 31.10.2000 respectively under section 3 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, hereinafter referred to as the 'EFL Act' for short. The appellant thereupon instituted O.A.No.6 of 2009 before the Tribunal for Ecologically Fragile Land Cases constituted under section 9 of the EFL Act. Before the Tribunal, the respondents contended that there is no cultivation in the land covered by the notification and it predominantly supports natural vegetation. It was contended that the notified land lies contiguous to vested forests and is surrounded by ever green forest, that it supports wild life and therefore it comes within the definition of the term 'ecologically fragile land' as contained in the EFL Act. Before the Forest Tribunal, the appellant examined himself as PW1 and produced and marked Exts.A1 to A16. On the side of the respondents the then Forest Range Officer, Kuttiyadi was examined as

RW1 and Exts.B1 to B9 were marked. On application filed by the appellant an Advocate Commissioner was appointed and he submitted Ext.C1 report dated 20.07.2010 along with Ext.C1(a) survey plan. The Tribunal considered the rival contentions and held that as the disputed land is lying contiguous to the vested forest and the appellant had not proved that there is no natural vegetation in the property, it can be safely held that the entire extent of 80 Acres is ecologically fragile land as on the appointed day, namely 02.06.2000. O.A.No.6 of 2009 was accordingly dismissed.

5. Aggrieved thereby, the appellant filed M.F.A.No.60 of 2011 in this court. After notice to and hearing the respondents, a Division Bench of this court allowed the appeal in part by judgment delivered on 09.12.2011, set aside the order passed by the Tribunal on 22.01.2011 and remanded O.A.No.6 of 2009 to the Tribunal for the purpose of considering whether 65 acres out of the 80 acres (corresponding to 32.8250 hectares) is ecologically fragile land which has vested in the Government. The dismissal of O.A.No.6 of 2009 in respect of 15 acres of land which had not been clear-felled by the appellant's father and was found to be ecologically fragile land was upheld. After remand, on application filed by the appellant, an Advocate Commissioner, who was examined as CW1, was appointed and he submitted Ext.C2 report dated 05.11.2012, C2(a) plan and C3

series of photographs, 43 in number. No other evidence, oral or documentary, was adduced on either side. The Tribunal considered the rival contentions and held relying on Ext.C2 report and C2(a) plan submitted by the Advocate Commissioner that plots B and C having a total area of 7.021 hectares are not ecologically fragile lands and the said lands have not vested in the Government. The Tribunal held that the appellant has not adduced any evidence to prove that the lands covered by plots D to F in Ext.C2(a) plan are not ecologically fragile lands as on 2.6.2000, that plot A in Ext.C2(a) plan is a vested forest and plot C1 is a thick forest supporting forest growth, that trees are abundant in plots G, H and I as well and that except plots B, C, D and E and the estate road which is described as plot F, all other areas are principally covered by naturally grown trees and undergrowth. The Tribunal held that the appellants have also not adduced any evidence to show that plots D to F are not ecologically fragile lands or that they do not support natural growth or forest trees. In that view of the matter, relief was declined in respect of plots A, C1 and D to I in Ext.C2(a) plan. The appellant has, aggrieved thereby, filed this appeal.

6. We heard Sri.Sajan Varghese, learned counsel appearing for the appellant and Sri.M.P.Madhavankutty, learned Special Government Pleader appearing for the respondents. We have also gone through the pleadings and the materials on record, including the report and

plan submitted by the Advocate Commissioner examined as CW1 as also the photographs, 43 in number, produced by him. The Advocate Commissioner has in Ext.C2 report dated 5.11.2012 stated that except the portion marked as plot C1 in Ext.C2(a) plan, the entire portion of 65 Acres of land comprised in R.S.No.276/2 is used principally for cultivation of crops of long duration such as rubber, arecanut, coffee, etc. He has also reported that plot C1 which has an extent of 0.60 hectares is not principally used for cultivation of any crop and that it supports thick growth of forest trees. He has in Ext.C2(a) plan accompanying the report described plot A situate in S.No.276/1 and having an area of 0.500 Hectares, as a vested forest. It is not in dispute that the claim of the appellant in respect of 15 out of 80 Acres of land was negatived by this court in M.F.A.No.60 of 2011 and the remand was only in respect of 65 Acres of land. The Commissioner has not in Ext.C2(a) plan identified and demarcated the said 15 Acres of land though he has identified plot A which has an extent of 0.500 Hectares as a vested forest. Though the Advocate Commissioner has stated that plot C1 having an extent of 0.60 Hectares has abundant growth of forest trees and therefore it is not principally cultivated with long duration crops like rubber, arecanut, coffee, etc., plots A and C do not have an area of 15 Acres.

7. The Advocate Commissioner has in Ext.C2(a) plan

accompanying his report stated that plot B having an extent of 0.9878 Hectares is a rubber plantation, that plot C having an extent of 6.0336 Hectares is a rubber and arecanut plantation, that plot D having an extent of 5.6548 Hectares is a coffee plantation, that plot E having an extent of 12.3854 Hectares is a coffee plantation and that plot F is the estate road. The Advocate Commissioner has also reported that plot H having an extent of 0.8455 Hectares and plot I having an extent of 3.7785 Hectares predominantly support tree growth. It is possible to infer from the report submitted by the Advocate Commissioner that plots G, H and I are not principally cultivated with long duration crops like rubber, arecanut, coffee, etc. The total extent of plots A, C1 and G to H is 7.17 Hectares corresponding to 17.71707 Acres. The report submitted by the Advocate Commissioner is in tune with the finding entered by this court in M.F.A.No.60 of 2011 that the claimant is not entitled to relief in respect of 15 Acres out of the 80 Acres of land. Out of the balance extent, the estate road takes in an extent of 0.5929 Hectares which corresponds to 1.465 Acres. The balance extent is comprised of plots B, C, D and E having a total extent of 25.0616 Hectares corresponding to 61.9272 Acres.

8. The Forest Tribunal has, relying on Ext.C2 report and Ext.C2 (a) plan held that plots B and C are principally cultivated with crops of long standing duration like rubber and arecanut and therefore, they

cannot be termed as an ecologically fragile land as defined in the EFL Act. Consequently, relief was granted in respect of plots B and C in Ext.C2(a) plan. The State of Kerala has not filed an appeal challenging the said finding entered by the Tribunal or the declaration made by the Tribunal that plots B and C in Ext.C2(a) plan are not ecologically fragile lands. It is only the applicant before the Tribunal who has filed this appeal challenging the judgment of the Tribunal in so far as it declines relief in respect of plots D and E. It is contended that the Tribunal ought to have accepted and acted upon the reports and plans submitted by the Advocate Commissioner and held that plots D and E are also principally cultivated with coffee.

9. As stated earlier, plots B, C, D and E have a total extent of 25.0616 Hectares corresponding to 61.9272 Acres. The Advocate Commissioner examined as CW1, has not given the exact number of coffee plants standing in plots D and E. Instead, taking note of the number of coffee plants standing in sample plot Nos.8 and 9 in plot D and sample plot Nos.10 to 20 in plot E, the Advocate Commissioner has opined that plots D and E are principally cultivated with coffee. The number of coffee plants standing in sample plot No.8 is 35, the number of coffee plants standing in sample plot No.9 is 23, the number of coffee plants standing in sample plot No.10 is 38, the number of coffee plants standing in sample plot No.11 is 10, the

number of coffee plants standing in sample plot No.12 is 29, the number of coffee plants standing in sample plot No.13 is 35, the number of coffee plants standing in sample plot No.14 is 21, the number of coffee plants standing in sample plot No.15 is 1, the number of coffee plants standing in sample plot No.16 is 12, the number of coffee plants standing in sample plot No.17 is 23, the number of coffee plants standing in sample plot No.18 is 10, the number of coffee plants standing in sample plot No.19 is 33 and the number of coffee plants standing in sample plot No.20 is 25. Though the Advocate Commissioner has stated that except sample plot No.8A, all the other sample plots are situate 50 meters away from the nearest one, he has not given the area of the sample plots selected by him. It is not known whether the pattern of tree growth is identical in the rest of the areas covered by plots D and E. The Advocate Commissioner has also not given a clear picture as regards the type of trees standing in the rest of the areas. He has also not stated that apart from coffee plants standing in the sample plots, the remaining portion of plots D and E also are principally cultivated with coffee. In the light of the materials on record, the finding entered by the Tribunal that the appellant has not proved that plots D and E are principally cultivated with coffee plants cannot be said to be perverse warranting interference in appeal. However, having regard to the admitted fact

that the appellant's father had clear-felled 65 Acres out of 80 Acres which was restored to his possession and he had also started cultivating the property and the Advocate Commissioner has noticed the presence of coffee plants in sample plots 8 to 20, we are of the opinion that the appellant should be afforded another opportunity to establish his case that plots D and E are also principally cultivated with coffee. After hearing learned counsel appearing on both sides, we are of the opinion that the proper course would be to remand the matter to the Tribunal for fresh consideration after enabling the appellant to have plots D and E inspected once again by an Advocate Commissioner to be appointed by this court and after adducing such further evidence as he may deem fit to adduce.

10. We accordingly allow the appeal, set aside the impugned judgment to the extent it relates to plots D and E mentioned in Ext.C2 (a) plan submitted by the Advocate Commissioner appointed by the Tribunal and examined as CW1 and remand O.A.No.6 of 2009 to the Tribunal for fresh disposal for the purpose of considering whether plots D and E mentioned in Ext.C2(a) plan are ecologically fragile lands which have vested in the Government. We also deem it appropriate to appoint Sri.V.Ramkumar Nambiar, learned counsel of this court as Advocate Commissioner to inspect plots D and E with notice to both sides and to submit a report to the Forest Tribunal as to whether plots

D and E are principally cultivated with coffee as claimed by the appellant. The remuneration payable to the Advocate Commissioner is fixed at Rs.1,00,000/-. One-half of it shall be paid by the appellant within one month from today and the balance sum of Rs.50,000/- shall be paid after the Advocate Commissioner submits his report. The parties shall appear before the Tribunal through counsel on 28.9.2015. The Advocate Commissioner shall also be present on that day. The Tribunal shall thereafter try and dispose of O.A.No.6 of 2009 afresh, expeditiously and in any event within six months from the date on which the Advocate Commissioner submits his report. The contentions of both sides on the merits in so far as it relates to plots D and E are kept open. The Advocate Commissioner shall also ascertain whether the coffee plants standing in plots D and E have been overgrown with wild growth and whether the said plots predominantly support natural vegetation. The Forest Officials shall extend to the Advocate Commissioner the assistance of surveyors attached to their department. It will be open to the Advocate Commissioner to secure the services of a private surveyor, preferably a former employee of the Survey and Boundaries Department as also the services of an officer of the Agricultural Department not below the rank of Deputy Director of Agriculture, a scientist from the Forest Research Institute, Peechi and the Divisional Forest Officer of the concerned division. The officers of

the Forest Department shall render all assistance to the Advocate Commissioner and shall make available, the requisite equipment for GPS survey. No costs.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ANU SIVARAMAN
JUDGE

/TRUE COPY/

P.A. TO JUDGE

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