

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

MFA.No. 5 of 2015 ()

**OA. NO.7/2011 OF KERALA FOREST (VESTING AND MANAGEMENT OF
ECOLOGICALLY FRAGILE LANDS) TRIBUNAL, PALAKKAD.**
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APPELLANTS/RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY (FOREST & WILDLIFE),
THIRUVANANTHAPURAM.**
- 2. CONSERVATOR AND CUSTODIAN OF
ECOLOGICALLY FRAGILE LAND,
VAZHUTHACAUD, THIRUVANANTHAPURAM.**

BY SPL. GOVT. PLEADER (FOREST) SRI.M.P. MADHAVANKUTTY.

RESPONDENTS/APPLICANTS:

- 1. K. NARAYANAN,
S/O.NARAYANAN NAMBU DIRIPAD,
RESIDING AT KOZHISSEERI MANA, SHORNUR,
PALAKKAD DISTRICT- 679 121.**
- 2. K. SUBRAMANIAN,
S/O.LATE NARAYANAN NAMBU DIRIPAD, -DO-.**
- 3. K.N. SANKARAN,
S/O.NARAYANAN NAMBU DIRIPAD. -DO-.**

**BY SRI.K.GOPALAKRISHNA KURUP, SENIOR ADVOCATE.
ADV. SRI.JAMES ABRAHAM (VILAYAKATTU) (CAVEATOR).**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/06/2015,
ALONG WITH MFA. NO.6 OF 2015 AND CONNECTED CASES, THE COURT
ON 15/10/2015 DELIVERED THE FOLLOWING:**

rs.

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.,**

M.F.A.Nos.5 of 2015, 6 of 2015, 7 of 2015 &
M.F.A No. 9 of 2015

Dated this the 15th day of October 2015

JUDGMENT

Anu Sivaraman, J.,

These appeals arise from a common judgment delivered on 7.5.2014 by the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Tribunal, Palakkad. The State of Kerala and the Custodian of Ecologically Fragile Lands who were the respondents in the Tribunal are the appellants before this Court. M.F.A (F.T) No.5 of 2015 is an appeal from judgment in O.A.No.7 of 2011 wherein the claimants/ petitioners had sought denotification of 13 acres 95 cents of land notified under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. M.F.A (F.T) No.6 of 2015 arises from O.A.No.3 of 2011 involving 12 acres 57 cents of land, M.F.A.(F.T) No.7 of 2015 arises from O.A.No.6 of 2011 where the extent of land involved is 12 acres and 42 cents and M.F.A.(F.T) No. 9 of 2015 arises from O.A.No. 5 of 2011 where the land measures 9 acres 25 cents. All the lands involved are situated in Survey No.38/2 of Shoranur II Village in Ottapalam Taluk, Palakkad District.

2. The appellants in this appeal, who were the respondents before the Tribunal had filed a written statement contending that the lands in question form part of a greater extent of land known as "Kokunnu Parambu" which belonged in jenm right to the Kozhissery Mana. It is also admitted by the appellants that the lands form part of the lands involved in O.A.No.607 of 1974 on the file of the Forest Tribunal, Palakkad constituted under the Kerala Private Forests (Vesting and Assignment) Act, 1971, that O.A.No.607 of 1994 was allowed and M.F.A.306 of 1998 filed by the State of Kerala was dismissed and the lands restored to the possession of the applicants or their predecessors-in-interest on 28.11.1998. The lands were thereafter notified 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) by Ext.B1 notification dated 21.4.2001. It was further contended that applicants in O.A No.3 of 11 had filed O.A.No.10 of 2008 seeking de-notification of the land and it was dismissed on 17.7.2009, that the applications are barred by limitation and that the notified land is forest land lying contiguous to vested forests and supports natural vegetation and wild animals. De-notification of any portion thereof will destroy the contiguity, it was contended.

3. Considering the contentions of the parties and the documentary and oral evidence adduced as well as Ext.C1 report submitted by the Advocate Commissioner deputed to inspect the property, the Tribunal

came to the conclusion that the lands in question do not support any natural tree growth or wildlife suggestive of a natural forest, that the land is planted with rubber and cashew trees which were in a neglected condition, that the lie of the lands is not in contiguity with vested forests and that the lands are bounded by the lands covered by Annexure A5 judgment on two sides. The Tribunal thus found that the lands covered by the four applications are not ecologically fragile lands and directed their de-notification. This common judgment is challenged by the State of Kerala and the custodian as being unsustainable. The finding of fact regarding the nature of the land and its contiguity with vested forests are also challenged as being erroneous.

4. We heard Sri. M.P.Madhavankutty, learned Special Government Pleader (Forests) appearing for the appellants and Sri. K.Gopalakrishna Kurup, learned Senior Advocate appearing for the respondents in these appeals. The main argument put forward by the appellant is with regard to the nature of the lands involved herein. Section 2(b) of the EFL Act defines the term ecologically fragile land as "any forest land or any portion thereof held by any person and being contiguous or encircled by a reserved forest or vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation". It is thus clear that to answer the definition of ecologically fragile land under the EFL Act, the land in question has to be one which lies encircled by or

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contiguous to forest land owned by the government or reserve forests or vested forests. Section 2(c) of the EFL Act defines the term "forest" as follows:

"forest" means any land principally covered with naturally grown trees and undergrowth and includes any forest statutorily recognised and declared as reserved forest, protected forest or otherwise but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential building and surroundings essential for the convenient use of such buildings."

5. The principal contention advanced by the respondents herein (the claimants before the Tribunal) was to the effect that the lands involved in these appeals are not lying contiguous to any forest owned by the government or vested forests or reserve forests. It was the specific case of the respondents herein that they had title to the land in question by virtue of the family partition deed. Though the title deeds of the property were not produced by the appellants, since the earlier vesting and restoration of possession to the respondents herein or their predecessors-in-interest is not disputed, the title of the applicants and their claim to the property was not in dispute. The respondents herein had a case that, after the restoration of the land to them in 1998, the land had been planted with rubber and cashew trees as well as seasonal crops like ginger and turmeric. They had stated that the land is situated

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within the municipal limits and abuts the municipal road on the western side. They also claimed to have approached the Custodian under Section 10A of the EFL Act for de-notification of the lands and their applications having been finally disposed of on 23.12.2010, they had preferred the instant applications on 3.2.2011 against the orders of the Custodian praying that the scheduled land be de-notified.

6. As noticed earlier, an Advocate Commissioner was deputed by the Tribunal to conduct an inspection of the lands in question and to ascertain whether the lands come within the definition of the term "ecologically fragile lands" under the EFL Act. The Commissioner deputed by the Tribunal has in Ext.C1 report dated 13.3.2012, stated that the property is situated in Shornur Municipality and was seen filled with undergrowth. In the lands involved in O.A. No.7 of 2011, seventy cashew trees were seen. In the lands involved in the other applications, the Commissioner has noted that rubber trees are seen planted. He has reported that the trees are aged 15 to 20 years. Regarding the boundaries of the properties it is specifically stated by the Commissioner that the property in O.A.No.3 of 2011 is bounded by the properties of petitioners 5 & 10 in O.A. No.607 of 1974, which was allowed by the Forest Tribunal and on the eastern and southern sides it is Paramba. The lands involved in O.A.No.5 of 2011 are bounded by the property of some of the petitioners in O.A.No.607 of 1974 on the eastern side and on the

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southern side, it is Palliyal. On the North & West, it is bounded by the rest of the properties in Survey No. 38/2. Likewise, the lands involved in O.A.Nos.7 and 6 of 2011 also had Paramba and the other properties covered by O.A.No.607 of 1974 as boundaries. It is seen from the report that the representatives of the appellant had submitted that on all four sides of the lands in question lie vested forests. But the Commissioner has specifically stated that it is not so. It is stated that on the western side of the lands in dispute, are the lands involved in O.A.No.607 of 1974 and the land had mango trees and plantains planted in it. The northern side is bounded by Kavalappara properties and the eastern side bounded by the properties in O.A 23 of 2009. On the southern side was seen as Palliyal as per the revenue records. The Commissioner has specifically noted that the forest boundary demarcation by way of constructing a 'jinda' was seen only on the eastern corner of the property.

7. He also found that there are no valuable trees or evidence of any wild life in the property. Ext.B1 is the notification issued by the Government under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance 2001. It provides for vesting of the lands described therein in the Government free from all the encumbrances and for the extinguishment of the right, title and interest of owners thereof with effect from the date of commencement of the Ordinance i.e. 2.6.2000. In the schedule attached to the notification, item

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No.24 is shown as "Anthimalakadu" Bit I, of Shornnur II Village in Ottapallam Range of Palakkad Forest Division. 4.6255 hectares of land in Survey No. 38/2 is seen included in the notification. The boundaries of the said land are shown as vested forests on the north and east and restored land in O.A.No.607 of 1974 on the south and west. It is stated that though petitioners in O.A.No.3 of 2011 had earlier filed O.A.No.10 of 1998, it was dismissed for non-prosecution on 17.7.2009. In the meanwhile, the Kerala Forest Vesting and Management of Ecologically Fragile Lands (Amendment) Act, 2009 was enacted and it was presumably to pursue their remedies under the newly inserted section 10 A, that O.A.No.10 of 1998 was got dismissed for non-prosecution. Thereafter, it is admitted that the applicants in all the applications had preferred petitions under section 10A of the EFL Act before the Custodian and they were finally disposed of on 23.12.2010. The instant applications were filed in February 2011, well within the time limit prescribed under Rule 3 (1) of the Kerala Forest (Vesting And Management of Ecologically Fragile Lands) Rules, 2007. It is contended by the respondents that Ext.B1 notification itself would show that the properties are not bounded by the forest land and that there is no contiguity with forest land. It was in the above circumstances, that they had sought de-notification of the properties held by them which was rejected by the Custodian.

8. The applicants had placed reliance on Ext.A5 judgment of the

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same Tribunal in O.A.Nos.11, 12 and 13 of 2008. The said Original Applications were allowed by Ext.A5 judgment holding that the lands involved therein are not ecologically fragile lands and directing restoration of lands to the applicants therein. It is to be noted that the land covered by Ext. A5 is also part of the land covered by O.A.No.607 of 1974. The Tribunal also noticed that the boundaries shown in Ext. B1 notification itself in respect of the lands in O.A.No.3 of 2011 are restored lands in O.A.No.607 of 1974. As such, the appellants themselves did not have a case that the lands in O.A.No.3 of 2011 are lying contiguous to or surrounded by forest land. Considering the report of the Advocate Commissioner, the Tribunal held that the scheduled lands are not lying contiguous to vested forests or reserve forest and therefore, would not come under the definition of the term ecologically fragile land as defined by the EFL Act. Learned counsel appearing for the appellants contended that in coming to this conclusion, the Tribunal has also placed reliance on the earlier judgment under the Kerala Private Forests (Vesting and Assignment) Act, 1971 i.e., judgments of the Forest Tribunal, Palakkad in O.A.No.607 of 1974 and of this court M.F.A. No. 368 of 1998. This, according to the counsel, is completely unjustified and erroneous in view of the provisions of the 2003 Act. It was brought to our notice that section 3(1) of the EFL Act overrides not only the earlier enactments but all judgments rendered by Forest Tribunal, the High Court as well as the

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Supreme Court in the context of the Kerala Private Forests (Vesting and Assignment) Act 1971 and therefore, in view of the non-obstante clause contained in section 3(1) of the EFL Act, the earlier judgments of the Forest Tribunal, Palakkad in O.A. No.607 of 1974 and of this court in M.F.A No.306 of 1998 are completely irrelevant and cannot be looked into for any purpose.

9. Per contra, the learned Senior Advocate appearing for the respondents brought to our notice the decision of the Division Bench of this court in **Planters Forum v. State of Kerala [2015 (2) KLT 783]** where this specific contention raised by the State had been repelled. Referring to the provisions of the EFL Act and to the non-obstante clause contained in Section 3(1) in particular, the Division Bench held as follows:

*"116. The second part of the issue is as to whether judgment/order of Forest Tribunal, High Court and Supreme Court in the context of 1971 Act declaring the properties of the petitioners as plantation are relevant or not. It is relevant to note that the scope of non obstante clause in a Statute has been examined by the Apex Court in several cases. In **State of Tamil Nadu v. Arooran Sugars Ltd.**, (supra) the Supreme Court has laid down in paragraph 16 as quoted above. When Section 3(1) gives an overriding effect, overriding the judgment/decreree or order of Court or Tribunal, the determination of Forest Tribunal, High Court or Supreme Court in the context of 1971 Act can in no way affect the vesting of*

Ecologically Fragile Land within the meaning of 2003 Act with effect from 02.06.2000. The binding effect of judgment of any issue relevant for vesting of Ecologically Fragile Land has been taken away expressly by Section 3(1). Although the judgments rendered in the context of 1971 Act are not binding but whether such judgment can be held to be relevant for any purpose is also to be examined. The judgments rendered by Forest Tribunal, High Court or Supreme Court are relevant under Section 42 of Indian Evidence Act. Section 42 of the Evidence Act which is relevant for the purpose of this case is quoted as below:

"42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.---Judgment, orders or decrees other than those mentioned in Section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state."

117. In view of the definition of Forest as contained in Section 2 (c) and the Ecologically Fragile Land as contained in Section 2 (b) of the 2003 Act which exclude the land which is principally covered with naturally grown trees and undergrowth and includes any forests statutorily recognised and declared as reserved forest, protected forest or otherwise, but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential buildings and surroundings essential for the convenient use of such buildings. Thus the lands which are used principally for the cultivation shall not be ecologically Fragile Land and the issue whether they are principally used for

cultivation of crops is relevant and is to be enquired into. Thus the judgments which were rendered by Forest Tribunal, High Court and Supreme Court under the 1971 Act are clearly relevant judgments within the meaning of Section 42 of the Indian Evidence Act and can be looked into as a piece of evidence for determining the issue. We are thus of the view that any enquiry or decision under Section 19 or Section 9(3) and 10 (b), the judgments delivered in the context of plantation for personal cultivation etc are relevant and can be relied for in appropriate cases."

10. It was held that though the earlier judgments rendered under 1971 Act are not binding on the Tribunal in view of the provisions contained in section 3 (1) of the EFL Act, the judgments rendered by the Forest Tribunal, the High Court or the Supreme Court are relevant under section 42 of the Indian Evidence Act and are to be considered as 'relevant judgments' and can be looked into as a piece of evidence for determining the issue. The Division Bench held that in any enquiry or decision under section 19 or section 9(3) or 10(b), the judgments delivered in the context of "plantation for personal cultivation etc" are relevant and can be relied on in appropriate cases. In our opinion, this is all that the Tribunal has done in the instant case also. It is not on the basis of the earlier finding that the property in question was planted with rubber, cashew and other crops and would not come within the definition of the term Forest under the 1971 Act that the instant applications were allowed

by the Forest Tribunal. The Tribunal has only taken the earlier judgment as one piece of evidence to hold that the properties in question are not ecologically fragile lands. It is for establishing the applicant's title over the properties that the earlier judgment has been relied on. It is on the question of contiguity with forest land that the Tribunal has primarily found in favour of the applicants before it.

11. It is seen from a reading of the impugned judgment that on a consideration of the report of the Advocate Commissioner and other materials produced before it, the Tribunal has come to the conclusion that the properties are bounded on one side by the lands involved in O.A.No.23 of 2009 which was allowed by the Tribunal by directing restoration of possession on the finding that it is not ecologically fragile land. It is also not disputed before us that the State has not filed any appeal from Ext.A5 judgment of the Tribunal. It is seen from the Commissioner's report that the lands covered by Ext.A5 judgment are lying on the eastern side of the lands involved in O.A.No.5 of 2011 and O.A. No.7 of 2011. Petitioners 6,7,11 and 12 in O.A. No.607 of 1994 are the applicants in O.A.No.11 of 2008 which has been allowed by Annexure A5 judgment. In those circumstances, it is clear that the contiguity of the lands in question with the forest land is broken by the existence of restored lands in the possession of private persons and therefore, no case of contiguity has been made out as is required to answer the

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definition of the term ecologically fragile lands under Section 2(c) of the EFL Act. We cannot therefore fault the finding of the Tribunal to the effect that the lands in question were being used for own cultivation by the holders thereof or their predecessors-in-interest and are not ecologically fragile lands. No other point was urged or argued before us.

For the reasons stated above, we hold that no grounds have been made out warranting interference with the judgment under appeal. The appeals fail and are accordingly dismissed. No costs.

Sd/-

**P.N.RAVINDRAN
(JUDGE)**

Sd/-

**ANU SIVARAMAN
(JUDGE)**

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The words "**Exhibit A5 Judgment**" occurring in the 2nd and 3rd sentences of paragraph 11 of the common judgment dated 15.10.2015 in M.F.A.Nos. 5/2015, 6/2015, 7/2015 & 9/2015 are corrected and substituted as "**Judgment in O.A. No.23 of 2009**" as per order dated 30/08/2017 in R.P. Nos. 942/2016, 996/2016, 1020/2016 and 37/2017.

Sd/-

Registrar (Judicial)