

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

MFA.No. 104 of 2014 ()

AGAINST THE ORDER IN OA 1259/1974 of FOREST TRIBUNAL, PALAKKAD DATED
01-04-1981

APPELLANT(S):

1. V.K.GOPALA VARMA (DIED) LEGAL REPRESENTATIVE - K.KALYANI
NATHIYARAMMA AGED 85 YEARS, W/O. LATE V.K. GOPALA VARMA
SUMANGALY HOUSE, DEFFEDARE CHALLA, NANNIMODE POST
VANDITHAVALAM, CHITTOOR, PALAKKAD - 678 534.

2. K. NANIKUTTY,
AGED 63 YEARS, D/O. LATE V.K. GOPALA VARMA
SUMANGALY HOUSE, DEFFEDARE CHALLA, NANNIMODE POST
VANDITHAVALAM, CHITTOOR, PALAKKAD - 678 534.

3. P. VINAYA CHANDRAN
AGED 43 YEARS, S/O. LATE BALAGOPALA VARMA
KAILASAM HOUSE, POLPULLY POST, PANAYOOR
CHITTUR, PALAKKAD - 678 552.

4. V.K. CHANDRASEKHARA VARMA
AGED 72 YEARS, S/O. LATE V.K. YASODA NETHIYAR
LAKSHMI NARAYANAM HOUSE, AKATHETHARA POST
PALAKKAD - 688 008.

5. M. JAYAKUMAR
AGED 42 YEARS, S/O. LATE SUBADRA NETHIYAR
LAKSHMI NARAYANAM HOUSE, AKATHETHARA POST
PALAKKAD - 688 008.

6. M. APPUKUTTAN
AGED 51 YEARS, S/O. LATE SUBADRA NETHIYAR
SUBHADRAM HOUSE, AKATHETHARA POST, PALAKKAD- 688 008.

7. M. UMADEVI
AGED 32 YEARS, D/O. LATE SUBADRA NETHIYAR
LAKSHMI NARAYANAM HOUSE, AKATHETHARA POST, PALAKKAD- 688 008.

8. V.K. SARATH CHANDRA VARMA
AGED 57 YEARS, S/O. LATE V.K. VISALAKSHI NETHIYAR
NO.7, SRILAKSHMI NAGAR, KOVAI PUDUR
COIMBATORE - 641 042.

9. V.K. SASIDHARA VARMA
AGED 61 YEARS, S/O. LATE K.P. CHALLAPPA MENON
FLAT NO. B6, SRIVALSAM, NO.52
THIRUMALAI ROAD, T. NAGAR P.O., CHENNAI - 600 017.

MFA NO. 104 OF 2014

10. K. MANIKANDAN
AGED 50 YEARS, S/O.V.R. RADHAKRISHNA VARMA, 40/1253
GOPALA VARMA MANDIRAM, ALRA NO. 62, ARUVIKARA LANE
MANAKKAD POST, TRIVANDRUM - 695 009.

11. K. JALAJAKUMARI
AGED 52 YEARS, D/O.V.K. RADHKRISHNA VARMA, 40/1253
GOPALA VARMA MANDIRAM, ALRA NO. 62, ARUVIKARA LANE
MANAKKAD POST, TRIVANDRUM - 695 009.

12. K. GEETHA RAVI VARMAN,
AGED 50 YEARS, D/O.V.K. RADHAKRISHNA VARMA
A/405 OM AKSHAY CHS, THAKKORVADI CROSS LANE
DOMBIVILLE WEST, THANA, MAHARASHTRA - 421 202

13. V.P. APPUKUTTA RAJ
AGED 48 YEARS, S/O. V.K. INDIRA DEVI
SURYA JYOTHI HOUSE, KULAPPURA, PUZHAKALIDOM
VADAKKANACEHRY POST, PALAKKAD - 678 683.

14. P.C. JAYADEV
AGED 52 YEARS, S/O. V.K. CHANDRABANU VARMA
AYODHA HOUSE, AKATHETHARA POST, PALAKKAD - 678 008.

15. VENUGOPALA MENON
AGED 76 YEARS, S/O.V.K. KELU ACHAN, VIJAYA NIVAS
NEAR INDIAN BANK, AKATHETHARA POST, PALAKKAD- 678 008.

16. SANTHAKUMARA MENON
AGED 74 YEARS, S/O.V.K. KELU ACHAN, RADHALAYAM
VINAYAKA STREET, VADAKKANACHERY, PALAKKAD - 678 683.

17. VISALAKSHI NETHIYAR
AGED 78 YEARS, D/O.V.K. KELU ACHAN, OLD KUNNATH HOUSE
LAKSHMI NIVAS, VADAKKANACHERY POST
PALAKKAD - 678 683. (APPELLANTS NO.3 TO 7 AND 9 TO 17
REPRESENTED BY THEIR POWER OF ATTORNEY HOLDER AND 8TH RESPONDENT
SRI.V.K. SARATHCHANDRA VARMA)

BY ADVS.SRI.G.GOPALAKRISHNAN NAIR (EDAPPALLY)
SRI.PREMCHAND R.NAIR

RESPONDENT(S) :

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

2. CUSTODIAN EX OFFICIO SPECIAL SECRETARY (AGRICULTURE
FOREST SPECIAL) DEPARTMENT, THIRUVANANTHAPURAM.

R1,R2 BY SPECIAL GOVERNMENT PLEADER SRI. M.P. MADHAVANKUTTY

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 15-
09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.F.A (Forest) No. 104 of 2014

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Dated, this the 15th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

Challenge in this appeal is against the order dated 01.04.1998 passed by the Forest Tribunal in O.A. No. 1259 of 1974.

2. Heard Smt. Sumathi Dandapani, the learned senior counsel appearing for the appellants as well as the learned Government Pleader appearing for the respondents.

3. The sequence of events as narrated in the proceedings shows that a claim was put forth by one Mr. Gopala Varma by approaching the concerned Tribunal by filing O.A. No. 1259 of 1974, to the effect that the property involved therein, which allegedly was of more than 100 acres, was not part of the 'private forest' vested with the Government and that same is exempted by virtue of Sections 3(2) and 3(3) of the Kerala Forests (Vesting and Assignment) Act 1971 (herein after referred to as the 'Act').

4. The grievance as on date is mainly with regard to 62.60 acres, as the balance is stated as 'rocky area'. The matter was considered by the Tribunal and on conclusion of the trial, the verdict was passed on 26.12.1997, whereby the O.A. was allowed. The matter was taken up in appeal by the State, by way of MFA No. 222 of 1978. After hearing both the sides, the impugned order was set aside and the matter was remanded as per the judgment dated 11.07.1979. Pursuant to the remand, the matter was reconsidered by the Tribunal and after evaluating/weighing the pleading and evidence, interference was declined and the O.A. was dismissed more than 3 decades ago, as per order dated '01.04.1981', which is now sought to be challenged by the appellants by stepping into the shoes of the original applicant.

5. Contention projected by the appellants is that the case was being looked after by one of the elder members of family, by name 'Gopala Varma' and that the property belonged to Thavazhi, whereby the rights and interests of the appellants are also involved. The appellants were under the firm belief that the property was still belonging to them and attempts were made to effect partition of the property in the year 2013. When the conveyance deed was taken to the concerned Registrar for effecting

registration, the appellants were let known that the deed cannot be registered, as the property already stood vested with the Government, by virtue of the 'Vesting Act' and in view of the finalization of the proceedings by the concerned Forest Tribunal decades ago. This made them to feel aggrieved and hence the appeal seeking to challenge the order passed about 33 years ago.

6. Initially, the appeal was sought to be maintained, by filing C.M. Appln No. 2785 of 2014, seeking to condone the delay of '397' days. The contention raised therein was that since the appellants came to know about the proceedings; particularly the order passed by the Tribunal (which stands against them), only in the year 2013 (when partition was sought to be effected), the limitation period has to be computed from the date of knowledge. The matter came up for consideration before this Court on different occasions and the delay was sought to be opposed by the State, mainly pointing out that the actual delay was of more than 33 years and not 397 days. In the above circumstances, the appellants sought to file I.A. No.55 of 2014, seeking to challenge the verdict, after getting the 'leave' of the Court i.e. leave to file appeal, for the circumstances mentioned in the affidavit filed therewith and trying to dispense with filing of any delay petition. Accordingly, when the

matter came up for consideration on 13.10.2014, a submission was made on their behalf, to permit them to withdraw the C.M. Appln. filed to condone the delay, and accordingly, the C.M. Appln. was dismissed as withdrawn. Subsequently, I.A. for 'leave' came up for consideration on 20.10.2014, when the prayer in the I.A. was vehemently opposed by the State. In the said circumstances, reserving all the rights and liberties of the State to oppose the matter, also on the question of delay, the I.A. was allowed granting 'leave' to file appeal. The said order reads as follows :

"I.A. 55/14

The learned senior Government Pleader for respondents strongly opposed the grant of leave. According to him, the appeal is not maintainable and the legal heirs of the original claimant should have filed the appeal within a statutory period of limitation. We allow the application subject to the right of the respondents to raise all objections at the time of admission of the appeal including the objections raised in the counter affidavit."

7. The matter was heard in detail with regard to the course and proceedings. During the course of hearing, the learned senior counsel submitted that actual delay is only '397' days and the

parties were not in a position to know about the litigation, which was being pursued by the senior member of their family, by name Gopala Varma. The learned counsel also sought to place reliance on the decisions reported in **(1985) 1 SCC 163 [Harshan Verma Vs. Charan Singh and Others]**, **(1987) 2 SCC 107 [Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and Others]** and **(2000) 9 SCC 94 [State of Bihar Vs. Kameshwar Prasad Singh]**, contending that the delay has to be construed liberally and that the appellants are in no way benefited because of the delay. The said version does not appear to be correct or acceptable to this Court for various reasons. Obviously, all the appellants are not seeking to pursue the matter as legal representatives of the deceased Gopala Varma, who was pursuing the matter earlier. It is stated that some of the appellants are also co-sharers of the property concerned. If they were co-sharers of the property concerned, they should have been vigilant enough as to the rights and interests, particularly with regard to the adverse consequence which resulted by virtue of promulgation of the Act i.e. Kerala Forests (Vesting and Assignment) Act. By virtue of the relevant provisions of law, vesting is automatic, as declared by the a Division Bench of this Court in **Ranga Sesha Hills (P) Ltd. Vs.**

State of Kerala [1991 (2) KLT 49] and affirmed by Full Bench of this Court as per the decision reported in **1997 (2) KLT 513 (F.B.) [Bhargavi Amma Vs. State of Kerala]**. That apart, the impugned order was passed by the Tribunal in O.A. No. 1259 of 1974 on 01.04.1981 and the original applicant, who even according to the appellants, was pursuing the matter on behalf of the members of the family, being the elder member. The said elder member did not find it fit and proper to challenge the order immediately or within a reasonable time. Gopala Varma took his last breath only in the year 2003, as stated by the learned senior counsel for the appellants. The necessity to have the order challenged did not strike the mind of the original applicant i.e Gopala Varma, for nearly 22 years. Same was the position with regard to the other appellants, who are stated as co-sharers of the property. Persons who are sitting on an arm chair and taking rest without any regard to the rights and liberties are not entitled to have any relief, as made clear by the Apex Court in **Rabindranath Bose Vs. Union of India (AIR 1970 SC 470)**, It is also to be noted that the right of the State to oppose the relief including the question of delay was left open as per the interim order dated 20.10.2014. Merely for the reason that the 'leave' to

file appeal was granted, this Court does not find it as a fit and proper case to be entertained, notwithstanding the inordinate delay of more than 33 years. The decision cited by the learned counsel for the appellants do not come to their rescue, as the dictum is only to the effect that the delay has to be considered liberally and a pragmatic view has to be taken. This Court finds that so called explanation offered by the appellants does not appear to be a reason at all; much less a reasonable one. The extent of delay is also beyond comprehension. That apart, the application to condone the delay itself was got dismissed as not pressed and no such application is pending. In the said circumstances, this Court finds it difficult to accept the proposition. The appeal is devoid of any merit. The same stands dismissed accordingly.

sd/-

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

sd/-

**K. HARILAL,
JUDGE**

kmd