

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 5860 of 2004 (V)

PETITIONER(S) :

- 1 ELAPPUNGAL KURIAKOSE (DEAD) ,
S/O.JOSEPH, PUTHUPPADI AMSOM AND DESOM, KOZHIKODE.

*SUPPLEMENTED PETITIONERS 2 TO 8 IMPEADED

- P2. PHILOMA KURIAKOSE,
AGED 69, W/O.ELAPPUNGAL KURIAKOSE, ELAPPUMKAL HOUSE,
KODATHAI POST, THAMARASSERY - 673 573.
- P3. ALICE GEORGE AGED 50,
W/O.GEORGE, CHOKKAT HOUSE, MARIKUNNU POST,
CALICUT, PIN - 673 012.
- P4. ASHA JOSEPH,
AGED 48, W/O JOSEPH, PUTHENPURACKAL HOUSE, NALUKODY POST,
CHANGANASSERY PIN - 686 548.
- P5. ANITHA SAJAN,
AGED 46, W/O SAJAN, PARUKANNIL HOUSE, MAMOOD POST,
CHANGANASSERY, PIN - 686 536.
- P6. ANILA JOSEPH,
AGED 44, W/O JOSEPH, EYYALIL HOUSE, MARIKUNNU POST,
CALICUT - 673 012.
- P7. TOMCY THOMAS,
AGED 29,S/O ANCY, KAROTTUPURAM HOUSE, OLLUKARA POST,
KALATHODE, TRISSUR, PIN - 680 655.
- P8. TENY THOMAS,
AGED 44, S/O ANCY, KAROTTUPURAM HOUSE, OLLUKARA POST,
KALATHODE, TRISSUR, PIN - 670 655.

(*ADDL.P2 TO P8 ARE IMPEADED AS PER ORDER DATED 12.06.2015 IN
IA 7710/15.)

BY ADV. SRI.E.NARAYANAN.

RESPONDENT(S) :

1. THE CUSTODIAN OF VESTED FORESTS
PALAKKAD.
2. THE STATE OF KERALA,
REPRESENTED BY SPECIAL SECRETARY, FOREST DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.MADHAVAN KUTTY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P-1: TRUE COPY OF THE PROCEEDINGS IN OA NO.128/75 DATED 07/12/1196 OF THE FOREST TRIBUNAL, CALICUT.
- EXT.P-2: TRUE COPY OF THE JUDGMENT DATED 24TH JULY, 1979 IN MFA NO.228/1977 OF THIS HON'BLE COURT.
- EXT.P-3: TRUE COPY OF THE ORDER OF THE FOREST TRIBUNAL, KOZHIKODE DATED 02/06/1980 IN OA NO.128/75.
- EXT.P-4: TRUE COPY OF ORDER IN IA 15/92 IN OA 128/75 DATED 11/03/1992 OF THE FOREST TRIBUNAL, KOZHIKODE.
- EXT.P-5: TRUE COPY OF THE REPRESENTATION DATED 17/02/2003 SENT BY THE PETITIONER TO THE SECRETARY TO GOVERNMENT.
- EXT.P-6: TRUE COPY OF THE DEATH CERTIFICATE OF SRI.E.J.KURIAKOSE.
- EXT.P-7: TRUE COPY OF THE SURVIVING FAMILY MEMBERSHIP CERTIFICATE.
- EXT.P-8: TRUE COPY OF THE COMMUNICATION DATED 12/08/2003 BETWEEN THE CONSERVATOR OF FORESTS AND THE DISTRICT COLLECTOR, WAYANAD.
- EXT.P-9: TRUE COPY OF THE PLAN OF THE ENTIRE 25 ACRES OF LAND FALLING IN SURVEY NUMBER 187/1A1 OF KUNNATHIDAVAKA VILLAGE, SOUTH WAYANAD TALUK.

RESPONDENT(S) ' EXHIBITS :

NIL

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.5860 of 2004

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Dated this the 28th day of September, 2015

JUDGMENT

The first petitioner was the applicant in O.A No.128/75 on the files of the Forest Tribunal, Calicut. In the said petition, he has claimed that 25 acres of land in Sy. No.187/1A1 of Kunnathidavaka in South Wayanad taluk is not vested with the Government. According to the petitioners, it is a coffee plantation and the property originally belonged to Edavath Kovilakam. The petitioners allege that claim of the first petitioner was accepted by the Forest Tribunal and 25 acres was excluded from vesting.

2. The State has preferred an appeal before this Court as MFA No.228/77 wherein this Court remitted the matter to the Forest Tribunal for re-consideration. Thereafter, the Forest Tribunal by Ext.P3 order dated 2.6.1980 found that out of 25 acres, 21 acres is vested with them and by Ext.P4 order dated 11.3.1992, the application submitted by the first petitioner for restoration of land was allowed. Thereafter no action was taken to restore the land in terms of Exts.P3 and P4 orders even after a lapse of more than several years. It is with this background, the petitioners have approached this Court.

3. In the statement filed by the first respondent, it was contended as follows:

The first petitioner filed O.A No.128/75 before the Forest Tribunal, Kozhikode, claiming 25 acres of land in R.S No.187/1A1 in Kunnathidavaka village, South Wayanad Taluk. The Divisional Forest Officer, Special Division, Kozhikode submitted counter statement before the Tribunal stating that four acres of land out of 25 acres was developed before 10.5.1971 and, therefore, Act 26/71 is not applicable to the area. The remaining 21 acres supports bushy wild growth, grass etc., and was forest as on 10.5.1971. The learned Tribunal allowed the O.A vide order dated 7.12.76. The State filed MFA No.228/77 in which this Court set aside the order of the Forest Tribunal and remanded the case back to the Tribunal for fresh disposal vide order dated 24.7.79.

It was further stated that the learned Tribunal after considering the matter in detail declared that 21 acres is vested with the State and four acres is not vested, confirming the counter statement of the State vide order dated 2.6.1980. Copy of the counter statement is produced as Annexure-R1(a). It is contended that the first petitioner has submitted various representations for restoration of the property. He was informed that the land allowed

as per Ext.P2 was never under the possession of the forest department and the department is not responsible for restoring any area which it has not taken over under Act 26/71.

It was further contended that Ext.P2 order of the learned Tribunal is very clear and the Tribunal recorded in paragraph (4) of the order that the respondents admitted that four acres out of the 25 acres was developed prior to 10.5.71 and was not taken as vested forest. The Tribunal added that the only dispute is the claim of the first petitioner that the remaining 21 acres was not private forest and is not vested with the Government. As the claim was dismissed and four acres was declared as not vested with forest, the petitioners are entitled for undisturbed possession and enjoyment of the said four acres. Therefore, it was contended that the four acres of land was never vested under Act 26/71 and taken possession of by the forest department. Therefore, the prayer for restoration of the first petitioner is made *mala fide*.

It was also contended that no compensation is payable to the petitioners because of the statutory bar under Section 9 of the Kerala Private Forest (Vesting and Assignment) Act. It was also contended that Ext.P4 order issued by the learned Tribunal is without jurisdiction and the petitioners are not entitled for

restoration of the property which was not taken possession of by the Government. Thee Government made it clear during 1976 itself that the above four acres is not a vested forest. It is true that the Government has not filed appeal against Ext.P2 as the finding of the learned Tribunal is correct.

4. I have heard the learned counsel for the petitioners and the learned Senior Government Pleader in the matter.

5. As it appears from record that the bone of contention between the parties is with respect to a particular piece of land, it has to be identified on the basis of a joint inspection by the forest and revenue officials. This Court is of the view that it is only just and proper to relegate the matter to the aforesaid authorities.

Therefore, the writ petition is disposed of directing the forest and revenue officials concerned to conduct a joint inspection of the property in dispute, within three months from the date of receipt of a copy of this judgment, in the light of the documents relied on by both sides. The question regarding the authenticity of those documents is left open to be decided by the authorities concerned before making the inspection. The plan produced along with I.A No.13370 of 2015 shall be returned to the petitioners so that they can produce the same before the concerned authorities during

inspection. As there is a claim for compensation also, this Court leave the same open to be decided by the authorities concerned, which shall be subject to the final outcome of the inspection.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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