

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WA.No. 369 of 2011 () IN WP(C).1207/2005

AGAINST THE JUDGMENT IN WP(C) 1207/2005 of HIGH COURT OF KERALA
DATED 17-01-2011

APPELLANT(S)/PETITIONER IN WP:

M/S. JOSEPH & COMPANY,
REPRESENTED BY ITS MANAGING PARTNER
SMT. MEERA SCARIA, NOW RESIDING AT TC.6.900
PARACKA HOUSE, ZENANA MISSION ROAD,
THRISSUR-680020.

BY ADVS. SRI. P. RAVINDRAN (SR.)
SRI. JOHN JOSEPH VETTIKAD
SRI. C. JOSEPH JOHNY

RESPONDENT(S)/RESPONDENT IN WP:

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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, GOVT. SECRETARIAT
THIRUVANANTHAPURAM-695039.
 2. PRINCIPAL SECRETARY FOR FOREST,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695039.
 3. THE DIVISIONAL FOREST OFFICER,
NEMMARA DIVISION, NEMMARA-678508.
 4. THE FOREST RANGE OFFICER,
NELLIAMPATHY RANGE, NEMMARA-678508.
 5. THE TAHSILDAR, CHITTOOR,
PALAKKAD DISTRICT-678511.

R BY SRI. M. P. MADHAVANKUTTY, SPL. GP FOR FOREST

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-07-2015, ALONG
WITH W.A.NO.375 OF 2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.Nos.369 & 375 of 2011

Dated this the 10th day of July, 2015

JUDGMENT

Antony Dominic, J.

1. These writ appeals are filed against the judgment of the learned single Judge in W.P(C).1207/05, which was filed by the appellant in W.A.369/11. W.A.375/11 is filed by the respondents in that writ petition. Since the appeals arise from the same judgment, they were heard together and are disposed of by this common judgment.

2. W.P(C).1207/05 was filed by the appellant in W.A.369/11, seeking to quash Exts.P39 and P41, whereby, the lease in respect of Beatrice Estate in the Nellyyampathy Hills was terminated and a bank guarantee furnished by the appellant was invoked by the appellants in W.A.375/11. In the writ petition, a writ of mandamus requiring the appellants in W.A.375/11 to restore to them the possession of the estate, which was taken over pursuant to Ext.P29 and consequential directions were also sought for.

3. By the judgment under appeal, though the learned single Judge set aside Ext.P41 proceedings of the Divisional Forest Officer, Nenmara invoking the bank guarantee furnished by the writ petitioner, Ext.P39 order terminating the lease was affirmed. It was in these circumstances, W.A.369/11 has been filed by the writ petitioner and W.A.375/11 has been filed by the State and its officers.

4. We heard learned senior counsel for the appellant in W.A.369/11 and the learned special Government Pleader appearing for the official respondents, who are the appellants in W.A.375/11.

5. Before we deal with the contentions raised at the Bar, we shall make reference to the facts pleaded and the documents that were referred to us by both sides from the voluminous paper books filed in these appeals. Ext.P3 is a notification issued by the Divisional Forest Officer of the Government of Travancore-cochin on 5.1.1953, stating that the leasehold right of the forest lands mentioned therein would be sold in auction by the Divisional Forest

Officer, Trichur at his office on 11.2.1953. Among the two estates that are included in the schedule to the notification, first one is Beatrice having an extent of 279.94 acres and the remark column shows that it is an abandoned estate and the extent of which is subject to survey.

6.It is the common case of the parties that in the auction that was held, the bid submitted by one P.I.Joseph was accepted and the auction was confirmed in his favour on 9.9.1953. Accordingly, he was put in possession of the estate on 4.2.1955. Subsequently, it being an abandoned estate, Sri.P.I.Joseph sought permission to develop the property and accordingly, Ext.P5 order dated 5.12.1956 was issued by the Revenue Department of the Government of Kerala, according sanction for sale of the tree growth in 246.26 acres of the southern block of the abandoned Beatrice estate to Sri.P.I.Joseph. It is stated that Sri.P.I.Joseph developed the property and after retaining it and harvesting the crop, sold his leasehold rights to one K.K.Joseph by Ext.P6 document executed on 28.2.1974.

7.The recitals in Ext.P6 document show that Sri.K.K.Joseph has described himself as the Managing Partner of M/s.Joseph & Company, a registered partnership firm. Later, on 15.12.1979, the Government entered into Ext.P7 lease agreement with Sri.K.K.Joseph in respect of the 246.26 acres of land mentioned in Ext.P6 referred to above. It is also worth mentioning that in this document, though reference is made to Ext.P6, it does not make reference to M/s.Joseph & Company, the partnership firm mentioned in Ext.P6.

8.Subsequently, by Ext.R3(b), a document executed on 16.12.1983, Sri.K.K.Joseph, in his capacity as the Managing Partner of M/s.Joseph & Company, sold 50 acres of the property covered by Exs.P6 and P7 to Sri.Raghavan, his wife Leela and Remesh, Hareendran, Preman, Jaya and Bindu, their children. It is also averred in the pleadings that on 11.8.1988, Sri.K.K.Joseph retired from the partnership and this is evident from Ext.P2, extract of the Register of Firms maintained under section 59 of the Indian

Partnership Act, 1932 (However, Ext.P31 shows that his retirement was on 31.3.1987).

9. Thereafter, on 26.6.1990, Mrs.Meera Scaria, the Managing Partner of the firm, issued Ext.P25 letter to the Divisional Forest Officer, Nelliampathy Range, Nenmara informing him about Ext.R3(b) and that they have learnt that before assigning the leasehold right, the former Managing Partner had omitted to obtain the consent of the Government in writing. It is also stated that the transferees have agreed to re-convey the land and that by such re-conveyance, the firm will have the default remedied. On that basis, the Government was requested to condone the error in not having obtained their consent for the assignment of the leasehold rights by Ext.R3(b) and further to grant permission for re-conveyance of the property to the firm. Though the respondents do not dispute the receipt of this letter, it is the admitted case of the parties that no reply was given to the firm or the Managing Partner.

10. However, by Ext.P14 notice dated 19.2.1992, the Tahsildar, Chittur informed the Managing Partner of the firm that the Government have, vide letter dated 27.5.1989, ordered termination of the lease of the estate since the firm had violated the conditions of the lease. It is also stated that the Government have ordered to prepare inventory for termination of the lease and the firm was requested to vacate the estate on or before 10.3.1992. It appears that on receipt of Ext.P14, the firm submitted a petition to the Government on 17.3.1992 and on that basis, the Government issued Ext.P15 order dated 7.4.1992, informing the firm that direction has been issued to the District Collector to stay the eviction proceedings initiated by the Tahsildar, pending decision on the petition submitted by the firm.

11. While matters stood thus, the Government issued Ext.P26 order dated 7.11.1995, making reference to the memorandum submitted by the Nelliampathy Planters Association and ordering that all transfers which have already taken place are regularised and any transfer in future will be valid only if prior

sanction of the Government is obtained. According to the firm, as a result of Ext.P26, the breach, if any, committed by them in executing Ext.R3(b) stood regularised. However, the Government again issued Ext.P27 order dated 26.2.1999, cancelling Ext.P26 and making it clear that "the Government have already decided that all the issues connected with the lease of Forest land in Nelliampathy will be re-examined".

12.Be that as it may, on 15.11.1999, Ext.P30 notice was issued by the Divisional Forest Officer, Nenmara, addressed to Sri.K.K.Joseph, M/s.Joseph & Company, Beatrice Estate, Padagiri, calling upon him to show cause why the lease in respect of the whole area shall not be terminated as contemplated in clause 12 of the lease deed. The reason stated in that notice is that Sri.K.K.Joseph had executed Ext.R3(b) in the office of the Sub Registrar, Nenmara in favour of one Raghavan and six others and that the said sale deed executed by him showed that he had transferred possession of 50 acres without obtaining the previous permission of the Government in writing, as contemplated in clause 14 of Ext.P7 lease deed. It

is stated that this breach committed by Sri.K.K.Joseph entitled the Government to terminate the lease for the above default on his part in the observance of the covenant in clause 14 of the lease deed.

13. On receipt of Ext.P30 notice, Sri.K.K.Joseph submitted Ext.P31 reply, informing that the property was purchased by the partnership firm and he signed the lease deed on behalf of the firm. He admitted that by an inadvertent omission, without obtaining previous permission, leasehold rights over 50 acres of land was assigned to Sri.Raghavan and others. He has also stated that on 31.3.1987, he retired from the firm and has no subsisting right or interest in his assets. He has further informed that Mrs.Meera Scaria is the Managing Partner and that notice should be sent to her. According to him, the firm continues to pay the lease rent of the entire property and that even after his retirement, the firm was pursuing its efforts to get the 50 acres sold to Raghavan and others re-assigned and thereby remedy the default. He has also made reference to Exts.P26 and P27 and

according to him, in view of these documents, it is neither proper nor legal for the Government to take the lessee to task.

14.However, the Government issued Ext.P29 order dated 20.5.2002, terminating the lease. In this order, the Government took the stand that Sri.K.K.Joseph is the lessee of the estate and not the firm. It is also stated that in violation of the lease conditions, he had executed Ext.R3(b) in favour of Raghavan and others. This order also states that the stay granted by the Government, and mentioned in Ext.P15 order dated 7.4.1992, was vacated by the Government on 30.7.2001. On receipt of Ext.P29, the firm, represented by its Managing Partner, filed OP.20508/02 and in that OP, this Court passed Exts.P32 and P33 interim orders. The OP was finally heard and disposed of by Ext.P34 judgment, along with OP.30224/02 filed by Raghavan and others mentioned in Ext.R3(b).

15.In Ext.P34 judgment, Ext.P29 was set aside by this Court mainly on the ground that the same was passed

without hearing the petitioners in that OP. It was also directed that the possession of the estate should be restored to the petitioners and they were also given liberty to carry out agricultural operations and harvest agricultural produce till the Government took a fresh decision in the matter. Against Ext.P34 judgment, the State filed W.A.255/03 and the petitioner firm filed W.A.296/03. These writ appeals were heard by a Division Bench and were disposed of by Ext.P35 common judgment. In this judgment, dealing with the contention of the Government that Sri.K.K.Joseph was the lessee and not the firm, the Division Bench held thus:

"15. But it is pertinent to note that Shri.P.I.Joseph was in possession of the estate since 1953. The Government had admittedly accorded sanction for the sale of the leasehold right of the estate in favour of Shri.P.I.Joseph in the year 1953 pursuant to an auction conducted by the Government. Shri.K.K.Joseph had purchased the leasehold right from Shri.P.I.Joseph by virtue of a registered document of the year 1974 (Ext.P1). In the above document, it is seen clearly mentioned that Shri.K.K.Joseph had purchased the property in his capacity as the Managing Partner of M/s.Joseph

and Company (petitioner). It is true that in Ext.P2 lease deed executed between the Government and Shri.K.K.Joseph (lessor and lessee respectively), Shri.Joseph had not described himself as the Managing Partner of the petitioner firm. But it is significant to note that Ext.P2 lease deed specifically refers to the sale deed (Ext.P1) between Shri.P.I.Joseph and Shri.K.K.Joseph. Therefore, the Government, the lessor was very well aware that Shri.K.K.Joseph, the lessee was in possession of the leasehold in his capacity as the Managing Partner of the firm.

16. Be that as it may, there were several other materials on record which may indicate that the petitioner firm was recognised or at least accepted by the Revenue and Forest authorities, to be the lessee in possession.

17. We may only refer to some of the documents which have been placed on record by the petitioner in this regard. Ext.P3 is a true copy of the notice dated February 2, 1987 issued by the Forest Range Officer, Nelliampathy. In this notice, the petitioner was directed to remit the lease rent for the period ending on February 4, 1987. Ext.P18 is a communication issued by the Divisional Forest Officer, Nanmara to the Tahsildar, Chittoor. In this communication dated June 17, 1982, the Divisional Forest Officer has informed that the Department has no objection to give registration to the petitioner for coffee

plantation for the area under cultivation in the estate. Ext.P19 which is dated June 5, 1985 is a communication issued by the Executive Officer of Nelliampathy Panchayat to the Manager of the petitioner firm reminding him to remit the land cess. Ext.P22 is the true copy of the proceedings of the Tahsildar, Chittoor. In this proceedings dated June 21, 1982 it has been certified that the petitioner firm is in possession of the estate and that on inspection it was found that an extent of 184 acres was planted with coffee. Accordingly, the petitioner was granted registration certificate as a coffee estate. Ext.P23 is a true copy of yet another proceedings of the Tahsildar, Chittoor dated August 13, 1982. This relates to the grant of registration certificate for an area of 5 hectares as cardamom plantation. We have referred to these documents only to highlight the contentions raised by the petitioner that there was prima-facie proof or evidence to show that the petitioner has been in possession of the estate ever since 1974. The above contention of the petitioner is not without any merit or substance.

18. It is contended by the learned counsel for the petitioner that in view of the overwhelming piece of evidence on record, the learned Single Judge is not justified in directing the Government to reconsider the matter afresh. The learned Judge ought to have granted the reliefs prayed for, especially since it was found

that Ext.P12 notice was issued without affording any opportunity to the petitioner of being heard. It is further pointed out by the learned counsel that the Government had recognised the petitioner as the lessee of the land known as Beatrice Estate. In the counter affidavit filed on behalf of the Forest Environment and Wild Life Department in O.P.No.8801/1985, it was specifically admitted that the petitioner was a lessee. In the above Original Petition, the petitioner claimed that he had got a right to extract minerals and granite from the land under lease. The above claim was made relying on clause 9 of Ext.P2 lease deed. The Government had resisted the claim made by the petitioner. However, it was admitted by the Department that the petitioner was a lessee. It is further pointed out by the learned counsel for the petitioner that the Divisional Forest Officer, Nenmara had also admitted in his counter affidavit in the above Original Petition that the petitioner was granted lease "for certain specific purpose". In short, the contention of the petitioner is that the status of the petitioner as a lessee has never been in dispute.

19. In this context we may refer to two other documents also, which would unambiguously indicate that the Government had recognized and accepted the petitioner as lessee. Ext.P8 is a notice dated February 19, 1992 by which the lease in respect of the Beatrice Estate was

terminated for the first time on the ground that a portion of the leasehold was transferred in favour of strangers. It is significant to note that the notice is addressed to the present managing partner (Smt.Scaria) and Sri.Raghavan the transferee. Ext.P9 order dated April 7, 1992 issued by the Government is addressed to none other than the petitioner, M/s.Joseph & Company. By this order the Government had stayed operation of Ext.P8. Thus it is clear that the contention of the respondents that the petitioner was never recognized or accepted as lessee is without any basis."

16.The Division Bench ultimately declined to interfere with the judgment but ordered that the Government should consider the contentions of the parties in the proper perspective and in the light of the observations in the judgment and take a final decision in the matter in accordance with law (vide paragraph 31 of the judgment).

17.Though it was a common judgment disposing of W.A.Nos.255/03 and 296/03, the state filed Civil Appeal No.4169/04 against the judgment in W.A.255/03. That civil appeal was disposed of by Ext.P36 order dated 16.7.2004. Since much was argued on the scope

of this order, we deem it appropriate to extract the same. Therefore, the relevant portion of this order is extracted, which reads thus:

"Leave granted.

After hearing learned counsel appearing for the parties, we consider it just and proper to dispose of this appeal by modifying the order of the learned Single Judge, as confirmed by the Division Bench of the High Court, in Writ Appeal No.255 of 2003 by directing as follows:

(1) A Show-Cause notice regarding proposed termination of lease may be issued within two weeks from today. The respondent shall file reply to the said Show-cause notice within two weeks and the Government should, thereafter, fix a date of personal hearing and dispose of the matter by passing a reasoned order, after due consideration of the objections filed by the respondent, within a period of three months.

(2) The Status-quo, as to possession, as ordered by this Court on 7.5.2004 as an interim measure shall continue till the disposal of the matter by the Government.

(3) Pending disposal of the representation, we further direct that the order of the High Court in so far as it permitted withdrawal of a sum of Rs.12 lacs on furnishing bank guarantee will stand. The petitioner-State will further deposit a sum of

Rs.5 lacs with the Registry of the High Court within four weeks. The disbursement of the amounts lying in deposit will be subject to the orders that may be passed by the High Court on an application filed by either party, after the Government passes final order.

The appeal is disposed of accordingly.”

18. In compliance with this order of the Apex Court, Ext.P37 notice was issued by the Government, calling upon the Managing Partner of the firm Smt.Meera Scaria to show cause why the lease in respect of 246.26 acres should not be terminated as contemplated in clause 12 of the lease deed. This notice reads thus:

NOTICE

WHEREAS Sri.K.K.Joseph, Son of Sri.Kanjuvareed, M/s Joseph and Company, aged 64 years residing at Beatrice Estate, Padagiri.P.O., Palakkad District, was a lessee under the Government as per lease deed No.1983/79 dated 15.12.1979 of the Sub Registrar's Office, Nenmara, in respect of 246.26 acres of the Government Reserve Forest land described in the schedule to the said lease deed;

AND WHEREAS it has come to the notice of the Government that Sri.K.K.Joseph has executed sale deed No.2167/83 dated 16.12.1983 of the Sub Registrar's Office, Nenmara, in favour of one Sri.Raghavan, Son of Kunjiraman, Karappara Estate, Nelliampathy and six others in respect of an area of 50 acres in Beatrice Estate, which is part of the land covered by the said lease deed;

AND WHEREAS the above said sale deed executed by Sri.K.K.Joseph shows that he has transferred possession of the said area of 50 acres to the said Sri.Raghavan and the others;

AND WHEREAS it has also come to the notice of the Government that Sri.K.K.Joseph had transferred his leasehold right to M/S Joseph & Co. in respect of the balance of the leased land without the approval of the lessor with intention to nullify the effect of clause 14 of the lease deed and has retired from the firm in 1988 and he has no subsisting right or interest in the assets of the firm which include the leasehold right in respect of Beatrice Estate as per his own admission.

AND WHEREAS the said leased estate being the property of the Government of Kerala, Sri.K.K.Joseph has no manner of right or title to make the assignment as referred above;

AND WHEREAS in respect of the said

assignment, Sri.K.K.Joseph has not obtained the previous permission in writing of the Government of Kerala as contemplated in Clause 14 of the said lease deed.

AND WHEREAS the leasehold property is a Reserve Forest as per Cochin Government Gazette Notification dated 11.2.1933 of the Government of Cochin and the Hon'ble High Court in OP No.8801 of 1985-I as per order dated 6.4.1990 had held that Forest Conservation Act, 1980 applies to this estate and approval of Government of India has not been obtained for the above mentioned transfer as contemplated in the Forest Conservation Act, 1980.

AND WHEREAS clause 12 of the said lease deed entitles the Government to terminate the lease for the above said default on the part of Sri.K.K.Joseph in the observance of the covenant in Clause 14 of the said lease deed and the provisions of Forest Conservation Act, 1980;

AND WHEREAS the Government have terminated the said lease to Sri.K.K.Joseph after giving due notice to the lessee as per Government Order No.G.O.(MS)30/02/F&WLD dated 20.5.2002 and the said K.K.Joseph who had signed the lease deed had not challenged the termination order of the Government in any Court of Law.

AND WHEREAS Smt.Meera Scaria, Managing Partner of M/S Joseph & Company and Smt.V.Leela, W/o Late P.V.Raghavan have challenged the termination order of the Government and consequent resumption of the estate by the Government in OP 20508/02 and OP 30224/02 respectively before the Hon'ble High Court and the Government in accordance with law after affording an opportunity of being heard to the petitioners in both the OPs.

AND WHEREAS the order of the Single Judge has been challenged by the Government in WP(C)No.255/03 and the same was dismissed.

AND WHEREAS the SLP filed against the order of the Hon'ble High Court in W.A.No.255/03 has been admitted by the Hon'ble Supreme Court;

AND WHEREAS in the CA No.4169/2004 in SLP(C)No.9417/04, the Hon'ble Supreme Court has ordered among other things as follows:

"A Show-Cause notice regarding proposed termination of lease may be issued within two weeks from today. The respondent shall file reply to the said Show-Cause Notice within two weeks and the Government should, thereafter, fix a date of personal hearing and dispose of the matter by passing a reasoned order, after due consideration of the objection filed by the

respondent, within a period of three months."

AND WHEREAS the petitioners in the OP are not a party to the lease agreement relating to Beatrice Estate and the Government do not have any contract with the petitioners and they are strangers to the contract.

AND WHEREAS the status of the petitioners are therefore of squatters and encroachers of forestland and they are liable to be summarily evicted under Section 66 of Kerala Forest Act;

AND WHEREAS it is mandatory to have written contract in respect of any Government deal in conformity with the Article 299 of the Constitution and the same is absent in this case in respect of the petitioners and therefore the petitioners in the OPs have no locus standi to claim any right over the Reserve Forestland;

AND WHEREAS the petitioner in O.P.20508/02 is not a lessee under the State and hence the petitioner was served with a notice dated 19.2.1992 by the Tahsildar, Chittur to vacate the land by 10.03.1992.

AND WHEREAS against this notice, the petitioner has represented before the Government and the matter was stayed for a long time resulting in illegal possession of the estate with the petitioners for a longer period contrary

to the statute, till it was ultimately got evicted in the year 2002;

AND WHEREAS the notice of termination dated 15.11.1999 was served on the premises of Beatrice Estate by which time Sri.K.K.Joseph had retired from the Company and the petitioners in the OPs have deliberately chosen not to respond to the notice, eventhough they claim to be the successors to Sri.K.K.Joseph;

AND WHEREAS the petitioner's possession of the Government leased forestland is illegal and as per Section 22 of the Kerala Forest Act, 1961, accrual of new rights other than what is granted is barred and therefore the petitioners are not entitled to make any claim over the reserve forestland;

AND WHEREAS the forest officials are empowered under Section 66 of Kerala Forest Act, 1961 to summarily evict any encroachment on Reserve Forestland without prior notice;

Now, therefore, in compliance of the directions of the Hon'ble Supreme Court in CA No.4169/2004, Smt.Meera Scaria, Managing Partner, Beatrice Estate and Smt.V.Leela, W/o Late P.V.Raghavan are hereby given notice to show cause why the lease in respect of the forestland of the whole area of 246.26 acres covered by the said lease should not be

terminated as contemplated in clause 12 of the said lease deed and the written reply to the show cause notice should be submitted within a period of fifteen days from the date of receipt of this notice."

19. On receipt of the notice, Ext.P38 reply was submitted, denying the allegations and also alleging that in issuing the notice, there was non-compliance of clause 12 of the lease deed. After receipt of Ext.P38 reply, the Managing Partner of the firm was afforded an opportunity of hearing and thereafter, the Government issued Ext.P39 order dated 26.11.2004, terminating the lease. The relevant portion of this order reads thus:

"5. Government have examined the case in detail taking into consideration all aspects of the case. According to the petitioner the premises No.(1) and (2) above are incorrect and against the findings of the Hon'ble High Court of Kerala in the judgment in W.A.No.255/03, 296/03 and confirmed by the Hon'ble Supreme Court in C.A.No.4164/04. They claimed that their firm M/S Joseph & Co. was recognised or at least accepted by the Revenue, Forest, Finance and Labour departments of Government as a lessee

and that the High Court of Kerala in W.A.No.443/90-E, categorically held that Government cannot obstruct the plantation of the lessee firm Joseph & Co. till the lease period is over and that giving back possession of the estate will not create a fresh lessee.

6. Regarding the above contention, Government find that the lease deed executed on 15.12.1979 between the Governor of Kerala, represented by the Divisional Forest Officer, Nemmara and Sri.K.K.Joseph, aged 43 years, son of Sri.Kunjuvareed residing at Kizhakkodan House, Pariyaram village, Mukundapuram Taluk, Thrissur Dist. cannot in any way be construed as lease deed with M/S Joseph and Co., a firm constituted only in 1981 as per Reg.No.3548 of 1981 dated 24.12.81. The agreement between the Government and Sri.K.K.Joseph is governed only by the lease deed executed by him as per lease deed No.1983/79 dated 15.12.79 of the Sub Registry, Nemmara. The purchase right by Sri.K.K.Joseph of the estate as per document 323 of 1974 was not on behalf of firm registered in 1981. Sri.K.K.Joseph executed the lease agreement with Government on 15.12.79 in his personal capacity. M/S Joseph & Co. is a registered firm constituted only on 24.12.1981 having registration No.3548/81, as disclosed from the form No.V as per the Indian Partnership Act, 1932 forwarded to the Registrar of Firms, by Smt.Meera Scaria, Managing Partner, M/S Joseph

& Co. on 11.8.88. Unless and until there is a registered document to assign the lease rights to M/s Joseph & Co. with the previous written permission of the lessor ie the Government, by the lessee, Sri.K.K.Joseph, M/S Joseph & Co. is a stranger in law and cannot be treated as a lessee.

7. Regarding the premise that Sri.K.K.Joseph executed sale deed No.2167/83 dated 16.12.1983, the petitioner firm admits that when the then Managing Partner Sri.K.K.Joseph had assigned a portion of the property to Sri.P.V.Raghavan and others, he had omitted to obtain permission of the Government to the said transfer and that when the present Company came to know of this omission, originally being so advised that a reconveyance of the transferred area back to the lessee firm would remedy the default, committed innocuously on the part of the former Managing partner, Sri.K.K.Joseph, they were ready to reconvey the land.

8. Government cannot accept that the fault was committed innocuously by Sri.K.K.Joseph. Sri.K.K.Joseph was well aware of the conditions of obtaining prior approval of the Government, ie the lessor as per clause 14 of the Agreement, as he had done in the case of transfer of lease hold right from Sri.P.I.Joseph to himself in the year, 1979. He cannot commit such mistake when he is required to take approval of the Government. In the instant case Sri.K.K.Joseph deliberately avoided obtaining prior approval of Government as

it would have resulted in enquiries into treating the coffee estate as uncultivated area, as to pricing a valuable property which would have cost not less than Rs.2 lakhs per acre. Also the property has been sold to multiple owners with the intention of breaking into smaller units. As per the lease deed Sri.K.K.Joseph, the lessee, has no right to sublet or assign his right in the lease agreement dated 15.12.1979, except with the previous permission in writing of the lessor. Thus any transfer of lease right without the written consent of the lessor is violation of lease agreement and as per clause 12 of the agreement, the lessor can terminate the lease.

9. Regarding the premise that Sri.K.K.Joseph had transferred the leasehold rights to M/s Joseph and Co. in respect of the balance of lease of land, the petitioner Smt.Meera Scaria has admitted that Sri.K.K.Joseph had retired from the partnership firm and also he was not in charge of the estate from 31.3.1987. The lease hold right is admittedly transferred to M/s Joseph & Co., with Meera Scaria as new Managing Partner without the prior approval of the Government in violation of clause 14 of the lease deed. If Smt.Meera Scaria as Managing partner of M/s Joseph & Co. is claiming right over Beatrice Estate, it has to be only after transfer of right from Sri.K.K.Joseph to M/s Joseph & Co. Thus both transfer ie to M/s Joseph & Co. and to Sri.P.V.Raghavan have been done without any

authority and in violation of lease conditions. The lease deed between K.K.Joseph and the Government of Kerala on 15.12.79 is not governed by the lease deed executed between Sri.P.I.Joseph and Government of Kerala. There is no strength in the argument that the leasehold right was transferred by Sri.P.I.Joseph and not by Sri.K.K.Joseph. The operation of the agreement by Sri.P.I.Joseph had ceased from the day Sri.K.K.Joseph had executed the agreement with the Government. Legally the estate was governed only by the lease deed dated 15.12.79 and if the petitioner are admitting that they have not derived any right from that deed, they do not have the right for recognition as lessee.

10. Regarding the premise that the land in question is a reserve forest, the petitioner has denied it as incorrect. The petitioner has stated that by the notification dated 11.2.1993, the Revenue Department had resumed possession of the then abandoned estate and handed them over to the Forest Department for reafforestation but not materialised. During the hearing the counsel for the petitioner raised the following points also.

- i) Whether the lease is terminable.
- ii) The application for re-conveyance submitted to the DFO, is not yet passed.
- iii) The Forest (Conservation) Act is not applicable in this case.

11. The lease hold property falling within the Beatrice Estate has been notified as Reserve Forest as per notification of Cochin Government in Vol.XVII dated 10.2.1933. The status of the land as Reserve Forest has been conclusively proved in O.P.8801/85 and W.A.443/1990, which had gone into the applicability of the F(C) Act 1980 in respect of the Beatrice Estate. The Hon'ble Supreme Court in the judgment in W.P(C). 202/95 clarified that irrespective of the present land use, if the Government records show that if it is a forest land, the F(C) Act, 1980 is applicable to all such lands. Beatrice Estate is a notified Reserve Forest and hence approval of the Government of India, Ministry of Environment & Forest is required for regularisation of transfer of lease hold right to M/s Joseph & Co. as M/s Joseph & Co. is not a lessee as per the lease agreement dated 15.12.79. Hence the benefit of G.O(MS) 83/95/F&WLD dated 7.4.95 is not available to the petitioner Company. Subsequently G.O.(MS) 83/95/F&WLD stands cancelled, as per G.O.(Ms) 15/99/F&WLD dated 26.2.99.

12. M/s.Joseph & Co. cannot have the benefit of Clause 12 of the lease agreement for remedying the defaults as the firm was not in existence on 15.12.1979, the date on which Sri.K.K.Joseph signed lease agreement with the Government Sri.K.K.Joseph having relinquished his right over the lease hold property cannot hope to remedy the default and also has not come forward

to rectify the default. The petitioners have been afforded full opportunity to raise all their contentions before the Government, as observed by the Hon' High Court in para 31 of the judgment in Writ Appeal No.255/03. The law recognises only Sri.K.K.Joseph as the lessee. Since the lessee has violated Clause 14 of the agreement, the Government has got every right to terminate the lease under Clause 12 of the agreement. The Forest Department has also the power to evict the encroachments in the forest land under Section 66 of the Forest Act without prior notice. The illegal possession of the estate by M/s Joseph & Co. does not confer them any new right. Beatrice Estate being a reserved forest land, accrual of any new right over such Reserved Forest is barred under section 22 of the Kerala Forest Act. Both these positions have been upheld by the Hon. High Court in Aliakutty Paul Vs. State (ILR 1995 (3) K107). Therefore, the status of the petitioners amounts to be of encroachers and squatters in Reserve Forest land and they can be evicted and dispossessed of the unauthorised occupation even without notice to the party.

13. There was violation of clause 14 of the lease agreement. The lessor, ie the Government, has every right to terminate the lease and the lessee has to vacate the land forthwith as per clause 12 of the agreement and so no remedy is available for M/s Joseph & Co.

14. In view of the facts mentioned in the above paras and in obedience to the orders of Hon'ble Supreme Court of India, read as 5th paper above, Government, under the provisions of the clause 12 of the lease deed hereby confirm the termination of the lease of 246.26 acres of Reserve Forest land (Beatrice Estate) at Nelliampathy in Palakkad district made to Sri.K.K.Joseph, for violating the conditions of the lease agreement signed on 15.12.1979 and the provisions of the Forest (Conservation) Act, 1980.

15. The Chief Conservator of Forest (Protection)/the Conservator of Forest & Custodian of Vested Forest, Olavakkode, Palakkad will take further necessary action."

20. Reading of the above order shows that according to the Government, the lessee is Sri.K.K.Joseph and in violation of the conditions of the lease, the lessee transferred 50 acres of leased land to Sri.Raghavan and others. It is also found that Sri.K.K.Jospeh has transferred the balance lease land to Smt.Meera Scaria, the Managing Partner of the firm. The Government concluded that the transfer by Sri.K.K.Jospeh to Sri.Raghavan and to the firm has been done without any authority and in violation of

the lease conditions. On that basis, it is stated that the then occupants, the firm, are encroachers and squatters in reserve forest land who can be evicted and dispossessed from their unauthorised occupation. Immediately thereafter, the Government issued Ext.P41, invoking the bank guarantee furnished by the firm pursuant to Exts.P32 and P33 interim orders passed by this Court in OP.20508/02. It is in this factual background, the firm filed the writ petition which was disposed of by the judgment under appeal.

21. In the judgment under appeal, the learned single Judge held that since termination of the lease was effected only by Ext.P39 order issued on 26.11.2004, the bank guarantee furnished for the value of the usufructs earned from the estate for the period prior thereto could not be invoked. On that basis, Ext.P41 was quashed. However, in so far as Ext.P39 terminating the lease is concerned, learned Judge held that the Government came to the factual conclusion that Ext.R3(b) executed by the firm was in violation of the lease conditions and that the

factual finding arrived at by the Government, the authority competent to enter into such finding, cannot be questioned or interfered with in a proceedings under Article 226 of the Constitution of India. On that basis, learned single Judge upheld Ext.P39. It is this judgment which is under challenge by both sides.

22. Having heard the learned senior counsel for the appellant in W.A.369/11 and the learned special Government Pleader appearing for the appellant in W.A.375/11, according to us, mainly two issues arise for consideration. First one is whether the conclusion of the Government that Sri.K.K.Joseph was the lessee of the estate leased out as per Exts.P6 and P7 is correct. The second issue is whether in terminating the lease, there is non-compliance of the provisions of Ext.P7 lease deed.

23.To contend that Sri.K.K.Joseph is the lessee of the property in question, learned Government Pleader referred us to Ext.P6, the sale deed executed by Sri.P.I.Joseph on 28.2.1974 in favour of

Sri.K.K.Joseph. It is pointed out that in this document, though Sri.K.K.Joseph has described himself as the Managing Partner of the registered partnership firm, M/s.Joseph & Company, Ext.P1 partnership deed itself is dated 15.3.1974 and Ext.P2, the extract of Register of Firms maintained under section 69 of the Partnership Act, shows that the firm was registered only on 24.12.1981. Therefore, according to the Learned Government Pleader, these documents produced by the lessees themselves would show that the firm was not even in existence on 28.2.1974, when Ext.P6 sale deed was executed in favour of Sri.K.K.Joseph. It is also stated that in Ext.P7 lease deed executed by the Government on 15.12.1979, there is no mention of the partnership firm nor is Sri.K.K.Joseph described as the Managing Partner of the firm. Learned Government Pleader also referred us to section 47 of the Registration Act and the various paragraphs of the counter affidavit dated 3.8.2005 to highlight his contention that the sale consideration was paid by Sri.K.K.Joseph himself. He also made reference to the provisions of section 69 of the Partnership Act and judgment of the Apex Court in

Loonkaran Sethia v. Mr.Ivan E. John [AIR 1977 SC 336] rendered in that context. According to him, Ext.P35 judgment also does not contain any conclusive finding on the status of the firm as the lessee of the property and that in any case, in view of Ext.P36 order of the Apex Court, the findings, if any, in Ext.P35 have lost its efficacy.

24.All the aforesaid contentions raised by the learned Government Pleader were contradicted by the learned counsel for the appellant in W.A.369/11.

25.We have considered the submissions made. It is true that Ext.P1 is the partnership deed relied on by the appellant in W.A.369/11 and that document is dated 15.3.1974. Ext.P2, extract of the Register of Firms maintained under section 59 of the Indian Partnership Act, 1932, shows that the firm was registered only on 24.12.1981. However, Ext.P49, extract of the ledger, produced by the appellant in W.A.369/11 shows that there existed a partnership among the parties to Ext.P1 partnership deed, even in January, 1974. This ledger of the firm, the genuineness of which was not

disputed by the appellants in W.A.375/11, shows that the partners of the firm had made contribution to the share capital of the firm as early as on 14.1.1974 and various amounts were expended long before Ext.P1 or its registration. It is the existence of that partnership agreement among the parties to Ext.P1, that is reflected in Ext.P6 sale deed executed by Sri.P.I.Joseph, where, Sri.K.K.Joseph, the purchaser, is described as the Managing Partner of the firm M/s.Joseph & Company. When Ext.P7, the lease deed, was executed by the Government, though the second party to the document is Sri.K.K.Joseph and no reference is made about the firm, this document refers to Ext.P6. This means that the Government was obviously aware that Ext.P6 was executed in favour of the firm and it was recognising that right purchased by the firm, the lease was granted by the Government in favour of the purchaser in Ext.P6 sale deed.

26. After the retirement of Sri.K.K.Joseph from the firm, when the irregularity in the execution of Ext.R3(b) came to light, the firm represented by the Managing Partner, who succeeded Sri.K.K.Joseph,

issued Ext.P25 letter to the Government requesting for condonation of the irregularity in alienating 50 acres of land and also seeking permission for re-conveyance of the property in favour of the firm. Ext.P14 dated 19.2.1992 is the first notice of termination issued by the Tahsildar, Chittur. That notice was issued to the Managing Partner Smt.Meera Scaria, who succeeded Sri.K.K.Joseph. Ext.P21 is the counter affidavit filed by the State in OP.8801/85 filed by the partnership firm M/s.Jospeh & Company, in which, dispute related to quarrying in the property. Paragraphs 3 and 4 of the counter affidavit shows that the Government have, in categoric terms, admitted that the petitioner, the firm, is the lessee. Ext.P22 is the counter affidavit filed by the Divisional Forest Officer, Nenmara in that OP, where also, in paragraph 4, it is admitted that the land in question has been leased to the company, viz., M/s.Joseph & Company.

27.Ext.P24 is the judgment rendered by this Court in W.A.443/90 filed against the judgment of the learned single Judge disposing of OP.8801/85. In that writ

appeal also, the Divisional Forest Officer, the Forest Ranger, Nenmara and State of Kerala are parties. In paragraph 2 of the judgment, this Court has specifically held that "it is true that it is now a pucca plantation and appellant is planting the same on the basis of Ext.P1 lease deed". The appellant mentioned in the judgment is the firm.

28. We should also make reference to Ext.P34 judgment of this Court in OP.20508/02 filed by the appellant in W.A.369/11 against Ext.P29 order terminating the lease. In that judgment, this Court has recognised the fact that the firm is in possession of the land and it is on that basis, this Court set aside Ext.P29 order terminating the lease without notice to the appellant. The relevant paragraphs of the common judgment, Ext.P35, rendered by this Court in the appeals filed against Ext.P34 judgment and the order passed by the Apex Court disposing of Civil Appeal No.4169/04 filed against the judgment in W.A.255/03 have been extracted above. Reading of paragraphs 14, 15, 16 and 17 of Ext.P35 judgment shows that this

Court has found that there is merit in the contention of the firm that they are the lessees.

29. In so far as Ext.P36 order passed by the Apex Court is concerned, according to the learned Government Pleader, by directing that a notice be issued to the firm and that a fresh decision be taken, the Apex Court has passed an order of open remand and that therefore, the conclusions, if any, in Ext.P35 judgment of the Division Bench lose its efficacy. In support of this contention, learned Government Pleader placed reliance on the provisions of Order XLI Rule 23 of CPC and the principles laid down by this Court in the judgment in Sakthi Ceramics v. Supreme Ceramics [2013 (1) KLT 326] rendered following the Supreme Court judgment in United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. [(2000) 7 SCC 357].

30. Reading of the provisions of the CPC and the principles laid down in the judgment relied on by the learned Government Pleader evidences that the appellate court is entitled to remand a case to the

trial court for a fresh decision and that such remand may be either to decide all issues or any of the issues after the appellate court confirms the finding on other issues answered by the trial court. It is also laid down that the scope of jurisdiction of the trial court on remand will be circumscribed by the order of remand passed by the appellate court. While the principles laid down in the above judgments are not open to doubt, the question is whether, in the facts of the case, there is any substance in what is contended.

31. Reading of Ext.P36 order passed by the Apex Court shows that the Apex Court has not, in any manner, disturbed the findings rendered by this Court in Ext.P35 judgment, instead, the Apex Court has only modified the operative portion of the judgment in W.A.255/03 and issued the three directions contained in its order. In this context, we cannot also forget the fact that State did not file any appeal against the judgment in W.A.296/03 and the findings in that judgment against the State have attained finality. In any case, since the Apex Court has not disturbed

the conclusions of this Court as contained in Ext.P35 but has only ordered the issuance of a show cause notice and also to maintain status quo in the meanwhile, it cannot be argued that reconsideration ordered by the Apex Court as per Ext.P36 has the effect of an open remand, setting at naught the conclusions contained in Ext.P35 judgment rendered by the Division Bench.

32.If that be the position, reconsideration could have been only in the light of the observations contained in Ext.P35 as ordered in paragraph 31 therein, which means that the findings arrived at by the Division Bench on the status of the appellant in W.A.369/11 as the lessee remained in tact.

33.The Government had also accepted the firm as the lessee in its communications. This fact is also admitted by the Government in Exts.P21 and P22 counter affidavits filed in OP.8801/85. The status of the firm as the lessee has also been found by this Court in Exts.P24 and P35 judgments. In such circumstances, we cannot sustain the conclusion in

Ext.P39 that Sri.K.K.Joseph was the lessee and that he transferred the property to M/s.Joseph & Company, a partnership firm or to Mrs.Meera Scaria, its Managing Partner.

34.The second question is whether Ext.P39 order terminating the lease was issued without complying with clause 12 of Ext.P7. In order to effectively answer this contention, it is necessary to refer to clauses 12 and 14 of Ext.P7 lease agreement and therefore, these clauses are extracted hereunder:

"12. In the event of the Lessee making default in the observance or fulfilment of any of the covenants herein contained the Lessor shall be at liberty at any time, thereafter, after giving notice to the lessee and hearing him in person or through his agent or vakil duly appointed about the failure of the Lessee to remedy such default that may be reported to the Lessor from time to time by the Chief Conservator of Forests, to terminate the lease and Lessee shall forthwith vacate the land hereby leased and demised and notwithstanding such termination of this lease, the Lessee shall be liable for any loss which the Lessor may sustain by reasons of such default and all such improvements made by the Lessee on

the land hereby leased and demised as exist at the time of vacating the same must be left in tact and no compensation can be claimed by the Lessee for such improvements.

14. The Lessee shall not be entitled to sublet or assign his interest in the said lease except with the previous permission in writing of the Lessor."

35. Clause 14 of Ext.P7 lease deed shows that the lessee shall not be entitled to sub-let or assign his interest except with the previous permission in writing of the lessor, the Government. The firm does not have a case that before executing Ext.R3(b) in favour of Sri.Raghavan and others, it had obtained the prior permission of the lessor. This is evident from Ext.P25, by which, the firm itself confessed the irregularity and sought the permission of the Divisional Forest Officer for re-conveyance of the property. Even before us, the firm did not have a case to the contrary. One of the grounds relied on for termination of the lease is the alienation of 50 acres by Ext.R3(b).

36. Though clause 12 of Ext.P7, extracted supra, authorises the Government to terminate the lease for breach committed by the lessee, that liberty reserved by the Government in its favour can be exercised by the lessor, only after putting the lessee on notice about his failure to remedy the default on its part, which should be reported to the lessor by the Chief Conservator of Forests. In other words, though the right of termination as provided in clause 12 of Ext.P7 can be exercised by the Government, if the lessee commits breach of the conditions of lease, this power can be exercised only after giving notice to the lessee about its failure to remedy such default. This means that if a breach is committed by the lessee, he is entitled to an opportunity to remedy such default and lease can be terminated only if he fails to remedy the default even after putting on notice of such breach. The lessee is also entitled to an opportunity of hearing. The question is whether this requirement of clause 12 has been complied with in this case.

37. According to the learned Government Pleader, Ext.P30 is the notice that was issued in compliance with clause 12 of Ext.P7. However, reading of Ext.P30 shows that the said notice was issued proposing termination of the lease for violation of clause 14 and as empowered by clause 12 of the lease deed. Therefore, this notice cannot be accepted as one putting the lessee on notice about its default nor was the lessee required to remedy any default.

38. Learned Government Pleader further contended that the power of the Government to terminate the lease as per clause 14 of Ext.P7 is independent of its obligation contained in Ext.P12. Therefore, according to him, since the lessee alienated property without the prior permission of the Government, the Government is not required to issue any notice as contained in clause 12 and was at liberty to terminate the lease forthwith. We cannot accept this contention. First of all, clause 14 does not contain any non-obstante clause nor clause 12 provide that it is subject to clause 14. Even otherwise, the conditions, breach of which are

contemplated in clause 12, are the other conditions contained in the agreement, including clause 14. Clause 12 is one such condition. Apart from all these, the Government did not have such case in any of the previous proceedings between the parties. Therefore, if the lessor has a case that clause 12 is violated by the lessee, consequential action can be taken only in compliance with clause 12 and the contention that clause 14 conferred a right, independent of clause 12, cannot be accepted.

39. It is true that the learned senior counsel for the lessee argued that the lessee did not remedy the default in view of Ext.P26 order issued by the Government on 7.11.1995 regularising the transfers till then and also on account of the promise made by the Government to re-examine all issues as per Ext.P27 communication dated 26.2.1999. It is also true that referring to Ext.P4 notification dated 8.5.1909 and Ext.R3(a) notification dated 11.2.1933, learned Government Pleader contended that the land in question is a reserve forest and Exts.P26 and P27 do not apply to reserve forests.

40.Arguments were also addressed before us on the applicability of Forest Conservation Act, 1980 to the land in question and the learned Government Pleader made reference to the judgment of this Court in Ext.P24. However, having regard to our conclusion on the status of firm as the lessee and also on the non-compliance of clause 12 of the lease agreement, we do not think it necessary to deal with those issues.

For the aforesaid reasons, we are unable to sustain Ext.P39. Accordingly, it is quashed and the judgment of the learned single Judge setting aside Ext.P41 has to be confirmed. Therefore, w.A.369/11 filed by M/s.Joseph & Company is allowed and w.A.375/11 is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

k kb.

/True copy/

PS to Judge