

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RSA.No. 735 of 2014 ()

AGAINST THE DECREE AND JUDGMENT IN AS NO. 167/2011 of I ADDITIONAL DISTRICT
COURT, PALAKKAD DATED 18-01-2014

AGAINST THE DECREE AND JUDGMENT IN OS NO. 554/2009 of ADDITIONAL MUNSIF
COURT, PALAKKAD DATED 01-03-2011

APPELLANT(S)/APPELLANTS/PLAINTIFFS:

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1. N.K. SIVARAMAN
S/O KRISHNANKUTTY, AGED 63 YEARS, NOKKARA HOUSE,
VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR-678543, PALAKKAD.
 2. KOMALAM P.N.
W/O SIVARAMAN, AGED 52 YEARS, NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR-678543, PALAKKAD.
 3. ANITHA
D/O SIVARAMAN, AGED 36 YEARS, NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR-678543, PALAKKAD.
 4. ARUNKUMAR
S/O SIVARAMAN, AGED 31 YEARS, NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR-678543, PALAKKAD.
 5. AGREJAN
S/O NARAYANAN, AGED 47 YEARS, POOKODAN HOUSE, VELLUPADAM
PALAPILLY (PO)
TCR DT. BY POWER OF ATTORNEY P.N. KOMALAM
KAVASSERRY POST, PIN:678 543.

BY ADVS.SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
SRI.S.SUJIN

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

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1. CHIEF SECRETARY, GOVT. OF KERALA
SECRETARTIAT, THIRUVANANTHAPURAM-695001.
 2. THE CONSERVATOR OF FORESTS
EASTERN CIRCLE, ARANYA BHAVAN, OLAVAKKODE (PO)
PALAKKAD-678 002.
 3. THE DIVISIONAL FOREST OFFICER
NEMMARA DIVISION, (P.O), CHITTUR TALUK
PALAKKAD-678508.

R1 TO R3 BY SPECIAL GOVERNMENT PLEADER
SHRI M. P. MADHAVANKUTTY (B/O)

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03.07.2015,
THE COURT ON 21-07-2015 DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.735 of 2014

Dated this the 21st day of July, 2015

JUDGMENT

Plaintiffs in a suit for permanent prohibitory injunction, who lost in two courts below, are the appellants. Defendants are the respondents.

2. Skeletal facts are as follows: Plaintiffs claimed right, title and possession over plaint A schedule property having a total extent of 17.90 acres comprised in re-survey Nos.428J-3 to 5. They purchased the property through various assignment deeds. On the north-western side of the property, the plaintiffs have established a stone crusher unit after obtaining all the required licenses and permits. Besides, residential facility is also provided to workers employed in the crusher unit. The property is secured by barbed fencing and earthen wall. Plaint B schedule property is a public road used by the plaintiffs and their predecessors-in-title. It starts from Kazhani-Chungam-Thennilapuram PWD road and proceeds to east. It touches the north-western side of plaint A schedule property and goes upto Muttalam Harijan Colony as beaten track. Plaint B schedule runs through survey No.99A/5 of Kavassery-II Village and has a width of 7 metres. Defendants obstructed the passage. So the plaintiffs approached the Sub Divisional Magistrate. By order dated 30.07.1997, the Sub

Divisional Magistrate, after obtaining a report from the Village Officer directed the defendants to remove the obstructions. As per order of this Court in M.F.A.No.757 of 1987, an extent of 24.10 acres comprised in survey No.99A/5 was declared not a vested forest. It is the contention of the appellants that for no reason the plaint B schedule can be treated as vested forest. No Settlement Officer was appointed to decide the issue in this regard. The plaint was amended subsequently. The amendment was necessitated on account of the decision of the Tribunal constituted under the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (in short, "Act of 2003") in O.A.No.45 of 2008. Appellants contended that the Tribunal by judgment dated 18.12.2009 declared that except the rocky area in the property, no other property would come within the purview of the notification under the said Act. However, dissatisfied with the judgment of the Tribunal in the above O.A., both the State and the appellants preferred appeals and they are pending before this Court. Therefore, the appellants prayed for a prohibitory injunction against the defendants from interfering with vehicular entry to plaint A schedule property through plaint B schedule property and for such other reliefs.

3. The defendants raised the following contentions in the written statement. Plaint A schedule property is vested with the Government of Kerala as per the provisions in the Act of 2003. Plaint B schedule property

is also vested with the Government in accordance with the provisions under the Kerala Private Forests (Vesting and Assignment) Act, 1971 (in short, "Act of 1971"). The suit is not maintainable in view of Sections 7 to 10 of the Act of 1971. Plaintiff schedule property comprising in old survey Nos.428J/3 to 5 of Kavassery-I Village (new survey Nos.263/3 and 4) is vested with the Government by E.F.L. Notification No.6/121/2006 dated 25.07.2006. It has been duly published in the Kerala Gazette on 22.08.2006. Purchase certificates issued in suo motu proceedings were cancelled by the Appellate Authority under the Kerala Land Reforms Act as per orders in A.A.Nos.36 to 41 of 1996 dated 30.04.2009. According to the defendants, the crusher unit owned by the appellants is not functioning and the employees are not residing in the quarters provided. Plaintiff B schedule road never proceeded to any Harijan Colony. The attempt of the appellants is to regularise an illegally set up crusher unit functioning in the vested forest. The extent of 14.339 hectares of land covering Vellappara-Kunnu-Malavaram is copious with rare species of trees and birds. In order to avoid trespass into the forest land, gates have been placed as per the order of Principal Chief Conservator. The civil court has no jurisdiction to resolve the dispute. It can be resolved only by a Tribunal constituted under the Act of 2003. After amendment, the defendants have filed an additional written statement contending that the plaintiffs have no title over the plaintiff A

schedule property. The suit is liable to be dismissed.

4. Heard Sri.N.N.Sugunapalan, learned Senior Counsel appearing for the appellants and Sri. M.P.Madhavankutty, learned Special Government Pleader for Forest Cases, for the respondents.

5. The substantial questions of law urged by the appellants are as follows:

i. Under Section 24 of the Kerala Forest Act, whether the respondents are entitled to obstruct an existing pathway, public or private, and put up chain gate without the sanction from the Government? Whether the respondents are liable to provide a reasonably convenient substitute for the existing way if it is to be stopped?

ii. Whether the civil court has jurisdiction to consider the question of title and also regarding the claim of the Forest Officials that the entire properties have been vested as ecologically fragile land when the matter is now pending before this Court in appeal?

iii. Whether the vesting of property along with the rights thereof will extinguish the right of third parties for a way, which they used before the vestiture?

6. The trial court dismissed the suit finding that the appellants failed to prove title to plaint A schedule property and that plaint B schedule way runs through a vested forest. The trial court has elaborated the

reasons for entering a finding on facts. The appellate court, through a terse judgment, agreed with the findings of the trial court. Hence these concluded factual findings cannot be challenged in this second appeal.

7. Before going deep into other aspects of the case, it will be profitable to refer to some of the provisions of various enactments touching the controversy. Section 24 of the Kerala Forest, 1961 (in short, "Act of 1961") reads as follows:

"24. Power to stop ways and watercourse in Reserved Forest :- The Chief Conservator may from time to time, with the previous sanction of the Government, stop any public or private way or watercourse in a reserved Forest, provided that a reasonable convenient substitute for the way or watercourse so stopped already exists or has been provided or constructed in lieu thereof."

Based on this provision, learned Senior Counsel for the appellants contended that the stipulations in the said provision should apply to any land vested in the Government under the provisions of the Act of 2003 too. In this context, Section 4 of the Act of 1961 is also relevant. It enjoins the Government with a duty to publish a notification in the Gazette (a) specifying the situation and limits of the land proposed to be constituted as reserve forest; (b) declaring that it is proposed to constitute such land a reserve forest and (c) appointing an officer (called the Forest Settlement

Officer) to enquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within such limits. Learned Senior Counsel contended that none of the pre-conditions in Section 4 of the Act of 1961 was complied with in this case before allegedly extending the operation of Act of 2003 to the properties in dispute.

8. Section 5 of the Act of 1961 creates a specific bar to suits. It reads as follows:

“5. Suits barred :- Except as hereinafter provided, no Civil court shall between the dates of publication of the notification under section 4, and of the notification to be issued under section 19, entertain any suit against the Government to establish any right in or over any land, or to the forest produce of any land, included in the notification published under section 4.”

9. Per contra, learned Special Government Pleader contended that the object of the enactments pertinent to this case will have to be considered to appreciate the rival contentions. According to him, Act of 1971 was enacted in tune with the then policy of the Government, viz., “grow more food”. Thereafter, the Forest Conservation Act, 1980 (in short, “Act of 1980”) was enacted by the Parliament. Section 2 of the Act of 1980, which is quoted below, gives a clear indication as to the restrictions on de-

reservation of forests or use of forest land for non-forest purpose.

“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose :- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation;

Explanation :- For the purposes of this section “non forest purpose” means the breaking up or clearing of any forest land or portion thereof for,-

(a) the cultivation of tea, coffee, species,

rubber, palms, oil bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

The object of the Act of 1980 is to conserve forests and to effectuate matters connected therewith. According to the learned Special Government Pleader, the object of Act of 2003 is to provide for vesting in the Government of ecologically fragile lands in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the bio-diversity. It is, therefore, contended by the learned Special Government Pleader that the appellants cannot claim right to use the property, which is notified under the Act of 2003, as any other ordinary property and a suit for injunction simplicitor is not maintainable. My attention is also drawn to Section 13 of the Act of 2003 which creates a bar of jurisdiction of the civil courts. Section 9 of the Act of 2003 deals with constitution of Tribunals for determination of questions arising under the Act of 2003. Section 10 of the Act of 2003 empowers the Tribunal to settle

the disputes as to whether (a) any land is an ecologically fragile land or not; (b) any ecologically fragile land or any portion thereof has vested in the Government or not and (c) the compensation determined under Section 8 of the said Act is insufficient or not. It is the contention of the learned Special Government Pleader that in view of these provisions, a suit of this nature is incompetent. Section 12 of the Act of 2003 deals with the power of the Tribunal. Admittedly, in this case, the appellants have approached the Tribunal and it has entered a finding partly accepting the case of the appellants and partly allowing the plea of the State. Against the finding of the Tribunal, the appellants have preferred M.F.A.No.46 of 2010 and the Forest Department preferred M.F.A.No.54 of 2010. Both the appeals are pending before this Court. After considering the evidence adduced in O.A.No.45 of 2008, the Tribunal allowed the original application filed by the appellants in part declaring that the application schedule land (having a total extent of 17.9 acres in the above mentioned survey numbers) except the rocky portion thereof shown in Ext.C2 sketch submitted by the commissioner in the proceedings is not an ecologically fragile land. Further, the rocky portions of the properties shown in Ext.C2 sketch are ecologically fragile lands. It is beyond any possible dispute that the ultimate finding of this Court in the appeals regarding the status of the land will have a direct bearing on the questions raised in this appeal. Stated

differently, this case cannot be disposed of as any other suit for injunction simplicitor mainly considering the evidence as to who was in possession of the property as on the date of suit. Here, the entitlement of the appellants to claim possession on account of the implications of various statutes will have to be considered. The questions involved in the suit are subservient to the questions involved in the miscellaneous appeals filed before this Court under Act of 2003, which are pending. What can only be considered in this appeal is whether the appellants are entitled to claim a right of access to plaint A schedule property through plaint B schedule in spite of a finding by the Tribunal that some portions of the property are covered by the Act of 2003?

10. Learned Senior Counsel for the appellants contended that even if one entertains a view that the ultimate decision in the appeals will have a bearing on the decision of this case, the appellants should be permitted, until the matter is finally resolved by this Court, to make some interim arrangements for transporting raw materials to the crusher unit and also to remove the final product out of the unit. It is also submitted on behalf of the appellants that since the rocky area included in the plaint schedule property was found to be a land falling within the Act of 2003, the appellants are not intending to blast granite stones from that area. Instead, they are prepared to bringing in raw materials from outside through plaint B

schedule property for running the crusher unit. Learned Senior Counsel submitted that the appellants are prepared to limit their claim to ten lorry loads of granite boulders per day to be brought in from outside for the purpose of crushing. Learned Special Government Pleader opposed this contention by arguing that no non-forest activity can be permitted in the land, which is found to be an ecologically fragile land. To reinforce this argument, Section 5 of the Act of 2003 is pressed into service which says that subject to the provisions of Section 16 of the Act, all ecologically fragile lands vested in the Government under Sections 3 and 4 of the Act shall be deemed to be reserved forest constituted under the Act of 1961 and the provisions of that Act shall, so far as may be, apply to such lands. A conjoint reading of this provision with Section 2 of the Act of 1980 will clearly establish that no crusher unit shall be permitted in an ecologically fragile area, contended the learned Special Government Pleader. Therefore, even if raw materials are brought from outside for carrying out the activities in the crusher unit, it will violate the provisions of the Act, contended Sri. Madhavankutty.

11. Annexure-A11(a) is the rough sketch submitted by the commissioner appointed in O.A.No.45 of 2008 by the Tribunal. As per Ext.A11(a), the crusher unit is situated in the rocky area, which is found by the Tribunal to be a part of the land vested under the Act of 2003. So long

as the order in O.A.No.45 of 2008 passed by the Tribunal remains, I am of the view that the contention of the appellants cannot be legally countenanced.

12. Learned Senior Counsel for the appellants contended that Ext.A43 proceedings by the Sub Divisional Magistrate, Palakkad would show that on 30.07.1997 the Sub Divisional Magistrate directed the respondents to remove the obstructions in plaint B schedule pathway. In answer to this argument, learned Special Government Pleader submitted that the Sub Divisional Magistrate is not a competent authority to take a decision in respect of the questions falling under the Act of 1971 or Act of 2003. Therefore, the order passed by the Sub Divisional Magistrate cannot have any overriding effect on the statutory provisions. I am also of the view that merely because an order for removing the obstruction was passed by the Sub Divisional Magistrate, the statutory provisions comprised in various enactments mentioned above will not get obliterated .

13. Learned Senior Counsel vehemently contended that Section 4 read with Section 24 of the Act of 1961 enjoins a duty on the Forest Settlement Officer to enquire and determine the existence, nature and extent of any rights claimed by any person in or over any land comprised within the limits of the lands which is proposed to be notified as a reserve forest. Controverting this argument, learned Senior Government Pleader

contended that the procedure contemplated in Section 4 read with Section 24 of the Act of 1961 need be taken only if a land is proposed to be constituted as reserve forest. But in this case, by coming into force of Act of 2003, there is a statutory fiction created whereby the ecologically fragile lands coming within the definition of the Act of 2003 shall be deemed to be a reserve forest and vested with the Government. The Act of 2003 itself provides for the ways and means to put up a challenge against the notification. According to the learned Special Government Pleader, there is no need to conduct an enquiry by the Forest Settlement Officer in the case of a deemed vesting of lands under the Act of 2003. If we examine provision in Section 3 of the Act of 1961, almost the same principle can be seen in Section 3 of the Act of 1971, which deals with private forest vested in the Government. Section 4 of the Act of 1971 says that all private forests vested in the Government under Sub-section (1) of Section 3 shall, so long as they remain vested in the Government, be deemed to be reserve forest constituted under the Act of 1961. It is the contention of the learned Special Government Pleader that unless a land is de-reserved as per the procedure under the Act of 2003, it shall be deemed as a reserve forest and that is for achieving the object of the Act. It is also important to note that Section 2(ii) of the Act of 1980 disempowers the State Government to permit any non-forest activity in any forest land or any

portion thereof without the prior approval of the Central Government. In the light of the deemed vesting of the land in Government as a reserve forest by virtue of the Act of 2003, the land in question cannot be permitted to be used in contravention of Section 2 of the Act of 1980. Therefore, I am of the view that the request of the appellants to permit them to bringing in granite boulders, the raw materials, to the crusher unit from other sources and to conduct crushing activity in the disputed area cannot be permitted.

14. In the appeal filed by the appellants (M.F.A.No.46 of 2000) against the order passed by the Tribunal so many questions of facts have been raised. Disputes relating to the identity of property raised also require to be resolved in those proceedings. This Court as per order dated 08.07.2013 in the above Miscellaneous First Appeals directed the Tribunal to identify the property with reference to the old and new survey demarcations and also the documents relied on by both the parties. All those issues remain to be thrashed out in the said proceedings. Therefore, factually also, the appellants are not entitled to get any relief in this appeal.

15. It is submitted by the learned Special Government Pleader that ingress and egress of the appellants through plaint B schedule to plaint A schedule property was never obstructed by the officers of Forest Department. According to the respondents, the appellants have no legal right to conduct any commercial activity (a non-forest activity) on a land

covered by Act of 2003. From the tenor of arguments, it is discernible that the disputes raised by the appellants do not pertain to the access to plaint A schedule property through plaint B schedule property, but their right to run the crusher unit using granite boulders brought from outside. In my view that right cannot be recognized so long as the decision of the Tribunal is in force. Therefore, I find that the substantial questions of law raised by the appellants do not actually arise in this case. In fact the civil court has no jurisdiction to consider the rival contentions in the suit as the matter was in seizin of the Tribunal constituted under the Act of 2003 and the appeal thereof is pending before this Court. For the above reasons, I find no merit in the appeal.

Appeal is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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