IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 19000 of 2009 (T)

PETITIONERS :
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1. STEPHEN POONNEN,
   S/O. P.V.POONNEN, RESIDING AT NO.3, VILLA DELMAR
   SARJAPUR ROAD, BANGALORE-560 034.

2. PAUL POONNEN, AGED 39 YEARS, S/O.P.V. POONNEN,
   RESIDING AT VILLA A16-SREEVASTHA ENCLAVE,
   G.N. MILL POST, METTUPALAYAM ROAD, COIMBATORE-641 021.

   BY ADV. SRI.M.C.JOHN

RESPONDENTS :
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1. STATE OF KERALA
   SECRETARY, F & WLD, SECRETARIATE
   THIRUVANANTHAPURAM.

2. THE CUSTODIAN OF VESTED FORESTS,
   VESTED FOREST CIRCLE, ARANYA BHAVAN, OLVAVAKODE
   PALAKKAD.

3. THE DIVISIONAL FOREST OFFICER,
   SOUTH WAYANAD DIVISION, KALPETTA, WAYANAD.

4. THE FOREST RANGE OFFICER, MEPPADY,WAYANAD.

5. THE VILLAGE OFFICER, MUPAINAD VILLAGE,
   WAYANAD DISTRICT.

   R1 TO R5 BY GOVERNMENT PLEADER SMT. DEEPA G.N.

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 19000 of 2009 (T)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE JUDGMENT DT 5/6/1986 IB M.F.A. NO. 475/1981.

P2: COPY OF THE ORDER PASSED BY THE TALUK LAND BOARD DT 14/11/1978.

P3: COPY OF THE JUDGMENT DT 19/12/1997 IN OP NO. 5072/1993.

P4: COPY OF THE SKETCH DT 22.4.1996.

P5: COPY OF THE ORDER DT 16/7/1998 IN CMP NO. 21509/1998 IN OP NO. 5071/1993.

P6: COPY OF THE JUDGMENT DT 29/10/1998 IN WA NO. 2281/1998.

P7: COPY OF THE JUDGMENT DT 10/8/1999 IN WA 2761/1998.

P8: COPY OF THE BASIC TAX RECEIPT ISSUED BY THE R5.

P9: COPY OF THE COMMUNICATION NO. 190/2009 DT 15/6/2009.

P10: COPY OF THE ASSIGNMENT DEED DT 13/6/1956 IN FAVOURT OF MARIAMMA KURIAN.

P11: COPY OF THE ASSIGNMENT DEED DT 24/10/1956.

P12: COPY OF THE SURVEY SKETCH OF THE ESTATE.

P13: COPY OF THE REPORT OF THE COMMISSIONER DT 13/9/1979.

P14: COPY OF THE ORDER DT 3/6/1981 IN OA NO. 23/1979 OF THE FOREST TRIBUNAL, KOZHIKODE.

P15: COPY OF THE CLARIFICATION PETITION DT 8/6/1998.

P16: COPY OF THE COUNTER AFFIDAVIT DT 2/7/1998.

P17: COPY OF THE MEMORANDUM OF WRIT APPEAL NO. 2761/1998.

P18: COPY OF THE COUNTER AFFIDAVIT IN O P NO. 16762/2001.

P19: COPY OF THE COFFEE REGISTRATION CERTIFICATE NO. 8633/69 K DT 27/3/1969 ISSUED BY THE COLLECTOR, KOZHIKODE.

P20: COPY OF THE PROCEEDING NO.D. DIS/TLB/1204/73(TLB SW) DT 5/8/1976 OF THE TALUK LAND BOARD, SOUTH WAYANAD.

P21: COPY OF THE BASIC TAX RECEIPT NO. 82 DT 28/10/1999 FOR KOLERIE (WAYNAD) ESTATE ISSUED BY THE VILLAGE OFFICER MUPAINAD.

P22: COPY OF THE PLANTATION TAX RECEIPT DT. 28/10/1999 ISSUED BY THE OFFICER MUPAINAD.

WP(C).NO. 19000 OF 2009 (T)

P23: COPY OF G.O.(RT) NO. 305/2013F& WCDDT 21/8/2013 ISSUED BYTHE R1.

RESPONDENT'S EXHIBITS :

EXT.R3(A): COPY OF THE JUDGMENT DT 3/3/20O8 IN OP NO. 16762/2001.

EXT.R3(A): COPY OF DIGITAL IMAGE PRINT OF SALE DEED (DOCUMENT NO. 1192OF 11956) DT 1361956.

EXT.R3(B): COPY OF ORDER DT 3/6/1981 IN OA NO. 33/1979.

EXT.R3(C): COUNTER AFFIDAVIT FILED BY R5 IN WPC NO. 19000/2009.

//TRUE COPY//

P.A. TO JUDGE

bp

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 19000 of 2009

Dated this the 30th day of October, 2015

J U D G M E N T

The petitioners have come up before this Court seeking a direction to the 5th respondent to accept land tax on the petitioners' property including 12.95 hcts. (32 cents) mentioned in Ext.P9.

2. The petitioners allege that as per the order in OA No.23/1979 of the Forest Tribunal, Kozhikode, which was confirmed in Ext.P1 judgment in MFA No.475/21981, and also as per Ext.P2 order of the Taluk Land Board, whole of the property of the petitioners known as Coleri Estate having an extent of 40 acres was declared to be not private forest since it is a property planted coffee estate. By Ext.P5 judgment, the disputed area within the Coleri Estate of 576.44 acres having an extent of 5 acres was ordered to be restored so as to enable the petitioners to enjoy the entire 576.44 acres as a compact block. The

respondents filed an application for clarification of the judgment, which was also dismissed, against which, there were writ appeals, which also culminated in Ext.P7 judgment. The findings have become final and conclusive, according to which, no part of the petitioners' estate can be considered as private forest liable to vest in the Government; it is alleged. That being the position, as per Ext.P8, the 5th respondent was accepting the land tax for the entire property up to 2008. However, for the year 2009, the Village Officer declined to accept the tax for 12.95 hects. on the ground that he was instructed by the 4th respondent not to accept land tax for 12.95 hcts (32 acres) since, according to the 4th respondent, it is a vested forest. According to the petitioners, this stand taken by the 4th respondent is contrary to the concluded judgments, Exts.P1, P5 & P7. It is with this background, the petitioners have come up before this Court.

3. A counter affidavit and an additional counter affidavit have been filed by the 3rd respondent, in which it

is contended as follows;

There was a dispute with respect to 5 acres of land held by the petitioners, which was the subject matter of OA No.23/1979. The Forest Tribunal allowed the OA in favour of the Estate. The appeal filed by the State before this Court against the order of the tribunal (MFA No.475/1981) was dismissed as per Ext.P1 judgment. The petitioners filed OP No.5072/1993 seeking to issue writ of mandamus directing the respondents therein to restore possession of 5 acres as directed by this Court in Ext.P1 judgment with regard to OA No.23/1979, which was disposed of as per Ext.P3 judgment dated 19.12.1997 directing the respondents not to interfere with the possession of the petitioners in respect of the disputed land of 5 acres and to restore possession to them within a period of two months from the date of receipt of a copy of the judgment. According to the 3rd respondent, there was a larger block of 32 acres (12.95 Ha.) of forest land in the area. However, the OA applicant had claimed only 5 acres in OA No.23/79. Therefore, the petitioners were not entitled for more than 5 acres as per the judgment of this Court. Therefore, the custodian of vested forests filed

CMP No.21509/1998 in OP No.5072/1993 for clarification of the judgment dated 19.12.1997. Clarification petition filed by the State was also dismissed by this Court as per Ext.P5 judgment dated 16.07.1998. The State filed WA No.2281/98 against Ext.P5 judgment, which was dismissed by Ext.P6 judgment dated 29.10.1998 observing that no appeal is maintainable against the clarification order as the grievance, if at all, may arise from the main judgment. Subsequently, the State filed WA No.2761/98 against the judgment in OP No.5072/93 dated 19.12.1997. However, it was also dismissed by this Court as per Ext.P7 judgment dated 10.08.1999.

The correctness of the total extent in the possession, ownership etc. of the petitioners mentioned in the writ petition are disputed with reference to the title deeds mentioned in the writ petition. During the enquiry and trial before the tribunal, the correctness of the title and identity of the land were not properly established or gone into by the tribunal. According to the 3rd respondent, this was the reason for the disposal of the petitions filed by the State before this Court.

No portion of cultivated land in the petitioner's estate has been notified as forest land as per the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000. It is admitted that the 5 acres of land involved in OA No.23/1979 is a dense forest as on 02.06.2000 having all the characteristic features of an ecologically fragile land as per Section 2(b) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (Act 21/2005) without enjoyment by anybody. Though action was taken to prepare a proposal for notifying the land, it could not be done due to delay of survey works in the area as a result of the various litigations before the courts challenging the action of the respondents to notify the said land. Since no area from the property held by the petitioners has been notified as per the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, the contentions of the petitioners are baseless and unwarranted.

4. The 5th respondent has filed a counter affidavit contending that the petitioners are not in actual possession of an extent of 52.0916 hectares of land in Resurvey No.64/2 as per village records. As per letter

No.A2.65/05 dated 12.03.2008 of the Forest Range Officer, Meppadi, it was intimated to the Village Officer, Mooppainad that an extent of 12.9500 hectares of land was notified as vested forest and basic tax should not be accepted for the above extent. Hence, basic tax was not accepted for an extent of 12.9500 hectares of land in Resurvey No.64/2 from the year 2009-10; it was contended.

5. The petitioners have filed reply to the counter affidavit filed by the 3rd respondent.

6. Arguments have been heard.

7. The writ petition is filed inter alia for a direction to the 5th respondent to continue to accept the basic tax in respect of the petitioners' property ignoring the instruction given by the 3rd respondent with regard to the 12.95 hcts (32 acres) in Resurvey No.64/2 in the light of Exts.P1, P5 & P7. The claim set up by the Forest Department with regard to the 12.94 hcts was elaborately considered by this Court and was

found against. The dispute raised by the Forest Department was in respect of an area of about 5 acres within the total extent of 576/44 acres of the Colerie Estate owned and possessed by the petitioners. OA No.23/1979 was filed before the Forest Tribunal for a declaration that no portion of the estate much less the disputed 5 acres is private forest and, hence, not liable to vest. The Advocate Commissioner deputed from the Forest Tribunal identified the disputed 5 acres in the presence of forest officials and filed a report, which was not challenged by the respondents and accordingly, the Forest Tribunal as well as this Court concurrently found that the area is not a private forest and that the petitioners are entitled to enjoy the entire 576.46 acres as a compact estate. The petitioners' title and possession have been found by the tribunal as well as this Court.

8. The petitioners are the absolute owners of the Colerie Estate having an extent of 576.44 acres, which is a fully planted coffee estate. The property originally

belonged to their parental aunt, Smt.Mariamma Kurian; and on the strength of a testamentary Will executed by her, the said property devolved upon the petitioners on the death of the testator. The testator has purchased the property in 1956 as per a registered assignment deed dated 13.06.1956, which is produced as Ext.P10. After the death of Smt.Mariamma Kurian, the Will was probated and the District Judge, Wayanad, Kalpetta, as per order dated 30.07.1992 in OP(LA) No.21/1990 gave letters of administration in the name of the petitioners. Another 40 acres of property was inherited by the petitioners from their father, Sri.P.V.Ponnan, which was obtained by their father as per Ext.P11 assignment deed dated 24.10.1956. A copy of the survey sketch of the estate is produced as Ext.P12. There was no dispute with regard to any portion of the 40 acres covered by Ext.P11.

9. The Commissioner deputed by the Forest Tribunal inspected the property in the presence of the respondents and submitted Ext.P13 report dated

13.09.1979 stating that the disputed portion is about 5 acres and it is within the 576.44 acres and it is also planted with coffee just like the remaining part of the estate even though the coffee plants are not properly seen maintained. On an elaborate consideration of the entire evidence including report of the Advocate Commissioner, the learned tribunal came to the conclusion that the disputed property is a part of 576.44 acres, which is a coffee plantation. A copy of the order dated 03.06.1981 in OA NO.23/1979 of the Forest Tribunal is produced as Ext.P14. The said order was unsuccessfully challenged by the respondents in MFA No.475/1981, which was dismissed as per Ext.P1 judgment produced along with the writ petition.

10. Even though the appeal was also dismissed as early as on 05.06.1986, the custodian did not formally restore the area as contemplated under Section 84(4) of the Act 26 of 1971 even though the petitioners were not dispossessed at any point of time. However, for the

completeness of the procedure, the petitioners filed OP No.5072/1993 praying for a direction to the respondents to formally restore possession of the area and also to restrain them from interfering with the possession of the petitioners in any manner, which was disposed of by Ext.P3 judgment dated 19.12.1997. The respondents have not chosen to file any counter affidavit in the matter. The writ petition was allowed and the respondents are interdicted from interfering with the possession so that the petitioners can enjoy the entire area of 576/44 acres as a compact estate. Therefore, it has now been settled by judicial pronouncements, where the Forest Tribunal declared the position that the applicant is in possession and enjoyment and there is no requirement for earmarking or conveyance of the property.

11. The respondents filed CMP No.21509/98 (Ext.P15) dated 08.06.1998 for clarification of Ext.P3 judgment. It was contended in the affidavit in support of the clarification petition for the first time that the

disputed area is 32 acres and that the Commissioner did not report the correct extent. Along with the application, the respondents had produced a copy of the periphery sketch purported to be for the 12.9500 Hcts (32 acres), which, according to the respondents, is a vested area. A comparison of the periphery sketch produced by the respondents and Ext.P12 survey sketch would go to show that the periphery sketch is nothing but a reduced copy of the survey plan of the entire estate. Even in the periphery sketch, there is nothing to show which portion is the so called 12.95 hcts. On the other hand, it is recorded in the periphery sketch that the 12.95 hcts has not been separately surveyed, identified and demarcated.

12. A detailed counter affidavit was filed by the petitioners to the clarification petition, which is produced as Ext.P16. The clarification petition was dismissed by Ext.P5, which is a detailed order. Therefore, the respondents filed a writ appeal, which also was dismissed as per Ext.P6. Thereafter, another WA No.2761/1998

(Ext.P17) was filed against the main judgment in OP No.5072/1993, which was also dismissed by Ext.P7 judgment. Though the respondents claimed 12.95 hcts (32 acres) as vested forests, they hopelessly failed in their attempt; and therefore, they cannot be allowed to re-agitate the same contention any longer.

13. When the Kerala Forest (V&M) of EFL (Ordinance), 2000 was promulgated in June, 2000, there was an attempt by the officers of the Forest Department to interfere with the petitioners' possession alleging that the estate is going to be notified as EFL under the ordinance. This was another attempt on account of the respondents failure to take over the 32 acres as vested forest. The EFL ordinance was challenged by several estate owners before this Court in various writ petitions. Therefore, the petitioners also filed OP No.16762/2001 challenging the constitutional validity of the ordinance and it was referred to Bench for consideration along with similar other writ petitions. As a matter of fact, a counter

affidavit was filed by the respondents stating the reasons to sustain the validity of the ordinance; and a memo to adopt the counter affidavit was also filed in the identical matters. However, in para 19 of the counter affidavit (Ext.P18), the respondents clearly stated as follows;

> "...it is submitted that any portion of the petitioners' property has neither been proposed nor notified under the Ecologically Fragile Lands Ordinance. Therefore, the contentions of the petitioners in this ground are baseless, irrelevant and unwarranted."

In the light of the aforesaid averment in the counter affidavit, no portion of the petitioners' property was proposed nor notified under EFL ordinance. Therefore, OP No.16762/2001 was not prosecuted further. However, when the connected matters or reference came before the Division Bench, OP No.16762/2001 was not de-linked and Ext.R3(a) common judgment was passed disposing of all the petitions with liberty to challenge the statute or claim the benefit before the tribunal. Even now, the respondents have not been able to show that any portion of the petitioners' property has been notified as EFL land; and therefore, there was no necessity for proceeding further in the matter.

14. As this Court is not satisfied with the stand taken by the respondents refusing to accept tax on the property of the petitioners, this Court is of the view that the petitioners are entitled to get the relief as prayed for.

Therefore, the writ petition is allowed.

- The 5th respondent is directed to continue to accept land tax in respect of the petitioners' property including the 12.95 hcts (32 cents) in RS No.64/2 of Muppainad Village.
- It is hereby made clear that no part of the 576.44 acres of the petitioners' property comprised in Sy.Nos.64/1, 64/2 (Old Sy.No.733/1Pt) of Muppainad Village is liable to be treated as vested under the Act 26 of 1971 and that any claim based on Ext.P4 is hit by constructive res judicata.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-