IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE MR. A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

WA NO. 482 OF 2020

AGAINST THE JUDGMENT DATED 12.4.2019 IN WP(C) NO.22062 OF 2007 OF HIGH COURT OF KERALA

APPELLANTS/1st PETITIONER & ADDL.PETITIONERS 3 TO 7:

1 ABDUL KASSIM
AGED 46 YEARS
S/O. KUNHARAMU, NADUKKANCHIRA HOUSE,
VEERAMANGALAM POST, VIA THRIKKADEERI,
PALAKKAD DISTRICT.

2 KHADEEJA
AGED 44 YEARS
D/O. LATE HAMSA K., KULUKKAMPARA HOUSE,
VEERAMANGALAM, THRIKKADEERI -2 VILLAGE,
OTTAPPALAM TALUK,
PALAKKAD DISTRICT, PIN - 679 503.

3 FATHIMA SUHARA
AGED 42 YEARS
W/O. MOIDEENKUTTY, KILIYANGAL HOUSE,
VEERAMANAGALAM P.O., CHERPPULASSERY,
PALAKKAD DISTRICT, PIN - 679 503.

4 HAJARA
AGED 39 YEARS
W/O. JAMAL, KARIMBANCHOLA HOUSE,
VEERAMANAGALAM P. O., CHERPPULASSERY, PALAKKAD DISTRICT, PIN - 679 503.

5 RASHEEDA
AGED 35 YEARS
W/O. K. V. RAHIM, KARUPPAN HOUSE, KACHERIKUNNU,
CHERPPULASSERY P. O., PALAKKAD DISTRICT, PIN - 679 503.

6 MUMTAZ LAILA
AGED 30 YEARS
W/O.O.K.SUBAIR, OREKKATTIL HOUSE, MANGODE P. O.,
CHERPPULASSERY VIA, PALAKKAD DISTRICT,
PIN - 679 503.

BY ADVS.
BABU JOSEPH KURUVATHAZHA
SRI.P.T.ABHILASH

RESPONDENTS/RESPONDENTS 1 TO 3 & ADDL.R4:

1 STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2 SECRETARY
DEPARTMENT OF FORESTS, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

3 DIVISIONAL FOREST OFFICER
KALLEKULANGARA P. O., PALAKKAD - 678 009.

4 UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF
ENVIRONMENT AND FORESTS, CENTRAL SECRETARIAT, NEW
DELHI - 110 001.

BY ADVS.
SPECIAL GOVERNMENT PLEADER(FOREST)- SRI.T.P.SAJAN
P.VIJAYAKUMAR
SRI.T.C.KRISHNA, SR.PANEL COUNSEL
DSGI(i/C)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.07.2024, THE COURT ON 26.07.2024 DELIVERED THE FOLLOWING:

A.MUHAMED MUSTAQUE, Acg.C.J. & S.MANU, J.

W.A.No.482 of 2020

Dated this the 26th day of July, 2024

JUDGMENT

S.MANU, J.

Judgment dated 12.4.2019 in W.P.(C)No.22062/2007 of the learned Single Judge is under challenge in this appeal. By the impugned judgment the learned Single Judge dismissed the writ petition rejecting the contentions of the petitioners.

2. Case of the appellants, in short, is as follows:-

14.67 acres of property comprised in Sy.No.2/2 of Kadampazhipuram-1 Village of Ottappalam Taluk of Palakkad District was purchased by the appellants. By order dated 27.5.1978, the Forest Tribunal, Palakkad allowed the claim for exemption made by the sellers of the property under Section 3(2) of the Kerala Private Forests (Vesting and Assignment) Act, 1971. According to the appellants, the properties were cultivated with tapioca and cashew as on the appointed day which was 10.5.1971 and therefore the land was not a private forest. The order of the Forest Tribunal was not challenged by

anyone. However, the properties were restored only on 04.12.2004. While restoring possession of the property by certificate dated 4.12.2004 the Divisional Forest Officer further certified as follows:-

> "Also certified that the above area restoring possession is notified under Section 5 of KPT Act, 1986. In view of the above notification and in the light of ruling of Hon.Supreme Court in WA 202/95 cutting of trees and using the area for non-forestry purposes are not allowed."

The writ petitioners purchased the property from the original holders by sale deeds executed in 2006. The petitioners wanted to conduct quarrying operations in the property. By notice dated 16.2.2007, produced as Ext.P7, the Forest Range Officer directed the writ petitioners not to conduct any quarrying operations. Applications for issuing No Objection Certificate for conducting quarrying operations were submitted to the Divisional Forest Officer thereafter. However, those requests were rejected by the DFO on 20.3.2007. In the writ petition, challenge was raised against Ext.P7 notice dated 16.2.2007 issued by the Forest Range Officer and the orders issued by the DFO on 20.3.2007 to the 1st appellant and the predecessor in interest of the appellants

2 to 7. Later, the writ petition was amended to incorporate a challenge against condition incorporated in Ext.P6 certificate and Ext.P12 notification dated 8.10.1998 imposing the provisions of the Kerala Preservation of Trees Act over the properties in issue.

3. The Government resisted the writ petition. A statement was filed by the 3rd respondent DFO. It was alleged in the statement that the property in question is forest land having vested forest on its boundaries. The intention of the writ petitioners was to conduct quarrying and change the character of the land from forest land. It was contended by the Government that no non-forest activities could be permitted in the area. Accordingly, the official respondents prayed for dismissing the writ petition.

4. The writ petition was finally heard by the learned Single Judge on 2.4.2019 and by judgment dated 12.4.2019 the same was dismissed.

5. Sri.Babu Joseph Kuruvathazha, the learned counsel for the appellant argued before us that the Forest Tribunal, Palakkad, as early as on 27.5.1978, categorically found that the properties purchased by his clients were not private forests. He

contended that Ext.P4 order of the Forest Tribunal is a declaration to the effect that the property was not a private forest and by virtue of Section 3(2) of the Kerala Private Forests (Vesting and Assignment) Act, 1971, provisions of Kerala Preservation of Trees Act, 1986 would have no application to the property. He further contended that the condition incorporated in Ext.P6 certificate regarding application of the Preservation of Trees Act is therefore not sustainable. He also argued that the rejection of request for issuing NOC for conducting quarrying operation was therefore improper and illegal. He placed reliance on various judgments of the Apex Court as well as this Court in support of his contentions.

6. The learned Special Government Pleader on the other hand contended that the property of the appellants falls within notified area under the Preservation of Trees Act. He submitted that there is a clear distinction between lands excluded from the purview of Kerala Private Forests (Vesting and Assignment) Act, 1971 and exempted under Section 3(2) or 3(3) of the Act. The submission of the learned Government Pleader is that exemption granted under Section 3(2) or 3(3) does not take away the

character of the land from private forest. He further submitted that exemption is granted under Section 3(2) or 3(3) only for the purpose of cultivation. Other activities cannot be conducted on the strength of exemption obtained under Section 3(2) or 3(3). He also relied on various judgments in support of his submissions.

7. 'Private forest' is defined under Section 2(f) of the Kerala Private Forests (Vesting and Assignment) Act, 1971. It is as follows:-

> “(f) "private forest" means-
>
> (1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)-
>
> (i) any land to which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-
>
> (A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964);
>
> (B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose

ancillary to the cultivation of such crops or for the preparation of the same for the market.

Explanation.- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forest Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.

Explanation. For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs;"

8. Certain categories of lands specified under Section 2(f)(1)(i) are thus excluded from the ambit of the definition.

9. In Ext.P4, the Forest Tribunal has specifically found that the applicants were entitled for the exemption claimed under Section 3(2) of the Act. Section 3(2) is extracted hereunder for ready reference:-

> "**3. Private forests to vest in Government.-**
>
> (1) xxx xxx
>
> (2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.
>
> **Explanation**.- For the purposes of this sub section, "cultivation" includes cultivation of trees or plants of any species."

10. As per Section 3(2), if the land comprised in private forest is held by an owner under his personal cultivation and the extent is within the ceiling limit under the Kerala Land Reforms Act, 1963 then the property shall stand exempted from the operation of Section 3(1). A close reading of the provision brings out that the benefit provided by it is a constricted one,

from getting the ownership and possession vested with the Government. The provision does not in any way render that the property shall not be thereafter treated as private forest.

11. We note that a learned Single Judge of this Court in **Jacob.V.Elias v. Valsala Amma** [2018 (2) KLT OnLine 2101] considered the provisions of Section 3 and held as follows:-

> “18. Sub-section (2) of S.3 of the Vesting Act clearly says that so much extent of land comprised in private forests held by an owner under his personal cultivation, as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (in short, "the KLR Act") or any building or structure standing thereon or appurtenant thereto, will not be vested as provided in Sub-section (1) of S.3. It is clear that the land which is exempted from vesting under Sub-section (2) of S.3 of the Vesting Act is a private forest. However, that private forest would be exempted, if it was held by its owner under personal cultivation and if it fell within the ceiling limit prescribed under the KLR Act. It is therefore definite that what is intended to be exempted in Sub-section (2) of S.3 of the Vesting Act is nothing but a private forest. More precisely, a person seeking exemption under S.3(2) of the Vesting Act cannot dispute the nature of land as a forest.”

12. Section 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 deals with the settlement of disputes. Sub-section (1) of Section 8 is extracted hereunder:-

> "**8. Settlement of disputes.-** (1) Where any dispute arises as to whether-
>
> (a) any land is a private forest or not; or
>
> (b) any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may, within such period as may be prescribed, apply to the Tribunal for decision of the dispute."

13. If there is a dispute as to whether the lands fall within the definition of private forest or stands excluded, the same will fall within the scope of Section 8(1)(a). Therefore, if the party raising the dispute relies on any of the exclusions mentioned under sub-clauses (A) to (D) of Section 2(f)(1)(i), the application shall be for exclusion. On the other hand, if the party is seeking exemption from vesting, invoking sub-sections (2) or (3) of Section 3, then the dispute will fall under the ambit of Section 8(1)(b). Therefore, the scheme of the Act

contemplates exclusion from the operation of the Act as well as exemption from vesting and also adjudication of claims falling in both categories by the Tribunal. If the Tribunal finds in a given case that the land in dispute falls within the exclusions under sub-clauses (A) to (D) of Section 2(f)(1)(i), the consequence is exclusion of the land from the operation of the Act. However, exemption granted under Section 3(2) or 3(3), as noted above, is only from the operation of Section 3(1), to the limited extent of vesting with the Government.

14. Admittedly, the Tribunal in this case granted exemption under Section 3(2) to the original holders. Reading of the order passed by the Tribunal reveals that the claim was not for exclusion. Therefore, it cannot be later contended that the land ceased to be forest land. We have carefully perused the judgments relied on by the learned counsel for the appellant. The learned counsel placed heavy reliance on the judgment in **The Managing Trustee v. State of Kerala & ors.** [AIR 2006 Kerala 300]. In the said case, the property concerned was declared as not a private forest as defined in the Act, by the Forest Tribunal. Therefore, this Court held that the notification

issued under the Kerala Preservation of Trees Act, directing the petitioner not to cut trees was liable to be quashed. In the present case, declaration by the Tribunal is only to the extent of exemption under S.3(2). Hence, we find that reliance cannot be placed on the said authority. The learned counsel relied on the judgment in **State of Kerala and ors. v. Abdul Ali and ors.** [2013 (15) SCC 274] also. The opening paragraph of the judgment is as follows:-

> "1. Whether the land which is not a private forest as defined under The Kerala Private Forests (Vesting and Assignment) Act, 1971 can be brought under the teeth of The Kerala Preservation of Trees Act, 1986, is the moot question arising for consideration in these cases."

Hence it is clear that the Supreme Court considered the applicability of the provisions of the Kerala Preservation of Trees Act, 1986 on land which is not a private forest as defined under the Kerala Private Forests (Vesting and Assignment) Act, 1971. As we have already noted, in the case on hand, the Forest Tribunal has granted exemption under Section 3(2) alone with respect to the property. The property is not excluded from the

purview of the Act. Therefore, reliance cannot be placed on the said precedent cited by the learned counsel to decide the present case. Other judgments cited by the learned counsel are also not of any help to advance the case of the appellants.

15. We also need to refer to the provisions of the Preservation of Trees Act, 1986. Section 5 of the Act deals with prohibition of cutting of tree in notified areas. The provision opens with a non obstante clause providing it overriding effect over anything contained in any law for the time being in force, or in any judgment, decree or order of any Court, tribunal or other authority, or in any agreement or other arrangement. By Ext.R3(a) notification issued under sub-section (1) of Section 5 dated 26.10.1998 the Government made the provisions of the Act applicable to the area, covering the disputed property. As rightly pointed out by the learned Special Government Pleader, this Court in **Joseph v. State of Kerala** [2005 (4) KLT 504] categorically held that the Preservation of Trees Act being a later Act and also in view of the non obstante clause in Section 5, will have an overriding effect on any of the provisions in the Kerala Private Forests (Vesting and Assignment) Act. Hence, we cannot

find fault with issuing of the notification under the Preservation of Trees Act and also incorporating the condition regarding applicability of the Kerala Preservation of Trees Act in Ext.P6 certificate. In view of the preceding discussion, rejection of the request made by the appellants for issuing No Objection Certificate for conducting quarrying operations in the property also cannot be held to be improper or illegal.

We, therefore, uphold the judgment of the learned Single Judge. Writ Appeal stands dismissed.

Sd/-

A.MUHAMED MUSTAQUE,
ACTING CHIEF JUSTICE

Sd/-

S.MANU,
JUDGE

skj

APPENDIX OF WA 482/2020

APPELLANTS' ANNEXURES

ANNEXURE A1	**TRUE COPY OF THE JUDGMENT DATED 18.6.2014 IN W.P.(C) NO.12998/2014 OF THIS COURT.**