

Alavi vs State of Kerala

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Court : Kerala

Decided On : Oct-06-2022

Judge : Honourable Mr.Justice K.Vinod Chandran,Honourable Mr.Justice C. Jayachandran

Appeal No. : MFA (FOREST)/21/2005

Appellant : ALAVI

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN THURSDAY, THE 6TH DAY OF OCTOBER 2022 / 14TH ASWINA, 1944 MFA (FOREST) NO. 21 OF 2005 AGAINST THE ORDER/JUDGMENT OF A 51/2000 OF FOREST TRIBUNAL, KOZHIKODE PETITIONER/S:

1 ALAVI, S/O.ILLIKKAL KUNHIPATHUMMA,, BHOODANAM P.O., KODALIPOYIL (VIA),, MALAPPURAM, EDAKKARA AMSOM DESOM, ERNAD TALUK. 2 HUSSAIN AGED 38 YEARS DO. DO. 3 AYSHA AGED 35 YEARS DO., W/O. MOHAMMED KUTTY, AREEKOTTIL

HOUSE,, VYLATHUR POST, MALAPPURAM. 4 UMMER AGED 32 YEARS KOMPAN THODIKA, BHOODANAM POST,, KODALIPOYIL. 5 NABEESA AGED 29 YEARS WO.HAMSA ERIKATTU KUZHAYIL HOUSE, MANITHA POST,, MALAPPURAM. 6 SULAIKA AGED 27 YEARS W/O.ABU, KAITHAVALAPPIL HOUSE,, KARUNITHOCHI P.O., MALAPPURAM. 7 PIRIYAMMA WO.MAJEED KAJISALA HOUSE, OTHAI POST,, MALAPPURAM. BY ADVS. SRI.A.P.CHANDRASEKHARAN (SR.) SRI.M.KRISHNAKUMAR SMT.PRABHA R.MENON

RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM. 2 THE CUSTODIAN OF VESTED FORESTS PALAKKAD. 3 K.T.ABU HAJI P.B.NO.26481 ABUDHABI, U.A.E. 4 K.T.KHADER P.B.NO. 27613 ABUL ABIYADH, ABUDHANI, U.A.E. 5 K.T.MOHAMMED P.B.NO.60519 DUBAI, U.A.E. BY ADVS. SRI.NAGARAJ NARAYANAN, SPL. G.P. FOR FOREST SRI.K.SANEESH KUMAR GOVERNMENT PLEADER THIS MFA (FOREST) HAVING BEEN FINALLY HEARRD ON 06.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: K.VINOD CHANDRAN & C. JAYACHANDRAN, JJ
----- M.F.A(Forest) No. 21 of
2005 ----- Dated this the 06th
October, 2022

JUDGMENT

K. VINOD CHANDRAN,J The appeal is against an order in O.A No.51 of 2000 dated

31.5.2000. The application before the Tribunal was under S.8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971. The applicants who were the legal heirs of one Illikkal Kunhi Pathumma sought exemption, for an extent of 2.50 acres of land claiming that the same was cultivated by their mother, the predecessor in interest. It was alleged that the Forest Department in the year 1983, uprooted and cut & removed the rubber trees planted in the said land. They claimed exemption

to the petition scheduled property under S. 3(2) and 3(3) of the Act of 1971. The respondents 3 to 5 were the other legal heirs, supporting the applicants; but who were not in station and hence made party respondents.

2. Admittedly the petitioners had filed the application with

gross delay; the explanation for which was the proceeding initiated before the civil court seeking a restrain order against the official respondents 1 & 2 from interfering with the enjoyment of the property. O.S 199 of 1983 filed before the Munsiffs Court Manjeri stood dismissed, since the Act of 1971 ousted the jurisdiction of the civil court with respect to disputes coming under the said Act. An appeal filed as A.S 39 of 1988 and a second appeal filed as S.A 760 of 1990 were unsuccessful. This Court, in the second appeal, while dismissing the same, reserved the right of the appellant to approach the Forest Tribunal. A review filed also was accepted by this Court, directing ample opportunity to be provided to the applicant, while considering the question of limitation. The question of limitation considered as point No.1 went in favour of the applicants and there is no appeal filed by the State. We do not dwell upon the said aspect in the present appeal.

3. Smt. Prabha R Menon, learned Counsel appeared for

the appellant and argued that the Commission report Ext.C1 and Ext.C3 site plan specifically found cultivation in the property. It was argued that Exts.A1 to A10 were documents showing the use and occupation of the property from the year 1968. Revenue Receipts showing payment of tax by the mother of the applicants and the applicants themselves, after her death, are produced as Exts.A6 to A10. There was a rubber plantation existing in the property and the Commission report clearly indicates that the adjacent properties are also rubber plantations. The absence of rubber trees in the subject property at the time of inspection was only by reason of the officers of the department having trespassed into the property and cut and removed the rubber trees existing there. It is argued that the Tribunal misdirected itself insofar as the identity of the property, the cultivation carried on in it and also erroneously found the subject property to be falling under the Madras Preservation of Private Forests Act, 1949 (for brevity 'MPPF Act').

4. Sri.Nagaraj Narayanan, learned Special Government

Pleader (Forests) argues that there was no identification of the property by the Commissioner appointed by the Tribunal nor evident from Ext.A13 report submitted before the civil court. It is also argued that Ext.A13, in the year 1986 and Ext.C1 report, in the year 2003, do not show the lie of the property as on the appointed date; ie 10.05.1971 as per the Act of 1971. The location of the property clearly comes within the Malabar area and the description indicates the same to be within the ambit of the MPPF Act. The cashew trees noted in Ext.C1 report was aged only 8 to 11 years. The applicants trespassed into the property and the documents were created only to put forth the claim for exemption before the Tribunal. The extent and description of the properties in the various documents do not tally. The amounts paid, as seen from the revenue receipts are different in different periods and have no relation to the extent of the property claimed by the applicants. It is asserted that the O.A is an experimental one by the applicants who are nearby residents, encroaching into forest lands which stood statutorily vested in the State, as on the appointed date.

5. The Tribunal after elaborate discussion of the evidence found that no evidentiary value can be attached to Exts.A5 to A10 in

order to find possession by the persons who paid such tax to the

Government, specifically prior to 10.05.1971. Only a person who was cultivating the property prior to the appointed date or holding the land with intention to cultivate, can claim exemption from vesting. The applicants produced nothing reliable to establish their possession or cultivation prior to 10.05.1971. There is also no pleading to the effect that, the predecessor in interest obtained the property prior to 10.05.1971 for the purpose of cultivation. The scheduled property lies contiguous to vested forests and it cannot be said that the above property did not form part of the private forest. The Tribunal found absolutely no reason to find the property to be exempted from vesting under the Act of 1971.

6. We have perused the records of the case and evaluated

the evidence minutely. The application filed before the Tribunal was amended in the year 2003, substantially changing the boundaries; thus altering the boundaries, as found, even in the purchase certificate produced as Ext.A3. Further more, the specific contention taken up by the applicants in the memorandum of the original application was that the predecessor in interest obtained the property on lease from Nilambur Kovilakam in the year 1956 and she was cultivating the same with seasonal crops. In paragraph 2, it is specifically contended that 'originally the property was cultivated with paddy, tapioca, yam, gingely, plantains etc., and later in 1982 the predecessor in interest planted nearly 500 rubber plants in the property' (sic). Hence the contention that the property was a rubber plantation, does not relate back to the appointed date and even according to the applicants it was commenced only in the year 1982. The said submission itself is very suspicious going by the evidence produced by the applicants regarding the permission obtained from the Rubber Board. Ext.A2 is the Rubber Plantation Development Permit issued to Smt. Illikkal Kunhi Pathumma in the year 1983, specifically dated 03.08.1983. The suit also was filed before the Munsiffs Court, Manjery in the year 1983; all attempts to claim the land to be planted with rubber trees. It is also pertinent that the permit issued by the Rubber Board speaks of an extent of 1.01 hectares which is sought to be planted with rubber. The pleadings in the O.A supported by the deposition of PW1 (2 nd appellant) clearly goes against the parameters prescribed in the Act of 1971 to claim exemption; which has to be on the appointed day; ie, 10.05.1971. As rightly found by the Tribunal there is nothing produced to show the possession of the lands or the cultivation carried on therein from 1956, as has been pleaded by the applicants.

7. The Tribunal also had raised serious doubts regarding

the identity of the property, which was not stated properly by the applicants, in the application and not ascertained in either of the commission reports. In this context, as noticed above, the original boundaries as seen from the application filed before the Tribunal indicate that the subject property was bounded on the East, by the kudiyrippu (meaning tenancy) of Kokkadan Moideen Kutty, on the South, by a pathway, on the West, by the kudiyrippu of Keeriyath Moideen and on the North, by the kudiyrippu of K.T Moideen and Keriyath Moideen. This description of the

boundaries are in tandem with that seen from Ext.A3, purchase certificate obtained under the Land Reforms Act; the only variation being that the northern boundary is described as K.T Mohammed's property and not K.T.Moideen which could be a bonafide mistake.

8. Ext.A13 is the commission report prepared by PW2, in

the suit filed before the Munsiffs Court and Ext.A13(a) is the sketch prepared. The boundaries shown of the subject property are that shown in the purchase certificate and originally indicated in the application itself. The official respondents had a contention that they were not present at the time of inspection which is validated from the recital in the Commission report that : 'some forest officials probably from Chunkathara, Forest Range Office-II were present at the property and left the spot before 1 p.m'(sic). Be that as it may, the Commissioner reported that the scheduled property known as 'Kodalipoyil Parambu' is unsurveyed land in Edakara Village, Eranad Taluk of Malappuram District, which was identified with the help of the plaint and documents produced by the plaintiff. The extent claimed was 2 acres 50 cents and the property was on the slope of a small hill, with the southern boundary of the property running more or less over the summit of the hill. It is confessed by the Commissioner, that due to the irregular lie and shape of the property only an approximate area of the plot could be ascertained. According to the report, the plaintiff showed the Commissioner a few number of uprooted rubber plants, having 3 to 4 years age, lying here and there in the property, which were uprooted by the forest guards on 08.05.1986. The cashew plants uprooted from the property also were only about 3 to 4 years of age. According to the plaintiff there were 800 rubber trees and 200 cashew trees in the area till 08.05.1986. In fact the said submission made by the plaintiffs who are the applicants before the Tribunal are quite contrary to the pleadings before the Tribunal. Before the Tribunal it was pleaded that the rubber trees were uprooted in the year 1983 and it is quite unbelievable, if the uprooted trees were found in the property after about three years. The submission was also regarding the uprooting having been effected a few days before the Commissioner visited the property, which visit was on 28.05.1986, quite contrary to the pleadings. No reliance can be placed on A13 Commission Report or A13(a) sketch accompanying the report.

9. As we noticed herein above it was in the year 2003 that

the amendments to the boundaries were made in the original application and the Commissioner appointed by the Tribunal. Ext.C1 is the Commission report filed by the Commissioner appointed by the

Tribunal. The amendments to the boundaries were made by an order

dated 24.03.2003 and the warrant for commission issued on 25.05.2003. The Commissioner visited the property on 07.06.2003. Ext.C1 also indicates that the property was unsurveyed land and there was no identification possible, with reference to the field measurement book and the survey boundaries. A Village Officer assisted the Commissioner and it was specifically reported that the boundaries in the schedule of the O.A does not tally with the boundaries seen on the field. The nature of the property again was noticed to be a hilly terrain and there were some rubber trees planted in the north eastern corner of the property. There were 87 cashew nut trees which were stated to be having age of 22 to 25 years; which

clearly indicates that the cashew plants were planted after the appointed date; the inspection being in the year 2003. The 29 rubber trees were also having only about 20 years of age, again planted after the appointed date. There is reported a mud road on the western side of the property and the land lying to the west of the mud road was in the possession of the Social Forestry Department. On the northern side also there was a mud road after which there was vested forest. On the north eastern boundary there was a rubber plantation which is said to have been sold by one Keeri Moideen wherein also there was rubber plantation with trees having about 20 to 25 years age. On the southern and south eastern side, again there were rubber plantations belonging to one Mohammed Hussain with trees of the very same age. The house of the applicants was situated on the southern side of the property owned by Mohammed Hussain. There were also several houses situated in the neighbouring properties.

10. Primarily it has to be noticed that there was no

identification of the property as per the original boundaries shown in the application nor those shown after the amendment. The trees seen in the property, in the year 2003, does not establish a cultivation in the year 1971. There is nothing to show that the predecessor in interest of the applicants was cultivating the property as on the appointed day ie, 10.05,1971. We cannot also ferret out an intention to cultivate, since even according to the pleadings the rubber plantation was commenced in the year 1982. An intention to cultivate as has been dilated upon in *Parameswara Sastrigal K.S v. State of Kerala and others* [2008(2) KHC 434 (F.B)] should be discernible from the attendant circumstances and not merely the assertion made in the box by the applicants or by the fact that a cultivation was attempted, more than a decade after the appointed day. We also garner support from the decision of the Hon'ble Supreme Court in *Joseph v. State of Kerala* [(2007) 10 SCC 414] . The words 'intend to cultivate' was held to signify that on the date of vesting, the land in question had not been cultivated in its entirety, but the owner had intention so to do. Conduct of parties is a very relevant fact and in this case there is no evidence as to any cultivation having been carried out on the appointed day.

11. It is also pertinent that Ext.A1 permission for

occupation of the land for the purpose of cultivation indicates an interpolation. The predecessor in interest of the appellants was Kunhi Pathumma and Ext. A1 shows the name of Illikkal Pathumma with 'Kunhi' interpolated in between the two words. As far as revenue receipts, the Tribunal elaborately dealt with it and found that the tax paid does not tally with the extent claimed by the applicants. The payment of tax also was for various extents in different years. *State of Kerala v. T.V Chandran* [1980 KLT 838] held that the mere fact of payment of tax for a land does not prove title. It can only be a piece of evidence along with such other material as is relevant in the matter of proof of title. The Tribunal has noticed the inconsistencies in the extent and amount paid, as indicated in the receipts, which commends us to discard it as a valid piece of evidence.

12. The appellants also had a contention that Ext.A3

Purchase Certificate produced by them would indicate the intention with which the property was originally acquired and also the possession and the cultivation therein. The Tribunal had relied on various decisions to find that the Purchase Certificate obtained without the Government in the party array cannot have any evidentiary value insofar as the claim for exemption under the Act of

1971. We specifically refer to the decision of a Division Bench of this Court reported in *K.D.Mani v. State of Kerala* [1987 (1) ILR 570], from which paragraph 7 is extracted hereunder:

If the land in question had vested in the Government as on 10th May 1971 [the appointed date as per Section 3(1) of the Act] it is clear that a certificate of purchase issued long thereafter, in a proceeding initiated subsequent to the aforesaid vesting, without the junction of the Government in the proceedings, cannot affect the rights of the Government. There is no case for the appellant that the Government was made a party in the proceedings in the Land Tribunal which issued Ext.A2. That is an inaccuracy on the face of Ext.A2. Thus the certificate of purchase, Ext.A2, cannot be given the benefit of section 72K of the KLR Act. If so, Ext.A2 cannot have more evidentiary value than any other document. The appellant has not produced a copy of the order of the Land Tribunal pursuant to which Ext.A2 certificate was issued. As the appellant's case is based on an oral purchase of a leasehold right which cannot be recognised as valid in law, how could the Land Tribunal have granted a certificate of purchase to the appellant upholding his claim of tenancy right? Thus we are unable to act on Ext.A2. There is a further difficulty with Ext.A2. As per Section 72K, the assignment of the right, title and interest of the landowner would take place only upon the determination of the purchase price by the Land Tribunal. Ext.A2 shows that it was granted in OA No.1005 of 1972. Evidently the determination of the purchase price could have been made only long after the date of vesting i.e. 10th May, 1971. Hence if the vesting has taken place on that date, no further right will remain with the landowner or intermediary (if

any) as far as this land is concerned. Therefore Ext.A2 will have no bearing on the right of the Government with whom the land is vested as per Section 3(1) of the Act.

13. The position in the instant case is clearly identical.

Ext.A3 is issued on 27.04.1983 in a suo motu proceedings initiated in the year 1983, long after the appointed date. The order of the Land Tribunal has also not been produced and we have herein before noticed that there was no evidence produced for any cultivation carried on in the subject property as on the appointed date and the pleadings also speak of cultivation of rubber only in the year 1982, long after the appointed day. We are further fortified in taking this view by another Division Bench in Thresiamma v. State of Kerala 2002(2) KLT S.N 31 (Case No.37). It was held that the

Forest Tribunal constituted under the Act of 1971 could independently consider the nature and character of the property and is not bound by a purchase certificate issued by the Land Tribunal. The conclusiveness given to a purchase certificate with regard to the rights and liabilities under the Land Reforms Act is not binding on the Forest Tribunal governed by the Act of 1971. The Hon'ble Supreme Court in State of Kerala v. Popular Estates (2004) 12 SCC 434 held the Taluk Land Board was only concerned with the issue as to whether the lands held by the respondents were liable to be exempted from the ceiling limits. As long as the land fell into one of the exempted categories, the Board was not concerned with the exact category under which the land fell since both private forest and plantation are exempted categories. The decision of the TLB does not operate as 'resjudicata' or prejudice the rights of the State under the Act of 1971 was the binding declaration.

14. As has been held in State of Kerala v. Kunhiraman

1990 (1) KLT 382 and Popular Estates (supra) the burden of proof is on the applicant to prove that the land on which exclusion or exemption is claimed was not covered under the MPPF Act, prior to 10.05.1971. There was no evidence led to that effect and there was no exclusion claimed under S.2(f)(1)(i) of the Act of

1971. The claim raised was specifically of exemption under S.3(2) and 3(3) of Act of 1971 for which a valid possession and cultivation as on the appointed day has to be established and proved. The identity of the property as we saw, could not be established and the lease claimed under Ext.A1 was on a sticky premise, especially by reason of the interpolation made therein. There was also no specific description of the property now sought to be exempt from the application of Act of 1971. As for cultivation, there is no evidence led to prove the same as on 10.05.1971 except the bland assertion by one of the applicants in the box. The rubber plantation claimed, has not been established and was even pleaded to be, long after the appointed day. The subject land was also on the slope of a hill as we saw from the description of the lie and nature recorded by both the Commissioners. The fact that the properties were bounded by plantations or that there was human habitation nearby, at the time when the Commissioners visited the property would not enable us to decipher the lie and nature of the property, as on the appointed day. The commissions were taken out long after the appointed day and there was nothing discernible as to the nature of the property on the appointed day. The applicants miserably failed to establish the claim of exemption set up before the Tribunal. We hence dismiss the appeal leaving the parties to suffer their respective costs.

Ordered accordingly. Sd/- K.Vinod Chandran, Judge Sd/- C.Jayachandran, Judge
jma/sp

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