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Sadasivan vs the 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)/72/2005

Appellant : Sadasivan

Respondent : The State of Kerala

Advocate for Pet/Ap. : Sri. P.B. Krishnan

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. 72 OF 2005 AGAINST THE ORDER/JUDGMENTOA 9/1997 OF FOREST TRIBUNAL, KOZHIKODE APPELLANTS: 1 SADASIVAN, S/O MADHAVAN, RESIDING AT ERANAKUNDU,, ATHIPOTTA, ALATHUR. 2 PONNAMMA DO. DO. IN DO. 3 SARASA DO. DO. IN DO. 4 SUDHAKARAN SO. DO. IN DO. 5 MOHANAN SO. DO. IN DO. 6 SIVADASAN SO. DO. IN DO. 7 RAMADAS SO. DO. IN

DO. 8 PRASAD SO. DO. IN DO. 9 SUKUMARI DO. DO. IN DO. BY ADVS. SRI.S.V.BALAKRISHNA IYER (SR.) SRI.P.B.KRISHNAN RESPONDENT/S: 1 THE STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVT., GOVERNMENT -2- SECRETARIAT, THIRUVANANTHAPURAM. 2 THE CUSTODIAN OF VESTED FORESTS ARANYA BHAVAN, OLAVAKODE, PALAKKAD. BY ADV SRI.NAGARAJ NARAYANAN, SPL.G.P. (FORESTS) THIS MFA (FOREST) HAVING COME UP FOR ADMISSION ON 06.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3- K. VINOD CHANDRAN & C. JAYACHANDRAN, JJ.

Dated this the 6th day of October, 2022

JUDGMENT

K.Vinod Chandran, J.

The appeal challenges the order in O.A. No.9/1997 (O.A. No.114/76)

rejecting the application filed under S.8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971. The prayer was for excluding 6 acres of land comprised in sub-divisions 1, 1A, 1B and 5 of Re.Sy. No. 41 of Tarur- II Village. The original applicant whose legal heirs are now in the party array prayed for a declaration that the property is not a private forest, that the applicant has no other property for their personal cultivation, and consequently, restrain the forest officials from entering the property.

2. The case had a checkered career, especially when it traveled to this Court too, earlier, in four instances, the judgment in one of which alone is relevant for consideration of the instant appeal. In the original, O.A. -4-

No.114/76, PWs 1 and 2 were examined on the side of the original applicant and RW1 for the department. Exts. A1 to A5 were marked, and after appreciation of evidence, the Forest Tribunal, Palakkad, dismissed the application by order dated 14.6.79. The Tribunal found Ext.A1 lease deed to be fake and the original

applicant to have no right in the scheduled property. M.F.A. 391/79 filed against that order was allowed and the case was remanded to the Tribunal at Palakkad. The Tribunal, by order dated 12.2.1986, found the original applicant to have no title over the property and it was also held that the applicant failed to prove cultivation in the property, though the applicant did not have lands in excess of the limit under the Land Reforms Act. But the Tribunal held that the property would not come under the purview of the Madras Preservation of Private Forests Act, 1949 (for brevity, the MPPF Act). The State filed an appeal numbered M.F.A. 112/1987, the judgment in which, is relevant for our consideration. Later, twice, the legal heirs of the original applicant had approached this court against the refusal of the Tribunal to restore the case, which stood dismissed on default for the reason of non-appearance of the applicants. Those appeals were numbered as M.F.A. Nos. 668/1999 and

-5- the restoration of the case, which eventually was allowed. The order dated 15.1.1997 in MFA 112/1987, was specifically noticed in the two later orders of this court; however, the MFA number was wrongly noticed as M.F.A.

3. The order in M.F.A. 112/1987 upheld the finding of the Tribunal

that Ext.A1 was not genuine and the alleged personal cultivation by the appellant was not true. The finding that the applicant has no property exceeding the ceiling limit was untouched, but the aforesaid two findings stood against the applicant/s. A remand was made in the appeal filed by the State, only since the Tribunal found that the land would not come under the purview of the MPPF Act, on the ground of the State having not proved it. After remand, the OA was renumbered as O.A. 9/1997, before the Forest Tribunal, Kozhikode, since by then the Tribunal at Palakkad had ceased to

exist. The legal representatives of the original applicant were also impleaded. -6-

4. The learned Tribunal, on remand, found that all private forests

within the State of Kerala vested in the State under sub-section (1) of S.3 of the Act of 1971, statutorily. The vesting was subject only to the exemptions under

sections 3(2) and 3(3) and the exclusions as provided in S.2(f)(1)(i). Admittedly, the land was situated in the Malabar area, prior to the States Reorganization Act, and all private forests in that area were covered under the MPPF Act immediately before the appointed day of the Act of 1971; i.e., 10.5.1971. Unless the Act of 1971, an exclusion was provided for the lands mentioned in clauses A to C of S.2 (f)(1)(i) and also an exemption of lands

falling under Section 3(2) & (3). The Tribunal found that the burden to prove the claim set up by the applicants was on the applicants and that nothing was produced to establish the same.

5. The applicants contended that the District Collector was maintaining a blue book, map and register under the MPPF Act in respect of the

properties, to which, the said Act was applicable. The burden on the applicants being to prove a negative fact, it was argued that a mere denial would suffice and that then the onus shifts to the State. The Tribunal -7-

rejected the contention and held that the applicant should have produced certified copies of the relevant documents. The application filed to summon the District Collector, after the closure of the trial, also stood dismissed. But, for the bare denial in the witness box, there was absolutely no evidence to establish the claim of the applicants. The Commission Report also was not let in evidence, was the finding of the Tribunal.

6. Learned Counsel Sri. P.B. Krishnan, appearing for the appellants,

argued that there is no requirement to let in evidence, the Commission Report, especially in the context of the respondents having filed no objection to the same. It was also argued that the Commission Report is part of the records and the Tribunal misguided itself in not referring to the Commission Report. It was argued that the Commission Report would indicate that, on the boundaries of the subject property, there were other garden lands and rubber estates. There is no question of the land being a private forest under the MPPF Act. The best evidence available was not produced by the District Collector and there were specific direction in the

instant appeal for the production of the blue book. The said direction

-8- having not been complied with; an adverse inference has to be drawn

against the State. Learned Special Government Pleader (Forests), Sri. Nagaraj Narayanan, on the other hand, pointed out that there is an affidavit filed by the District Collector, in which it is stated that, despite a search conducted, there is no such book available with the District Collector, Palakkad. It is pointed out that though the original application was filed in the year 1974, it was 30 years afterward, in 2004 that the District Collector was attempted to be summoned. The Commission Report also cannot be relied on, the same being of the year 2004. It would not establish the lie and nature of the land on the appointed day, that is 10.5.1971.

7. We have first to notice the judgment in M.F.A. 112/1987. This

Court noticed specifically three issues raised by the Tribunal for consideration, (i) whether the land is covered under the MPPF Act, (ii) whether the applicants have ownership and personal cultivation and (iii) whether the extent is in excess of the ceiling limit under the Land Reforms Act. The Division Bench specifically referred to the evaluation of evidence on record, by the Tribunal and the conclusion arrived at, of the applicant

-9- having no title to the property and that the verumpattam cheet dated 10.12.1961 said to be executed by one Madhavan, not being genuine. The Division Bench also noticed the finding of the Tribunal that the personal cultivation asserted by the applicant on the subject land was not true, with

approval. On the third point, regarding the possession of lands by the applicants in excess of the ceiling limit, it was found in their favor. The Division Bench upheld all the above findings of the Tribunal and only interfered with the finding of the Tribunal that the land does not come within the purview of the MPPF Act. The specific finding of the Tribunal was that the department failed to prove that the land was a private forest within the erstwhile Malabar area. This Court specifically referred to the decision of a Division Bench in State of Kerala v. Kunhiraman 1990

(1) KLT 382 declaring the burden of proof, to establish the exclusion or the exemption under the Act of 1971, to be squarely on the applicant. It was

hence that the matter was remanded to the Tribunal. The dictum in Kunhiraman (supra) is affirmed by the Hon'ble Supreme Court in State of Kerala v. Popular Estates (2004) 14 SCC 434. -10-

8. While remanding the matter for fresh consideration of the sole

question, as to whether the subject land comes under the MPPF Act, the Division Bench specifically held that the other points discussed herein above are already concluded and we do not propose to upset those

findings(sic). Hence, on the issue of ownership and the assertion of personal cultivation, the issues have been considered and held against the applicant and the same is concluded by an order of the Division Bench in the MFA. The remand is only on the question of the land existing as a private forest, of which vesting is enabled statutorily under the Act of 1971.

9. In the teeth of the above findings of this Court, upholding that of

the Tribunal, there is no scope for consideration of the two issues which have been found against the applicants at the earlier point. However, for completion, we refer to the Commission Report. The Commission Report is of the year 2004, and the lie and nature of the boundaries at that point would not aid the case of the applicants, since what must be established is the nature of the land as it existed in the year 1971. As we noticed, the application was filed in the year 1974, and if there was a blue book available

-11-

as pointed out by the applicants, it was for the original applicant to ensure production of the same by the District Collector or as found by the Tribunal, get certified copies and produce the same before the Tribunal. With reference to the specific orders passed by this Court, we find that on 8.11.2016, an interim order was passed in the above MFA directing the District Collector, Palakkad, to

produce the blue book and register maintained and kept under the provision of the MPPF Act. Again, in 2008, when nothing was produced, on 26.6.2018, an order was passed directing compliance of the earlier interim order or an affidavit in explanation of why the same was not produced. The District Collector has filed an affidavit dated 6.10.2018, admitting that the said documents could not be traced. The District Collector also submits that necessary inquiries were made with the Taluk Office and the Office of the Chief Conservator of Forests, Palakkad, the Archives Department, Kozhikode and Thiruvananthapuram, who also could not trace out the documents sought to be brought on record.

10. We cannot accept the argument of the learned Counsel for the applicant that the blue book having not been produced, an adverse -12-

inference must be drawn. Kunhiraman (supra) negatived the argument that once the claimant denied that the land is a forest land, the burden is on the State to prove that it was a private forest. Popular Estates (supra) too

held that: the burden of establishing that certain disputed land was not

vested forest rested squarely upon the respondents before the Forest Tribunal. The respondents would succeed or fail on the merits of their own case of showing that the land fell within the exempted category (sic). In fact, the best evidence could have been produced by the applicant himself at the time when the application was filed before the Tribunal. Having not done so, after 51 years from the appointed date, there can be no

adverse inference drawn against the State. We reiterate that the first application to summon the District Collector was filed only in 2004, 30 years after the original application was filed before the Tribunal. At the risk of repetition, we must pertinently observe once again that the title and the aspect of personal cultivation stand concluded against the applicants and both issues have achieved finality, thus denying the right of the applicant to approach the Tribunal under the Act of 1971, as held in Kunhiraman.

11. On the aspect of the lands being covered under the MPPF Act, it

must be noticed that, in the deposition of PW1, in cross-examination he has admitted that the land is termed a Malavaram (slope of a hill). In this context, we notice the binding declaration in Kunhiraman (supra) to the effect that in consideration of whether the land on which exemption or exclusion is sought, was existing as a private forest, one must understand the topography of the region. The learned judges specifically referred to Kuttanad coming within the State of Kerala, a coastal area and one in the plains, where there could be found no forest at all, as distinguishable from the high ranges. In so far as the location of the subject lands, there is no doubt that the same was a hilly area and the lie of the land being on the slope of a hill, it would have been forest land as on the appointed day; a reasonable presumption. The statutory vesting occurs on the appointed day and any modification made to the nature of the land after that or the modifications which were made to the neighboring lands, cannot be projected by the applicants to claim the exclusion. Again we notice that the remand was very limited, in an appeal of the State, only to enable ascertainment of the nature of the land and whether it stood covered under

-14- the MPPF Act; occasioning statutory vesting. We find the issue has been correctly answered by the Tribunal. We uphold the findings of the Tribunal and reject the appeal, leaving the parties to bear their respective costs. Sd/- K. VINOD CHANDRAN JUDGE Sd/- C. JAYACHANDRAN JUDGE uu

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