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State of Kerala and Another vs P.Jayanarayanan

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Court : Kerala

Decided On : Nov-18-2022

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

Appeal No. : MFA (FOREST)/176/2009

Appellant : State of Kerala and Another

Respondent : P.Jayanarayanan

Advocate for Def. : Sri. V.V. Surendran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN & THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN FRIDAY, THE 18TH DAY OF NOVEMBER 2022 / 27TH KARTHIKA, 1944 MFA (FOREST) NO. 176 OF 2009 AGAINST THE ORDER IN OA 14/1999 DATED 2.2.2009 OF FOREST TRIBUNAL, KOZHIKODE APPELLANTS/RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM. 2 CUSTODIAN OF VESTED

FORESTS OLAVAKKODE, PALAKKAD DIST. BY SRI. NAGARAJ NARAYANAN, SPL GP RESPONDENT/APPLICANT: P.JAYANARAYANAN S/O POTTEKKAD NARAYANAN NAIR, I.N.H.COLONY, "CHANDRAGIRI", SULTHAN BATHERY, POOMALA.P.O. CHELLANGODE, WAYANAD, DIST. BY ADVS. SRI.P.A.HARISH SRI.V.V.SURENDRAN THIS MFA (FOREST) HAVING COME UP FOR ADMISSION ON 18.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: M.F.A.(Forest) No.176 of 2009 2

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ. ---------- M.F.A.(Forest) No.176 of 2009 ---------- Dated this the 18th day of November, 2022

JUDGMENT

K.Vinod Chandran, J.

Two plots, respectively of 5 and 5.8 acres scheduled as plot A

and plot B comprised in Sy.Nos.1132/2A1A2A1A8 of Muppayinad Village in Vythiri Taluk, Wayanad District, were claimed as excluded and exempted under the Kerala Private Forests [Vesting and Assignment] Act, 1971 [for brevity, 'the Vesting Act']. The applicant before the Tribunal purchased the property in 1994 as per Ext.A1 deed from one Gopinathan and two others. The said property was claimed to have belonged to one Lakshmi @ Malukkutty Amma who assigned 'kanam' right in favour of Choyi @ Appukkuttan. The said Appukkuttan obtained the property jointly with one Kelu, who by a release deed, assigned his rights to Appukkuttan. A sale deed was executed by Appukkuttan in favour of Gopinathan, Vasanthi and Geetha, who sold the properties by A1 deed to the applicant. The applicant claimed that both the properties were cultivated as on the

M.F.A.(Forest) No.176 of 2009 3 appointed day and that the properties were not forest land, either covered under the Madras Preservation of Private Forests Act,

1949 [for brevity, 'the MPPF Act'] nor coming within the definition of private forests in Malabar district other than that covered under the MPPF Act.

2. The respondents resisted the application on the grounds of

limitation, demarcation and survey carried out of the land vested in the Government and notified as V.F.C. item No.22 as on 14.12.1979 and the properties being included in a total extent of 710 hectares in bit No.4 of V.F.C. item No.22. The transfers executed prior to 10.5.1971 ought to have been with the prior sanction of the District Collector, for which there was no evidence. The title, possession and cultivation asserted by the applicant was also seriously challenged.

3. The Tribunal by the impugned order allowed the claim with

respect to plot A, as being not a private forest as on the appointed day under S.2(f)(1)(i) based on the earlier finding of the Tribunal and also found that there was evidence of cultivation as on the appointed day. With respect to plot B, the claim of the applicant was rejected, from which there is no appeal. We are hence concerned with only plot A in the present appeal of the Government and in the context of the

M.F.A.(Forest) No.176 of 2009 4 Tribunal having relied upon the earlier findings of the Tribunal itself, which order was set aside in an appeal by this Court, we are of the opinion that we should first look at the said order, again confined to plot A.

4. We have called the judge's papers of M.F.A.No.99/2002, and

have seen the earlier order of the Tribunal dated 17.10.2001 from the records of this appeal. With respect to plot A, it is seen that the Tribunal, initially, found that the applicant failed to establish title of the said property as on 10.5.1971. The Tribunal looked at the aspect of whether the land comprised in plot A is a private forest covered under the MPPF Act. It was found that the respondents, officers of the Forest Department, failed to produce the best evidence possible, i.e., the documents in their custody to prove that the property is governed by the MPPF Act, and hence found it to be not covered under S.2(f)(1)(i). However, on the

question of whether it is covered under S.2(f)(1)(ii), the Tribunal relied on State of Kerala v. Chandraleka [1995 (2) KLT 152] which found the burden to establish the subject property to be not a private forest and the cultivation carried on, to be squarely on the applicant who has invoked the jurisdiction under S.8 of the Vesting Act. The Tribunal elaborately

M.F.A.(Forest) No.176 of 2009 5 considered the contention on either side as also the commission report produced as Ext.C1 to find that plot A was not a private forest as on 10.5.1971. The claim with respect to plot B was rejected. The applicant filed an appeal before this Court which was disposed of by

judgment dated 19.11.2007 in M.F.A.No.99/2002. The appellant

produced five documents before the court to contend that the dismissal of the claim regarding A schedule property was not proper. There was a remand made to the Forest Tribunal for fresh consideration, according to us, an open remand. This Court in M.F.A.No.99/2002, specifically directed fresh consideration and allowed parties to adduce further evidence. In such circumstances, it cannot be said that the earlier finding with respect to plot A being not a forest, survives, as there is no finding rendered in the appeal regarding that aspect. We also have to notice that the rejection of the application by the Tribunal for reason of the applicant having no title as on the appointed day of the Vesting Act, was not proper. Parameswara Sastrigal v. State of Kerala (2008 (2) KLT 461) clearly found that even a subsequent assignee can file the application under S.8, but it goes without saying that cultivation has to be proved, either for the purpose of exclusion under clauses (A) to (C) of S.2(f)(1)(i)

M.F.A.(Forest) No.176 of 2009 6 or exemption under sub-sections (2) and (3) of S.3, as on the appointed day. We also have to observe that the Tribunal in its earlier

order egregiously erred in finding that plot A is not governed by the

MPPF Act, merely for the reason of the Department having not produced the documents establishing its coverage. The error assumes significant proportions, especially when the Tribunal noticed the Division Bench judgment of this Court in Chandraleka (supra), which placed the burden of proof on the applicant, who asserts or denies the coverage under the MPPF Act.

5. With this prelude, we look at the present order impugned in

the appeal. As far as title, the Tribunal relied on A4 to A8 documents to trace it from the applicant to Lakshmi @ Malukkutty Amma. Ext.A6 is a document of 1969 by which Lakshmi @ Malukkutty Amma assigned kanam right in favour of Choyi @ Appukkuttan and Kelu, by Ext.A7. Kelu released his right in favour of Choyi @ Appukkuttan and later, by Ext.A8, a sale deed of 1987, Choyi @ Appukkuttan transferred the property in favour of Gopinathan, Vasanthi and Geetha, who by Ext.A1, transferred it to the applicant.

6. The learned Special Government Pleader seriously assailed the identity of the property covered by the aforesaid documents as M.F.A.(Forest) No.176 of 2009 7

being not the one scheduled in the application. The specific challenge was regarding the boundary on the southern side. A4, A6 and A7 documents shows a river on the western and southern boundaries. However in A8, on the western boundary, the property of one Varghese is shown. We have looked at the application in which the western boundary is shown as the property of Varghese. We have also looked at the report and plan of the Commissioner, Exts.C1 and C2. Ext.C1 indicates a well formed road on the western side of plot A and on the southern side, a water fall. From Ext.C2 sketch, it can be seen that there is a narrow strip of land on the western boundary of plot A. There was no objection filed by the department to the commission report nor was a request made to examine the Commissioner. The road on the western boundary could have been formed in the course of time and we are dealing with the description of boundaries in documents, right from 1969. The Commissioner has clearly identified the property in the presence of the respondents and there is also improvements noted from the property, which we will deal with while examining the cultivation in the land. Suffice it for the present, to affirm the findings of the Tribunal on the title, as

per the various documents produced as Ext.A6 to A8 and A1.

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7. Now the question arise as to whether the property is covered

under the MPPF Act. But for the bland assertion made by the applicant before the Tribunal, there was nothing produced to indicate that the property was not governed by the MPPF Act; the burden of

which, as we saw above, is squarely on the applicant. In such circumstances, we cannot but come to the conclusion that the property is covered under S.2(f)(1)(i) of the Act, especially when it is part of a vested forest having a total extent of 710 acres as revealed from the notification produced at Ext.B1 by the respondents. The Commissioner has also noticed that the property lies on a steep incline of a hill. We are convinced that plot A is covered under S.2(f) (1)(i) and what remains is the consideration of whether there could be an exclusion or exemption.

8. The application before the Tribunal specifically averred

that there was coffee, pepper and fruit bearing trees like mango, jack fruit as also seasonal cultivation carried on in the property. In this context we look at the commission report Ext.C1 which was prepared based on an inspection in the year 2000. According to the Commissioner, plot A as also B were planted with coffee plants and there were other trees existing, such as areca, jackfruit, coconut and M.F.A.(Forest) No.176 of 2009 9

mango trees. In plot A, the areca tree was stated to be having an age ranging between 20 to 30 years and many of the coffee plants, though newly planted, there were also old plants of age more than 25 years. The applicant before the Commissioner and when examined as PW1, stated that there was a forest fire which destroyed the coffee plantation in a substantial area of the property, after which the new

coffee plants were planted. The Commissioner also was shown stumps of old coffee plants, from which the Commissioner observed, he was not able to

ascertain the exact age. The Commissioner also noted trees like venteak, rosewood and neeli in plot A and the coconut trees in plot A had age between 15 to 20 years. Varghese, PW2, who had his residence on the boundary, told the Commissioner and also testified before court that he knew the property from long and that he had observed coffee plantation in the said property. In addition to this, the applicant had also produced A5 proceedings of the Land Tribunal and A4 purchase certificate issued to Appukuttan who was the predecessor in interest of the vendors of the applicant.

9. Sri. V.V. Surendran, learned Counsel for the respondent/applicant relied on State of Kerala v. Mohammed Basheer [(2019) 4 SCC 260] to argue that the purchase certificate M.F.A.(Forest) No.176 of 2009 10

issued under Section 72K is conclusive proof of title and such lands are exempted under the Vesting Act. The decisions in Kunjanam Antony v. State of Kerala [(2003) 3 SCC 221] and State of Kerala v. Popular Estates [(2004) 12 SCC 434] were under Chapter III of the Land Reforms Act while Mohammed Basheer (supra) specifically looked at S.72K of the Land Reforms Act coming under Chapter II. The Purchase Certificate issued under S.72K, according to him, is conclusive proof of the land being not a private forest, and the exemption under S.3(1)(vii) of the Land Reforms Act would not definitely be applicable. It was argued that the definition of private forests under the Land Reforms Act is different and distinct from that under the Vesting Act. The issuance of a Purchase Certificate being statutorily conclusive as per S.72K, there is a presumption that the property is not a private forest. It is also argued that Ext.B2 plan would indicate that the area is occupied and planted. Though the Government is not in an adversary position, they have a right to file an appeal from the order of the Tribunal, as noticed in Mohammed Basheer (supra). The Government has not filed any appeal from the proceedings before the Land Tribunal, which led to the issuance of the purchase certificate.

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10. The learned Special Government Pleader [Forests]

Sri.Nagaraj Narayanan pointed out a number of decisions of this Court to contend that a purchase certificate issued under the Land Reforms Act would only be a piece of evidence and not conclusive proof of the cultivation carried on in the subject property. The position has been affirmed by two decisions of the Hon'ble Supreme Court in Kunjanam Antony and Popular Estates (both supra). Mohammed Basheer (supra) was a subsequent decision of the Hon'ble Supreme Court which, it is argued, is per incurium. It is pointed out that Mohammed Basheer (supra) noticed Kunjanam Antony (supra) but distinguished it on the ground that the earlier decision did not consider the conclusiveness of a purchase certificate issued under S.72K of the Land Reforms Act. In fact in Kunjanam Antony (supra) the applicant raised the contention that the land alleged to have vested under the Vesting Act, had been exempted from the ceiling proceedings under the Land Reforms Act by the Taluk Land Board, on the ground that it was a rubber plantation. That was a better ground since, therein, a statutory authority had found that the property was cultivated, which absolves it from vesting under the Vesting Act. Even then it was held to be only a piece of

evidence and not conclusive. Popular Estates (supra) also considered an exemption granted by the Taluk Land Board, on the ground of the land being a plantation and the Supreme Court noticed that the consideration for exemption from ceiling limit under the Land Reforms Act cannot operate as res judicata since both private forests and plantations are exempted under the ceiling limit of the Land Reforms Act.

11. It was argued that the enquiry of the Land Tribunal under

the Land Reforms Act is not comprehensive to verify the nature of the cultivation and its extent. Often claims are accepted, based on the reports made by the Revenue Inspectors, who only look at the aspect of possession and not necessarily cultivation. The learned Special Government Pleader pointed out that S.53 of the Land Reforms Act enables a cultivating tenant entitled to fixity of tenure under S.13 to purchase the right, title and interest of the land owner and intermediaries, in respect of the land held by him. S.13, a non obstante clause,

speaks of the rights of tenants to fixity of tenure. S.72K by sub-section (1) provides for issuance of Certificate of Purchase to the cultivating tenant, upon which the right, title and interest of the land owner and the intermediaries, in respect of the

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holding or part thereof, to which the Certificate relates, vests in the cultivating tenant, free of all encumbrances created by the land owner or the intermediaries. Sub-section (2) of S.72K also mandates the Certificate of Purchase to be conclusive proof of the assignment to the tenant, of the right, title and interest of the land owner and the intermediaries. According to the learned Special Government Pleader this is only conclusive proof of title and not proof of cultivation. In this context, the learned Special Government Pleader also took us to the definition clause of cultivating tenant [S.2(8)]; defined as a tenant who is in actual possession of land, entitled to cultivate the land comprised in his holding. The Land Reforms Act does not require actual cultivation for enabling fixity of tenure or issuance of Purchase Certificate; which is required to be proved under the Vesting Act as on the appointed day to absolve the property of the vesting.

12. Further it is pointed out that S.3(1)(vii) exempts leases of

private forests from the operation of Chapter II, in which Chapter is contained the provisions regarding deemed tenants and S.13, which speaks of rights of tenants to fixity of tenure. The definition of private forests under both enactments exclude cultivated lands and waste lands which are not enclaves within wooded areas. S.72, which speaks

M.F.A.(Forest) No.176 of 2009 14 of vesting of landlords rights, in Government, provides that all right, title and interest of the landlord, owners and intermediaries in

respect of holdings held by cultivating tenants [including kudiyirippus and kaaraymas] entitled to fixity of tenure under S.13 and in respect of which Certificates of Purchase under sub-section (2) of S.59 have not been issued, shall vest in the Government free from all encumbrances. Hence, the vesting occurs

only of lands, where fixity of tenure can be claimed under S.13; which is not applicable to leases of private forests. Hence even if there is a lease as claimed by the applicant herein, if it is of a private forest without any cultivation specified in clause (ii) to (iv), there could not have been any vesting under the Land Reforms Act for reason of the exemption under S.3(1) (vii). If there is no vesting, then of course the Purchase Certificate issued is questionable. There is absolutely no proof offered of the cultivation carried on in the property and the applicant before the Tribunal failed to establish that he possesses land below the ceiling area under the Land Reforms Act. It is also pointed out that Section 105 of the Kerala Land Reforms Act provides for an authorised officer, not below the rank of a Revenue Inspector to obtain information from any person relating to the extent of land held by

such person and his family members and such other particulars as prescribed for the purpose of implementing the provisions of the Land Reforms Act. The authorised officer merely collects the information to bring into effect the provisions of this Act and it does not necessarily place the Government in an adversary position before the Land Tribunal. It is also urged that the private forests under the Vesting Act includes those under the Land Reforms Act and as on 10.05.1971 there is a vesting under the Vesting Act de hors a notification.

13. Having anxiously considered the issue raised in the appeal,

we are of the opinion that the finding of the Tribunal regarding plot A being not covered under the MPPF Act, is not proper. However, despite our finding that the applicant has failed to prove that the land is not covered under the MPPF Act, we are of the opinion that the land was cultivated as on 10.5.1971. The title has been specifically traced from 1969 and the slight discrepancy in the boundary which commenced from the deed at A8 executed in 1987, is inconsequential in so far as the property scheduled having been specifically identified by the Commissioner in the presence of the respondents, on which there is no dispute raised by the respondent department. We are

further fortified with the decision in Mohammed Basheer (supra) in upholding the order of the Tribunal which decision is an authoritative pronouncement of exemption being available under the Vesting Act, for the lands on which purchase certificate has been issued under the Land Reforms Act. Even if we adopt the principle under Kunjanam Antony and Popular Estates (both supra) the proceedings under the Land Reforms Act is a piece of evidence to prove that the property is absolved from vesting, which, coupled with the finding of cultivation, inures to the benefit of the respondent/applicant. We hence reject the appeal upholding the declaration of the Tribunal with respect to plot A scheduled in the application. The appeal of the State fails and the same shall stand dismissed.

Sd/- K.VINOD CHANDRAN, JUDGE Sd/- C.JAYACHANDRAN, JUDGE uu

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