

**Balan Vs. Kesavan**

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**Court :** Kerala

**Decided On :** Jul-26-2006

**Reported in :** 2006(4)KLT100

**Judge :** K.S. Radhakrishnan, J.

**Acts :** Contempt of Court Act, 1971 - Sections 3(3), 9, 10, 11 and 12; Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 - Sections 2 2, 3, 3(1), 3(2), 4, 4(1), 4(2), 10, 15 and 16; Kerala Forest (Vesting and Management of Ecologically Fragile Lands) (Amendment) Act, 2005 - Sections 3 and 3(1); Private Forests (Vesting and Assignment) Act, 1971 - Sections 3(1); Kerala High Court Contempt of Court Rules, 1971

**Appeal No. :** CCC No. 192 of 2002

**Appellant :** Balan

**Respondent :** Kesavan

**Advocate for Def. :** Sushheela R. Bhatt, Spl. G.P. Forests

**Advocate for Pet/Ap. :** D. Krishna Prasad,; D. Narendranath,; Joji Varghese,

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**K.S. Radhakrishnan, J.**

1. This is a petition filed under Sections 10, 11 & 12 of the Contempt of Court Act 1971 and Contempt of Court Rules (High Court of Kerala) 1971 to initiate contempt of court proceedings against respondents for not giving effect to the judgment in OP. No. 4888 of 1993.

2. Petitioner herein was an applicant in OA. 348 of 1981 before Forest Tribunal, Kozhikode which was subsequently transferred to Forest Tribunal, Palakkad and numbered as O.A. 2 of 1991. The Forest Tribunal, Palakkad vide its order dated 29-6-1991 allowed the petition in part and ordered that the petitioner is entitled to get restoration of 7 1/2 acres of land in R.S. 1226 pt. (new Sy. No. B1.32 sy.260 pt.). The order was challenged before this Court by the State in MFA. 518 of 2002 which was dismissed on 20-12-2002, against which State preferred C.A. No. 22227-28/2003 before the Apex Court, which was dismissed on 5-12-2003.

3. Petitioner then submitted several applications for restoration of the land as ordered by the Forest Tribunal which was confirmed by this Court. After the disposal of OP. 4888 of 1993 directing the respondents to restore possession it is seen that the area in question was demarcated and a sketch was prepared and a report was submitted before the Government for finalisation. Meanwhile the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act 2003, Act 21 of 2005 was enacted. Respondents have taken up the stand that in view of the coming into force of the above mentioned Act, the land in question for which restoration is sought for, is an ecologically fragile land and consequently the same stood vested in the Government in view of Section 3 of the Act and hence the order of the Tribunal as well as the judgment of this Court in MFA. 518 of 2002 and that of the apex court and the judgment in OP. No. 4888 of 1993 cannot be enforced. Under such circumstance it was pointed out no contempt of court proceedings can be initiated based on the judgment which is unenforceable in the eye of law.

4. Smt. Susheela R. Bhatt, Sl. Govt. Pleader (Forest) placed reliance on the Division Bench decision of this Court in Niyamavedi v. Union of India and Ors. 2003 (3) KLT (SN) 86 : 2004 (1) KLJ 68 and submitted that neither the State

Government nor the Forest Department have got the right to hand over evergreen forest to the applicant in order to get over the contempt of court proceeding. Counsel also submitted that in the light of the above mentioned Act this petition is liable to be dismissed. Counsel appearing for the petitioner Sri. D. Krishna Prasad on the other hand contended that the land in question would not fall within the ambit of Act 21 of 2005 especially, when the procedure laid down in Section 4 has not been complied with by the Government. Counsel further submitted that the judgment was delivered by this Court as early as 1st August, 1996 and the Act came into force only with effect from 2nd June, 2000 and the Government have no explanation why the judgment has not been given effect to from 1996 onwards. Counsel therefore submitted that appropriate action be taken for not complying with the judgment.

5. Indisputedly the land in question is part of the vested forest and the applicant had claimed exemption from vesting under Section 3(3) of Act 21 of 1971. Ext.R1 (a) is the details of the land which fall under the EFL as per Kerala Forest Ecologically Fragile Land (Vesting & Management) Act 2003. Survey conducted by the Forest Range Officer Meppady, would show that all the boundaries of the land are covered by vested forests. The Forest Range Officer accordingly remarked as follows:

The terrain of the area is very steep. It is an evergreen Forest area with species like Vayanavu, Njaval, Punna, Pali, Chorapali, Plapatta, Cheeralam etc. having GBH up to 250cm. The area is also having profuse regeneration of various evergreen species. Canes and reeds are also encountered in this area. This area is an enclave surrounded by evergreen forest.

State has taken the specific stand that the land in question has already been vested in the Government under Section 3 of Act 21 of 2005. Consequently in case there is any dispute as to whether the land is ecologically fragile land or not or any ecologically fragile land or portion thereof has vested in the Government or not, that dispute has to be resolved by the Tribunal constituted under Section 9 of the Act. The Act also provides for appeal to the High Court under Section 11 of the Act. Those disputes in my view cannot be resolved by this Court in this contempt

of court proceedings.

6. Act 21 of 2005 was enacted to provide for the vesting in the Government of ecologically fragile lands in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the bio-diversity. The preamble of the Act is to be noted, which is extracted hereunder.

Preamble-- Where the earth's biological resources with their intrinsic ecological, genetic, economic, social, cultural, scientific, educational, recreational and aesthetic values are global assets and public trust vital to the sustained economic and social development, maintenance of ecological balance and the very existence of humanity.

The Act came into force on 2nd June, 2000. Section 2(b) defines the words 'ecologically fragile lands' which is extracted below for easy reference:

(b) 'ecologically fragile lands' means--

(i) any land or any portion thereof held by any person and lying contiguous to or enriched by a reserved forest or a vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation; and

(ii) any land declared to be an ecologically fragile land by the Government by notification in the Gazette under Section 4.

The above mentioned definition clause takes in three categories of lands, one is that any forest land or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or a vested forest and the second category is that any other forest land owned by the Government and predominantly supporting natural vegetation and the third category is that any land declared to be an ecologically fragile land by the Government by notification in the Gazette under Section 4. All the above categories of lands would fall within the definition of 'ecologically fragile land' under Section 2(b) of the Act.

7. Section 3 states that ecologically fragile lands would vest in the Government. Section 3 is extracted hereunder for easy reference:

### 3. Ecologically fragile lands to vest in Government--

(1) Notwithstanding anything contained in any other law for the time being in force, or in any judgment decree or order of any court or tribunal or in any custom, contract or other documents, with effect from the date of commencement of this Act, the ownership and possession of all ecologically fragile lands held by any person or any other form of right over them, shall stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date.

(2) The lands vested in the Government under Sub-section (1) shall be notified in the Gazette and the owner shall be informed in writing by the custodian and the notification shall be placed before the Advisory Committee constituted under Section 15 for perusal.

The above mentioned provision would indicate that notwithstanding anything contained in any other law for the time being in force, or in any judgment, decree or order of any court or tribunal or in any custom, contract or other documents with effect from the date of commencement of the Act, the ownership and possession of all ecologically fragile lands held by any person or any other form or right over them shall stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date. Therefore by virtue of sub-section (1) of Section 3 of the Act, vesting takes place, by operation of law on 2nd June, 2000. No provision in the Act postpones the vesting to any day subsequent to the appointed day. Sub-section (2) of Section 3 stipulates the procedure to be followed after the land stands vested in the Government under Section 3 of the Act. Once the land vests in the Government, with effect from the date of commencement of the Act, the ownership and possession held by any person shall stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date by operation of law. I may in this connection refer to a decision of this Court in Ranga Sesha Hills (P) Ltd. v. State of Kerala 1991 (2) KLT 49 wherein this Court examined the scope of sub-

section (1) of Section 3 of Private Forests (Vesting and Assignment) Act, 1971 and this Court took the view that by virtue of sub-section (1) of Section 3 of the Act, vesting takes place, by operation of law on the appointed day and no provision in the Act postpones the vesting to any day subsequent to the appointed day. The principle laid down by the Division Bench of this Court applies with all force when we interpret Section 3(1) of Act 21 of 2005.

8. Section 16 says that all ecologically fragile lands vested in the Government shall be managed by the Forest Department in accordance with the provisions of the management plans approved by the Government. After vesting the Government shall notify in the Gazette about the land which has been vested under Sub-section (1) of Section 3 and the owner shall be informed in writing by the custodian and the notification shall be placed before the Advisory Committee constituted under Section 15 for perusal. The Advisory Committee constituted under Section 15 of the Act have also got the power to identify the lands which are ecologically fragile and recommend to the Government for the declaration of such lands under Section 4(1) as ecologically fragile. Section 4 of the Act confers power on the Government to declare ecologically fragile land as defined under Section 2(b)(ii) of the Act. Section 4 is extracted hereunder for easy reference:

#### 4. Power to declare ecologically fragile land-

(1) The Government shall have power to declare, by notification in the Gazette, any land to be ecologically fragile land on the recommendation of the Advisory Committee appointed for the purpose under Section 15 of this Act.

(2) No declaration under Sub-section (1) shall be made without giving the owner a notice of thirty days for being heard.

(3) No person shall change the legal or physical status or ownership of the land proposed to be declared as an ecologically fragile land after the notice issued under Sub-section (2).

(4) With effect from the date of declaration of any land as ecologically fragile land under Sub-section (1), the ownership and possession of the land or any other form

of right over it shall subject to the provisions of this Act, stand transferred to and vested in the Government free from all encumbrance and the right title and interest of the owner or any other person thereon shall stand extinguished from the said date.

Section 4(1) states that the Government shall have power to declare, by notification in the Gazette, any land to be ecologically fragile land on the recommendation of the Advisory Committee appointed for the purpose under Section 15 of the Act. Sub-section (2) of Section 4 stated that no declaration under Sub-section (1) shall be made without giving the owner a notice of thirty days for being heard. Further it is also stated that no person shall change the legal or physical status or ownership of the land proposed to be declared as an ecologically fragile land after the notice issued under Sub-section (2). With effect from the date of declaration of any land as ecologically fragile land under Sub-section (1), the ownership and possession of the land or any other form of right over it shall subject to the provisions of this Act stand transferred to and vested in the Government free from all encumbrance and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date.

9. Resultantly, any forest land or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation shall stand vested in the Government under Section 3 of the Act so also Government have got power under Section 4 of the Act to declare by notification in the Gazette any land to be ecologically fragile land on the recommendation of the Advisory Committee.

10. Section 6 of the Act deals with demarcation of boundaries which says that within such time as may be prescribed, after the coming into force of Act 21 of 2005 or the notification under Sub-section (1) of Section 4, as the case may be, the custodian shall cause to demarcate the boundaries of ecologically fragile lands vested in the Government under Section 3 of Section 4. Further notwithstanding the pendency of an application under Section 10 before the Tribunal, the custodian may, if he is satisfied that any land is vested in the Government under Section 3 or

Section 4, demarcate or cause to demarcate the boundaries thereof. The above mentioned provision would indicate that there are two modes of vesting. One is automatic vesting of forest land under Section 3, which should satisfy the definition of Section 2(b)(i). The second category is the cases where Government issues notification under Section 4(1) of the Act.

11. I am of the view that so far as this case is concerned, the land in question falls under first category, i.e., land which is encircled by vested forest, and therefore the vesting is automatic notwithstanding anything contained in the judgment or decree or order of the Tribunal. Therefore notwithstanding anything contained in the judgment of the Forest Tribunal the land in question stood vested in the State by operation of law. Under such circumstance the order passed by the Tribunal cannot be enforced since the land in question stood vested in the State by operation of law, subject of course to the right of the petitioner to move the Custodian or Tribunal under the provisions of Act 21 of 2005.

Under such circumstance C.C.C. lacks merits and the same would stand dismissed.

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