

Joseph Vs. State of Kerala

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Court : Kerala

Decided On : Oct-06-2005

Reported in : 2005(4)KLT504

Judge : Rajeev Gupta, C.J. and; S. Siri Jagan, J.

Acts : [Kerala Preservation of Trees Act, 1986](#) - Sections 2, 4 and 5; Kerala Private Forests (Vesting and Assignment) Act, 1971 - Sections 3(3); Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974; Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983

Appeal No. : W.A. No. 2236 of 1998

Appellant : Joseph

Respondent : State of Kerala

Advocate for Def. : Roy Chacko, Government Pleader

Advocate for Pet/Ap. : P.N. Krishnankutty Achan, Sr. Adv. and; K. Mohana Kannan, Adv.

Disposition : Appeal dismissed

Judgement :

S. Siri Jagan, J.

1. By the impugned judgment, the learned Single Judge repelled the challenge of the appellant against Ext.P9 notification issued by the 1st respondent-State of Kerala under Section 5 of the [Kerala Preservation of Trees Act, 1986](#) (for short 'the Act') prohibiting cutting of trees in the area referred to therein, which area was exempted from vesting under Section 3(3) of the Kerala Private Forests (Vesting & Assignment) Act, 1971, by orders of the Forest Tribunal, as confirmed by this Court in appeal, as a property intended for cultivation, in favour of the father of the appellant which he claims to have devolved by succession on the appellant. That judgment is under challenge in this appeal.

2. The contentions of the appellant against Ext.P9 notification are threefold. (1) In so far as the land in question had been exempted from vesting by order of the Forest Tribunal and confirmed by this Court in Appeal, under Section 3(3) of the Kerala Private Forests (Vesting and Assignment) Act, 1971, as a property intended to be cultivated, the notification essentially interferes with the statutory right of the appellant under the Kerala Private Forests (Vesting and Assignment) Act, 1971 to get the land cultivated and, therefore, is unsustainable. (2) Ext.P9 notification has been actuated by mala fides in view of the fact that it has been issued to negative the rights of the appellant, which was upheld by the Forest Tribunal and this Court, after prolonged litigation, at every stage of which the authorities have opposed tooth and nail to prevent the predecessor-in-interest of the appellant and the appellant, from taking possession of the same. (3) Even assuming that Ext.P9 notification is valid, the same can be taken to have prohibited cutting of only those trees included in the definition of tree as contained in Section 2(e) of the [Kerala Preservation of Trees Act, 1986](#) and not all trees standing in the property.

3. The first contention of the appellant cannot be countenanced in view of the purpose for which the [Kerala Preservation of Trees Act, 1986](#) was enacted and the over-riding effect of Section 5 of the Act, under which Ext.P9 notification has been issued, vis-a-vis the provisions contained in any other laws, judgment, decree, order of any Court, Tribunal or other Authority or in any agreement or other arrangement. The very fact that as per Ext.P1 order of the Forest Tribunal and Ext.P2 judgment of this Court in M.F.A. arising out of Ext.P1 order, the father of

the appellant was granted exemption from vesting of the property in question, under Section 3(3) of the Kerala Private Forests (Vesting and Assignment) Act, 1971, would categorically go to show that the land in question is a private forest and the father of the appellant was granted exemption for the purpose of cultivating the said land. As such, Section 5 of the Act which applies to private forest gets specifically attracted. As is clear from the statement of objects and reasons of the Act, the Act has been enacted for preventing indiscriminate felling and destruction of trees in the State. Since the Government feared that it may result in quick denudation of the forest growth and consequent soil erosion, land slides, flood etc., Government was of opinion that such a situation is also detrimental to ecological balance. Government noticed that of late, felling of trees and destruction of flora and fauna are reported to be on the increase and that there was no effective law to prevent this tendency and, therefore, Government decided to enact a law for imposing restrictions on the cutting of trees in the State and regulating cultivation in the hill areas of the State. This very laudable and absolutely essential object, in the present day circumstances, was sought to be achieved by the enactment of the [Kerala Preservation of Trees Act, 1986](#). Section 5 of the Act which starts with the non-obstante clause 'Notwithstanding 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...' was enacted in 1986. Of course, this was only a successor of the Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 and the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983, but contains more rigorous and stricter provisions in the context of cutting of trees. The Kerala Private Forests (Vesting and Assignment) Act was enacted in 1971. As such, the Kerala Preservation of Trees Act is a later Act. In view of the said fact and the non-obstante clause in Section 5 of the said Act, Section 5 of the Act will have an over-riding effect on any of the provisions in the Kerala Private Forests (Vesting and Assignment) Act. Therefore, there is no merit in the contention of the appellant that the provisions of the Act in so far as they run counter to the Private Forests (Vesting and Assignment) Act, 1971 is invalid and unenforceable. In the above circumstances, the fact that the appellant's father was granted exemption from vesting under the Kerala Private Forests (Vesting and

Assignment) Act, 1971, is of absolutely no relevance in deciding the validity of Ext.P9 notification issued under Section 5 of the Act. Therefore, we find absolutely no merit in the contention of the appellant that in view of the fact that the appellant's father had been granted exemption from vesting under the Private Forests (Vesting and Assignment) Act, 1971, for the purpose of cultivation, prohibition of cutting of trees in the land would affect the said right of the appellant Ext.P9 notification is bad in so far as it would affect his rights under the Kerala Private Forests (Vesting and Assignment) Act, 1971.

4. In so far as the contention regarding mala fides is concerned, it is settled law that mala fides should not only be alleged but also proved by cogent evidence. In this connection, we also note the law on the point as discernible from the following passage in the decision of the Supreme Court in Indian Railway Construction Co. Ltd. v. Ajay Kumar, reported in : (2003)11LLJ150SC .

'23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But, it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deducted as a reasonable and inescapable inference from proved facts (See S. Pratap Singh v. State of Punjab, : (1966)11LLJ458SC). It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a higher order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. : (1974)11LLJ172SC , courts would be slow to draw dubious inferences from incomplete facts placed before it

by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.'

5. In this case, we must hold that the allegation of mala fides of the appellant remains as an allegation, the same having not matured into the status of proof as required under law, for more than one reason. Firstly, mala fides is a state of mind. As such, it, as a legal requirement, has to specifically relate to a person from whose mind the mala fides have emanated. That can only be a specified individual and not the post which a particular individual holds. Therefore, in order to prove mala fides, it is absolutely necessary under law that the individual who mans the post against whom allegations of mala fides are raised is impleaded in the case in his personal capacity and not in his official capacity. In the present case, we find that the allegations of mala fides are raised against the Custodian of Vested Forests, Kozhikode and District Forest Officer, Mannarkad. The appellant has not chosen to implead the persons who were manning the posts at the relevant time in their personal capacity. Further, between 26-3-1980 (date of order of Forest Tribunal) and 27-8-1990 (date of order of Ext.P4 judgment, directing restoration of possession of the land to the appellant), the persons manning the posts of respondents 2 and 3 may have changed, and it cannot be presumed that all such individuals were inimically disposed towards the appellant or his father, especially in the absence of all of them on record. That being so, we cannot even advert to the contentions of the appellant on the basis of allegations of mala fides.

6. Secondly, Ext.P9 notification was issued by the Government of Kerala, and not by respondents 2 and 3. The allegations of the appellant are that even after confirmation of the order of the Forest Tribunal and by this Court in the M.F.A., the Custodian of Vested Forests and the District Forest Officer (respondents 2 and 3) refused to hand over possession of the land to the appellant, which would go to prove their mala fides and only when all their efforts to deny possession of the property to the appellant failed that Ext.P9 notification was issued. The appellant would request this Court to draw an adverse inference of mala fides against respondents 2 and 3 taking note of the date of Ext.P4 judgment of this Court by which respondents 1 to 3 were directed to restore possession of the property as per Ext.P2 judgment, namely, 27-8-1990 and the date of Ext.P9 notification,

namely, 4-4-1991. It must be noted that the appellant's property is not the only one possession of which had to be conceded by the forest authorities to its original owners pursuant to court orders. There are scores of other properties possession of which had been handed over to such persons as directed by court. In order that the persons who manned the posts of respondents 2 and 3 should deny such benefits to the appellant alone, they should have a special mala fide intention as against the appellant particularly unlike in other cases. The appellant had neither alleged nor proved any such special reasons for any such mala fide intentions on their part. Therefore, we are of opinion that that circumstance would not, by any stretch of imagination, lead to any inference of mala fides. Assuming that respondents 2 and 3 had any such mala fide intention, we cannot draw an inference that the 1st respondent-State of Kerala, which issued Ext.P9 notification, in exercise of its legislative function, would be moved by any such mala fide intention of respondents 2 and 3. The appellant cannot impute any mala fides to a statutory function of the Government under Section 5 of the Kerala Preservation of Trees Act. As such, there is absolutely no merit whatsoever in the contentions of the appellant based on allegations of mala fides. This is all the more so since the Divisional Forest Officer, Mannarkad has filed a counter affidavit in the Writ Appeal refuting the allegations of mala fides and in the original petition a counter affidavit on behalf of the 1st respondent State of Kerala has also been filed refuting the allegations of the appellant.

7. The last contention of the appellant is that the term 'trees' referred to in Ext.P9 notification must be restricted to the 'trees' as defined in Section 2(e) of the Act. Section 2(e) of the Act reads thus:

'2(e). 'Tree' means any of the following species of trees, namely:--

Sandalwood (Santalum album), Teak (Tectona grandis), Rosewood (dalbergialatifolia), Irul (XyliaXylocarpa), Thempavu (Terminaliatomantosa), Kampakam (hopeaparviflora), Chempakam (Michelia chempaca), Chadachi (Grewua tukuaefikua), Chandana vempu (Cedrela toona), Cheeni (Tetrameles nudiflora).'

Counsel for the appellant would submit that in view of the Said definition, by Ext.P9 notification, respondents 1 to 3 can prohibit the appellant from cutting only those species mentioned in the said definition and not any other tree.

8. We do not think that counsel is well founded in his submission. Ext.P9 notification has been issued under Section 5 of the Act. Explanation I to Section 5 specifically stipulates that for the purposes of Section 5, the term 'tree' shall include any species of tree. This would show that in respect of notifications issued under Section 5, the prohibition under Section 5 need not be limited to the species mentioned in the definition of 'tree' as defined under Section 2(e). Section 5 is intended at prohibition of cutting of tree growth in private forests. Cardamom Hills Reserve and other areas cultivated with cardamom, for the purpose of which section the legislature has chosen to incorporate an inclusive definition as including any species of trees. On the other hand, Section 4 prohibits trees in other areas in the State, without written permission of the authorised officer, for which and other purposes elsewhere in the Act excluding Section 5, alone the definition in Section 2(e) would be applicable. The non-obstante clause, by which Section 5 starts would put this beyond any shadow of doubt. We note that this issue has been specifically and elaborately considered by a learned Single Judge of this Court (K.S. Radhakrishnan, J.) in the decision of Mathew v. D.F.O. reported in 1997(1) KLT 61. In the said decision, the learned Single Judge, after referring to the various provisions of the Act as also the purposes for which the Act has been enacted and after a very elaborate consideration of the various issues involved, has specifically come to the conclusion that for the purposes of Section 5 of the Act trees as explained in Explanation I would apply and not the definition of 'tree' under Section 2(e), which would apply only for the purposes of Section 4. The said decision has dealt with every aspect of the matter and we fully and respectfully approve of the said decision without any reservation whatsoever. Since the said decision which succinctly deals with every aspect of the subject and squarely covers the field, we do not want to elaborate on the same either.

In the above circumstances, we do not find any merit in the Writ Appeal and the same is dismissed, but without any order as to costs.

