

State of Kerala Vs. Abdulkhadar

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Court : Kerala

Decided On : Nov-11-2002

Reported in : 2003(1)KLT273

Judge : K.S. Radhakrishnan and; J.M. James, JJ.

Acts : Kerala Private Forests (Vesting and Assignment) Act, 1971 - Sections 2 and 8; ;Tribunal Rules - Rule 3; Kerala Private Forests (Vesting and Assignment) Rules - Rule 2A(2)

Appeal No. : M.F.A. Nos. 305 and 993 of 1996

Appellant : State of Kerala

Respondent : Abdulkhadar

Advocate for Def. : V.V. Surendran and; P.A. Harish, Advs.

Advocate for Pet/Ap. : Ramprasad Unni T., Government Pleader

Disposition : O.A. dismissed

Judgement :

K.S. Radhakrishnan, J.

1. M.F.A. No. 305 of 1996 was filed by the applicant in O.A. No. 15/92 challenging the order of the Forest Tribunal, Kozhikode. State of Kerala and the Custodian

aggrieved by that part of the order have preferred M.F.A. No. 993 of 1996. Since the issues involved are the same we are disposing of the appeals by a common judgment.

2. Applicant preferred O.A. No. 15 of 1992 seeking a declaration that 5.20 acres of land in R.S. No. 1/1 of Payyavoor village, Taliparamba taluk is integral part of rubber plantation and was used by the applicant for ancillary purposes, such as wind belt, river belt, firewood and also to keep the perennial flow of water in the river on the western side. It is stated in the application as follows:

'The disputed area, 5.20 acres, is the integral part of the rubber plantation of the petitioner. This is the area used by the petitioner for ancillary purposes such as wind belt, river belt, fire wood and to keep the perennial flow of water in the river on the eastern side of the land in dispute from which water has been using by the petitioner to irrigate the rubber plantation, which are essential for the cultivation of rubber crops and for the preparation of the same for the market. The rubber as well as the other plantations of the petitioner cannot be conveniently enjoyed without the land in dispute..... The land in dispute will not come under the definition of the private forest mentioned in the KPF (V & A) Act, 1971. Since this land has been using by the petitioner as ancillary land of wind belt, river belt, firewood and irrigation purposes for the cultivation of rubber crops and other crops and for the preparation of the same for market, this is the excluded category coming under 2f(B) of the KPF (V & A) Act and therefore KPF (V & A) Act is not applicable to this land in dispute.'

It is also stated in the application as follows:

'In any view of the matter the land in dispute is not a private forest vested with Government. Even if the land in dispute is a private forest the petitioner is entitled to hold the same under Section 3 (3) of the Act as the same is within the ceiling limit of the petitioner prescribed under the KLR Act and intended for cultivation. The land in dispute may be declared that it is not a private forest vested in Government under the provisions of KPF (V & A) Act.'

Tracing title to the land, applicant has stated in the application as follows:

'The land specifically described in the schedule to the petition was formerly forming part of the area taken on Marupattam Lease from Sri Karakkathidathil Unnamman Nayanar in the year 1961. At the time when the area was taken on lease in the year 1961, the entire area was private forest. The above land was taken on lease with the alienation permission of the District Collector, Cannanore under the M.P.P.F. Act given as per the proceedings No. D.Dis. 22638/60 dated 31.12.1960. Subsequently the area was clear felled with the permission under the M.P.P.F. Act and converted into mainly rubber plantation and after the area was converted into plantation a partition was effected orally between the petitioner and the brothers giving absolute possession ownership and enjoyment of the property and thereafter a registered partition deed was executed in accordance with the oral partition already done, covered by document No. 50/1973 SRO Sreekandapuram.'

3. Detailed counter affidavit has been filed by the Divisional Forest Officer on behalf of Custodian of Forests. Maintainability of the application was questioned stating as follows:

'S. 8 of the Act 26 of 1971 as amended, require filing of applications with such period as may be prescribed as per S.R.O. 932/81 published in gazette dated 6.8.1981. Rule 3 of the Kerala Private Forests (Tribunal) Rules, 1972 was amended prescribing the time limit for filing application in respect of areas already notified as sixty days from 6.8.1981. The relevant notification under Rule 2A in respect of the area disputed in this case was published on 8.7.1977 as per notification No. 4713/778 of Custodian of Vested Forests, Kozhikode. This notification is produced and marked as Ext. R. Therefore the time limit for filing application in this case was upto 5.10.1981 and this time allowed for filing original application was already over about a decade back. So at this distant date the applicant has no locus standi for filing an application under Section 8 of the Act 26 of 1971. In this circumstances this original application is hopelessly time barred and is liable only to be dismissed.'

With regard to the nature of the land, in the counter affidavit it is stated as follows:

'An extent of 39.38 hectare of private forests comprised in survey No. 1/1 of Payyavoor village (formerly Pruvessey village) locally known as Chelakayam to which the provisions of the M.P.P.F. Act applied immediately before the appointed day had vested in Government by virtue of Section 3 of the Kerala Private Forest (Vesting and Assignment) Act, 1971 (Act 26 of 1971).'

It is also stated as follows:

'The area has never been subjected to any kind of development. The claim of the petitioner that the land is required for irrigation purpose after a lapse of 21 years is baseless. It is only an attempt to take over possession of vested forests under the cover of irrigation and thereafter to cut and remove the tree growth in the area..... This area has never been used as ancillary land as explained in 2 (f)(1)(B) of the Kerala Private Forest (Vesting and Assignment) Act, 1971. The area is not entitled and eligible for exclusion or exemption.'

4. Applicant in order to prove his case got himself examined as P.W. 1. On the side of the State forest officials were examined as R.Ws. 1 and 2. Applicant produced Exts. A1 to A9. On the side of the State, Exts. B1 and B2 were produced. Ext. C1 is the commission report and Ext. C2 plan. Advocate Commissioner was also examined as a court witness.

5. Counsel appearing for the applicant submitted that the land was not private forest and that even assuming it was a private forest, applicant is entitled to get exemption under Section 2 (f)(1)(i)(B) of the Act since the land in question is being used for ancillary purposes for the purposes of plantation. Counsel also placed reliance on the order of the Land Board, Ext. A7. Counsel also submitted that the Taluk Land Board on the basis of the report of the Authorised Officer found that out of 5.20 acres in R.S. No. 1/1 of Payyavoor village exemption could be given to at least 3 acres as ancillary to the plantation. Counsel submitted this finding of the Land Board would be binding on the State as well as the Custodian. Counsel also placed reliance on the decision of this Court in Noorjahan v. State of Kerala (1988 (2) KLT 925) as well as two unreported decisions of this Court in M.F. A. No. 249 of 1988 and M.F. A. No. 757 of 1987. Counsel also submitted that even assuming that the lands in question are private forest, applicant is entitled to get exemption

since the lands were being used for ancillary purposes prior to the appointed day.

6. Learned Government Pleader on the other hand pointed out that the application is barred by law of limitation. In any view of the matter, it is submitted that the lands in question are governed by the erstwhile M.P.P.F. Act and consequently vested in the State. Learned Government Pleader also submitted that the lands were never used prior to the appointed day for ancillary purposes and consequently are not eligible to be exempted under Section 2 (f)(1)(i) (B) of the Act.

7. We may examine the question whether the application is barred by law of limitation. Application was filed before the Tribunal under Section 8 of the Act, which reads as follows:

8. Settlement of disputes - (1) Where any dispute arises as to whether -

(a) any land is a private forest or not; or

(b) any private forest or portion thereof; has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may, within such period as may be prescribed apply to the Tribunal for decision of the dispute.

(2) Any application under Sub-section (1) shall be in such form as may be prescribed.

(3) If the Tribunal decides that any land is not a private forest or that a private forest or portion thereof has not vested in the Government and -

(a) no appeal has been preferred against the decision of the Tribunal within the period specified therefor; or

(b) such appeal having preferred has been dismissed by the High Court, the Custodian shall as soon as may be after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, restore possession of such land or private forest or portion, as the case may be, to the person in possession thereof immediately before the

appointed day.

Section 8 (b) stipulates that applicant has to make application within such period as may be prescribed in the Rules. Section 7 (5) of the Act provides that the Tribunal shall follow such procedure as may be prescribed. Section 17 enables the Government to make Rules. In exercise of the powers conferred by Sub-section (1) of Section 17 of the Act, Government have enacted Kerala Private Forests (Tribunal) Rules, 1972. Rule 3 of the aforesaid Rules reads as follows:

'(1) An application under Section 8 shall be in Form A and shall be presented to the Tribunal with such number of additional copies of the application as are necessary to be served on the respondents within sixty days from 6th August 1981 or from the date of publication of the notification under Sub-rule (2) of Rule 2A of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 in respect of the land to which the dispute relates whichever is later.

(2) The applicant shall, along with the application, file documents, if any relied on by him in support of his application with sufficient number of true copies of the same, as are necessary, to be served on the respondents.'

We may in this connection also refer to Section 6 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 which deals with demarcation of boundaries, which reads as follows:

'6. Demarcation of boundaries - (1) As soon as may be after the appointed day, the Custodian shall cause the boundaries of the private forests vested in the Government under Sub-section (1) of Section 3 to be demarcated.

(2) Notwithstanding the pendency of an application under Section 8 before the Tribunal, the Custodian may, if he is satisfied that any land is a private forest vested in the Government under Sub-section (1) of Section 3 cause the boundaries thereof to be demarcated as if such land has vested in the Government under that sub-section.'

Government in exercise of the powers conferred under Section 17 of the Act framed Kerala Private Forests (Vesting and Assignment) Rules, 1974 of which we

are concerned with Rule 2A, which reads as follows:

2A. Demarcation of boundaries - (1) Demarcation of private forests in pursuance of Section 6 of the Act shall be effected by erecting by cairns along the boundaries.

(2) A notification specifying the details of the private forest, the boundaries of which have been demarcated such as survey and sub division number if available and local name and describing its boundaries shall immediately be published simultaneously in the Village Office, Panchayat Office, Office of the Forest Tribunal, Range Office of the Divisional Forest Office and the office of the Custodian.

(3) The fact that a notification has been published under Sub-rule (2) shall be published in two or more newspapers having circulation in the locality.

The above mentioned provisions would indicate that as per Rule 3 of the Tribunal Rules application under Section 8 has to be filed within sixty days from 6.8.1981 or from the date of publication of the notification under Sub-rule (2) of Rule 2A of the Kerala Private Forests (Vesting and Assignment) Rules in respect of the land whichever is later. We are in this case not concerned with the first limb of Rule 3 since the application could be filed either within sixty days from 6.8.1981 or within sixty days from the date of publication of the notification under Sub-rule (2) of Rule 2A of the Rules. In the instant case application was preferred on 18.2.1992, evidently beyond sixty days from 6.8.1981. We have therefore to examine whether the applicant had filed the application within sixty days from the date of publication of the notification. Notification has been produced as Ext. B1. Application schedule property is seen included in the notification. The area under dispute is a portion of the vested forest comprised in V.F.C. Item No. 1 of the list attached to the Government Notification No. 4713/77B dated 8.7.1977. The total extent of vested forest in VFC item 1/1 of Payyavoor village (formerly Pruvessy village) is 39.38 hectares. The notification has already been published in two Malayalam dailies, Mathrubhumi and Deshabhimani dated 8.8.1977 and 9.8.1977 respectively. Paper publication as such was not produced before the Tribunal due to its non availability. However, certificate was issued by the Mathrubhumi Publishing

Company dated 4.7.1994 confirming the fact of publication on 8.8.1977. Similar certificate was also obtained from Desabhimani daily evidencing publication of the notification on 9.8.1977. Those certificates were made available before the Tribunal, though opposed by the counsel for the applicant. Affidavit in support of the said fact was also submitted by the Divisional Forest Officer. We are of the view these certificates have been issued by the two publishers of daily stating that they have already carried out the publication in their dailies. We have no reason to doubt the certificate issued by those two reputed publishing companies. We therefore accept the affidavit filed by the Divisional Forest Officer as part of evidence. Above mentioned facts would show that there was proper publication of the notification under Sub-rule (2) of Rule 2A of the Kerala Private Forest (Vesting and Assignment) Rules, 1974. Desabhimani daily published the above notification on 9.8.1977. Therefore application should have been filed within sixty days from the said date. Evidently the O.A. was filed only on 18.2.1992. Therefore it is evident that the application is barred by limitation. We therefore reverse the finding of the Tribunal that the O.A. is not barred by limitation. We could have dismissed the application on this sole ground. However, we are inclined to examine the merits of the case as well.

8. We have already extracted the averments in the application. Going by the averments itself land in question was governed by the M.P.P.F. Act. Since the land in question was admittedly governed by the M.P.P.F. Act the land continued to be private forest within the meaning of the Kerala Private Forests (Vesting and Assignment) Act. This legal position is well settled by the decision of a larger Bench of this Court in *State of Kerala v. Moosa Haji* (1984 KLT 494). Affirming the said decision the Apex Court in *Bhavani Tea and Produce Co. v. State of Kerala* (1991 (2) SCC 463) held as follows:

'This significant, reference to MPPF Act in the made all the difference in the case. The MPPF Act was a special enactment by the erstwhile Madras State to preserve the private forests in the district of Malabar and erstwhile South Kanara district. The scheme appeared to be that if the land was shown to be private forest on the date on which the MPPF Act came into force, it would continue to be a forest even if there was subsequent replantation. Accordingly it was held that the lands which

were forests as defined in MPPF Act and continued to be so when the Vesting Act came into force would continue as forests as under that Act.'

Applying the above principle we have to proceed as if land in question is a private forest. The question to be decided is whether even if it is private forest under the Vesting Act applicant is entitled to get exemption under Section 2(f) (1)(i)(B) of the Act. In order to get exemption from private forest under the Vesting Act applicant has to show that land in question was used for any purpose ancillary to cultivation of such crops or for the preparation of the same for the market. In *State of Kerala v. Pullengode Rubber and Produce Co. Ltd.* (1999 (6) SCC 99) Apex Court has held that burden is on the applicant to show that there was sufficient pleading and evidence that the land was used for ancillary purposes prior to the appointed day or else he will not be entitled to get exemption.

9. We are of the view in this case apart from the interested testimony of the applicant no independent evidence was adduced by the applicant to show that the land in question was being used prior to the appointed day. No evidence was adduced by the applicant to show that land in question was used for firewood or wood belt or for other ancillary purposes. No register was produced with regard to those requirements. No independent witness was examined. Commission report also is of no assistance to the applicant. Though applicant has stated that he has been using the disputed land for the purpose of irrigation, commissioner reported that he could not find any device of irrigation employed in the estate using the area in question. Topography of the land also would show that no water could be taken from the property in question. We fully endorse the view of the Tribunal that the land in question was not being used for ancillary purpose prior to the appointed day.

10. Learned counsel for the applicant placed reliance on the order of the Land Board and also on two unreported decisions of this Court as well as on the decision in *Noorjahan v. State of Kerala* (1988 (2) KLT 925). We are of the view these decisions are not applicable to the facts of this case. In those two cases there is specific finding by the court that the land in question was not part of the private forest covered under the M.P.P.F. Act unlike in the present case. In the

present case it is admittedly a private forest under the M.P.P.F. Act. Going by the decision of the Apex Court in Bhavani Tea and Produce Co.'s case (1991 (2) SCC 463) the land has already vested in the State under the Vesting Act. Therefore, proceedings of the Land Board or the decision cited by the applicant would not advance the case of the applicant since the land in question has already been vested in the State under the Vesting Act. We have already found that the applicant could not establish that the land was being used for ancillary purposes prior to the appointed day. Consequently that land is not liable to be exempted. We have already found that the application was barred by law of limitation. On merits also we have found that applicant has not made out a case. In such circumstances, we are inclined to dismiss the O.A. filed by the applicant. Consequently M.F.A. No. 993 of 1996 filed by the State is allowed and M.F.A. No. 305 of 1996 filed by the applicant would stand dismissed.

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