

Tomy Vs. the State of Kerala

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Court : Kerala

Decided On : Jun-15-2011

Judge : Thomas P.Joseph

Appeal No. : Crl.M.C.No.1594 of 2011

Appellant : Tomy

Respondent : The State of Kerala

Judgement :

Challenge in this proceeding is to Annexure-A, the Form-I report submitted by the Forest Range officer, Devikulam, Munnar Division (for short, the Range Officer") against petitioner and others to the extent it concerns offence under Section 27(1)(e)(iii) of the Kerala Forest Act (for short, "the Act"). According to the Range Officer, accused 1 to 3 who are in possession of Cardamom estates cut down trees from those estates with the assistance of accused 5 to 9 and the same were stored in the premises of petitioner, the 4th accused. The Range Officer inspected premises of petitioner on 17.05.2011, detected the offence and registered case as O.R. No.20 of 2011 for the offence aforesaid and under Sections 4, 5(2) and 9 of the Kerala Preservation of Trees Act, 1986 (for short, "the KPT Act"). According to the petitioner (4th accused) offence attributed to him and others under the Act cannot stand, if at all it came within the purview of the KPT Act since even according to the Range Officer trees were cut from the Cardamom estates of accused 1 to 3. Learned counsel contended that Sec.5 of the KPT Act has over-

riding effect over provisions of the Act. Learned counsel placed reliance on the decision of the Supreme Court in Bank of India v. Ketan Parakh and Others ([2008] SCC 148). Learned counsel has also invited my attention to the Notification dated May 04, 1987 published in the Kerala Gazette on May 14, 1987 which according to the learned counsel supported his contention. Reliance is also placed on Annexure-B, Notification published in the Kerala Gazette on September 12, 1990.

2. Learned Public Prosecutor in response, contended that the Cardamom estates wherefrom trees were cut are 'Cardamom Reserve Hills' coming within the purview of the Act. According to the learned Public Prosecutor, Cardamom Reserve Hills are governed by Regulation 11 of 1068 and the Rules framed thereunder are saved by Sec.85(3) of the Act.

3. The limited scope of this proceeding is to decide whether along with the offence attributed to the petitioner under provisions of the KPT Act, offence under Sec.27(1)(e)(iii) of the Act also would stand. Section 27(1)(e)(iii) of the Act provides punishment for any person who, in a "Reserved Forest or in a law proposed to be constituted a Reserved Forest" cuts or fells any trees or girdles, marks, lops, taps, uproots, burns, saws, converts or removes any tree including fallen or felled, or strips off the bark or leaves from or otherwise damages the same. The said provision relates to a Reserved Forest or a land proposed to be a Reserve Forest. Section 3 of the Act gives power to the Government to constitute any land at the disposal of the Government a Reserved Forest in the manner provided in the Act. The words "land at the disposal of the Government" is defined in Sec.2(g) as including all unoccupied land, all temporarily occupied land and all land occupied without permission, whether assessed or unassessed; but does not include land, the properties of land holders such as Jenmies, Devaswoms, or holders of Inam lands; also all holdings of land in any way subject to the payment of land revenue direct to Government and all registered holdings of land in propriety right. Section 4 of the Act provides that a Notification shall be issued by the Government whenever it is proposed to constitute any land a Reserved Forest. Section 6 of the Act empowers a Forest Settlement Officer to issue proclamation consequent to the Notification under Sec.4 of the Act and invite objections in the

matter. The Forest Settlement Officer has to conduct an enquiry under Sec.8 of the Act and after such enquiry he has to pass an order Sec.10 of the Act admitting or rejecting claims made by the objectors regarding right of way, watercourse or to the use of water or right of pasture and right to forest produce. Any person aggrieved by the order of the Settlement Officer has a right of appeal under Sec.11 of the Act. The Settlement Officer has to report his decision to the Government under Sec.14 of the Act. The Government may under Sec.15 of the Act admit or reject the claims referred above. Thereafter the Government has to issue Notification under Sec.19 of the Act specifying the limits of the forests which it is intended to reserve and declaring the same to be reserved from a date to be fixed by such Notification. From the date so fixed, the forest shall be deemed to be a "Reserved Forest". It is relevant to note that the claims which the Settlement Officer is required to adjudicate under Sec.8 of the Act does not relate to cultivation of the land. Section 10 of the Act also does not mention about any right of cultivation in the land proposed to be declared as reserved forest. It is not disputed that so far as the cardamom estates are concerned, it is in the possession of the person to whom it is given for cultivation and so far as the leasehold right stands, he has the right to cultivate cardamom in the said land.

4. I shall also refer to the provisions of the KPT Act. That enactment was made repealing the Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 and Kerala Preservation of Trees Ordinance, 1986. While Sec.4 of the KPT Act creates restrictions in the matter of cutting of 'trees', Sec.5 of that Act provides for prohibition of certain acts with respect to such 'trees' (as defined in Sec.2(e) of the said Act).

"5. Prohibition of cutting of tree in notified areas.- (1) 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 the agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted, burnt or otherwise destroyed except on the ground that-

(a) the tree constitutes a danger to life or property' or

(b) the tree is dead, diseased or windfallen:

Thus under Sec.5, there is a total prohibition of cutting of any tree standing within the area notified by the Government unlike Sec.4 which provides restrictions on cutting of trees. This has been taken note of by this Court in Mathew v. D.F.O. (1997 [1] KLT 61). There, it was held that the definition of 'tree' in Section 2(3) of the KPT Act has to be understood in a different context. Section 5 applies only to those lands covered by the Government Notification. It was held that however, for other lands whether it be a private forest or cultivated with cardamom not covered by the Notification, Sec.4 of the Act applies. It is relevant to note that Sec.5 of the KPT Act is intended for tree growth in private forests or in Cardamom Reserved Hills or any other area cultivated with cardamom by Notification in the Gazette.

5. I shall refer to the Notification relied on by learned counsel for petitioner. The first one is the Notification dated May 04, 1987 issued under Sec.5 of the KPT Act where, certain areas are notified as coming within the purview of Sec.5 (which includes Chinnakkanal where the cardamom estates of accused 1 to 3 are situate). In the explanation to that Notification it is stated that the areas declared as Cardamom Reserve Hills has already been decided to be coming within the purview of Sec.5 of the KPT Act and for the said purpose Notification is issued. Thus it is clear from the above Notification as also Sec.5 of the KPT Act and the decision referred supra that areas already notified as Cardamom Reserved Hills or any other land where cardamom is cultivated (as permitted by the Government) came within the purview of Sec.5 of the KPT Act.

6. Learned Public Prosecutor has brought to my notice a Notification dated August 24, 1897 issued under Section 17 of Regulation 11 of 1068. That according to the learned Public Prosecutor is in respect of Cardamom Reserve Hills coming within the areas mentioned therein. It is also pointed out by the learned Public Prosecutor that Sec.101 of the Travancore Cochin Forest Act and the Rules framed under the Regulation, so far as they are consistent with the Act are saved by the Act. My attention is also invited to Sec.85(3) of the Act which states that all rules prescribed, appointments made, powers conferred and orders issued under

the enactments hereby repealed shall be deemed to have been respectively prescribed, made, conferred and issued under the provisions of the Act till new rules and enactments are made under various sections of the Act.

7. By the expression "Cardamom Reserved Hills" what I understand is such lands as are covered by the permanent Patta issued by the Government. True, in the present case the Range Officer has not stated in the Form-I report that accused 1 to 3 are holders of Patta of the Cardamom estates. But he has stated that they are owners of the Cardamom estates wherefrom trees are allegedly cut. Accused 1 to 3 are persons in possession of the Cardamom estates in question.

8. I stated that the enquiry which the Settlement Officer is to conduct under Sec.8 of the Act does not refer to any claim for cultivation of the land intended to be notified as Reserved Forest. I also stated that by virtue of the right conferred on accused 1 to 3 they are entitled to cultivate cardamom in the estates in question. If that be so, it is inappropriate to say that entering those cardamom estates or indulging in cultivation of cardamom in the said estates would amount to any offence under Sec.27 of the Act. For, under Sec.27 (1)(e)(i) of the Act even cultivating, clearing or braking the land for cultivation or for any other purpose or putting shed or other structures (in Reserved forest or other places to be notified as reserve forest and at the disposal of the Government) are offences. I am unable to understand that clearing the land (not amounting to cutting of trees or other act prohibited by the lease agreement) cultivating cardamom breaking the land or putting up shed for the said purpose in a cardamom estate which is permitted would amount to an offence under Sec.27(1) of the Act. If that be so the contention that cutting of the trees from the cardamom estate is an offence punishable under Sec.27(1)(e)(iii) of the Act cannot be accepted when the Government have provided sufficient safeguards against such cutting by enacting the KPT Act and making Cardamom Reserve Hills or any other land being cultivated with cardamom within the sweep of the said provision.

9. That view of mine gets support from the decision of a Division Bench of this Court in Joseph v. State of Kerala 2005 [4] KLT 504). The question considered was whether Sec.5 of the KPT Act will have an over-riding effect on any of the

provisions of the Kerala Private Forests (Vesting and Assignment) Act. It was answered that Sec.5 of the KPT Act will prevail in view of the non-obstante clause in the said Section. In *Bank of India v. Ketan Parekh and Others* (supra) also over-riding effect of a statute was considered. In paragraph 25 the observations made by Krishna Iyer J., in *Life Insurance Corporation of India v. D.J.Bahadur and Others* ([1981] 1 SCC 315) was quoted with approval. That observation stated that "in determining whether a statute is a special or a general one the focus must be on the principal subject matter plus the particular perspective. For certain purposes an Act may be general and for certain other purpose it may be special". In paragraph 28 of *Bank of India v. Ketan Parekh and Others* (supra) it is held that the Act of 1992 and Act of 1993 relating to natural dispute start with non-obstante clause and that Sec.34 of Act 1993 starts with non-obstante clause unlike Sec.9A of Act 1992. But incidentally in that case Section 9A came subsequently, that is, it came on 25.01.1994 and it was a subsequent legislation which will have over-riding effect over the Act of 1993. In the present case I referred to the scope and amplitude of Sec.5 of the KPT Act and the purpose for which said provision was made. The object is to prevent cutting of trees even from the Cardamom Reserved Hills and lands cultivated with cardamom. If that be so, in the light of the said provision it is idle to contend that cutting of trees from the cardamom estates of accused 1 to 3, though it might invite the offence under the KPT Act would amount to an offence under Sec.27(1)(e)(iii) of the Act.

10. It is relevant to note that the Act as well as the KPT Act prescribe separately punishment for the offences committed under the said Acts. Separate provisions are also made for seizure and disposal of timber collected in violation of the said Acts. It is difficult to contend that in respect of same matter two different enactments are made providing separate and to some extent contradictory provisions for seizure and disposal of timber. For instance, Sec.61A of the Act dealt with confiscation of the timber, etc., and states that when a forest offence is committed, the timber, vehicle, etc., are liable for confiscation. The term "forest offence" is defined in Sec.2(3) of the Act as meaning an offence punishable under the Act or any rule made thereunder. There is no dispute that the KPT Act is not a rule made under the provisions of the Act. If that be so, timber seized under the

provisions of the KPT Act cannot come under the purview of Sec.61A of the Act.

11. In the light of what I have stated above, I am inclined to accept the argument that alleged cutting of trees from the cardamom estates of accused 1 to 3 does not amount to an offence under Sec.27(1)(e)(iii) of the Act. Criminal Miscellaneous Case is allowed. Annexure-A, Form-I report in O.R. No.20 of 2011 of the Forest Range Officer, Devikulam to the extent it concerned offence under Sec.27(1)(e)(iii) of the Act is quashed. The benefit of this order to the said extent shall be given to the remaining accused in O.R. No.20 of 2011 as well. I make it clear that I have not expressed any opinion as to whether petitioner or any other accused has committed offence under the KPT Act which is a matter which the appropriate authority has to decide at the appropriate stage.

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