

PETITIONER:
STATE OF KERALA & ANOTHER

Vs.

RESPONDENT:
NILGIRI TEA ESTATES LTD.

DATE OF JUDGMENT 12/10/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
DUTT, M.M. (J)

CITATION:
1988 AIR 59 1988 SCR (1) 444
1988 SCC Supl. 79 JT 1987 (4) 119
1987 SCALE (2) 787

ACT:

Kerala Private Forests (Vesting and Assignment) Act, 1971: Section 2(f)-Eucalyptus trees planted in tea estate for fuel purposes for manufacture of tea-whether area forms part of 'private forest' and vests in Government.

HEADNOTE:

The Forest Tribunal, Palghat, found that Eucalyptus trees raised by the respondent in the lands in dispute were not for raising a forest, but for supply of fuel necessary for the manufacture of tea. It held that the question whether Eucalyptus plantations raised in a tea estate would be forest or not, had no bearing to the extent of the cultivation, that the area planted with the Eucalyptus trees in a tea estate did not form part of a vested forest or private forest and was, therefore, excluded from the purview of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (Act 26 of 1971) and that the Eucalyptus plantations in question were not private forest and did not vest in the Government under the Act. Relying on an earlier Division Bench decision that in the context in which the term 'private forest' had been used in the Act, it applied to lands other than those on which human skill, labour and resources had been spent for agricultural operations, the High Court held that the State had not succeeded in establishing that the land in which Eucalyptus had been planted could be said to be forest land and agreed with the decision of the Tribunal.

On the question whether land planted with Eucalyptus in tea estate in the Travancore area of Kerala was a 'private forest' or not in terms of section 2(f) of the Kerala Private Forests (Vesting and Assignment) Act, 1971.

Dismissing the Special Leave Petition,

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HELD: The Eucalyptus trees in the area concerned under dispute were raised not for forest but for supply of fuel necessary for the manufacture of tea which is the industry carried on by the respondent Company. The High Court was, therefore, right in the facts and

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circumstances of the instant case, in holding that the land

in question was outside the purview of the vesting provisions contained in the Kerala Private Forests (Vesting and Assignment) Act, 1971. [449B-C]

Malankara Rubber and Product Co. & ors etc. v. State of Kerala & Ors. etc., [1973] 1 SCR 399, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 16085 of 1986.

From the Judgment and order dated 28.7.1986 of the Kerala High Court in M.F.A. No. 482 of 1981.

G. Vishwanatha Iyer and P.K. Pillai for the Petitioners.

Soli J. Sorabjee, M.N. Jha and K.L. John for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an application for leave to appeal under article 136 of the Constitution from the judgment and order of the High Court of Kerala dated 28th July, 1986. The question involved in this case is whether where Eucalyptus is planted in the Travancore area of Kerala is a private forest or not. Act 26 being Kerala Private Forests (Vesting and Assignment) Act, 1971 came into operation in 1971. On 24th June, 1981 by a common order, the Forest Tribunal, Palghat held in favour of the respondent company, the Nilgiri Estate Ltd. that certain areas of forest did not vest in the government under the said Act. The High Court affirmed that finding. The propriety and validity of that decision are sought to be challenged by this application under article 136 of the Constitution. The factual parameters have to be borne in mind in the background of the relevant provisions of the Act. The said Act 26 by section 2(f) provides, inter alia, as follows:

"(f) "private forest" means-

(1) in relation to the Malabar district referred to in subsection (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)-
(i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied

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immediately before the appointed day excluding-

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964):

(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamom and lands used for any purpose ancillary to the cultivation such crops or for the preparation of the same for the market.

Explanation-Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and

(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;

(ii) any forest nor owned by the Government, to which the Madras Preservation of Private Forests

Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala any forest not owned by the Government including waste lands which are enclaves within wooded areas:

Explanation-For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs;

The Forest Tribunal in this case held, inter alia, in its order as follows:-

"The entire property in O.A. 39/79 (26.90 hectares corresponding to 66.50 acres) admittedly contains eucalyptus

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trees raised by the petitioner as also cardamom plants here and there. The Superintendent in charge of the petitioner estate had deposed to that effect. The Range officer examined as R.W. 1 has stated that the disputed land on O.A. 39/79 lie in two bits and in both the bits there are eucalyptus trees raised by the petitioner, that they are aged between 12 to 15 years and are having a height of about 30 ft. It is also stated by him that at present there are cardamom plants but they are raised after 1971."

The Tribunal went on to record as follows:

"But, the respondents have conceded that those trees are not of natural growth but they have been grown there with human skill, expenses and labour. That these trees are planted for purposes of fuel necessary for the manufacture of tea also admits of no doubt."

The tribunal concluded by stating:-

"The question whether eucalyptus plantations raised in a tea estate would be a forest or not has no bearing to the extent of the cultivation. It should be remembered that eucalyptus trees were raised in the instant case not for raising a forest but for supply of fuel necessary for the manufacture of tea. Hence I have no hesitation to come to the conclusion that the areas planted with eucalyptus trees in a tea estate do not form part of a vested forest or a private forest and therefore it is excluded from the purview of Act 26/71. In other words, the entire lands involved in O.A. 39/79 and 20 acres out of the property shown as item 1 in O.A. 146/78 which are eucalyptus plantations are not private forest and they have not vested in the Government."

On this basis, the High Court came to conclusion that the Tribunal was right. The High Court in its order observed:-

"The question whether forest lands planted with eucalyptus by employing agricultural operations would be forest was considered by this court in the decision of a Division Bench reported in State of Kerala v. Anglo American Direct Tea Trading Co. Ltd., [1980] KLT 215. The same question was considered over again by a Full Bench

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of this Court in the decision reported in State of Kerala.v. A Moosa Haji, [1984] KLT 494. In the former decision, it was held:-

"As we have indicated in the absence of a definition of the term 'forest' in Act 26 of 1971 we should take notice of the general meaning of

the term as used in common parlance. Whether one would understand a eucalyptus plantation within a Tea estate or adjoining a Tea estate as forest in common parlance would necessarily be the test. This calls for consideration of the scope of the term 'forest'

In the contest in which the term "Private forests" has been used in Act 26 of 1971, it is evident that it applies to lands other than those on which human skill, labour and resources have been spent for agricultural operations.

In the light of what we have adverted to we do not think that the State has succeeded in establishing that the land in which eucalyptus has been planted in the Tea plantations could be said to be forest land and if so we should agree with the decision of the Forest Tribunal that it would be outside the purview of the vesting provisions in Act 26 of 1971. "

We are of the opinion that in view of the Finding recorded by the Tribunal, the decision and judgment of the High Court cannot be impugned. It is instructive that in respect of proceedings initiated under the Land Reforms Act, this Court in *Malankara Rubber and Product Co. & Ors. etc. v. State of Kerala & Ors. etc.*, [1973] 1 SCR 399 observed at page 426 as follows:-

"Lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands. They would certainly not be forests but the statements in the petitions seem to suggest that operations were carried hereon for the express purpose of growing these plants and trees. However, lands which are covered by eucalyptus or teak growing spontaneously as in a jungle or a forest, would be outside the purview of acquisition."

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It is true as noted above that this observation was made in the context A of Land Reforms Act but it was held that lands on which eucalyptus or teak are planted would be agricultural lands. In this case it has been found as noted before that eucalyptus trees in the area concerned under dispute were raised in the instant case not for a forest but for supply of fuel necessary for the manufacture of tea, which is the industry carried on by the respondent company.

In view of the aforesaid facts and in the light of provisions of the Act 26 of 1971, we are of the opinion that the view of the High Court is right in the facts and circumstances of this case and as such calls for no interference. The application is accordingly dismissed with no order as to costs.

We had in this matter advantage of the assistance of Shri Vishwanath Iyer, counsel for the petitioners and Shri Soli Sorabji, counsel for the respondent.

N.P.V.

Petition dismissed.

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