

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8168 OF 2010

P.T. Sreenarayanan Unni & Ors.

...Appellants

versus

State of Kerala & Ors.

...Respondents

WITH
CIVIL APPEAL NO. 8433 OF 2010

J U D G M E N T

INDU MALHOTRA, J.

1. The present Civil Appeals have been filed to challenge the final Judgment and Order dated 01.01.2008 passed by the High Court of Kerala at Ernakulam [hereinafter referred to as “the High Court”] in MFA No. 389 of 2002.

2. The factual matrix in which the present Civil Appeals arises is briefly stated as under :

2.1. The Appellants through their Partnership Firm *viz.* Maduthala Plantations, purchased 100 acres of private forest land in Survey No. 186/1A1 of Kunnathidavaka Village *vide* registered Sale Deed dated 15.05.1967.

2.2. In 1971, the Government of Kerala enacted the Kerala Private Forest (Vesting and Assignment) Act, 1971 [hereinafter referred to as “the Act”].

Section 3 of the Act reads as follows :-

Section 3 - Private forests vest in Government:-

(1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, 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 in any private forest shall stand extinguished.

(2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the

ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.

Explanation:- For the purposes of this sub-section, 'cultivation' includes cultivation of trees or plants of any species.

(3) Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with another lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him under Section 82 of the said Act.

(4) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or subsection (3), be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be 'other dry lands' specified in Schedule II to the said Act.

(emphasis supplied)

As per Section 3(1) of the Act, the ownership and possession of all private forests in the State of Kerala vested in the State Government with effect from 10.05.1971.

Section 3(2) provided an exemption if the land was under personal cultivation of the owner.

Section 3(3) provided a further exemption if the land was intended for cultivation, and if the extent of land was below the ceiling limit under Section 82 of the Kerala Land Reforms Act, 1963.

The constitutional validity of the Act was upheld by this Court in *State of Kerala v. Gwalior Rayon*.¹

2.3. The 100 acres of land comprised in Survey No. 186/1A1 was private forest land, which vested in the State Government w.e.f. 10.05.1971.

2.4. In 1975, the Forest Department took over possession of the aforesaid land.

2.5. In 1990 i.e. 19 years after the land had vested in the State Government, and 15 years after possession was taken over by the Forest Department, the Appellants filed O.A. No. 204/1990 under Section 8 of the Act before the Forest Tribunal, Kozhikode.

The Appellants sought a Declaration that out of the 100 acres of land in Survey No. 186/1A1, 79 acres and 68.5 cents was not private forest land. They claimed

¹ (1973) 2 SCC 713.

exemption under Section 3(2) of the Act, and submitted that they were cultivating the land with various agricultural crops such as rubber, coffee, cardamom, cocoa and lemon grass.

2.6. The Tribunal appointed a Commissioner to carry out inspection of the land.

The first inspection was carried out in 1993. As per the Report submitted by the Commissioner, there was no improvement on the land.

The second inspection was carried out on 20.05.1995. As per the Report submitted by the Commissioner, major portions of the land in question, and the adjoining vested forest, was planted with acacia trees aged approximately 8 years.

The third inspection was carried out on 24.01.1998. As per the Report submitted by the Commissioner, the entire area of the land was mainly planted with acacia and silver oaks aged 10 to 12 years.

As per the Final Report submitted by the Commissioner, the property purchased by the Appellants originally admeasured 100 acres. Out of the 100 acres, 80 acres of land vested in the State, while 20 acres of land was retained by the Appellants. Out of the said 20 acres, 12.60 acres of land was taken by the State as excess land under the provisions of the Kerala Land Reforms Act, 1963.

- 2.7. The Forest Tribunal *vide* Order dated 11.07.2000 dismissed the O.A. filed by the Appellants.

It was held that there was no evidence to show that the land in Survey No. 186/1A1 was cultivated with any agricultural crops prior to 10.05.1971.

As a consequence, the Appellants were not entitled to claim the exemption under Section 3(2) on the ground that the land was under their personal cultivation.

- 2.8. Aggrieved by the aforesaid Order, the Appellants filed MFA No. 389/2002 before the High Court. The High

Court *vide* impugned final Judgment and Order dated 01.01.2008 dismissed the Appeal.

It was held that in view of the 3 Reports submitted by the Commissioner, there was no evidence of any cultivation on the Appellants' property on or prior to the date of vestment i.e. 10.05.1971. Hence, the Appellants were not entitled to the exemption under Section 3(2) of the Act.

The Appellants produced a Registration Certificate from the Rubber Board for cultivating 10 acres of land which was issued prior to vesting. The Commissioner's Reports revealed that the Appellants were in possession of 20 acres and 31.5 cents of land. Out of the said area, 12.5 acres of land had been surrendered as excess land under the Ceiling Act. The Appellants were therefore, in active possession of only 7.85 acres of land.

The High Court held that against the claim of the Appellants for 79 acres and 68.5 cents of land, the

Appellants were entitled to get exemption under Section 3(3) only with respect to 7.85 acres of land.

2.9. Aggrieved by the aforesaid Judgment, the Appellants filed the present Civil Appeals.

3. We have heard the learned Counsel for the parties, and perused the material on record.

3.1. The Appellants contended that the land in question falls in the Malabar District. Hence, as per Section 2(f) (1) of the Act, the land in question is not private forest land, and could not have been taken over by the State.

Section 2(f) of the Act defines a “private forest”.

Section 2(f) is set out hereinbelow for ready reference :

“2(f) "private forest" means

(1) in relation to the Malabar district referred to in sub-section (2) of Section 5 of the State Reorganization Act, 1956 (Central Act 37 of 1956)-

(i) any land which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-

(A) land 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 cinnamon and lands used for any purpose ancillary to the cultivation of 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 purposes ancillary to the cultivation of such crops;

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

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

(ii) any forest not 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 purpose of this clause, a land shall be deemed to be waste land notwithstanding the existence thereon of scattered trees or shrubs."

4. The land in question falls in the Malabar District. As a consequence, sub-section (1) of Section 2(f) would be applicable in the present case.

As per Clause (i) of sub-section (1) of Section 2(f), “private forest” includes any land to which the Madras Preservation of Private Forest Act, 1949 applied prior to 10.05.1971. However, it excludes lands which were principally under cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

The land in question vested in the State on 10.05.1971 i.e. more than 48 years ago. The possession was taken over by the State in 1975. The Courts below have arrived at a finding of fact that there was no cultivation whatsoever on the land in question on 10.05.1971. The Appellants have failed to produce any evidence of cultivation on the land in question.

The land in question is therefore, covered by the definition of “private forest” under the Act, and the Act makes it clear that all private forests in the State of Kerala would automatically vest in the State Government with effect from 10.05.1971. The Appellants are not entitled to the

exemptions under sub-sections (2) and (3) of Section 3 of the Act.

We however, affirm the exemption granted by the High Court under Section 3(3) with respect to 7.85 acres of land.

In light of the aforesaid discussion, the Civil Appeals are dismissed. All pending Applications, if any, are accordingly disposed of.

Ordered accordingly.

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

**New Delhi;
August 16, 2019.**