M. N. Sankaranarayanan

Vs

State Of Kerala and Another

Civil Appeal No. 1956 of 1984

(O. Chinnappa Reddy, M. M. Dutt JJ)

21.07.1986

JUDGMENT

CHINNAPPA REDDY, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Kerala reversing that of the Tribunal constituted under the Kerala Private Forests (Vesting and Assignment) Act, 1973. The appellant had sought and obtained from the Tribunal a declaration that an extent of 2950 acres of land was 'cardamom plantation' and not a private forest which could vest in the government under the Act. An appeal preferred to the High Court by the government and the Custodian under Section 8-A of the Act was allowed and the declaration was confined to a small extent of twenty-five acres. We have perused the relevant evidence and we are satisfied that the finding of the High Court was substantially correct. We do not consider it necessary in this appeal under Article 136 to discuss the evidence at any great length merely to reiterate the conclusion arrived at by the High Court. Shri Venugopal, learned counsel for the appellant placed reliance primarily on the evidence of an Advocate-Commissioner who had purported to inspect the lands in connection with some other suits to which the government was not a party. The High Court has given cogent reasons with which we agree to conclude that those writs were conclusive, aimed at creating evidence for these proceedings. The Advocate-Commissioner asserted that he inspected the vast extent of 3000 acres and counted as many as 3,50,600 cardamom plants of the age of five to eight years and of the height of 3 1/2 to 7 1/2 feet. When questioned how he determined the age of the plants, he answered that he consulted some friends. When further asked who the friends were he said that he did not remember the names of his friends except that of one Balan whose address he did not know. Balan, we may mention, is one of the most common names in Kerala. It would be like saying Mr Smith of England. The Advocate-Commissioner's evidence is contradicted by the report of the Commissioners who were appointed by the High Court in the present proceedings. Their reports show that there was no trace of any cardamom plantation or any cultivation except in an area of 25 acres. The whole area was covered by a dense forest which was impenetrable. The inspection report of the Tribunal also shows that there were no cardamom plants except in two or three small patches of land. Shri Venugopal urged that the inspection by the Tribunal as well as the inspection by the Commissioners appointed by the High court were long after the vesting and it was no wonder that there were no traces of the plantation. We do not think that the cardamom plantation in an extent of 3000 acres would have been wiped out with no trace and replaced by an impenetrable dense forest in the course of the short span of five or six years. We have no doubt that the evidence of the Advocate-Commissioner was rightly rejected by the High Court. We also agree with the High Court that some of the documents on which the appellant sought to rely were brought into existence for the purposes of this case.

2. Shri Venugopal also urged that the High Court errored in ignoring the admission of the defendant-respondents in their counter and evidence that there was cardamom plantation in two extents of 60 acres and 150 acres respectively. Shri Venugopal is partly correct in his submission. In paragraph 3(v) of the counter it was stated :

> It is not a cardamom plantation; only 3 small bits with a total extent of about 60 acres can be said to be a cardamom plantation. Now another small bit of about 15 acres is seen planted with cardamom which was not there before vesting. When these plantations actually took place, these respondents are unable to submit. In any event the subject-matter of this petition is not principally cultivated with cardamom plantation. No doubt spontaneous and wild growth of cardamom plants, which is a common feature in such areas, are seen here and there in this area. They cannot be called cardamom plantation. Moreover they are very few and cannot be treated as plantation at all. In one portion of this malavaram which is about 8000 acres, there was an area of about 150 acres planted with cardamom which was away from the area the subject-matter of this application. But the whole plantation had been destroyed by Smt. A. P. Parukutty Moopilamma's men by cutting trees in the said area and dragging them outside the forests. This was done under the cover of interim orders issued by the Hon'ble High Court in the aforesaid OP's. The said area of about 150 acres cannot be within the 3000 acres which is the subject-matter of this petition. There was no other plantation anywhere in the whole malavaram (forest).

The Divisional Forest Officer in his evidence stated :

> I happened to inspect Olathukki Ariyalkkn Malavaram several times during the said period. It has an area of about 8000 acres. To my knowledge it is owned by Parukutty Moopilamma. I do not know whether 3000 acres out of it was specially demarcated. There are patches of cardamom plantation here and there. At the entrance there was 150 acres. In 3 bits there was about 60 acres. Besides, there was another 15 acres also. There was in the name of SN Cardamom also. Parukutty Moopilamma had filed on OP before the High Court in respect of 150 acres. Their cardamom is seen to be destroyed. Here and there cardamom can be seen. SN Cardamomm is about 6-7 miles away from there. It is in Chuthupara. 60 acres is about half a mile away from Chuthupara. Besides, there is no other cardamom there.

The counter filed on behalf of the government and the evidence of the Divisional Forest Officer show that there was cardamom plantation in an extent of 60 acres of land in the 3000 acres claimed by the appellant. Shri Venugopal is, however, not right in his submission that the counter and the evidence of the Divisional Forest Officer admit the claim of the appellant to another extent of 150 acres also. Both the counter and the evidence are specific and clear that the patch of 150 acres is not a part of the 3000 acres claimed by the appellant. We, therefore, find that the appellant is entitled to a declaration in respect of an extent of 60 acres of land. At this distance of time no useful purpose may be served by remanding the case for the purpose of identifying the 60 acres of land. After consulting the learned counsel for the parties we have arrived at the conclusion that the better course would be to grant a declaration that the appellant is entitled to an area of 60 acres of his choice out of the 3000 acres claimed by him. The declaration in respect of 60 acres will be in substitution of and not in addition to the declaration granted by the High Court in respect of 25 acres. Subject to this slight modification the appeal is dismissed but in the circumstances without costs.

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