V. Parukutty Mannadissiar and Another

Vs

State of Kerala and Others

Civil Appeal Nos. 3694-3695 of 1989

(M. N. Venkatachaliah, Ranganath Misra JJ)

05.09.1989

JUDGMENT

RANGANATH MISRA, J. –

1. Special leave granted. We have heard learned counsel for the parties.

2. In disposing of the appeal against a decision of the Forest Tribunal under the provisions of the Kerala Private Forests (Vesting & Assignment) Act, 1971, a Division Bench of the Kerala High Court in MFA No. 401 of 1978 disposed on July 14, 1980 directed :

> "It follows that out of 102 acres 25 over which teak was planted in 1967 and eucalyptus was planted in 1955 will be private forest coming within the Private Forests (Vesting & Assignment) Act. But since this area is under the personal cultivation of the respondent she will be entitled to 15 acres under Section 3 (2) of the Act. The rest 10 acres will vest with the government.

In the result the appeal is partly allowed and the order of the lower court is modified as follows :

> It is declared that 75 acres over which the respondent had planted teakwood, orange and softwood prior to December 14, 1949, is held to be not a private forest under the Madras Preservation of Private Forests Act, 1949 and Kerala Private Forests (Vesting & Assignment) Act, 26 of 1971. But of the rest 2 acres over which the respondent had planted cashew is declared to be not a private forest under Section 2 (f) (1) (i) (A) and (C) of the Act. Another 15 acres under the personal cultivation of the respondent is also held not to vest under the above Act under Section 3 (2) of the Act. The Custodian shall demarcate this 15 acres in such a manner that it will be convenient for the enjoyment of the respondent. The balance 10 acres will vest with the government. With the demarcation and identification of that 10 acres the case is sent back to the Forest Tribunal. If the Custodian has taken possession of the area declared not to vest, he will surrender the same to the respondent forthwith..."

3. In terms of this judgment 92 acres (being the total of 75 acres + 15 acres + 2 acres) were to be given to the appellants. In the process of implementation of this direction certain lands were returned to the appellants by the forest officials. These lands constituted thick forests and had valuable trees thereon. This fact was realised by the higher officers of the department and timber transit permits were not issued to the appellants when applied for. Thereupon the appellants filed a writ petition before the High Court for a direction to the State Government and its officers to issue

the requisite transit permits to enable the appellants to transport the rosewood trees and other timber. The claim was contested. The High Court came to the conclusion :

> "It is made clear that the petitioners are not entitled to any relief with regard to rosewood and other trees cut from the lands which do not form part of the lands ordered to be restored to the petitioner in O. P. No. 4832 of 1983 and are vested in the government. With respect to the trees cut from the properties ordered to be restored to the petitioner, respondents 1 to 3 are directed to consider the applications filed by the petitioner for issue of transit permits and pass appropriate orders according to law. Before determining this question also the respondents may give an opportunity to both the petitioners to put forward their contentions and a final decision may be taken after considering their objections."

This order of the High Court is the subject matter of the present appeal.

4. In an affidavit filed in this appeal by the Conservator and Custodian of Vested Forests it has been accepted that in terms of the judgment of the High Court in MFA No. 401 of 1978, 92 acres were found not to vest in the State under the Act. In the judgment the survey numbers with the respective extents had been furnished. It is stated that 12 acres had not been taken possession of and, therefore, surrender had to be made of 80 acres only. A further affidavit has been filed by the said Custodian where it has been said :

> "Hence only 80 acres are to be restored and out of this 56.31 acres have admittedly been restored already. For the remaining 23.69 acres, government are pleased to restore the same as follows vide G. O. Rt. No. 1345/82/AD dated May 22, 1982, in lieu of the land wrongly handed over to the petitioner.

Survey No. Area to be restored

> 1518 10.19 acres
>
> 1580 6.03 acres
>
> 1580 7.47 acres"

It has been further stated therein that in case any part of such land is not available, the government are prepared to pay reasonable compensation for such shortfall as if the same had been acquired by the State for a public purpose.

5. We are of the view that the High Court was right in refusing to act upon the footing that pursuant to the direction by the High Court about 36 acres of land containing forest growth had been surrendered to the appellants and, therefore, they were entitled to appropriate the trees. In fact within the ambit of the writ petition as filed before the High Court, the only question that fell for consideration was whether timber transit permits should or should not be issued to the appellants to enable them to transport the felled timber from the area which should not have been delivered to the appellants. Since we do not intend to differ from the High Court on that issue this appeal deserves to be dismissed but with a view to doing complete justice to the parties and give a final verdict in the matter we had enquired from Mr. Poti appearing for the respondent - State on March 27, 1989 as to how government proposed to comply with the binding direction of the High Court given in the first appeal. The affidavit of June 24, 1989 by the Custodian of Vested Forests is in answer to that query.

6. We would like to reiterate that the appellants are entitled to return of 92 acres of land and not 80 acres. This is on the ground that the direction of the High Court in the first appeal became final and in terms of such direction 92 acres were to go back to the appellants. Government had no authority to alter the decision by an administrative order as has been done on May 22, 1982. There is no dispute that 56.31 acres have been restored to the appellants. By the affidavit of 24th of June, 1989, 23.69 acres have been offered to be restored from three survey numbers indicated therein. With the restoration of 23.69 acres the appellants would have got back 80 acres of land. There would still be 12 acres to be returned to the appellants. The respondents shall have a direction to trace these 12 acres in the locality and make over vacant possession to the appellants thereof within four months hence. In case 23.69 acres or any part thereof as indicated in the affidavit cannot be delivered possession and the balance 12 acres are not identified and possession thereof cannot be delivered, the appellants shall be entitled to compensation in respect of the shortfall out of 35.69 acres in all which remain to be delivered and compensation for such shortfall shall be determined as if it were acquisition under the provisions of the Land Acquisition Act, the date of the preliminary notification being deemed to be the date of judgment in MFA 401 of 1978. The direction indicated above shall be worked out by the respondents within a total period of six months from today.

7. The High Court called upon the respondents to consider the appellants' plea for timber transit permits in respect of trees cut from certain other lands. There is no material on record as to whether that has been complied with. In case the respondents have not done the same yet they are directed to comply with the order of the High Court within three months from today.

8. The appeal is allowed in part. Parties are directed to bear their respective costs.

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