Gwalior Rayons Silk Mfg. (WVG) Co. Ltd.

Vs

Custodian of Vested Forests, Palghat and Another

Civil Appeal No. 698 of 1980

(R. M. Sahai, K. Jagannatha Shetty JJ)

06.04.1990

JUDGMENT

K. JAGANNATHA SHETTY, J.-

1. This appeal by leave from a Full Bench judgment of the Kerala High court raises a short question of construction of the plain words of a term 'private forest' as defined in a statutory enactment called "The Kerala Private forest (Vesting and assignment) Act, 1971 (called shortly "the Vesting Act") The High Court has decided the question in favour of the State and against the appellant. The judgment of the High Court has since been reported in State of Kerala v. Amalgamated Malabar Estates (P) Ltd. The view expressed by the High court has been subsequently affirmed by another Full bench in State of Kerala v. Malayalam Plantations Ltd. and reiterated by a larger Bench of five judges in State of Kerala v. K. C. Moosa Haji.

2. Losing the construction argument, the appellant has appealed to this Court.

3. The facts of the case are immaterial for the purpose of this judgment, save to state in the barest outline that the appellant is the Rayon Silk Manufacturing Company registered in the State of Madhya Pradesh. One of its industrial undertakings is located in Bilakootam, Mavoor in Kozhikode District, Kerala State. This establishment produces Rayon Grade Pulp, using Bamboo Eucalyptus and other species of wood as basic raw material. It has a large eucalyptus plantation covering thousands of acres, maintained as captive raw material for use in the factory. The state says that as a consequence of the Vesting Act, the eucalyptus plantation being a private forest and not excluded therefrom is vested in the State with no right, title and interest subsisting with the company. The claim of the company however, is that the term 'private forest' as defined under the Vesting Act, excludes the eucalyptus plantation.

4. 'Private forest' has been defined in the Vesting Act as well as under the Kerala Land Reforms Act (Act 1 of 1964) as amended by Amendment Act 35 of 1969 ("the KLR Act"). Since counsel for the appellant largely depends upon the judicial construction of the definition of 'private forest' in the KLR Act, it is necessary that we should set out hereunder both the definitions placed alongside with each other :

> #The Kerala Private Forests The Kerala Land Reforms Act(Vesting and Assignment) Act, (Act 1 of 1964) as amended by1971 (Act 26 of 1971) (as the Kerala Land Reformsamended by Act of 1978) (Amendment) Act 35 of 19692. Definitions.- In this Act 2. Definitions.- In this Actunless the context otherwise unless the context otherwiserequires - requires -(f) 'private forest' means : (47) 'private forest' means a

forest which is not owned by the government, but does not include -(1) In relation to the Malabar (i) areas which are waste are notdistrict referred to in sub- enclaves within wooded areas;section (2) of Section 5 of theStates Reorganisation Act,and 1956 (Central Act 37 of 1956)(i) any land to which the Madras (ii) areas which are gardensPreservation of Private or nilams;Forests Act, 1949 (Madras Act28 of 1949) applied immediatelybefore the appointed dayexcluding -(A) Lands which are gardens or (iii) areas which are plantednilams as defined in the with tea, coffee, cocoa, rubber,Kerala Land Reforms cardamom or cinnamon; andAct, 1963 (1 of 1964)(B) Lands which are used (iv) other areas which are cultivatedprincipally for the with pepper, are-canut, coconut,cultivation of tea, coffee, cashew or other fruit-bearing treescocoa, rubber, cardamom or or are cultivated with anycinnamon and lands used for other agricultural crop;..."any purpose ancillary to thecultivation of such crops orfor the preparation ofthe same for the market.Explanation : Lands used forthe construction of officebuildings, godowns, factories,quarters for workmen, hospitals,schools and playgrounds shallbe deemed to be lands used forpurposes ancillary to thecultivation of such crops;(C) lands which are principallycultivated with cashew orother fruit-bearing trees orare principally cultivated withany other agricultural crop;(D) sites of buildings and landsappurtenant to and necessary forthe convenient enjoyment or useof, such buildings;(ii) any forest not owned by thegovernment, to which theMadras Preservation of PrivateForests Act, 1949 did not apply,including waste lands which areenclaves within wooded areas.(2) in relation to the remainingareas in the State of Kerala, anyforest not owned by the government,including waste lands which areenclaves within wooded areas.Explanation : For the purposes ofthis clause, a land shall be deemedto be a waste land notwithstandingthe existence thereon of scatteredtrees or shrubs;"##

5. We may first examine the scope of the definition of 'private forest' under Section 2 (47) of the KLR Act. It means a forest which is not owned by the government, excluding thereby four kinds of areas specified under sub-clauses (i) to (iv). The latter part of sub-clause (iv) contains the words "... other areas cultivated with any other agricultural crop". The terms 'agriculture' and 'agricultural crop' have wider as well as narrower connotation. The wider concept covers both the primary or basic as well as the subsequent operations. it takes within its fold among other things, the products of the land which have some utility either for consumption or for trade and commerce including forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts etc. (See CIT v. Raja Benoy Kumar Sahas Roy.) Of course there must be present all throughout the basic idea that there must be cultivating and similar work done in the land. The forest growth or spontaneous growth of any product, plants or trees, however, would be outside the characteristic of agricultural products or operations.

6. In Malankara Rubber and Produce Co. v. State of Kerala this Court while examining the scheme of KLR Act with particular reference to Chapter III therein observed that 'lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands, but not lands which are covered by eucalyptus or teak growing spontaneously as in a jungle or a forest. This is the wider concept of agricultural crop, perhaps attributed to the latter part of sub-clause (iv) of the definition under Section 2(47) of the KLR Act.

7. The latter part of sub-clause (iv) of Section 2(47) of the KLR Act, counsel for the appellant contended, is practically the same as the second limb of sub-clause (C) of Section 2(f) (1) (i) of the Vesting Act. It was claimed that since eucalyptus plantation is covered by the expression 'any other

agricultural crop' in Section 2(47) sub-clause (iv) of the KLR Act, Section 2(f) (1) (i) sub-clause (C) of the Vesting Act with similar words must also carry the same meaning. It was emphasised that the KLR Act and the Vesting Act constitute a code of agrarian reform and they are cognate legislations with the Vesting Act as supplementary to the KLR Act. The expression 'ant other agricultural crop' used in both the enactments while defining 'private forest' must therefore, receive the same meaning as otherwise, it would lead to anomalies. This is the line of argument for the appellant.

8. This whole line of argument with respect, is hard to accept. As Felix Frankfurter, J. said : "Legislation is form of literary composition. But construction is not an abstract process equally valid for every composition, not even for every composition whose meaning must be judicially ascertained. The nature of the composition demands awareness of certain presuppositions... And so, the significance of an enactment, its antecedents as well as its later history, its relation to other enactments, all may be relevant to the construction of words for one purpose and in one setting but not for another. Some words are confined to their history; some are starting points for history. Words are intellectual and moral currency. They come from the legislative mint with some intricsic meaning. Sometimes it remains unchanged. Like currency, words sometimes appreciate or depreciate in value." The learned Judge further stated : "Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, not of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is what the judge must seek and effectuate."

9. Judicial interpretation given to the words defined in one statute does not afford a guide to construction of the same words in another statute unless the statues are pari material legislations. In the present case, the aim and object of the two legislations are not similar in the first place. Secondly, the definition of 'private forest' in the KLR Act is not just the same as the definition of 'private forest' in the Vesting Act. Indeed, there is a vast difference in between the two. The object of the Vesting Act was to provide for the vesting in the government of private forest in the State of Kerala for the assignment thereof to the agriculturists and agricultural laborers for cultivation. The preamble of the Act provides that such agricultural lands should be so utilised as to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State. Two separate definitions have been provided in the Vesting Act; the first is applicable to the Malabar district where the Madras Preservation of Private Forests Act, 1949 ('the MPPF Act') applied immediately before the appointed day; the second concerned is in relation to the remaining areas in the State of Kerala. The definition of 'private forest' as is applicable to the Malabar district is not general in terms but limited to the areas and lands to which the MPPF Act applied and exempts therefrom lands described under sub-clauses (A) to (D). This significant reference to MPPF Act in the definition of 'private forest' in the Vesting Act makes all the difference in the case. The MPPF Act was a special enactment. It was enacted by the erstwhile Madras State to preserve the private forests in the district of Malabar and erstwhile South Kannara District. The scheme of that Act has been explained by several decisions of the Kerala High Court and that scheme appears to be that if the land is shown to be private forest on the date on which the MPPF Act came into force, it would continue to be a forest, even if there was subsequent replantation.

10. It is not in dispute that the lands involved in this appeal were all forests as defined in the MPPF Act, 1949 and continued to be so when the Vesting Act came into force in 1971. In Malankara case this Court was not concerned with the lands covered by the MPPF Act, and denuded thereafter of forest growth and cultivated with fresh replantation. Therefore, it seems inappropriate to transplant the meaning accorded to 'private forest' from the KLR Act to the Vesting Act. That wide concept

cannot fit into the new legal source.

11. In State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. this Court while upholding the constitutional validity of the Vesting Act has observed that the forest lands in the State of Kerala has attained a peculiar character owing to the geography and climate and the evidence available showed that the vast areas of these forests are still capable of supporting large agricultural plantations. That much is clear from the following observations :(SCR p. 683 : SCC p. 726, para 30)

> "It is, therefore, manifest that when the legislature stated in the preamble that the private forests are agricultural lands, they merely wanted to convey that they are lands which by and large could be prudently and profitably exploited for agricultural purposes."

12. There is thus a judicial recognition of the distinction between private forest in Travancore-Cochin area in Kerala State and the private forest in Malabar district. This distinction by itself is sufficient to dispel the anomalies suggested by counsel for the appellant.

13. Look at the definition. Sub-clause (A) refers to gardens or nilams as defined in the KLR Act.'Garden' means lands used principally for growing coconut trees, arecanut trees or pepper vines or any two or more of the same.'Nilam' means lands adapted for the cultivation of paddy. Sub-clause (B) deals with what may be called plantation crops, cultivation of which in the general sense would be cultivation of agricultural crops. Such agricultural crops are by name specified. Lands used for any purpose ancillary to such cultivation or for preparation of the same for the market are also included thereunder. Next follows sub-clause (C). It first refers to lands which are principally cultivated with cashew or other fruit-bearing trees. It thus refers to only the fruit-bearing trees. It next refers to lands which are principally cultivated with any other agricultural crop'. If the legislature had intended to use the term 'agricultural crop' in a wide sense so as to take within its fold all species of trees fruit-bearing or otherwise, it would be unnecessary to have the first limb denoting only the cashew or other fruit-bearing trees. It may be significant to note that the legislature in each sub-clause (A) to (C) has used the words to identify the different categories of crops or trees. The words used in every sub-clause too have "associations, echoes and over-tones". While construing such words, judges must, as Felix Frankfurther, J., said "retain the associations, hear the echoes and capture the overtones" (at p. 414). When so examined and construed, we do not discover any indication that the words in sub-clause (C) "any other agricultural crop" are quit wide enough to comprehend all species of trees including eucalyptus plantations.

14. It is said, indeed rightly, that in seeking legislative intention, judges not only listen to the voice of the legislature but also listen attentively to what the legislature does not say. Let us compare the wordings in Section 3 with those of sub-clause (C). Under Section 3 sub-section (1), private forests vest in government. Sub-clause (2) however, excludes from such vesting lands within the ceiling limits applicable to an owner if they are under his personal cultivation. Cultivation for this purpose "includes cultivation of trees or plants of any species". The explanation to sub-section (2) makes this aspect beyond doubt. The lands used for the cultivation of any kind of trees, fruit-bearing or yielding only timber or pulp are not vested under Section 3 sub-section (2). The legislature has thus excluded from vesting under Section 3 sub-section (2). The legislature has thus excluded from vesting under Section 3 sub-clause (2) the trees of every variety. But while providing for exclusion under sub-clause (C). the legislature could not have again thought of trees or plants of all kinds. It seems to have considered only fruit-bearing trees and not of other species. If the intention was otherwise, the sub-clause (C) would have been in a different language.

15. In our view as a matter of pure construction untrammelled by authority, the words used in the latter part of sub-clause (C) could not take within its fold all varieties of trees and it could exclude only fruit-bearing trees.

16. This is also the conclusion of the High Court not only in the impugned judgment under appeal but also in the subsequent two decisions; Malayalam Plantation Limited and K. C. Moosa Haji cases.

17. In the result the appeal fails and is dismissed. In the circumstances of the case, however, we make no order as to costs.

</html