

T.N. Goda Varman Thirumulpad and others

Vs

State of Kerala and others

Civil Appeals Nos. 1780-81 of 1991, (in S.L.Ps. Nos. 4829-4829A, 5500 and 7905 of 1988)

(A. M. Ahmadi, V. Ramaswami, K. Ramaswamy JJ)

04.04.1991

JUDGMENT

1. Special leave granted.

2. Heard counsel for both sides. We have perused, the relevant orders and documents germane to the disposal of these appeals .

3. The facts reveal that a Suit No. O.S. 22/61 was filed in the Court of the Subordinate Judge, Kozhikode, for partition and separate possession of about 32,000 acres of Private Forest Lands belonging to the Nilampur Kovilakam comprising 112 members. In that suit a preliminary decree for partition was passed and Joint Receivers were appointed by the Court for the management of the property till partition by metes and bounds was effected. However, before a final decree could be passed in the said suit the Kerala Private Forests (Vesting and Assignment) Act, 1971 came into force with effect from 10th May, 1971. Under S. 3(1) thereof, the ownership and possession of all private forests in the State of Kerala stood transferred to and vested in the Government free of all encumbrances with effect on and from the appointed day i.e. 10th May, 1971. This provision being subject to sub-secs. (2) and (3) thereof must be read conjointly with those sub-sections. Sub-sec. (2) carves out an exemption in respect of so much extent of land comprised in private forest held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 or any building or structure standing there on and pertaining thereto. The explanation to that subsection states that the expression 'cultivation' shall include cultivation of tree or plants of any species. Then comes sub-sec. (3) which reads as under:

"(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 other 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 S. 82 of the said Act. "

The demarcation of the boundries has to be done by the custodian by virtue of S. 6. S. 7 contemplates the Constitution of one or more than one Tribunals for the purposes of the Act. Section 8 deals with settlement of disputes. It provides that where any dispute arises as to whether any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government may within such period as may be prescribed apply to the Tribunal for decision of the dispute. S. 13 bars the jurisdiction of Civil Gourts. It says that no Civil Court shall have jurisdiction to decide or deal

with any question or to determine any matter which is, by or under this Act, required to be decided or dealt with or to be determined by the Tribunal, the Custodian or any other officer except as otherwise provided by the Act. It will, however, be seen that an exclusive jurisdiction has been conferred on the authorities created under the Act. It is not necessary for us to determine what is the scope and ambit of the expression 'except as otherwise provided in this Act' used in S. 13 of the Act. The power to make rules is conferred by S. 17. In exercise of the said power the State Government has made rules entitled the Kerala Private Forest (Exemption from Vesting) Rules, 1974. These rules have come into force w.e.f. 23rd April, 1974. Rule 3 thereof refers to S. 3 of the Principal Act. It provides that where any other claims exemption in respect of any land held by him from the provisions of sub-sec. (1) of S. 3, on the ground that (a) such land is under his personal cultivation and is within the ceiling limit or (b) such land is held under a valid document of title executed before 10th May, 1971 and is intended for cultivation by him which together with other 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, he shall on or before 25th August, 1974, apply to the custodian in Form 1 specifying the land in respect of which he claims exemption. Rule 4 makes the production of the certificate from the Tehsildar along with the application in Form No. 1 obligatory. Rule 5 postulates that any owner who produces a certificate under Rule 4 shall also file an affidavit in Form No. 3. After these formalities are completed, the custodian has to make a declaration under R. 6 that the said lands have not vested in the Government under sub-sec. (1) of S. 3, and communicate a copy thereof to the applicant. These, in brief, are the relevant provisions bearing on the question arising for consideration in these appeals.

4. It appears that 201 members of the Kovilakam filed I.A. No. 4559/ 80 in the partition suit impleading the custodian and sought allocation of 3015 acres of private forest land on the premises that the Kovilakam then comprised 201 family members.. The figure of 3015 acres was arrived at by allocating 15 acres to each member. The custodian filed a counter-contesting the maintainability of the said application. Overruling the objection of the custodian the Court held that the Kovilakam was entitled to at best 1680 acres calculated on the basis of 15 acres for each of the 112 family members, comprising the Kovilakam on the date of institution of the partition suit. The custodian carried the matter in revision to the High Court. The High Court disposed of the revision by the following order:

'The respondents agree that identification and demarcation of the area not vested under S. 3(3) of the Act, 26/ 71, has to be done by the custodian himself and not jointly by him and the receivers. This is recorded and the direction in the order impugned will stand modified accordingly. The question whether the Civil Court is competent to pass an order of this kind or whether the matter is in the exclusive jurisdiction of the Forest Tribunal is left open. No other directions are called for. C.R.P. dismissed subject to the above.'

5. The State Government preferred a special leave petition to this Court challenging the said order but in vain review application filed later was also dismissed as not pressed. Thereafter, by an order dated 26th November, 1981, the State Government directed the custodian to demarcate these 1680 acres. The custodian earmarked the land to be allocated to the original plaintiffs on the right bank of Sholavar River in one single block. After the demarcation was completed, the Government by its order dated 25th May, 1982 directed the custodian to allocate 1680 acres in Bhudan Colony, a different area. This was communicated to the sharers after 11 th August, 1962. In the meantime the survey was completed. The Joint Receivers submitted a report to the Court to direct the custodian to hand over the possession of the area already demarcated to the sharers. The Court, however, came to

the conclusion that it had no jurisdiction to issue such a direction to the custodian, but directed that the earlier order of the Court dated 7th February, 1981 in I.A. No. 4559 of 1980 for giving possession of 1650 acres be carried out within a reasonable time. Neither the State Government nor the custodian challenged that order. On the contrary the State Government filed I.A. No. 3874 of 1982 seeking extension of time for implementation of the order. Since the sharers were intimated about the Government's order allocating 1680 acres in Bhudan colony. In the meantime they filed O.P. No. 6563 of 1982 challenging the said order on the ground that the State Government had no jurisdiction to interfere with the custodian's demarcation and the owners had the option to select the land under S. 3(3) of the Act. The High Court quashed the Government's order of 25th May, 1982 and directed the State Government and the custodian to hand over the possession of 1680 acres of land demarcated by the custodian. The High Court also upheld the right of the owners to select the land under S. 3(3) of the Act. The special leave petition filed against this order was dismissed by this Court on 29th May, 1983. Thereupon the State Government and the custodian filed I.A. Nos. 1439 and 1441 of 1983 in the Subordinate Judge's Court to review the order of 7th February, 1981 and I.A. No. 4559 of 1980. these review applications were dismissed. The sharers filed I.A. No. 2624 of 1983 on 30th July, 1983 for implementation of the earlier orders and to permit them to take possession of the land in accordance with the determination by the survey authorities. This application was allowed. Against that order the State Government as well as the custodian moved the High Court by way of revision application and obtained an ex parte stay which was later modified allowing possession to be taken through Court. On 8th November, 1983 an Execution Petition No. 23 of 1983 was filed for delivery of possession through Court. It was at this stage that Ss. 8B, 8C and 8D came to be introduced by Ordinance No. 17 of 1984 passed on 16th February, 1984 reenacted again and again till it culminated into Amendment Act 36 of 1986. On 30th March, 1984 the State Government issued a notification under S.5 of the Kerala Preservation of Trees Ordinance 15 of 1984 which subsequently became an Act. It is this notification which has given rise to S.L.P. No. 7905 of 1988. Thereafter Revision Petition No. 147 of 1984 was filed to review the order in Cr. P. No. 1062 of 1981. This was disposed of on 17th August, 1985 as not pressed. Hot on the heels came Review Petitions Nos. 147 and 150 of 1984 to review the order in Cr. P. No. 2271 of 1982 and Review Petition No. 154 of 1984 against the order of O. P. No. 6563 of 1984. C. R. P. No. 2621 of 1983 and C. R. P. No. 1255 of 1984 were allowed by an order dated 3rd September, 1987 holding that the prior orders lacked inherent jurisdiction and were, therefore, nullities. This order is the subject-matter of S. L. Ps. Nos. 4829 and 4829A of 1988. Both these review applications, viz.. Review Applications Nos. 147 and 150 of 1984. were allowed by the order dated 19th October, 1987. The said order is challenged in S. L. P. No. 5500 of 1988. This, in brief, is the chequered history of this litigation.

6. We have heard counsel for the parties and have perused the relevant provisions of the Act and the Rules. The preliminary decree passed in O.S. No. 22 of 1961 was prior to the coming into operation of the Act in question. Under that decree the entire area of 32.00 acres of private forests belonging to Nilambar Kovilakam was liable to partition amongst 112 family members. Had the preliminary decree culminated into a final decree prior to the coming into operation of the Act w.e.f. 10th May, 1971, different considerations may perhaps have ensued. However, it is an admitted fact that the preliminary decree had not culminated into a final decree "When the Act became operative from 10th May, 1971. By the thrust of the operative part of S.3(1) of the Act with effect on and from the appointed day the ownership and possession of private forests stood transferred and vested in the State Government free from all encumbrances and, the right, title and interest of the owner or any other person in such private forests stood extinguished. Had it not been for sub-sec. (3) of S.3 the family members of the Kovilakam would have no ground to stand. The said section is by was of an

exception to sub-sec. (1). Therefore in respect of so much extent of the 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 other land held by him to which Chapter III of the Kerala Land Reforms Act of 1963 is applicable does not exceed the extent of the ceiling area, under S. 82 thereof, is exempt from the operation of S. 3(1) of the Act. In the present case after the preliminary decree was passed it had to culminate into a final decree and the proper course would have been to await the decision of the authorities under the Act. However, the question was considered by the Civil Court and ultimately 1680 acres were determined to be allocable to 112 family members of the Kovilakam on the basis of 15 acres per family according to the ceiling law. After the decision of the High, Court dated 15th April. 1981 in C.R.P. No. 1062 of 1981. the Government issued orders on 26th November. 1981 to the custodian to demarcate the 1680 acres. It was pursuant to this order of the Government that the custodian undertook the demarcation exercise under the Act and demarcated the land as stated earlier. Therefore. although the State Government's order flowed from the order of the Civil Court, the actual demarcation was done by the authority under the Act. We, therefore think it would be a waste of public time and money to undo the exercise and once again direct the custodian to demarcate the land independent of the demarcation made pursuant to the Civil Court's order merely for upholding the technical contention that the jurisdiction of the Civil Court was barred by virtue of S. 13 of the Act. Several Years have rolled by and it is high time that this dispute is finally settled by and between the parties rather than be started denovo by directing the petitioners to take recourse under the provisions of the Act from the threshold. Therefore although there is substance in the submission that the jurisdiction of the Civil Court Was barred by virtue of S. 13 of the Act. since the ultimate decision was taken by the Custodian under the Act. we do not think that it is necessary to upset that decision since S. 6 of the Act specifically confers that power on the custodian and the ouster of jurisdiction under S. 13 is limited to the Civil Court deciding or dealing with any question required to be decided, dealt with or determined by the Tribunal, the custodian or any other officer under the Act. Since the demarcation has been done by the custodian himself who had that power under S. 6. we think it is not necessary to disturb that exercise at this belated stage.

7. The next question is regarding the application of S. 3(3) to the facts and circumstances of the present case. So far as this aspect is concerned we think that necessary action must be taken under the provisions of ,the Act and the Rules made in that behalf. We would, therefore, direct the Kovilakam comprising 112 family members or their legal representatives, as the case may be to make an application in Form 1 under Rule 3 for determination of the area to which they would be entitled having regard to Chapter III of the Kerala Land Reforms Act, 1963 not exceeding the ceiling area applicable to them under S. 82 of the said Act. Such applications may be made within six months from today. On receipt of such applications the custodian Will deal with them in accordance with the Act and the Rules for the limited purpose of finding out the area allocable to each claimant under Chapter III of the Kerala Land Reforms Act, 1963 not exceeding the ceiling area applicable under S. 82 thereof. To put the matter beyond doubt we may state that the custodian will proceed on the premises that the applicants are entitled to exemption from vesting under S. 3(3) of the Act and the only question which he will enter upon will be as regards to the area allocable keeping in mind the ceiling area and S. 82 of the Kerala Land Reforms Act, 1963. It is needless to clarify that the total area allocable will in no case exceed 1680 acres but on account of the applicants having any other land or opting for any other land there may be shrinkage in the total area claimed. The benefit of the shrinkage if any will go to the State Government. We may also clarify that the area to be allocated will be on the right bank of Shaliyar River in one single block. This will dispose appeals arising out of S.L.Ps. Nos. 4829, 4829A and 5500 of 1988.

8. So far as S. L. P. No. 7905 is concerned, it arises on account of the notification issued by the State Government on 30th March, 1984 under S. 5 of the Kerala Preservation of Trees Ordinance 15 of 1984 which has since been replaced by Act 35 of 1986. The High Court came to the conclusion that the petitioners had no locus standi as the entire 32,000 acres of forest land had vested in the State Government by virtue of S. 3(1) of the Act. The High Court also upheld the validity of S. 5 where under the notification was issued. In view of our aforesaid decision the Kovilakam members will now be entitled to make a claim under S. 3(3) of the Act. After the claims are finalised by the Custodian, if they still feel aggrieved by the impugned notification it would be open to them to approach the High Court for appropriate relief. We need not interfere with the order passed by the High Court in a different fact situation. We would make it clear that our refusal to interfere will not preclude the members of the Kovilakam, after they become entitled to land under S. 3(3) of the Act, to challenge the notification or any action taken pursuant to the notification. With these observations, we dispose of the appeal arising from S. L. P. No. 7905 of 1988 also.

9. Parties will bear their respective costs in these proceedings.

Order accordingly.

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