State of Kerala and Others

Vs

M.N. Sankara Narayanan and Others

Civil Appeal No. 10656 of 1996

(S. C. Sen, B. P. Jeevan Reddy JJ)

07.08.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. The case has a chequered history which needs no elaboration. Suffice it to state that under the Madras Private Forests Preservation Act, 1949 (27 of 1949) private forests were preserved. The Legislature of Kerala passed Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) (for short "the Vesting Act") which came into force w.e.f. 10-5-1971. The respondent claimed 3000 acres to be not a private forest. The Tribunal declared that the entire 3000 acres were not a private forest. When an appeal came to be filed by the appellant, the Division Bench of the Kerala High Court in MFA No. 152 of 1977 by judgment dated 19-9-1980 had accepted the report submitted by three Commissioners, namely, two Advocates, P.C. Chacko and N. Nandkumara Menon and John M. John, Assistance Director, Cardamom Board.

4. The report dated 26-2-1979 Ext. X-4 declared as under :

> "In the result, the appeal is allowed, the order of the Forest Tribunal is set aside we declared that Plots 2 and 3 as shown in Ext. X-5 plan having an area of 25 acres in alone not a private forest within the meaning of that expression as defined in Act 26 of 1971. If there is a case for any recovery steps, it is open to the appellant to enforce the bond, if any, filed by the respondent in obedience to the order dated 19-4-1977 in IA No. 125 of 1977 of the Tribunal (p. 23 beings). In the nature of this case the respondent shall pay the costs of the appellants."

5. Thereunder, 25 acres marked in the said area were declared to be not a private forest since cardamom operations were being carried on in that area. When the respondents carried the matter in appeal to this Court, this Court in M.N. Sankaranarayanan v. State of Kerala [(1986) 3 SCC 519 : AIR 1987 SC 47] based upon the admission made by the State in their counter-affidavit declared that 60 acres out of 3000 acres would be the area in which the respondent was cultivating cardamom plantations and held that : (SCC p. 522, para 2)

> "We, therefore, find that the appellant is entitled to a declaration in respect of an extent of 60 areas 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."

6. It was accordingly held that the respondent is entitled to a declaration in respect of an extent of 60 acres of land; he was given liberty to select any 60 acres out of 3000 acres for his retention and had accordingly retained the lands in question. Legislature has passed another enactment, viz., the Kerala Preservation of Trees Act, 1986 (Act 36 of 1986) (for short "the Preservation Act") which came into force w.e.f. 18-6-1983. In exercise of the said power notification came to be issued by the competent authority on 19-7-1991 in which it is declared that the felling of all the available trees would adversely affect soil erosion and moisture retention in the area and cause destruction and loss of timber wealth in the State. Therefore, notification was issued prohibiting felling of the trees under Section 5 of the Preservation Act. The same came to be questioned in the High Court. The learned Single Judge in the writ petition and the Division Bench of the High Court in the impugned judgment dated 9-3-1994 in Writ Appeal No. 1505 of 1992 held that the 60 acres is not a private forest within the meaning of the Vesting Act and, therefore, the notification issued under Section 5 of the Preservation Act is not valid in law. Thus this appeal.

7. Shri George, the learned counsel appearing for the State, contended that in view of the peculiar situation in this case, the notification is perfectly valid in law since the object of the Preservation Act is to sustain the forest growth and the land in question was a forest land. It was declared to be not a forest area in view of the admission made in the counter-affidavit that the respondent was cultivating cardamom plantation in that area. The admission made by the respondent that he had permitted the 4th respondent to cut and carry the trees therefrom would clearly show that they are the forest trees defined under Section 2(e) of the Preservation Act and, therefore, felling of trees is in violation of the Preservation Act. Shri Sudhi Vasudevan, the learned counsel for the respondents, contended that in view of the fact 60 acres of the land is declared to be not a private forest and in view of the language in the Preservation Act that unless it is a private forest as defined under the Vesting Act, the Preservation Act has no application and, therefore, the notification is clearly illegal.

8. In view of the diverse contentions, the question that arises for consideration is whether the view taken by the High Court is correct in law ? It is seen that there are peculiar facts in this case. While the appeal in the first stage was pending in the High Court, a commission of two advocates and an expert officer, Assistant Director, Cardamom Board came to be appointed by the High Court to inspect the area and submit the report. The report would clearly establish that that finding was not upset by this Court on the earlier occasion and it would show that 25 acres was found to be cultivated with cardamom plantation. The rest of the area was found to be a forest area. Consequently, it became a private forest. A declaration to that effect was given by the Division Bench. But, when the appeal came to be filed in view of the admission made by the respondent in the counter-affidavit that the respondent was cultivating cardamom plantation in an extent of 60 acres of the land, by virtue of exclusion of cardamom plantation from the operation of the private forest under the Vesting Act, this Court declared to that effect and held it to be not a private forest, But, instead of relegating the matter to the High Court for further identification of actual existing area, permission was given to the respondent to select any area of 60 acres out of 3000 acres for the purpose of his retention. Consequently, he selected 60 acres of the land. It is not in dispute that out of 25 acres of the land found to be under use for cardamom plantation by the High Court and in addition thereto any other 35 acres of the land had not been retained. Instead, the land the

respondent had retained a compact block of 60 acres of his choice. Consequently, by operation of the judgment of this Court, 60 acres came to be declared to be not a private forest. Yet, in fact, there exists forest growth in 60 acres of land. The admission made by the respondents was that they have permitted by way of sale, third parties to cut and carry the trees. It would appear that there are valuable trees in the 60 acres of land as admitted before us. The object of the Preservation Act is to preserve forestation and not deforestation. Consequently, though notification was published prohibiting the respondents from feeling the trees, in the circumstances, we are of the view that the notification should be suitably modified as under. The competent authority is directed to given permission to the respondents to fell such of the trees which are not referred to in Section 2(e) of the Preservation Act and if other trees are not of such value, then necessary permission may be given to the respondents to fell the trees so as to enable them to cultivate cardamom plantation or any other plantation operations permissible under the law so that the respondents would enjoy 60 acres of the land, the benefit flowing from the earlier judgment. We hold that this direction would ensue compliance of the Preservation Act and at the same time the right to the respondents to enjoy 60 acres of land would be sustained.

9. It would be open to the respondents to make an application to the competent authority. On making such application, the competent authority, with prior notice, would inspect the area in the presence of the respondents and any of the persons on their behalf and determine which of the trees coming under the definition of 'trees' under Section 2(e) of the Preservation Act should be preserved and which of the trees should be permitted to be felled and carried away. If any difficulty arises in implementation of this order, it would be open to the parties to approach the High Court and seek further direction in this behalf. Thereafter, the State Government is directed to issue modified notification in terms of Section 5 of the Act.

10. The appeal is accordingly disposed of in terms of the above direction. No costs.