SUPREME COURT OF INDIA

State of Kerala

Vs.

K.Sarojini Amma

C.A.No.324 of 1998

(Shivaraj V. Patil and D.M.Dharmadhikari JJ.)

14.10.2003

JUDGMENT

SHIVARAJ V. PATIL J.

The State of Kerala is in appeal assailing the impugned orders passed by the High Court made in exercise of its revisional jurisdiction under Section 103 of the Kerala Land Reforms Act, 1963 (for short `the Act'). The Taluk Land Board directed the respondents to surrender a total extent of about 2067 acres of land holding that, that was the excess land in their possession as on 1.1.1970, the date on which the ceiling provisions of the Act were brought into force. Late Shri C. Kumaran Nair purchased 1501 acres of land on 22.12.1965 which was a private forest. It was also the case of the respondents that the said land was converted into rubber plantation before 1.1.1970. The legal heirs of Late Shri C.Kumaran Nair were the declarants in Ceiling Case S.R. 780 of 1973 in the Taluk Land Board, Perintalmanna. Their main contention was that the area of 1501 acres of land purchased by Late Shri C.Kumaran Nair, being a private forest, was exempted under Section 81 of the Act and further that the said land having been converted into rubber plantation before 1.1.1970 also got the benefit of exemption under the said Section. The Taluk Land Board rejected the contentions of the respondents and held that excess land of 1501 acres was in their possession. Hence, aggrieved by the said order, the respondents filed C.R.P. No. 1654 of 1991 in the High

Court.

The claim made by the assignees of the declarants in respect of the properties in Mannarkkad taluk over 546.56 acres was also rejected on the ground that they failed to establish their claim of plantation over the said land prior to 1.1.1970. Aggrieved by the rejection of their claim, the assignees of the declarants filed C.R.P. No. 1697 of 1991. The High Court by the impugned common order concluded that the area of 1501 acres purchased by Late Shri C.Kumaran Nair on 22.12.1965 should be excluded from reckoning in the ceiling area applicable to the respondents but no discussion was made in regard to the subject matter and the questions raised in C.R.P.No.1697 of 1991. In that situation, a review petition was filed by the respondents in C.R.P. No. 1697 of 1991 which was allowed by the High Court by the order dated 30th July, 1996 holding that non-mentioning of 257 acres of land covered by revision petition in C.R.P. No. 1697 of 1991 was only an omission and that was to be incorporated in last paragraph of the common order made in both the C.R.Ps. on 11.19.1995 without affecting the order made in C.R.P. No. 1654 of 1991. C.A. No. 324 of 1998 is against this order of the High Court made in review.

The learned counsel for the appellants contended that the High Court in its revisional jurisdiction under Section 103 of the Act was not right and justified in interfering with the order passed by the Taluk Land Board; the High Court could disturb the finding recorded by the Taluk Land Board only when the Board decided the question of law erroneously or failed to decide any question of law; from the impugned order, it cannot be said that the Taluk Land Board had decided any question of law erroneously or failed to decide any question of law. The learned counsel further submitted that on the facts found by the Taluk Land Board, its conclusions could be sustained; the respondents failed to establish that there was plantation in the lands in question prior to 1.1.1970; further the lands in question being the private forest vested in the Government under the Kerala Private Forests (Vesting and Assignment) Act, 1971.

In opposition, the learned senior counsel for the respondents made submissions supporting the impugned order for the reasons recorded therein; they submitted that the situation existing on the lands and the nature of lands as on 1.4.1964 were relevant. According to them, the lands in question were private forest as on 1.4.1964 and even assuming that there was no plantation on the lands before 1.1.1970, the position as to exemption of the lands from the calculation to ceiling area is not affected as per Section 81(1)(d); it is not the case that the exempted category of lands on 1.4.1964 were converted into non- exempted category of lands. According to the learned senior counsel, when the Taluk Land Board committed a serious error in law as regards the relevant date in considering the exemption in the light of the law laid down by the High Court in the earlier judgments, the High Court was justified in interfering exercising revisional jurisdiction under Section 103 of the Act inasmuch as the Talk Land Board decided the question of law erroneously on the facts either found or established; the Board also failed to decide the question of law as to the effect when the exempted category of lands were converted to non-exempted category of lands. Even otherwise, the High Court was justified in passing the impugned order in its jurisdiction under Article 227 of the Constitution of India.

In order to appreciate the rival contentions urged on behalf of the parties having regard to the facts found or established or admitted, it is useful to notice certain provisions of the Act to the extent they are relevant and having bearing on the decision of the case" "Section 2(47) – "Private forest" means a forest which is not owned by the government, but does not include- (i) areas which are waste and are not enclaves within wooded areas;

(ii) areas which are gardens or nilams;

(iii)areas which are planted with tea, coffee, cocoa, rubber, cardamom or cinnamon; and (iv) other areas which are cultivated with pepper, arecanut, coconut, cashew or other fruit-bearing trees or are cultivated with any other agricultural crop;" Section 81 – Exemptions – (1) The provisions of this Chapter shall not apply to

- (a) .....

(b) .....

(c) .....

(d) private forests;

(e) plantations;" Section 83 – "No person to hold land in excess of the ceiling area – With effect from such date as may be notified by the Government in the Gazette, no person shall be entitled to own or hold or to possess under a mortgage lands in the aggregate in excess of the ceiling area." Section 87 – "Excess land obtained by gift etc., to be surrendered - (1) Where any person acquires any land after the date notified under Section 83 by gift, purchase, mortgage with possession, lease, surrender or any other kind of transfer intervivos or by bequest or inheritance or otherwise and in consequence thereof, the total extent of land owned or held by such person exceeds the ceiling area, such excess shall be surrendered to such authority as may be prescribed.

Explanation I – Where any land is exempted by or under Section 81 and such exemption is in force on the date notified under Section 83, such land shall, with effect from the date on which it ceases to be exempted, be deemed to be land acquired after the date notified under Section 83.

Explanation II - Where, after the date notified under Section 83, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or any land exempt under Section 81 from the provisions of this Chapter is converted into any class of land not so exempt and in consequence thereof the total extent of land owned or held by a person exceeds the ceiling area, so much extent of land as is in excess of the ceiling area, shall be deemed to be land acquired after the said date." Section 103 – "Revision by High Court

– (1)(i).....

(ii) .....

(iii)any final order of the Taluk Land Board under this Act, may, within such time as may be prescribed, prefer a petition to the High Court against the order on the ground that the appellate authority or the Land Board, or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any question of law.

(1A) .....

(1B) .....

(2) .....

(3) .....

(4) .....

" The relevant provisions of the Madras Preservation of Private Forests Act, 1949 (for short 'the MPPF Act') are as under:- Section 3. "Preservation of Private Forests – (1) (a)- No owner of any forest shall, without the previous sanction of the District Collector sell, mortgage, lease or otherwise alienate the whole or any portion of the forest.

Explanation - .....

(b) Any alienation in contravention of clause (a) shall be null and void – (i) if the alienation is of any forest declared by the District Collector to be a forest under clause (iii) of Section 1(2) or of any portion of such a forest, and is made on or after the date on which the declaration takes effect;

(ii) [.....] (iii)if the alienation is of any other forest or of any portion of such a forest, and is made on or after the 16th August, 1946." Section 2(f) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 reads as under:- "private forests" means - (1) in relation to the Malabar district referred to in sub-section(2) of Section 5 of the State Reorganisation Act, 1956 (Central Act 37 of 1956) – (i) any land which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949) applied immediately before the appointed day excluding – (A) land which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964).

(B) land which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market." It is clear from the definition of private forests given in Kerala Private Forests (Vesting and Assignment) Act, 1971 that any land to which the MPPF Act applied immediately before the appointed day was a private forest. Admittedly, to the lands in question, the MPPF Act was applicable as the very permission for selling the lands was granted by the District Collector under Section 3(1)(a) of the MPPF Act.

Sections 81 and 82 of the Act appearing in Chapter III came into force on 1.4.1964 and Section 83 of the Act relating to ceiling area was brought into force w.e.f. 1.7.1970. The Kerala Forests (Vesting and Assignment) Act, came into force on 10.5.1971.

The Taluk Land Board directed the respondents to surrender excess land of 2067 acres holding that they were in possession of this excess land as on 1.1.1970, the date on which the ceiling provisions of the Act came into force. According to the respondents, they were not the excess lands being private forests falling within the purview the MPPF Act and the same had been converted into a plantation before 1.1.1970. According to them, these lands were exempted under Section 81(1)(d)&(e). The Taluk Land Board did not accept the plea of the respondents. It recorded a finding that the respondents did not place records and proper evidence to show that the lands held by them were private forests to claim exemption and to prove that those lands had been converted into rubber plantation before 1.1.1970. Thus, rejecting the claim of the respondents for exemption, the Board held that the respondents had to surrender the total extent of 2067 acres of land.

The High Court upset the order passed by the Taluk Land Board observing thus:

"It appears that even the State has no dispute on the point that the land purchased by Shri Kumaran

Nair was initially a private forest falling within the purview of Madras Preservation of Private Forests Act. This may be because the State cannot now wriggle out of the permission granted by the District Collector on 23.8.1965 under Section 3(1)(a) of the MPPF Act in favour of one Abdu Haji and Kadarshah for selling the property of Shri Kumaran Nair. District Collector could have granted permission only if the property fell within the meaning of the said Act. If it was a private forest and remained so on 1.1.1970 such land was exempted from the ceiling provisions enumerated in Chapter III of the Kerala Land Reforms Act. If private forest had been converted into plantation before 1.1.1970 then also the same would stand exempted from the ceiling provisions. This can be discerned from Section 81(a)(d) and (e) of the Kerala Land Reforms Act. Learned senior counsel invited my attention to the decision rendered by U.L. Bhat. J.

(as His Lordship then was) reported in Alekutty John v. Taluk Land Board (1981 K.L.T. 731) that the crucial date as for Section 81 was 1.4.1964 and not 1.1.1970.

The latter may be important if the exempted category happened to be a non-exempted category before that date. I would say that if the exempted category was converted into another exempted category before 1.1.1970 the position would still remain unaffected as for the declarant." The High Court has also recorded in the impugned order that a specific question was put to the learned Additional Advocate General as to whether the State had a case that private forest was not converted into a plantation before 1.1.1970 and that the learned Additional Advocate General replied that he was not definite about it.

It is on record that the District Collector, Palakkad granted permission to transfer 1501 acres of land to Abdul Haji and Kadarshah in favour of late Shri Kumkaran Nair on 23.8.1965.

In the said permission, there is reference to the MPPF Act – Survey of Forest and alteration granted in respect of 1583.95 acres and that on the application made by Abdul Haji and Kadarshah permission was granted under Section 3(1)(a) of the said Act and the rules and regulations made thereunder read with Section 119 of the States' Reorganisation Act, 1956 and clause 4(1) of the Kerala Adoption of Laws Order, 1956 to sell various lands measuring 1583.95 acres in favour of Late Shri Kumaran Nair. The permission also indicates that separate permission was to be obtained from the Collector for felling treas. It is not disputed that the said Act applies to the private forests. Previous sanction of the District Collector was required under Section 3(1) of the said Act in case an owner of the forest i.e. private forest wished to alienate any portion of the forest. The fact that the owners of the private forest applied to the District Collector seeking permission to sell the forest land of 1501 acres in favour of Late Shri Kumaran Nair and that the District Collector granted permission accordingly under the Act as early as on 23.8.1965 is a matter of record. If the lands were not private forests, there was no question of the owners applying for previous sanction and at any rate District Collector granting permission under Section 3(1)(a) of the Act did not arise. If the lands were not private forests, the District Collector ought to have refused permission as rightly observed by the High Court. The Taluk Land Board committed a serious error both on facts and in

law in holding that the respondents failed to prove that the lands in question were private forests. As per Section 81(1)(d), private forests are exempted in reckoning or determining the ceiling area of a holder of the lands. Although material was placed before the Board to show that the forest lands were converted into plantation before 1.1.1970, the Taluk Land Board rejected the plea of the respondents as to the conversion into plantations before 1.1.1970.

Under Section 81(1)(d)&(e), both private forests and plantations are exempted. Assuming that the respondents failed to establish that the forest lands were not converted into plantation before 1.1.1970, yet it did not affect their claim for exemption as the lands continued to be private forests. It is not the case of the appellants that the exempted category of lands were converted into non-exempted category of lands so as to apply Section 87 of the Act. It is not the case where exemption available to private forest ceased. For the purpose of reckoning the ceiling area of the holder of the lands, the position existing as on 1.4.1964 is to be taken into consideration subject to Section 87 of the Act.

The Kerala High Court has considered this aspect of the matter in earlier decisions. In Aleykutty John v. Taluk Land Board [1981 KLT 731] in paras 7 and 8 of the said judgment, it is held thus:- "7. S.82(4) states that where after the commencement of this Act, any class of land specified in Schedule II has been converted into any other class of land specified in that Schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion.

The date of the commencement of the Act for the purpose of S. 84 is undoubtedly 1.4.1964. This has been made clear by this Court in Ramunni Nair v. The State of Kerala (1976 K.L.T. 732) and by the Supreme Court in Mathew & Others v. Taluk Land Board (1979 KLT. 601). The date of the commencement of the Act i.e. 1.4.1964 is significant in two ways; that is, the nature of the land on a particular day and the conversion after that day. S. 82(4) will be attracted only if the land was of the nature specified in Schedule II on 1.4.1964. Again, only where the conversion was made after 1.4.1964, this provision will be attracted. In other words, the meaning of this provision would be clearly brought out if we read the provision in the following way:

"Where any class of land of the nature specified in Schedule II at the commencement of the Act i.e. on 1.4.1964 has been, after the commencement of this Act, i.e. 1.4.1964, converted into any other class of land specified in that schedule or into a plantation, the extent of land liable to be surrendered by a person owning or holding such land shall be determined without taking into consideration such conversion." If the provision is read in the above manner, it will bring out correctly the legislative meaning. The time element is relevant vis-a-vis conversion as well as the nature of the property prior to conversion. On 1.4.1964 the land must be of the class specified in Schedule II. After 1.4.1964 it must be converted into any other class of land specified in Schedule II or a plantation. It is only where both these conditions are satisfied that the operation of the provision would be attracted. If one of these conditions is not satisfied, the provision will not have any

operation at all.

8. The above proposition can be explained in the following way. One of the conditions is that the conversion must be after the commencement of the Act, viz. 1.4.1964. Of course, if the conversion is after 1.1.1970, this provision will not be applicable though under the general scheme of Chapter III such a conversion will have to be ignored or in appropriate cases it may attract the operation of S. 87 of the Act. Then there is the other condition; the land must be a class of land specified in Schedule II on 1.4.1964. If the land was a house site on 1.4.1964 and ceased to be house site and has become dry land thereafter, this condition is not fulfilled and S.82(4) will not be attracted. If the land was plantation on 1.4.1964 and has been converted into dry land or cocoanut garden thereafter (but before 1.1.70), this condition is not fulfilled. That is because on 1.4.1964 the land was not of the class specified in Schedule II. If this be the proper way to understand the scope of S. 82(4), and I have no doubt that it is so, it would follow that whenever it is found that land is exempt by reason of its falling within one or the other of the clauses in S.81(1) of the Act (I am not taking into consideration clauses (b), (h) and (k) which are not permanent exemptions or which are only exemptions of a temporary nature) it cannot be taken into account for the purpose of determining the ceiling area under Section 85 whatever may have happened to its nature after 1.4.1964 and before 1.1.1970 and even thereafter, subject of course to S.87. In this view, the fact that land which was private forest on 1.4.1969 has been converted into dry land in 1965 and thereafter into plantation in 1969 will not matter at all and the land continues to be exempted for the purpose of S.85 of the Act." The same High Court yet in another case in Joseph Thomas v. State of Kerala [1987 (2) KLT 273] has taken the view that "On a plain reading of S.81, it is clear that "Private Forests" belong to that category of land which enjoys the exemption without any restriction. If that be so, 'private forest' converted into rubber plantation, although the conversion took place after 1.4.1964, requires to be excluded from the accounts of the declarant because the land converted belongs to the category of lands permanently exempted from the purview of the ceiling provisions contained in KLR Act." Thus, this being the legal position, in the absence of any material that private forests were converted into non-exempted category of lands, it was not permissible to the Taluk Land Board to deny the benefit of exemption claimed by the respondents.

Hence, the High Court was right in upsetting the order of the Taluk Land Board.

The alternative argument advanced on behalf of the appellants that the lands in question vested in the State by virtue of the provisions of the Kerala Private Forests (Vesting and Assignment) Act, 1971 does not help the appellants as on this front also the State had failed in the proceedings taken up under the said Act. The Forest Tribunal by its order dated 21.7.1978 in O.A. Nos. 81/1986, 82/1976, 83/1976 and 84/1976 had held that the land did not vest in the Government except some rocky and other portions stated in the said order. Appeal filed before the High Court by the State of Kerala challenging the said order of the Forest Tribunal was also dismissed. Further, even the S.L.P. filed in this regard against the order of the High Court passed in the appeal was dismissed. In this view, the argument that the lands in question vested in the State cannot be accepted.

What remains to be considered is whether the High Court committed an error of jurisdiction in passing the impugned order when the Taluk Land Board did not consider the question of law erroneously or failed to consider any question of law. From the facts found and looking to the provisions of law and the discussion made in the impugned order of the High Court, it is clear that the Taluk Land Board decided the question of law erroneously in taking the view that the benefit of exemption available to private forests could be denied on account of non- conversion of those lands into plantation before 1.1.1970. As already discussed above, denying the benefit of exemption of the lands being private forests when they were not converted into category of non-exempted lands was a clear case of deciding the question of law erroneously. This apart, as held by this Court in dealing with the scope of the provision of Section 103 of the Act in Baby vs. Travancore Devaswom Board and Ors. [1998 (8) SCC 310], the High Court had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents. Para 6 of the said judgment reads:

"But that, in our opinion, is not the end of the matter. The High Court had still powers under Article 227 of the Constitution of India to quash the orders passed by the tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the powers of revision under Section 103 of the Act. In that view of the matter, the High Court rightly set aside the orders of the tribunals. We do not, therefore, interfere under Article 136 of the Constitution of India. The appeals fail and are dismissed." The decision of this Court in Kerala Ayurveda Vydyasala Ltd. reliance is placed on behalf of the appellants in support of their contention as to the limited jurisdiction of the High Court under Section 103 of the Act, in our view, does not help them. The said decision was on the facts of that case. That was a case where the learned Single Judge of the High Court did not record a finding that the Tribunal or the appellate authority has either decided a question of law or has failed to decide the question of law. But a perusal of the impugned judgment in the present case shows that the High Court has recorded that the Taluk Land Board decided the question of law erroneously. Even otherwise, in the light of the decision in Baby vs. Travancore Devaswom Board and Ors. (supra) the High Court could exercise powers under Section Article 227 of the Constitution of India.

Having regard to all aspects and in the light of what is stated above, we decline to interfere with the impugned orders.

Consequently, the appeals are dismissed. Parties to bear their costs.