SUPREME COURT OF INDIA

Kumari Varma

Vs.

State of Kerala

C.A.No.3371 with 3372 of 2006

(S. B. Sinha and P. K. Balasubramanyan, JJ.)

04.08.2006

JUDGEMENT

P. K. BALASUBRAMANYAN, J.:-

1. Leave granted.

2. These are cross appeals by the applicant before the Forest Tribunal and the respondent therein, the State of Kerala. The appeals arise from the final adjudication made in O.A. No.90 of 1979 filed by the applicant therein claiming exemption from vesting under the Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short "the Vesting Act") in respect of the land scheduled to that application. Going by the application it will be seen that the applicant claimed that the lands in RS No.292/1A of Naduvil Village belonging to the applicant, was a cardamom plantation before the appointed day, namely, 10.05.1971; that the forest authorities are proceeding as if the entire land had vested in the State under the Vesting Act and the application scheduled land was liable to be declared as not having vested in the State, as per the Vesting Act. The application was resisted by the State and the forest authorities. But, it was stated that a portion of the land was planted with

cardamom. The land was part of what was called the Koliyat Estate consisting of about 700 acres and a substantial part of the Estate fell within the State of Karnataka when the reorganisation of States took place with effect from 1.11.1956. According to the applicant the area that fell within the State of Kerala was 348 acres and the whole of it had been planted with cardamom prior to the appointed day and it was on that basis that the application was filed under Section 8 of the Vesting Act.

3. The application was made only sometime in September 1979. The application was dismissed by the Forest Tribunal on the ground that it was barred by limitation, the vesting having taken place on 10.5.1971. That dismissal was set aside in appeal by the High Court which remanded the Application O.A. No.90 of 1979 to the tribunal for an investigation and disposal on merits in accordance with law. Some evidence was adduced including the filing of a report by a Commissioner. By order dated 22.3.1990, the tribunal dismissed the application on a finding that the land was not put under cultivation prior to the appointed day, namely, 10.5.1971 and that it was a forest to which The Madras Preservation of Private Forests Act applied and hence it was a forest in terms of the Act and it had vested in the State under the Vesting Act. This order was again challenged by the applicant before the High Court in M.F.A. No.658 of 1990. The High Court took the view that what was called for was a proper identification of the land which had been planted with cardamom prior to the appointed day since it would be seen from the pleadings that some portion of the land was cultivated with cardamom even going by the objections filed by the State and the forest officials before the forest tribunal. After setting aside the commission report and plan that was marked in evidence, the High Court directed the Forest Tribunal to issue a fresh commission, to have the property identified with particular reference to the portions, if any, in which cardamom was planted prior to the appointed day and to dispose of the application afresh. Both sides were given opportunity to adduce evidence.

4. Pursuant to this order of remand, a commission was issued and the commissioner after inspection reported that an extent of 100.05 acres (wrongly added up as 99.05 acres) was found to be planted with cardamom, the planting having been done about 25 years prior to the date of his visit. He also identified two structures and a platform existing in the property. He reported that the rest of the property is seen to be forest since it had forest tree growth. On behalf of the applicant some further evidence was adduced; but on behalf of the State, nothing much was done before the Tribunal. The Forest Tribunal made a local inspection with notice to both sides and in their presence so as to enable it to better appreciate the evidence on both sides. It prepared a note of inspection and gave copies of the same to both sides. Thereafter on an appreciation of the evidence in the case, the Forest Tribunal came to the conclusion that an extent of 100.05 acres demarcated as plots A, B and C in the sketch prepared by the Commissioner could be held to be planted with cardamom prior to the appointed day and hence excluded from vesting in the State under the Vesting Act. Though the applicant had not made any claim for exemption for ancillary purposes, the Forest Tribunal, taking note of the two constructions existing in the property along with the platform which was said to be used for drying cardamom, excluded an extent of 9.95 acres of land for that purpose. Thus, the Forest Tribunal passed an order holding that 110 acres of land were excluded from vesting under the Vesting Act and granted relief to the applicant on that basis. The Forest Tribunal clearly identified the land that had not vested, in its order by indicating that the area of 110 acres is comprised in plots A, B and C as shown in the exhibit C-3 plan and described in Ex. C-4 report. It ordered that Ex. C-3

plan and C-4 report should form part of its order. Feeling aggrieved, both sides filed appeals before the High Court. The High Court, on a consideration of the relevant materials, including the minutes of some meetings of the standing committee under a scheme formulated, relied upon by the applicant, came to the conclusion that the Forest Tribunal was right in accepting the case of the applicant only to the extent of 100.05 acres as demarcated by the commissioner in Exhibit C-3 plan and was justified in exempting 9.95 acres for ancillary purposes though no such specific claim was put forward by the applicant in the original application. Thus the order of the Forest Tribunal was confirmed and the appeals were dismissed. Feeling aggrieved by this decision of the High Court, both sides have approached this Court with these appeals by special leave.

5. On behalf of the applicant it was contended that the minutes of the standing committee chaired by the District Collector to ensure proper utilisation of the loan taken by the applicant from the Central Bank of India through the Agricultural Refinance Corporation of India clearly showed that the entire 348 acres of land that fell within the State of Kerala had been cultivated by the appointed day and in that situation, the Forest Tribunal and the High Court ought to have excluded or exempted the entire 348 acres from vesting. He submitted that the minutes were more or less official records and of undoubted authenticity and based on them, supported by the evidence of PW1, the claim ought to have been upheld in full. On behalf of the State it was contended that the minutes relied on did not establish the claim, that after the order of remand passed by the High Court on the second occasion, it was more or less a case of identifying the extent in which cardamom had been planted by the applicant prior to the appointed day and the only reliable material available, namely, the report of the commissioner and the plan prepared by him showed, that the plantation was confined to plots A, B and C in Exhibit C-3 plan. On behalf of the State it was contended that even the cardamom plants noticed in Plots A, B and C were not planted prior to the appointed day but they were of sporadic growth and the Forest Tribunal was not justified in excluding or exempting that extent from vesting. Counsel also pointed out that there was not even a claim for exclusion of 9.95 acres on the ground that the land was needed for being used for ancillary purposes and in this situation, the tribunal clearly erred in excluding that extent and the High Court was not justified in confirming that part of the order of the tribunal in any event. He also submitted that the minutes relied on do not establish that there was actual planting of cardamom in the entire extent before the appointed day and the Forest Tribunal and the High Court have rightly not relied on them to uphold the claim of the applicant.

6. We have given our anxious consideration to the arguments raised. The so called minutes of the standing committee do not enable the applicant to establish that the entire extent of 348 acres that allegedly fell in the State of Kerala had actually been planted prior to the appointed day. In fact, the applicant could not show what exactly was the extent that fell within the State of Kerala and in respect of which the plantation activity was carried on prior to the appointed day. The Forest Tribunal and the High Court cannot be said to have erred in refusing to uphold the claim of the applicant based on the minutes. In the second order of remand by the High Court what was emphasised was that even in the pleadings of the State and the forest authorities it was stated that some extent had been planted and the matter was remanded for a fresh consideration mainly to identify that extent which had been planted. The High Court specifically set aside the commissioner's plan and report that were available at that stage and directed the Forest Tribunal to issue a fresh commission for identifying the area that had been planted with cardamom. After the

remand by the High Court, a commission was taken out and the commissioner clearly reported that the plantation was confined to plots A, B and C in Ex.C-3 plan. He also indicated the extent of those plots in the plan he prepared. He gave reasons which led him to infer that the plantation found in those plots were plantations effected and could not be considered sporadic growth as sought to be contended by the forest authorities. He also reported that the rest of the area was full of forest tree growth. In spite of opportunity available, the claimant did not examine the commissioner to demonstrate that the report about the actual extent in which old plantation was found, was not correct. There was therefore no justifiable reason for the Forest Tribunal and the High Court to discard the plan and the report. Though a decision cannot be based on a local inspection, the Forest Tribunal did make a local inspection so as to appreciate the evidence better and the Forest Tribunal found no reason to discard the report of the commissioner or the identification of the plots made by him. Except the minutes relied on, and some bills for purchase of seedlings, the applicant could not adduce any evidence to show that more area was actually cultivated or that the identification made by the commissioner of the plots which contained cardamom plants aged 20 to 25 years, was in any manner, not correct or that the identification was unacceptable. It was in this situation that the Forest Tribunal came to the conclusion that the extent of 100.05 acres was liable to be exempted as cardamom plantation prior to the appointed day and that an extent of 9.95 acres was also to be excluded or exempted on the basis that it was required for purposes ancillary to the plantation. Of course, as rightly contended by counsel appearing on behalf of the State, there was no specific claim for exemption on the ground of land needed for purposes ancillary to the purpose of the plantation, but taking note of the existence of the buildings therein and the platform referred to, in the report of the commissioner, the tribunal thought it appropriate to exclude an extent of 9.95 acres also on that ground, even though there was no specific claim in that regard. But then, the claim of the applicant was that the entire 348 acres of land was to be excluded. It was in that situation that the High Court also chose not to interfere with that part of the order of the tribunal.

7. Thus, on the whole, we are not satisfied that there is any justification in interfering with the decision of the Forest Tribunal, as confirmed by the High Court. The property exempted had been clearly identified by the commissioner in the plan which had been appended to the order of the Forest Tribunal and the extent of the plots had been specifically given. It is, therefore, seen that the identity of the excluded lands is also clear and there is no occasion for attempting any further identification at any later stage. The order now passed thus suffers from no infirmity and there could be no dispute about the area excluded or exempted. Hence, no interference is called for on that ground also.

8. We, thus, confirm the decision of the High Court, and dismiss these appeals. In the circumstances of the case, we direct the parties to suffer their respective costs.

Appeal dismissed.