SUPREME COURT OF INDIA

Malayalam Plantations Ltd.

Vs.

State of Kerala

C.A.No.309 of 2003

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

09.11.2010

JUDGMENT

P.Sathasivam, J.

1. These appeals are directed against the judgment and decree dated 31.05.2002 passed by the High Court of Kerala at Ernakulam in MFA No. 537 of 1995 and Cross Appeal whereby the High Court modified the order dated 13.03.1979 of the Forest Tribunal, Kozhikode. Malayalam Plantations Ltd. has filed C.A. No. 309 of 2003 and the State of Kerala preferred C.A. No. 310 of 2003. Since both the appeals arise from the common order of the High Court, they are being disposed of by this common judgment. For convenience, we shall refer Malayalam Plantations Ltd. as appellant and the State of Kerala as Respondent.

Brief facts:

2. (a) The appellant is a Limited Company, which owns 5 estates in South Wayanad Taluk in Kerala. It engaged principally in the cultivation of Tea, Coffee, Cocoa, Rubber, Cardamom and Cinnamon. The Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as `the Act') came into force with 10.05.1971 as the appointed day providing for vesting of all private forests in the State of Kerala. An area of 5131 hectares of land which was in the possession of the appellant's Wayanad Estates in Wayanad District of Kerala State was deemed to be vested under the said Act.

> "(b) The appellant filed five applications being OA Nos. 3, 4, 5, 6 and 26 of 1975 before the Forest Tribunal, Kozhikode in respect of its 5 Wayanad Estates challenging the vesting of 2588 hectares out of the 5131 hectares which were either planted with eucalyptus by the appellant prior to the vesting or were utilized for the purpose of fuel requirement for its factory and for the use of its employees. No application was filed for the balance 2543 hectares as it formed part of the forest and finally vested with the Government.

(c) By a common order dated 13.03.1979, the Forest Tribunal, Kozhikode exempted the entire 2588 hectares from the vesting provisions of the Act.

(d) Aggrieved by the order of the Forest Tribunal, the State of Kerala filed appeals being MFA Nos. 264-268 of 1979 before the High Court of Kerala. The appellant also filed appeals being MFA Nos. 209-214 of 1979 claiming that exemption was granted only on the ground of estoppel on account of collection of land tax for the areas involved even after the vesting and other grounds urged was not accepted by the Tribunal.

(e) A Full Bench of the High Court, by its judgment dated 29.09.1980, while allowing the appeals filed by the Government thereby reversing the order passed by the Tribunal upheld the exemption for the roads and buildings.

(f) Challenging the order of the Full Bench, the appellant filed 5 Appeals being C.A. Nos. 557-561 of 1981 before this Court. The State Government also preferred appeals being Civil Appeal Nos. 1214-1218 of 1981. By a judgment dated 24.08.1992, this Court set aside the judgment of the Kerala High Court and remanded the O.A. Nos. 3, 4, 5, 6 and 26 of 1975 to the Forest Tribunal, Kozhikode with a direction to determine and exempt the extent of land required by the appellant for the purpose of growing trees for fuel requirement i.e. firewood purposes for its factory as well as for the employees working in the estates.

(g) The Tribunal, after hearing both the parties, by a common judgment dated 15.12.1994, exempted and excluded 1400 hectares of land from the vesting provisions of the Act as areas required for firewood purposes.

(h) When the appellant was pursuing with the authorities for implementing the order of the Tribunal, the State of Kerala filed MFA No. 537 of 1995 before the High Court, challenging the judgment dated 15.12.1994 passed by the Forest Tribunal, Kozhikode. On 02.07.1995, a Cross Appeal was filed by the appellant in the above said appeal of the Government.

(i) A Division Bench of the High Court of Kerala, by its impugned judgment dated 31.05.2002 exempted 730.58 hectares of eucalyptus lands from vesting but held that no forest areas could be exempted for the purpose of firewood in view of the decision of this Court in State of Kerala and Another vs. Pullengode Rubber Produce Co. Ltd. (1999) 6 SCC 92 holding that such areas should not be considered for exemption in the absence of proof that they were actually used in 1971. The Government's appeal was partially allowed and the appellant's Cross Appeal claiming the whole area was dismissed. Since the Cross Appeal filed by the appellant is dismissed and appeal filed by the State was allowed by the Division Bench by the impugned judgment, both the appellant and the State Government have filed the above appeals.

3. Heard Mr. L. Nageswara Rao, learned senior counsel for the Malayalam Plantations Ltd and Mr. Jayadeep Gupta, learned senior counsel for the State of Kerala.

4. Mr. L.N. Rao, after taking us through earlier remand order of this Court dated 24.08.1992 and the impugned judgment of the High Court dated 31.05.2002 submitted that the High Court erred in not appreciating the fact that the remand order dated 24.08.1992 only required the Tribunal to ascertain the area for the purpose of exemption commensurate with the area of plantation and fuel requirement of the appellant as on 10.05.1971. He also pointed out that the High Court was justified in reducing the limit of the exempted land to 730.58 hectares only on the basis of the decision in Pullengode Rubber Produce (supra). According to him, it has no application to the facts of the appellant's case. On the other hand, Mr. Gupta, learned senior counsel for the State by drawing our attention to various materials in the form of oral and documentary evidence submitted that the High Court was not justified in granting exemption of 730.58 hectares of land in favour of the appellant Company. He also pointed out that though the State Government has filed separate application for reception of material documents as additional evidence by filing application under Order 41 Rule 27, Code of Civil Procedure (in short `CPC'), the High Court while deciding the Regular First Appeal failed to consider the same though adverted to in the course of discussion.

5 Before considering the additional materials sought to be produced at the appellate stage, namely, before the High Court, by the State as well as Malayalam Plantations, it is useful to refer the previous decision of this Court in *Pioneer Rubber Plantation, Nilambur, Kerala State vs. State of Kerala Anr.*[1]. This Court, after adverting to the definition of `private forests' contained in clause (f) of Section 2 of the Act and the claim of both the parties remanded the matter with the following conclusion:-

> "14. The entire purpose of exclusion of the items set out in the foregoing paragraph from the scope of the definition of `private forest' seems to be not to hinder or create any difficulty in the functioning of plantations of tea, coffee, cocoa, rubber, cardamom and cinnamon as viable commercial enterprises. In these circumstances, it appears reasonable that the minimum area required for the purpose of growing firewood trees for fuel in the factories and smoke- houses as well as for supply to the employees of the estates for their domestic use should be excluded from the definition of the term `private forest'. We must, however, emphasize that the burden is on the appellants to show that it has been their practice to supply firewood to the employees of the estates for their domestic use. As for the firewood required for the factories and smoke-houses in the estates, there seems to be no doubt about the claim of the appellants.
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> 15. However, where evidence had been led to show that firewood was steadily and adequately available in the market at reasonable rates for use of the factories or smoke-houses as well as for supply to the workers of a particular plantation, in such a case no land could be excluded from the definition of the private forest on the ground that it was required for growing firewood trees for the purpose of the estate as well as

for the workers. That, however, is not the position in the case before us. On the pleadings and evidence before us, we do not consider that any further inquiry on the point is necessary.

16. In our view, Section 2(f)(1)(i)(B) should be so understood as to grant exemption in respect of lands on which firewood trees are necessary to be grown for steady supply of a reasonable quantity of fuel to the employees as well as to the smoke-houses or factories in the estates. In the absence of satisfactory evidence to show that firewood is adequately and steadily available in the market at reasonable prices, such lands, in our view, qualify for exemption under Section 2(f)(1)(i)(B) of the Act as "lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market". This principle, in our view, must hold good in relation to all crops mentioned under the aforesaid provision. The Tribunal shall merely ascertain as to what is the minimum reasonable area of land required for growing firewood trees to be used as fuel in the factories or smoke-houses and for supply to the employees for their domestic purposes, if such supply to the latter is proved, and to exclude such area in demarcating private forest.

17. What exactly is the area which can be reasonably regarded as required for growing firewood trees for the aforesaid purposes so as to qualify for exemption from vesting under the Act is a question of fact which has to be determined with reference to various factors. Some of these factors are mentioned by the larger Bench of the High Court in the following words:

"32. The next point is what area of the jungle land could be excluded on the above basis? A precise assessment will almost be impossible, because the quantum of firewood needed for smoking purposes will depend on the volume of rubber to be processed, the yield of the trees, the quality of the wood and other factors. The best solution seems to be to make an approximate assessment as was made by the Taluk Land Board in Ammad case."

18. We do not express any final view as to what factors are relevant in determining the reasonable area that qualifies for exemption under Section 2(f)(1)(i)(B) of the Act. That is a matter for consideration by the concerned forest tribunals.

19. In the circumstances, the judgments of the Kerala High Court impugned in these appeals are set aside and the cases are remanded to the appropriate forest tribunals: namely, the Forest Tribunal, Manjeri with respect to Civil Appeal Nos. 106-107 of 1982; the Forest Tribunal, Palghat with respect to Civil Appeal No. 2050 of 1981; and the Forest Tribunal, Calicut with respect to Civil Appeal Nos. 557-61 and 1214- 18 of 1981. The Tribunals shall determine the extent of the lands required, as aforesaid, for fuel for the smoke-houses or factories as well as for the employees in the estates.”

6. In view of the directions in the remand order, we are of the view that the High Court is not justified in relying on the earlier decision of this Court in Pullengode Rubber Produce (supra). As rightly pointed by Mr. Rao that after the order of remand with a specific direction, the same has no application to the facts of the present case. To this extent, we clarify the same.

7. It is not in dispute that when the appeals of the State as well as of the Malayalam Plantations were pending before the High Court, the State filed CMP No. 8793 of 2001 for accepting Annexures A1 to A21 in support of their claim stating that at the relevant time, the Company is in possession of an extent of 1199.3579 hectares of land other than plantation for ancillary purposes In the counter affidavit filed by the Plantations Company, the Company put forth their case and produced Annexure R1 in support of their stand claiming more extent of land for the use of their employees.

8. Mr. Gupta, learned senior counsel for the State by taking us through the various documents filed in the said CMP demonstrated that if we consider the contents of the same, the entire claim of the Malayalam Plantations is to be rejected. He further submitted that in view of the fact that Order 41 Rule 27 of CPC enables the parties to place documents in support of their claim as additional evidence, the High Court though adverted to did not consider the same and no order was passed in the said CMP No. 8793 of 2001. Mr. Rao pointed out that if this Court scrutinizes each and every document, the claim of the State is to be rejected in toto and the stand of the appellant is to be accepted.

9. We are not inclined to go into the validity or acceptability of those documents/materials filed by both sides before the High Court. Order 41 of CPC speaks about procedure in respect of disposal of appeals from original decree. Among various rules, we are concerned about Rule 27 which reads as under:-

> "27. Production of additional evidence in Appellate Court.--(a) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—
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> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
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> (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

10. In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 of CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in *Jatinder Singh & Anr. Vs. Mehar Singh & Ors.*[2] *and Shyam Gopal Bindal and Others vs. Land Acquisition Officer and Another*[3].

11. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.

12. Adducing additional evidence is in the interest of justice. Evidence relating to subsequent happening or events which are relevant for disposal of the appeal, however, it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary to the requirements of Order 41 Rule 27 of CPC. Additional evidence cannot be permitted at the Appellate stage in order to enable other party to remove certain lacunae present in that case.

13. In the light of the separate application filed under Order 41 Rule 27 of CPC for reception of additional evidence by both sides, it is for the High Court to consider and take a decision one way or other as to the applicability of the same and decide the appeal with reference to the said conclusion. In this view of the matter, we refrain from going into the merits of the materials placed by both sides and it is for the High Court to consider and take a decision one way or other as per the mandate of the said provision.

14. For the reasons aforesaid, the impugned judgment of the High Court is set aside. We make it clear that we have not gone into the merits as to whether application for reception of additional evidence under Order 41 Rule 27 of the CPC should be allowed or not, which shall be decided by the High Court in accordance with law. We also make it clear that we have not gone into the merits of the claim made by both parties except the reasons indicated in the earlier paragraphs. Considering the facts and circumstances of the case, more particularly, the issue is pending from 1975, we request the High Court to restore MFA No. 537 of 1995 and Cross Appeal on its file and dispose of the same at an early date preferably

within a period of six months from the date of receipt of copy of this judgment. Civil Appeals are allowed to the extent indicated above, however, with no order as to costs.

[1]*(1992) 4 SCC 175*
[2]*AIR 2009 SC 354*
[3]*(2010) 2 SCC 316*