

State of Kerala

v.

Abdul Ali

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE KURIAN JOSEPH

Special Leave to Petition (Civil) No. 13802 Of 2006 | 10-04-2013

Kurian Joseph, J.

1. Whether the land which is not a private forest as defined under the Kerala Private Forests (Vesting and Assignment) Act, 1971 can be brought under the teeth of The Kerala Preservation of Trees Act, 1986, is the moot question arising for consideration in these cases.

2. The Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as “the Vesting and Assignment Act”) was enacted to provide for the vesting in the Government of private forests in the State of Kerala and for the assignment thereof to agriculturists and agricultural labourers for cultivation. It is stated in the preamble that private forests in the State of Kerala are agricultural lands and that the Government wanted to utilize such agricultural lands so as to increase agricultural production and promote welfare of the agricultural production in the State. It may be noted that private forests were exempted from the purview of The Kerala Land Reforms Act, 1963, in the matter of ceiling.

3. ‘Private forest’ has been defined under S.2(f) of the Vesting and Assignment Act. The provision reads as follows:

“2(f) “private forest” means –

(1) in relation to the Malabar District referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) -

(i) any land to which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding –

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1) of 1964).

(B) lands 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.

Explanation. –

Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used purposes ancillary to the cultivation of such crops;

(C) lands which are principally cultivated with cashew or other fruit (bearing trees or are principally cultivated and any other agricultural crop, and

(D) sites of buildings and land appurtenant to and necessary for the convenient enjoyment or use of such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala any forest not owned by the Government including waste lands which are enclaves within wooded areas.

Explanation. –

For the purpose of this clause, a land shall be deemed to be waste land notwithstanding the existence thereon of scattered trees or shrubs.”

(emphasis supplied)

4. Section 3 of the Vesting and Assignment Act provides for the vesting of the private forests in the Government. In this Act, 10th May, 1971 has been noted as “appointed day.” The provision reads as follows:

“3. Private forests to vest in Government . –

(1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-section (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished.

(2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.

Explanation. –

For the purposes of this sub-section, ‘cultivation’ includes cultivation of trees or plants of any species.

(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 another 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 Section 82 of the said Act.

(4) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or sub-section (3) be deemed to be lands to which Chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be ‘other dry lands’ specified in Schedule II to the said Act.”

(emphasis supplied).

5. The Kerala Preservation of Trees Act, 1986 (hereinafter referred as “the Preservation of Trees Act”) was introduced in order to provide for preservation of trees in the State of Kerala.

The Statement of Objects and Reasons for introducing the Preservation of Trees Act, to the extent relevant, reads as follows:

“Indiscriminate felling and destruction of trees in the State have been brought to the notice of Government and it is feared that it may result in quick denudation of the forest growth and consequent soil erosion, landslides, flood etc. This is also detrimental to ecological balance. Of late, felling of trees and destruction of flora and fauna are reported to be on the increase. As there was no effective law to prevent this tendency, it was decided to enact a law for imposing restrictions on the cutting of trees in the State and regulating cultivation in the hill areas of the State.”

6. Section 2(e) of the Preservation of Trees Act has defined a “tree”. To quote:

“(e) “tree” means any of the following species of trees, namely:- - Sandalwood (*Santalum album*). Teak (*Tectona grandis*). Rosewood (*Dalbergia latifolia*). Irul (*Xylia Xylocarpa*). Thempavu (*Terminalia tomentosa*), Kampakam (*Hopea parviflora*), Chempakam (*Michelia Chempaca*) Chadachi (*Grewia tilliaefolia*), Chandana vempu (*Cedrela toona*), Cheeni (*Tetrameles nudiflora*.)”

(emphasis supplied)

7. Section 4 of the Preservation of Trees Act provides for restriction regarding cutting, etc., of trees. The provision reads as follows:

“4. Restriction regarding cutting etc., of trees. –

(1) No person shall, without the previous permission in writing of the authorized officer cut, uproot or burn, or cause to be cut, uprooted or burnt any tree.

(2) The permission under sub-section (1) shall not be refused if –

(a) the tree constitutes a danger to life or property, or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorized officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees, or

(c) such cutting is to enable the owner of the land in which the trees stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damages, the branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No persons shall, without the previous permission in writing of the authorized officer, destroy any plant or any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of any residential building:

Provided that where such compound exceeds one hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of one hectare immediately surrounding the residential building.

(6) Notwithstanding anything contained in this section or in any judgment, decree or order of any Court, the owner of any land shall have the right to cut or cause to be cut any tree, other than a tree as defined in clause (e) of Section 2, standing on such land, without obtaining a permission under this section.”

(emphasis supplied)

8. Section 5 of the Preservation of Trees Act provides for total prohibition of cutting of trees in the notified areas. The provision reads as follows:

“5. Prohibition of cutting of tree in notified areas. –

(1) Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court. Tribunal or other authority, or in any agreement or other arrangement, Government may, with a view to preserving the tree growth in private

forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette direct that no tree standing in any such area specified in the notification shall be cut, uprooted, burnt or otherwise destroyed except on the ground that -

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or withfallen:

Provided the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(2) No person shall, without the previous permission in writing of the authorized officer, cut, uproot, burn or otherwise destroy or cause to be cut, uprooted, burnt or otherwise destroyed any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation I. –

For the purpose of this section, the term “tree” shall include any species of tree.

Explanation II. –

For the purposes of sub-section (1), the expression “private forest” means any land which immediately before the 10th day of May, 1971, was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971.”

(emphasis supplied)

9. A bare perusal of the provisions would clearly show that while the Vesting and Assignment Act is intended for vesting of private forests as on 10.5.1971 in the Government and, thereafter, for distribution of the same to the agricultural labourers whereas the Preservation of Trees Act is meant for regulating destruction of certain species of tree growth and for total prohibition of destruction of all species of tree growth in certain notified areas.

10. In the instant case, we are concerned with the issue relating to total prohibition. The crux of the arguments advanced on behalf of the land owners and virtually upheld by the High Court, is that their lands having been taken and declared to be not covered by the Vesting and Assignment Act and, hence, no notification on total prohibition of felling or uprooting of trees can be validly issued by the State. High Court had upheld that contention and, thus aggrieved, the State has come up in Appeal.

11. 23.33 acres of land belonging to the 1st respondent herein was finally declared to be not covered by the provisions of the Vesting Assignment Act as per the Division Bench decision of the High Court of Kerala dated 04/09/1981 in M.F.A.No. 163/1977. (Annexure – P1 in SLP (C) No. 13802/2006). It was declared by the Court that:

“23.33 acres would be outside the purview of vesting. It is not to be taken as land to be vested.”

12. Despite the declaration, an attempt was made by the Government as per Notification dated 08.07.1977 notifying that certain land out of the 23.33 acres would vest in the Government. That was challenged by the 1st respondent in Original Petition No. 68671/1991 leading to Annexure-R1 Judgment dated 15.03.2000. That Notification was quashed.

13. Both Annexure-P1-Judgment in M.F.A.No. 163/1977 and Original Petition No. 6867/1991 have become final.

14. While restoring the land, a Notification under S.5 dated 09.01.2001 of the Preservation of Trees Act was also issued prohibiting total felling of trees in the area. That was challenged by the respondent in Original Petition No. 3252/2003 before the High Court which was disposed of by a Division Bench of the Court as per the impugned Judgment dated 31.3.2006 (Reported in 2006 (2) KLT SN 96 (C.No.118) – Arya Vaidya Sala v. State of Kerala). The High Court has taken the view that:

“There is a clear finding by the Division Bench in M.F.A.No. 163 of 1977 that 23.33 acres of land would be outside the purview of the vesting and therefore only those land which falls within the definition of the Vesting Act, 1971 would fall within sub-section (1) of S.5 of the Kerala Preservation Trees Act. In such circumstances, we are of the view Notification Ext.P2 issued by the Government cannot be sustained so far as plots VFC 130, 132 and 134 of Kumaranallor Village, Kozhikkode Taluk owned by the petitioner are concerned.”

(emphasis supplied)

15. Special Leave Petition (C) No. 1380/2007 arises from the judgment of the Division Bench of the High Court dated 07.03.2006 in Writ Appeal No. 1449/2003. In that case also, the Division Bench has taken the view that land covered by notification issued under S.5 of the Preservation of Trees Act was not a private forest or a cardamom plantation and, hence, it is impermissible for the State to issue a notification under S.5.

16. Special Leave Petition (C) No. 26236/2008 arises from Judgment dated 19.01.2007 and the High Court followed the impugned judgment in Special Leave Petition (C) No. 13802/2006.

17. On behalf of the State of Kerala, it is contended that the Kerala Preservation of Trees Act has to be purposively interpreted. A notification issued under S.5 of the Act for prohibiting the destruction of trees has an overriding effect on all other enactments, judgments, decrees, etc. Still further, it is contended that S.5 is applicable to all the private forests as they stood before 10.5.1971.

18. Learned counsel appearing for the respondents contended that the State is not justified in raking up such issues before this Court since those had already attained finality before the High Court in other proceedings. It is submitted that a notification under S.5 for total prohibition of destruction of all species of trees can be issued only in respect of private forest or cardamom hills reserve or an area cultivated with cardamom.

19. In the cases before us, there is no case for the State that the disputed lands are part of the cardamom hills reserve or there is any cardamom cultivation. Thus, the question is whether the lands is a private forest or not.

20. Explanation II under S.5 of the Preservation of Trees Act is a piece of legislation by reference. The definition of “private forest” under the Vesting and Assignment Act is to be taken for private forest under S.5 of the Preservation of Trees Act.

21. Section 2(f) of the Vesting and Assignment has defined “private forest” to mean ‘any land coming under the purview of The Madras Preservation of Private Forests Act, 1949; any forest not owned by the Government and not covered by The Madras Preservation of Private Forest Act, 1949; and any remaining forest area not owned by Government including waste lands which are enclaves within wooded areas’.

22. However, there are four exclusion under S.2(f)(1)(i) of the Act and they are:

(1) The lands which are gardens or nilams as defined in the Kerala Land reforms Act, 1963.

(2) Lands which are principally cultivating tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for ancillary purpose to such cultivation and for preparation of the products for market.

(3) Lands which are principally cultivated with cashew or other fruit bearing trees or any other agricultural crop and

(4) Building sites and lands appurtenant for convenient enjoyment of such buildings.

23. It is not in dispute that the disputed lands in all these three cases were in the erstwhile Malabar District referred to in sub-section (2) of S.5 of The State Reorganization Act, 1956 where The Madras Preservation of Private Forests Act, 1949 (hereinafter referred to as “The Madras Preservation of Private Forests Act”) was applicable. The said legislation was enacted in 1949 in order to:

“prevent the indiscriminate destruction of private forests and interference with customary and prescriptive rights therein and for certain other purposes.”

24. Section 1(2) of the Act provides for the application of the Act, which, to the extent relevant, reads as follows:

“1(2) it applies –

(i) to private forests in the districts of Malabar and South Kanara having a contiguous area exceeding 100 acres.”

25. In all the three cases before us, the stand of the State before the Forest Tribunal and otherwise on facts also is that The Madras Preservation of Private Forests Act, 1949 was applicable in these cases since the forests had a contiguous area exceeding 100 acres. Therefore, indisputably, The Madras Preservation of Private Forests Act, 1949 was applicable in these cases. However, Vesting and Assessment Act, 1971 has excluded certain lands from the purview of definition of “private forest” under S.2(f)(1)(i) of the Act. In all the three cases, the finding on the exclusion has attained finality also. The contention on behalf of the

State that despite such exclusion. The Madras Preservation of Private Forests Act, 1949 is applicable to any forest not owned by the Government including waste lands, in terms of S.2(f)(1)(ii) of the Act, we are afraid that the contention cannot be appreciated. Three pre-conditions are required for bringing a forest under the purview of S.2(f)(1)(ii):

(i) It must be a forest;

(ii) It is not owned by the Government and

(iii) It must be a forest to which The Madras Preservation of Private Forests Act, 1949 is not applicable.

All these are to be read cumulatively. Though there are disputes on facts as to the nature of the growth, we will assume for a moment that the disputed land is a forest coming within the purview of definition of “forest” made by this Court in *T.N. Godavarman Thirumulpad v. Union of India & Ors.* ((1997) 2 SCC 267). Even then, the requirements of the Statute will not be met. Though the forest is not owned by the Government, it is a case where, it is not disputed also, The Madras Preservation of Private Forests Act, 1949 is applicable, being private forest in the District of Malabar having contiguous area exceeding 100 acres. Thus, it is clear that the disputed lands in these cases have expressly been excluded from the purview of private and that it is not otherwise covered by the said definition under S.2(f)(1) of the Vesting and Assignment Act. 1971.

26. The prohibition of cutting of trees in notified areas under S.5 of The Kerala Preservation of Trees Act, 1986 would be permissible only if the land is either a private forest or a part of cardamom hills reserve or the land is cultivated with cardamom or if it is forest not owned by the Government and not covered by The Madras Preservation of Private Forests Act, 1949. As already noted by us here above, there is no case for the respondents that it is part of cardamom hills reserve or that the land is cultivated with cardamom. The only dispute is with regard to the classification of the land as private forest. Since the area has been expressly exclude from the purview of private forest as defined under the provisions of The Kerala Preservation of Trees Act, 1986 and since it is not covered by S.2(f)(1)(ii) of the Vesting and Assignment Act, the Government cannot notify the area for the purpose of total prohibition of trees under S.5 of The Kerala Preservation of Trees Act, 1986.

27. However, we may incidentally made a reference to the regulatory provision under the Preservation of Trees Act. While S.5 provides for total prohibition of cutting of any species of trees, S.4 is only a regulatory provision restricting the destruction of trees specified under S.2(e) of the Act. We may it clear that merely because the lands of the respondents are being taken out of the purview of S.5 that does not mean that they will also be outside the purview

of S.4. In other words, as far as those trees specified under S.2(e) are concerned, they will still be governed by the restrictions imposed under S.4 of the Act. No such tree or its branch shall be cut without previous permission in writing of the authorized officer and the permission shall only be in the contingencies provides for under sub-section (2), viz.:

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen; or

(c) the timber is only to enable the owner of the land for construction of a building for his own use.

28. Subject to the above observations, the Special Leave Petitions are dismissed.

29. There is no order as to costs.