

SUPREME COURT OF INDIA

L.Radhakrishnan

Vs.

Parakulangara Devaswom

C.A.No.2934 of 2011

(Kurian Joseph and R.Banumathi,JJ.,)

01.11.2017

JUDGMENT

Kurian Joseph,J.,

1. Civil Appeal No. 2964 of 2011 is filed against the Judgment dated 23.06.2006 passed in Writ Appeal No. 457 of 2000 and Civil Appeal No. 2934 of 2011 is filed against the order dated 17.10.2007 passed in Contempt Case (C) No. 1195 of 2007. The issue pertains to the claim made by the respondents that they are entitled to restoration of their land, which was declined by the State as an ecologically fragile land.

2. The short Judgment in the writ appeal did not go into any disputed contentions but merely made an observation that the Judgment impugned before the Division Bench for restoration of the land would be given effect to, subject to the right of the State that may be available to it under the provisions of The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (in short, "the Act"). Whereas in the order dated 17.10.2007, the Division Bench entered a categorical finding that in having declined to restore the land, the appellants have committed contempt of court and hence, decided to frame charge accordingly. It was at that stage Civil Appeal No. 2934 of 2011 was filed.

3. We have heard Mr. Pallav Shishodia, learned senior counsel appearing for the appellants, and Dr.Mathew Kuzhalnadan, learned counsel appearing for the respondents.

4. In the nature of the order we propose to pass, we do not think it necessary to go into the background of the entire litigation. Section 10 of the Act provides for a machinery for settlement of the disputes. The provision reads as follows :-

"10. Settlement of disputes by the Tribunal.- (1) Where any dispute arises as to whether,-

(a) any land is an ecologically fragile land or not; or

(b) any ecologically fragile land or portion thereof has vested in the Government or not; or

(c) the compensation determined under section 8 is insufficient or not, the person who claims that the land is not an ecologically fragile and or that the ecologically fragile land has not vested in the Government, or that the compensation is not sufficient, may, within five years from the date of commencement of this Act or within six months from the date of the notification under sub-section (1) of section 4 declaring the land to be an ecologically fragile land or the date of communication of compensation under section 8, as the case may be, or within such time as the Government may notify in this behalf, apply to the Tribunal for settlement of the dispute.

(2) An application under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) If the Tribunal decides that any land is not an ecologically fragile land or that an ecologically fragile land or portion thereof has not vested in the Government and,-

(a) no appeal under section 11 has been preferred against the decision of the Tribunal within the period specified therein; or

(b) such appeal having been preferred under section 11 has been dismissed by the High Court; the custodian shall, as soon as may be, after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, restore possession of such land or portion as the case may be, to the owner of such land.

(4) If the Tribunal decides that the compensation determined under section 8 is not adequate and revises the amount of compensation and,-

(a) no appeal under section 11 has been preferred against the decision of the Tribunal within the period specified therein; or

(b) such appeal having been preferred under section 11 has been dismissed by the High Court; the custodian shall, as soon as may be, after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, pay such compensation to the owner of such land."

5. Going by the Judgment of the Division Bench in the writ appeal, the Court was conscious of the right, if any, available to the State to proceed against the disputed land under the Act. Having thus taken steps under the Act, it cannot be said that the appellants have, in any way, committed any contempt. Be that as it may, since the crucial question to be decided is whether the disputed land is an ecologically fragile land, the jurisdiction is wholly vested in the Tribunal constituted under Section 9 of the Act. Therefore, while setting aside the

impugned order dated 17.10.2007 in the contempt case, we dispose of these appeals with liberty to the respondents to take recourse to the statutory remedy under Section 10 of the Act before the Tribunal. In the event of such an approach being made within sixty days from today, we request the Tribunal to dispose of the same expeditiously and preferably within one year. We make it clear that we have not considered the contentions of both parties on merits and, therefore, it will be open to the parties to raise all available contentions before the Tribunal, including the contentions raised by the learned counsel for the respondents pertaining to the report of the Commissioner in the year 1999 and the order of the Tribunal dated 05.07.1980.

6. No costs.