

# SUPREME COURT OF INDIA

State of Kerala

Vs.

Joseph

C.A.No.9912 of 2010

(Abhay Manohar Sapre and S.Abdul Nazeer,JJ.,)

25.09.2018

## JUDGMENT

**Abhay Manohar Sapre,J.,**

1. This appeal is filed against the final judgment and order dated 03.12.2007 passed by the High Court of Kerala at Ernakulam in M.F.A. No.137 of 1989 whereby the High Court dismissed the appeal filed by the appellants herein.

2. In order to appreciate the short controversy involved in the appeal, it is necessary to set out few facts hereinbelow.

3. The appellant is the State of Kerala. It was the appellant before the High Court whereas the respondents herein were the respondents in the appeal out of which this civil appeal arises.

4. The respondents herein are the owners of 14 acres of land situated in Thenkara Village of Mannarghat Taluk in Kerala. This 14 acres land was part of 47.35 acres of total land, which was purchased jointly by the family members of the respondents in the name of the respondents, their father and uncles.

5. It is the case of the respondents that there existed rubber plantation on this land. In addition, the respondents also are the purchaser of the land planted Teak and other trees on the land. It is also the case of the respondents that a partition amongst their family members took place as a result of which out of 47.35 acres of land, 23.5 acres of land was allotted to the respondents and their father.

6. A question arose as to whether the said 14 acres of land out of 23.5 acres stood vested in the State by virtue of the provisions of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as "the Act" ) or not. Since there was also a dispute as to whether the respondents had a right to remain or/and to claim their lawful possession on 14 acres of land, the respondents filed an application under Section 8 of the Act before the

Forest Tribunal and sought exemption of the said land from the provisions of the Act as provided therein.

7. Section 2 (a) of the Act defines the "appointed day" to mean the 10th day of May, 1971. "Owner" in relation to a private forest is defined in Section 2(c) to include therein a mortgagee, lessee or other person having a right to possession and enjoyment of the private forest. Section 2 (f) defines the term "private forest" to mean:

“2. (i)(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 Forests Act, 1949 (Madras Act 27 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 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 for 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 with any other agricultural crop; and

(D) sites of buildings and lands 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.”

8. Similarly Section 3 of The Act, which is also relevant for disposal of this appeal, reads as under:

“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-sections(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 other 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 are 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 ) 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.”

9. The question that arose for consideration before the Forest Tribunal was whether the respondents' case falls under Section 3(3) of the Act so as to entitle them to claim exemption of their land measuring 14 acres from its vesting in the State as provided under the Act and the other question was what is the true meaning of the expression “intended for cultivation by him” occurring in sub-section (3) of Section 3 of the Act.

10. The Tribunal, by order dated 21.02.1979, allowed the respondents' application and granted the exemption as claimed by them in relation to their 14 acres of land. It was held that firstly, the respondents acquired the right, title and interest on the land on the strength of the registered documents executed prior to 10.05.1971 in their favour; Secondly, the respondents acquired the land with the intention to personally cultivate; Thirdly, the respondents had planted rubber plantation in 3<sup>2</sup> acres of land and also cultivated coconut, pepper and coffee in one acre; Fourthly, this was the only land of the members of the respondents' family which was being used by them for their personal cultivation to earn livelihood; Fifthly, the other members of family were also using their share in the land for doing rubber plantation; Sixthly, the respondents owned only the land in question which falls within the ceiling limits; and lastly, though the respondents' scheduled property is a private forest as defined under the Act, yet in the light of seven findings, the land in question is not liable to be vested in the Government by virtue of exemption available under Section 3(3) of the Act. In other words, it was held that the respondents were able to make out a case on

facts as contemplated under Section 3(3) of the Act. The Tribunal therefore, declared the land in question as exempted from being vested in the State. As a consequence thereof, the respondents were allowed to retain the land in question for their personal cultivation.

11. The State felt aggrieved and filed review petition before the Tribunal under Section 8-B of the Act. By order dated 24.08.1988, the review petition was dismissed. The State then filed an appeal in the High Court of Kerala. By order dated 16.11.1999, the High Court allowed the appeal and set aside the main order dated 21.02.1979 passed by the Tribunal.

12. As a result, the respondents' application filed under Section 8-B of the Act was dismissed. The respondents felt aggrieved and filed appeal in this Court by way of special leave being Civil Appeal Nos. 8061-62 of 2001 (*Joseph & Anr. vs. State of Kerala & Anr.*..

13. By order dated 10.05.2007, this Court after interpreting the relevant provisions of the Act allowed the respondents' appeals and while setting aside the order of the High Court remitted the matter to the High Court for its fresh consideration. (See - (2007) 10 SCC 414).

14. This Court in Paras 18 and 19 made the following observations:

“18. Several questions arose for consideration before the High Court. The High Court indisputably had a limited role to play. We, as at present advised, are not inclined to accept the submission of Mr Iyer that sub-sections (2) and (3) of Section 3 of the 1971 Act would operate in the same field. In our opinion, both operate in different fields. However, on a plain reading of the impugned order passed by the High Court, we are of the opinion that the High Court was not correct in its view in regard to its construction of Section 3(3) of the 1971 Act. The Tribunal, while exercising its power under Section 8 of the 1971 Act, had taken into consideration the question which arose before it viz. as to whether the appellants herein had intention to cultivate the land on the appointed day. Appointed day having been defined in the 1971 Act, the relevant aspect was the situation as it existed on that day i.e. on 10-5-1971. For the purpose of attracting sub-section (3) of Section 3 of the 1971 Act, it was not necessary that the entire area should have been cultivated for arriving at a decision as to whether the owner of the land had the intention to cultivate or not. Also, it was required to be considered having regard to the activities carried on by the owner from the day of purchase till the appointed day. For the said purpose, subsequent conduct of the owner of the land was also relevant. Development of the land by plantation of rubber plants is not in dispute. The Explanation appended to Section 3(2) of the 1971 Act clearly suggests that cultivation would include cultivation of trees or plants of any species. Intention to cultivate by the owner of the land, we think, has to be gathered not only in regard to the fact situation obtaining at a particular time but also with regard to the subsequent conduct of the parties. If the activity in regard to cultivation of land or development thereof is systematic and not sporadic, the same also may give an idea as to whether the owner intended to cultivate the land. The words “intend to cultivate” clearly signify that on the date of vesting the land in question had not actually been cultivated in its entirety but the purchaser had the intention of doing so.

Such intention on the part of the purchaser can be gathered from his conduct in regard to the development of land for making it fit for cultivation preceding to and subsequent to the date of vesting.

19. The High Court, in our opinion, was not correct in opining that for applying Section 3(3) of the 1971 Act, the cultivation of the property subsequent to the vesting cannot be taken into account. The High Court also was not correct in arriving at a finding that there had been no evidence whatsoever that the owners intended to cultivate the land prior to 10-5-1971. As the provision contained in sub-section (3) of Section 3 of the 1971 Act clearly provides for exclusion of the operation of sub-section (1) thereof, the same has to be construed liberally. So construed, the conduct of the parties was a relevant fact. The High Court, in our opinion, therefore was not correct in ignoring the findings of the Tribunal. Also, the High Court should bestow its attention to the findings arrived at by the Tribunal having regard to the limited nature of the scope and ambit of appeal in terms of Section 8-A of the 1971 Act and, particularly, in view of the fact that the order dated 21-2-1979 had not been appealed against.”

15. The matter was accordingly heard by the High Court after remand with a view to find out as to whether the findings recorded by the Tribunal are in conformity with the law laid down by this Court in Joseph's case (supra). By impugned order, the State's appeal was dismissed by the High Court which gives rise to filing of this appeal by way of special leave in this Court by the State.

16. Heard Mr. K.N. Balgopal, learned senior counsel for the appellants and Mr. R. Basant, learned senior counsel for the respondents.

17. Learned senior counsel for the appellant (State) mainly urged one point. It was his submission that the case of the respondents (landowners) does not fall under Section 3 (3) of the Act and, therefore, the Tribunal and the High Court were not right in granting exemption to the respondents from vesting of their land in question in the State.

18. In other words, the submission of the learned counsel was that the respondents' land being a "private forest" stood declared vested in the State in accordance with the provisions of the ceiling law and the Act on an appointed day and hence the respondents were not entitled to get any benefit of exemption by taking recourse to Section 3(3) of the Act.

19. Learned counsel elaborated this submission with reference to the actual findings of the Tribunal in the context of the wording of Section 3 (3) of the Act and especially the expression "intended for cultivation by him" occurring in sub-section (3) and contended that the facts found by the Tribunal do not satisfy the expression "intended for cultivation by the landowners" and, therefore, no reliance could be placed by the respondents on Section 3(3) of the Act for claiming an exemption for their land from being vested in the State.

20. In reply, learned counsel for the respondents supported the impugned order and contended that it does not call for any interference.

21. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.

22. In our opinion, the question as to what is true interpretation of the relevant provisions of the Act and especially Section 3(3) and the other question regarding holding of the land and its intended use by the respondents stand already decided by this Court in the earlier round of litigation in its order dated 10.05.2007 in Paras 18 and 19 quoted above. The State cannot, therefore, be allowed to raise the same plea again in the second round of litigation after remand. This Court in paras 18 and 19 explained the object and purpose of Section 3(3) of the Act and then holding that such provision has to be construed liberally examined the facts of this very case and set aside the order of the High Court in the earlier round of litigation. The remand of the case to the High Court was to examine the issue in the light of interpretation made by this Court.

23. That apart, in our view, the Tribunal has recorded seven findings of fact as set out above in para 10 while allowing the respondents' application filed under Section 8 and the same were not interfered with by the High Court.

24. In our opinion, all the seven findings are otherwise found to be based on documentary evidence filed by the respondents and the same were properly appreciated by the Tribunal keeping in view the two requirements of sub-section(3) of Section 3 of the Act, namely, that the title was derived by the respondents in relation to the land in question prior to the appointed day, i.e.,10.05.1971 and second, the land in question was found in actual use by the respondents for their personal cultivation even prior to the appointed day.

25. In the light of these two findings recorded by the Tribunal on facts and upheld by the High Court in the impugned order after remand, which were not found perverse or against any evidence or illegal in any way, we do not find any ground to interfere in the impugned order.

26. The appeal thus fails and is accordingly dismissed.

Judgment Referred.

<sup>1</sup>(2007) 10 SCC 414