

KERALA HIGH COURT

State of Kerala

Vs

M.J. Thomas

(A Lakshmanan, C.J. K Sankaranarayanan, J.)

10.02.1998

JUDGMENT

A Lakshmanan, C.J.

1. This appeal is directed against the common order of the Forests Tribunal, Palghat in O.A. Nos. 45, 46, 47, 48 and 50 of 1990 dated 31st March, 1990. The above applications were filed by the appellants herein under Section 8 of the Kerala Private Forests (Vesting and Assignment) Act, (Act 26 of 1971). This case has a chequered history. It is unfortunate that the dispute before the Tribunal, which started in the year 1975, has not seen an end even now. The matter was remitted by a Division Bench of this Court to the Tribunal on 27th August, 1979 to consider what were the lands obtained under Exts. P-1 and P-4. In determining the extent of land that would vest the Tribunal was directed to determine the total extent of land taking into account the claim in respect of Panduranga estate also. Therefore, the Tribunal was directed first to determine whether Ext. P-4 is a valid document of title or not and then to determine the total extent of land held by each one of the claimants. It is then that the Tribunal could determine whether there is any excess land over the ceiling limit held by the claimant. This Court, while remitting the matter back to the Tribunal for fresh disposal, held that the lands obtained under Ext. P-1 would fall under Section 3(3) of the Act, subject, of course, to the ceiling limit. It has to be noted that the applications filed by the appellants were disposed of by the Tribunal by its order dated 3-3-1976. This Court, by its order in M.F.A. No. 239 of 1977 dated 27th August, 1979, remitted back the matter for fresh disposal. Unfortunately, the Tribunal, by its order dated 5th April, 1980, dismissed the applications without properly understanding the scope of the remand order. On remand, the Tribunal held that Ext. P-4 is an invalid document for want of sanction from the District Collector for alienation under Section 3(4) of the Act. The Tribunal proceeded to hold that the claimants are not entitled to exemption under Section 3(3) of the Act and that the land covered by Ext. P-4 is vested in the Government. Regarding the benefit of exemption under Section 3(3) of the Act in regard to the land covered by Ext. P-1 the Tribunal held that in the absence of Tahsildar's Certificate regarding the total extent of land in the possession of the various claimants, the benefit could not be granted. Consequently, all the Original Petitions filed by the

appellants herein who claimed title to the land were dismissed. The claimants filed M.F.A. No. 275 of 1980 which was disposed of by a Division Bench of this Court on 13th January, 1986 again remitting the matter back to the Tribunal for fresh disposal in accordance with law and after giving both sides reasonable opportunity to adduce further evidence. This Court, in its remittal order dated 13th January, 1986, has observed as follows :

"5. The main dispute in this case relates to lands covered by Ext. P-4. This Court in the earlier remand order directed that the validity of Ext. P-4 registered title deed (under which the claimants claim) should be decided by the Tribunal. If the lands were covered by the M.P.P.F. Act, then permission of the collector would be necessary to enter into Ext. P-4 transaction. There is no case for the claimants that the document was taken after obtaining permission from the Collector. Therefore, if the M.P.P.F. Act applied, the document would be invalid. If the document is invalid, the claimants should have no title to put forward before the Tribunal and it would be unnecessary to consider the exemption under Section 3(3) of the Act.

6. Contention of the claimants is that M.P.P.F. Act had no application to the lands covered by Ext. P-4, as they had been brought under cultivation prior to the coming into force of that Act. So the question whether the M.P.P.F. Act applied would depend on the finding whether the land had been brought under cultivation prior to the coming into force of the M.P.P.F. Act. The Tribunal held against the claimants.

7. Our attention is invited to the fact that the claimants produced certified copy of resurvey and settlement register relating to these lands before the Tribunal after remand. That document refers to this land as '(Vernacular matter is omitted)' . According to the learned counsel, '(Vernacularmatterisomitted)' means 'occupieddry', that is, it is no longer forest; it is dry land under permanent occupation. It is contended that this state of affairs existed even in early 1930s when the re-settlement took place in Malabar and if that be so, there is no question of the M.P.P.F. Act applying to this land. Unfortunately, the Tribunal returned the petition and declined to look into the document on the ground that the remand did not permit further evidence being adduced. We have gone through the remand order. We do not find anything in the remand order inhibiting production of further evidence before the Tribunal. The Tribunal was in error in holding that it had no power to receive additional evidence. On this conclusion itself, we are of the opinion that the matter deserves to go back before the Tribunal." The Tribunal, by its common order dated 31st March, 1990, fell into the same error and rejected all the Original applications without understanding the scope of the remand order. After remand, several documents were filed as additional evidence. The Tribunal proceeded on the wrong basis that it is the admitted case that M.P.P.F. Act applied to Ext. P4 properties and that sanction under Section 3(3) from the Collector was necessary and held that for want of sanction from the Collector Ext. P4 was not valid. It is specifically pointed out in paragraph 6 of the remand order that the contention of the appellants is that M.P.P.F. Act had no application to the lands covered by Ext. P4, as they had been brought

under cultivation prior to the coming into force of that Act, and so the question whether the M.P.P.F., Act applied would depend on the finding whether the land had been brought under cultivation prior to the coming into force of the M.P.P.F. Act. We are sorry to say that the Tribunal has not adverted to that aspect at all, which necessitated the filing of the present appeal by the appellants. Since the matter is pending before one forum or the other from the year 1975 onwards, no useful purpose will be served by remitting the matter again to the Forest Tribunal for a fresh disposal. Since the entire materials placed before the Tribunal and the evidence, both oral and documentary, are available before us, we have decided to go through the entire matter and decide the same. We have gone through the entire pleadings and looked into each and every document filed as also the evidence tendered. We have heard counsel appearing on either side at length. We shall now proceed to consider the matter on merits.

2. The present appeal is filed by the appellants, as already stated, against a common order passed in five applications filed before the Forest Tribunal, Palghat. Each one of the appellants in the five applications claimed that portions of Laurels Estate and Panduranga Estate held by the appellants did not vest in the State under the Kerala Private Forest (Vesting and Assignment) Act, 1971. The Laurels Estate was acquired by one John Jacob and another under Ext. P. 1 sale deed of the year 1955 and the Panduranga estate was purchased by the said John Jacob and another under Ext. P.4. The right of John Jacob was obtained separately under Exts. P2 and P5. It is said that this right was orally partitioned between several persons and it is on the basis of such oral partition that the claims were made before the Forest Tribunal for different extents of land in two different estates. The appellants, in support of their applications, have furnished the following as a reason for filing the applications.

"Land described in Clause (b) of the application was found demarcated by the Forest Department on 24-2-1975. The land demarcated is not private forest. It is part and parcel of the plantation namely the Tanga Estate and reserved for uses, ancillary to the plantation purposes. The applicant is also entitled to the benefit under Section 3 of the Act." (O.A. 66/1975). In column (i) the following relevant particulars connected with the dispute were furnished which read thus : "Plantations held by the applicant were parts of the erstwhile Laurels Estate and Panduranga Estates which on an oral partition between the co-sharers 25.17 acres in Laurels Estate and 34.78 in Panduranga Estate was set apart to the applicant. There after the applicant was in possession and enjoyment of the area mentioned above. About 35 acres (14 hectares) of land is under plantation and the rest is being utilised as drying yard, water source and Nursery ground. The applicant is not having any residential building, smoke house or labour quarters. The area demarcated also includes land reserved for the above purposes."

The appellants relied on the following-five documents in support of their claim for ownership over the land. They are :

"1. Document No. 220 of 1956 -

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| 2. | " | No. 1779 of 1956 | " | " |
| 3. | " | No. 1692 of 1963 | " | " |
| 4. | " | No. 1435 of 1951 | " | " |
| 5. | " | No. 2259 of 1956 | " | " |

Similar statements were furnished by the other applicants in their Original Applications.

3. The respondent State filed a counter affidavit stating that there was no cultivation in the petition Scheduled property on or before 10-5-1971 and hence the area vested in the State, that the appellants do not claim it as developed prior to the appointed date and therefore, they are not entitled to the area on any of the grounds on which it is claimed and that they are not entitled to any exemption or exclusion under the Act.

4. In this appeal, we have to examine the following questions:

(A) Whether the contention of the claimants that the M.P.P.F. Act had no application to the lands covered by Ext.P4 as they had been brought under cultivation prior to the coming into force of the Act is to be accepted?

(B) Whether the sale deeds Exts.P1 and P4 in favour of John Jacob are to be held as valid title deeds?

(C) Whether the decision of the Tribunal is vitiated by non-compliance with directions in the remand order of this Court dated 13th January, 1986 in M.F.A. No. 275 of 1980.

5. The question whether the M.P.P.F. Act applies would depend on the finding whether the land had been brought under cultivation prior to the coming into force of the M.P.P.F. Act. Our attention was invited to the fact that the claimants produced certified copy of the resurvey and settlement register relating to this land before the Tribunal after remand. It is mentioned therein that it was "occupied dry" which means that it was no longer forest, but was dry land under permanent occupation. It is contended by the learned counsel for the appellant that this state of affairs existed in the early 1930s. If that be so, there is no question of the M.P.P.F. Act applying to this land. Unfortunately, the Tribunal has not looked into the documents in its proper perspective, which necessitated the filing of the present appeal. Before the Tribunal, after the remand, the appellants produced a number of documents such as printed copy of the resurvey and settlement register, and the orders passed by the Taluk Land Board with reference to each of the claimants. We have perused the Resurvey and Settlement Register. It would show that this land is described as "developed dry" The ceiling orders were produced to show the extent of land held by the claimants and the extent of permissible ceiling area. The Tribunal has not looked into any of these documents or considered the same in order to decide the question whether the lands covered by Ext.P4 had been brought under cultivation prior to the coming into force of the Act and whether the M.P.P.F. Act had any application to the lands covered by Ext. P4. Though

there was a clear direction to the Tribunal to determine to what extent the land vests and, for that purpose, to determine the ceiling area of each of the of the claimants on the basis of the materials produced before it. But the Tribunal proceed on the incorrect basis that it is the admitted case that M.P.P.F. Act applied to Ext. P4 properties and hence sanction of the Collector under Section 3(3) of the Act was necessary and held that for want of such sanction, Ext.P4 is not valid. We are sorry to say that the evidence adduced have not been considered at all by the Tribunal while coming to the above conclusion. In the light of the evidence adduced and considering the circumstances and probabilities, we are of the view that the Tribunal should have accepted the contentions of the appellants and allowed all the Original Applications.

6. The failure of the Tribunal to look into the copy of the resurvey and settlement register in which survey No. 294 was shown as "dry developed" on the basis of which the appellants contended that much earlier to the commencement of the M.P.P.F. Act the said state of affairs existed and hence, no question of application of the Act arises. After remand, certified copy of the resurvey and settlement register relating to survey No. 294 (Ext.P4 properties) was produced and marked as Ext.P14. The Tribunal, without considering the effect of the said evidence regarding the validity of Ext. P4, rendered a finding that for want of sanction from the Collector Ext.P4 is invalid. It is observed by the Tribunal as follows :

"..... According to Ext. P14 survey 294 is a developed area (DD) but since the claim of the petitioners in respect of R.S. 294 has already been found against on the ground that the document under which the above properties are claimed by the petitioners is not a valid document, the question whether it was a developed area or not need not be gone in now."

7. Our attention was drawn to the finding of the Tribunal on point No. 2 in O.A. Nos. 45, 48 and 50 of 1990. Here again, the Tribunal went wrong in excluding properties covered by Survey No. 294 on the ground that Ext. P4 sale deed relating to Survey No. 294 is found invalid for want of sanction from the Collector. We have carefully perused Ext. P14 which is the copy of the resurvey and settlement register kept by Trissalery Desom, Wynad Taluk of the Malabar District. In Ext. P14, R.S. 294 measuring 416 acres and 69 cents is shown as Panduranga estate, "DD" (developed dry), and the Pattadar is shown as J.C. Mugasett. The resurvey and settlement dates back to 1930 and earlier as can be seen from Ext. P14, much earlier to the commencement of M.P.P.F. Act, 1949. Thus, it is seen that the property in question was a developed area under cultivation and not a forest. We have perused Ext.P4, which is in English. Ext.P4is the original sale deed. The properties involved in all the Original Applications are covered by Exts. P1 and P4 sale deeds. As already noticed, the decision of the two earlier Division Benches of this Court dated 27th August 1979 in M.P. A. No. 239 of 1977 and 13th January, 1986 in M.F.A. No. 275 of 1980 finally found that Ext.P1 is a valid title deed. The Division Bench held in paragraph 3 of the judgment in M.F.A. No. 239 of 1977 as follows :

"3. There can be no doubt that Ext.P 1 is a valid title deed. That was executed after obtaining permission under the Madras Preservation of Private Forests Act. That in respect of such properties there was a partition among the claimants is evident from the fact that in Ext. P3 executed as early as in 1963, there is a reference to an oral partition between the claimants. Therefore the claimants will succeed in their claim of holding under a valid registered document of title in regard to the property comprised in Ext. P1, Laurel Estate."

The Tribunal has already held that Ext. P4 is invalid for want of sanction of the District Collector under Section 3 of the M.P.P.F. Act. We have, therefore, to consider the question as to whether Ext.P4 is invalid for want of sanction of the District Collector under Section 3 of the Act. Ext. P4 is dated 18-6-1951, which is the sale deed obtained by the predecessors in interest of the appellant in respect of Panduranga estate measuring 416 acres and 69 cents, bearing resurvey No. 294 (survey No. 274). According to the appellants, as on the date of commencement of the M.P.P.R Act on 14-12-1949, this land was already developed dry land under cultivation to which the Act was not applicable. Hence, they contended that sanction under Section 3 was not necessary and not obtained. To clarify the position that the Act is not intended to apply to developed areas under cultivation, the explanation to Section 1(2)(i) of the M.P.P.F. Act was added. The added portion reads thus ;

"Explanation:-- Nothing in this clause shall be deemed to apply to any land which was brought under fugitive or other cultivation prior to the 14th December, 1949 by an owner or any person claiming under him." This explanation was added by Section 2(b) of the Madras Preservation of Private Forests (Second Amendment) Act, 1954 (Madras Act XVIII of 1954). We have also perused the recitals in Ext.P4 document wherein it is stated that what is conveyed therein is Panduranga Estate together with all the improvements, easements, privileges and rights. It is also stated in Ex.P4 that the Vendor got the premises in jenmom under sale deed No. S.R. 2181 of 1947 and that the property shall be enjoyed by the vendee and the rents and profits received therefrom. In the schedule to the sale deed in the column relating to description of the properties it is shown as "Field". The Original Pattadar's name is mentioned as J.D. Mugaseth.

8. On behalf of the Government, R.W. 1 was examined after remand in M.F.A. 275 of 1980. R.W. 1 has deposed as follows :

"Chief: Retired Forest Ranger. I was Survey Ranger during 1973-76 in the Mananthavady Special Range under which comes the lands involved. I have demarcated the land for the purpose of vesting.

Cross : Survey No. 294 had been surveyed; It is without referring documents that it is stated that this land comes within the purview of the M.P.P.F. Act. Since the adjacent lands are forest it was thought that these lands also come under the M.P.P.F. Act There are sketches available in the Forest Office showing the lands which come under the M.P.P.F. Act..... If it is developed dry land, it will not come under vesting. I have not

looked into Ext. P14.1 have nothing to say regarding the entry in Ext. P14 showing Survey No. 294 as "Developed Dry"."

The facts above mentioned would clearly reveal that long prior to the M.P.P.F. Act, the properties covered by Ext. P4 were brought under cultivation and that the properties did not come within the definition of private forest under the M.P.P.F. Act and, therefore, sanction of the Collector was not necessary and that Ext.P4 is a valid title deed.

9. It is argued by the learned counsel for the appellant that the Tribunal, went wrong in finding that the report of the Special Deputy Tahsildar under Ext.P 10(a) cannot be accepted in evidence since he was not examined. We are of the view that it was not incumbent upon the appellant to have the Special Deputy Tahsildar examined. This apart, nobody has challenged the validity or correctness of Ext. P10(a). The statement of the Tribunal that apart from the orders of the Taluk Land Board and Ext. P10(a) there is no independent evidence regarding coffee plantation is also not correct. In the partition deed Ext. P2 entered into by the parties on 13-8-1956 in respect of Ext.P1 properties it is mentioned that coffee registration certificate No. 10392 dated 2-11-1955 is obtained from the Collector and curing certificate dated 14-1-1955 from the office of the Superintendent of Central Excise, Thalassery. So also, in Ext. P1 it is stated as follows :

"..... bearing Registration No. 8 with the Coffee Market Expansion Board and Certificate of Registration No. 4273 dated 9-12-1944 issued by the then Collector of Malabar"

After remand, the appellants have filed the certificates of the Tahsildar regarding the total extent of land held by them. The Tribunal has discarded the certificates and also rejected the orders of the Taluk Land Board fixing the ceiling area as not binding on the Tribunal. Each of the appellants has filed affidavit before the Forest Tribunal after remand stating that the total area of 405.22 acres belonged to them in common as per the partition deed Nos. 17779 of 1956 and 2259 of 1956 of Manantody Sub Registry -- Exts. P2 and P5 respectively. As per an oral agreement made on 1-4-1963 the above properties were partitioned by them by which a total extent of 59.95 acres came in the exclusive possession of Mr. M.J. Thomas and ever since he occupied the land until the Forest Department took over the same in December, 1973, 27.03 acres under the vesting and assignment Act. Similar affidavits were filed by the other appellants/claimants. The Tahsildar, Mananthavady has certified that on perusal of the Taluk Land Board North Wayanad Order No. 66/73, dated 5-12-1974 it is found that Sri. M.J. George, Smt. Mariamma George. Johnson, Thoas, Annamma, Saggi and Koshi were in possession of the extent of land mentioned in the said certificate. It is also mentioned in the certificate dated 24-11-1986 that the said certificate was issued for the purpose of it being produced before the Forest Tribunal, Kozhikode. Similar certificates were issued by Tahsildar to the other appellants certifying that the lands mentioned in the different certificates were in the possession of the respective persons. These documents were filed by the appellants and marked as Exts. P16 to P18 and P20 to P23.

10. The above valuable piece of evidence has been discarded by the Tribunal. There was no cogent or convincing reason given for not relying on them. In fact, in the remand order it is said that in the contingency of the claimants failing to get Tahsildar's certificate, they were allowed to produce other materials. It is settled law that the findings rendered statutorily by one wing of the State are binding on the other authorities functioning under Act 26 of 1971. It is not the case of the State that the certificate issued by the Tahsildar on the basis of the affidavits filed by the respective appellants are not genuine or valid. Under the said circumstances, we are of the view that the Tribunal has miserably failed to rely on the crucial documents, namely the certificates issued by the Tahsildar, Mananthavady, with regard to the total extent of land held by each of the appellants.

11. Our attention was invited to the decision of the Taluk Land Board. It is seen from the said order that all the relevant evidence including Coffee Registration Certificates were produced in the proceedings for fixing the ceiling area. However, the Tribunal has not accepted the decision of the Taluk Land Board for reasons best known to it. In our opinion, the Tribunal ought to have found that the Taluk Land Board has fixed the ceiling limit after complying with all the statutory requirements of the Kerala Land Reforms Act and should have accepted the decision of the Taluk Land Board.

12. We shall now consider whether the appellants are entitled to exemption under Section 3(3) of Act 26 of 1971. As already referred to, Exts. P7, P23, P21, P25 and P17 which are respectively the Tahsildar's certificate regarding the total extent of land in the possession of the appellants as per Rule 4 of the Kerala Private Forests (Exemption from Vesting) Rules, 1974; Exts. P13, P8, P9, P12 and P19 respectively are orders of the Taluk Land Board fixing the ceiling area under the Kerala Land Reforms Act and the excess land liable to be surrendered by each of the appellants. These orders are not challenged by the State.

13. As far as O.A. No. 46 of 1990 is concerned, the applicant, the 2nd appellant herein, died and additional appellants 7 and 8 were impleaded as legal heirs. In that case, the total extent of properties held by the applicant is shown as 58.65 acres in different Sub Divisions of Survey Nos. 352, 353 and 354 of Tirunelli Village as per Ext. P23. There is no dispute that this is part of the property covered by Ext. P1 which has already been found to be a valid title deed as per the two earlier orders of remand by this Court. We also concur with the views expressed by the earlier two Division Benches with regard to the validity of Ext.P 1. Out of the extent shown in Ext. P23, the Government demarcated 26 acres as vested. The Taluk Land Board in its order Ext. P8 found that 40.75 acres are covered by Coffee Plantation liable to be exempted for fixing the ceiling area under the Kerala Land Reforms Act and out of the balance 17.90 acres, the ceiling area applicable to the petitioner/2nd appellants herein is 15 acres and the remaining 2.90 acres of land is liable to be surrendered by the appellant. Therefore, out of the 26 acres declared as vested, the vesting order is to be confirmed with regard to 2.90 acres only and the balance 23.10

acres is to be restored to the legal heirs of the applicant in O.A. No. 46 of 1990.

14. In so far as O.A. No. 47 of 1990 is concerned, the appellant relied on Ext. P21, the certificate issued by the Tahsildar wherein the total extent held by the appellant is shown as 57 acres and 7 1/2 cents forming part of the property covered by Ext. p 1, out of which the Government demarcated 33.15 1/2 acres as vested area. Under Ext. P9 the Taluk Land Board exempted 24.56 1/2 acres as coffee plantation. Out of the balance, the ceiling area applicable to the appellant and his family was found as 15 acres. The remaining 18.15 acres is found to be liable to be surrendered by the petitioner to the Government. On the above basis, out of the 33.15 1/2 acres demarcated as vested, we confirm the vesting regarding 18.15 acres and we direct the balance 15 acres and 1/2 cents be restored to the appellant as totally exempted.

15. With reference to O.A. No. 45 of 1990, Ext. P7 certificate of the Tahsildar was relied on. As per the said certificate, the total extent held by the petitioner is 59.95W acres (consisting of 25.17 1/2 different Sub Divisions of Survey Nos. 352, 353 and 354 covered by Ext. P1 and 34.78 acres in Survey No. 294 covered by Ext. P24). Out of this, the Government demarcated 1 54 1/2 acres in Survey No. 353/7 and 23.78 acres in Survey No. 294 as vested forest. We have already found that the M.P.P.F. Act is not applicable to Ext.P4 properties. It will therefore follow that 23.78 acres in Survey No.294 demarcated as vested will not come within the definition of 'private forest' under the Kerala Private Forest (Vesting and Assignment) Act and therefore, the said property has to be exempted from vesting. Ext. P13 order of the Taluk Land Board was marked on the side of the appellant wherein the Taluk Land Board found that the appellant's family is entitled to retain 15 acres as ceiling area and after excluding 23.78 acres in Sy. No. 294 the balance out of the area demarcated as vested is only 1.54 1/2 acres in Sy. No. 353/7 which is less than the ceiling area. The result is that the entire extent declared as vested by the Tribunal has to be exempted and restored to the appellant concerned. We direct so.

16. Appellants 4 and 5 are the legal heirs of the petitioner in O.A. No. 48 of 1990 who died. The appellants placed reliance on Ext.P25 certificate of the Tahsildar showing the total extent held by the petitioner in the above Original Application as 57.11 acres consisting of 15.42 acres in survey Nos. 352 and 353 covered by Ext. P1 and 41.41 acres in Sy No. 294 covered by Ext. P4, The Government demarcated 3.39 acres in Sy. No, 352/1 and 33.67 1/2 acres in Sy. No. 294 as vested. The Taluk Land Board held that out of the 57.11 acres an area of 20.61 acres comes under the exempted category out of the balance, the ceiling area applicable to the petitioner before the Tribunal was 15 acres and the balance was to be surrendered. We have already found that Ext. P4 property does not come within the purview of the Act. Hence, the entire extent of 33.67 1/2 acres in Sy.No. 294 is to be exempted. The balance of the area declared as vested, namely 3.39 acres in Sy. No. 352/1 being less than the ceiling area, the said area is also to be exempted. Therefore entire area of land involved in O.A. No. 48 of 1990 is liable to be restored to the appellants.

17. As far as O.A. No. 50 of 1990 is concerned, the area declared as vested is 20.61 acres in Sy. No. 294 covered by Ext.P4. The entire area of 20.61 acres in Sy. No. 294 is to be exempted and restored to the appellants for the reasons assigned by us earlier with reference to the other appeals.

18. Section 8 of the Private Forest (Vesting and Assignment) Act, 1971 provides that :

"(1) Where any dispute arises as to whether-

(a) any land is a private forest or not; or

(b)

(b) any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may, within such period as may be prescribed apply to the Tribunal for decision of the dispute." The person who prefers the claim before the Tribunal that the private forest is not vested under the Act has the burden to establish his case. In this case, all the applicants who preferred the claims before the Tribunal produced necessary oral and documentary evidence in support of their case and has proved beyond doubt and has also established their claim. After remand they produced necessary certificates from the Tahsildar concerned and also filed other relevant documents in support of their claim. All the appellants have discharged their burden which, as held by this Court in the decision reported in State of Kerala v. Chandralekha, (1995) 2 Ker LT 152 : (1995 AIHC 4946) (FB) is squarely on them to substantiate their claim. Though the learned Government Pleader pleaded that the appellants have not discharged their burden or established their claim with necessary data and materials, we are unable to countenance the said contentions for the reasons recorded in the earlier part of this judgment. In this case, the appellants have produced voluminous documents to substantiate their claim and has proved beyond doubt that the private forest has not vested in the Government on the appointed date. They have pleaded and proved that the lands in question are exempted from the provisions of Act 26 of 1971. They have proved cultivation and that the area cultivated with plantation crops cannot be forest. The appellants have proved positively their case as on the appointed day.

19. In the light of our above findings, no part of Sy. No. 294 would vest in the Government as per the provisions of the Kerala Private Forest (Vesting and Assignment) Act. It will be for the authorities to consider whether the whole or any part thereof will come under the ceiling provisions of the Kerala Land Reforms Act. The said question is left open.

20. In conclusion, we say that we are compelled to interfere with the order of the Tribunal which is impugned in this appeal on the ground of unsatisfactory consideration of the issue involved and non-adherence to the directions given in the remand order dated 13th January, 1986 while deciding the issue. These lacunae, in fact are present in this case. Therefore, we have decided to rectify these lacunae by ourselves as there are no compelling circumstances to make an order of remand again as requested by the Government Pleader. An order of remand should not be taken to be a matter of course. The power of remand should be sparingly exercised. There should

always be an endeavour to dispose of the case by the Appellate Court itself when the commissions and omissions made by the Forest Tribunal can be corrected by this Court. The parties were also not anxious to place additional evidence as all the evidence had been adduced already after the order of remand. Since all the questions required a comprehensive consideration on merit and a decision thereon, we considered the entire matter on its merits to thrash out and settle the dispute and ultimately to put an end to this long drawn litigation wherein the appellants have been fighting all these years. The above features obliged us to interfere with the common order passed by the Forest Tribunal. In the result, we allow this appeal in its entirety and set aside the judgment of the Forest Tribunal dated 31 st March, 1990. However, there will be no order as to costs.