

# KERALA HIGH COURT

State of Kerala

Vs

Anglo-American Direct Tea Trading Co. Ltd

M.F.A. Nos. 475 of 1978 and 423 to 430 of 1979

(Subramonian Poti and Janaki Amma, JJ.)

17.01.1980

## JUDGMENT

### **Subramonian Poti, J.**

1. The Forest Tribunal, Palghat, by a common order passed in O. A. 164 of 1974 and 8 other connected cases held that eucalyptus plantations situate within the estates of the applicants would not fall within the definition of 'forest' and therefore would not vest in the State under the provisions of the Kerala Private Forests (Vesting and Assignment) Act, 26 of 1971. The Custodian of Vested Forests was directed to surrender back possession of the lands taken from the appellants. Against this the State filed M.F.A. 475 of 1978 as if it was an appeal against the decision in all the nine cases. This was evidently because the cases had been disposed of by a common order. When the appeal was heard one of the points raised concerned the maintainability of one appeal against the orders on nine applications. After the hearing the appellants moved an application to treat MF.A 475 of 1978 as an appeal against one only of the cases, O.A 164/74 and separate appeals were filed against the other orders. These appeals were numbered as M.F.A. Nos. 423 to 430 of 1979. The delay in filing these appeals has been excused by this court. The nine appeals against the common order in the nine cases were thereafter posted for hearing and they are being disposed of by this common judgment.

2. The claimants in these cases are owners of Tea estates. The areas planted with tea in each of these cases have of course been excluded from the operation of the vesting provisions in Act 26 of 1971. There are portions of the estate where there are eucalyptus plantations. It is claimed by the applicants that these are areas which are required as ancillary for the Tea plantations, ancillary in the sense that the eucalyptus trees grown in the eucalyptus plantations serve as fuel for processing the tea for the market. There is also a plea that the lands having been converted into eucalyptus plantations long before the appointed day under the Act such areas could not be said to be forest as on 10-5-1971 and therefore there is no scope for vesting of such areas in the State. The latter plea has found acceptance by the Tribunal and consequently the areas where there are eucalyptus plantations have been held not to vest in the State. This is challenged by the State along with the Custodian of Vested Forests in these appeals.

3. There are two questions which arise. Whether the lands which had been converted into

eucalyptus plantations could be said to be forests within the meaning of that term in S. 2(f)(2) of the Act is the main question. We may also have to deal with the contention that even assuming it is forest since it is ancillary land it should be excluded.

4. Kerala Private Forests (Vesting and Assignment) Act, 26 of 1971 is, as the preamble shows, an Act intended to put to use agricultural land to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State. It came into force on the appointed day which is 10-5-1971. S. 3 (I) provides that notwithstanding anything contained in any other law for the time being in force, or any other contract or other document, 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 the Act, stand transferred to and vested in the Government free from all encumbrances. This is subject to the provisions of sub-sections (2) and (3) which are not relevant for the purpose of this case. 'Private forest' is defined in S. 2(f) of the Act and that runs thus:

"2. (f) 'Private Forest' means

(1) in relation to the Malabar district referred to in sub-section (2) of S.5 of the States Reorganization Act, 1956 (Central Act 37 of 1956)

(i) any land to which the Madras Preservation of Private Forests 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, god-owns, 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.

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

In all these cases we are concerned with lands outside the Malabar District and therefore it is the applicability of S. 2 (f) (2) of the Act that arises. Here what is required to be shown in support of the case that the disputed area is private forest is that such land was forest' on 10-5-1971 and was not owned by the Government. The state's case is that eucalyptus plantation is a forest. This is disputed by the applicants.

5. There is no case that eucalyptus plantations in the estates of the applicants are of spontaneous growth. Eucalyptus is indigenous to Australia, Tansania, New Guinea and the neighboring islands where they constitute a large portion of the forest vegetation. Eucalyptus species are remarkable for their rapid growth and some of them, in their natural habitat, attain gigantic sizes and are among the tallest trees of the world. Much experimental work has been carried out in the past on the cultivation of eucalyptus in different parts of India under varying climatic conditions, both in the plains and on the hills. The usual method adopted in India for raising eucalyptus is transplanting of nursery-raised seedlings. Eucalyptus 'E globulus' was introduced into India as a fuel tree in 1843 (Vide the Wealth of India, Raw Materials, Vol. III: D-E published by the Council of Scientific & Industrial Research, pages 203, 204 and 211). The countries planting eucalyptus from Australia, New Guinea and Timor have established more than 3 1/2 million hectares of eucalyptus plantations at an investment cost of between U.S. Dollars 1000 million and 2000 million, excluding the cost of land. The plantations are monocultures. (Vide: Draft. Eucalyptus for planting published by Food and Agriculture Organisation of the United Nations, Pages 53, 138). Eucalyptus is a 'type' genus of Australian forests and comprises about 500 species, which range in size from the giant 'gum trees', the tallest hardwood trees in the world, to the shrub of the Australian Bush. (Vol. 10. The World of Knowledge Encyclopedia, page 22041).

6. Eucalyptus has several uses. It may be used for the extraction of oil. Its timber can be used as fuel. It is not in dispute that the purpose for which the applicants have planted eucalyptus and reared the eucalyptus plantations is the supply of fuel necessary for processing the tea leaves.

7. The Tribunal has noticed that the parties are agreed that eucalyptus trees have been planted adopting scientific methods and the plantations are the result of human skill and expense. It is in this background that we have to examine whether eucalyptus plantations within the Tea estates of the applicants are forests within the meaning of that term in S. 2 (2) of Act 26 of 1971.

8. "Forest" is not a term defined in the Act. With reference to lands in the Malabar area and to which the Madras Preservation of Private Forests Act applies on the appointed day the test for determination whether the land is 'private forest' is different. Evidently the scheme of that section appears to be that if the land is shown to be private forest on the date the Madras Preservation of Private Forests Act came into force it would continue to be private forest even if it has actually ceased to be a forest unless one or other of the exclusions in clauses A to D in the definition applies. If the land in the Malabar District did not fall within the Madras Preservation of Private Forests Act, it would not fall within the scope of that Act if it is less than the specified area in extent - then it had to be shown to be a forest other than that belonging to the Government. Sub-section (2) deals with the lands other than those in Malabar and the question in such a case would be, has the land been shown to be a forest. As we have indicated in the absence of a definition of the term 'forest' in Act 26 of 1971 we should take notice of the general meaning of the term as used in common parlance. Whether one would understand a eucalyptus plantation within a Tea estate or adjoining a Tea estate as forest in common parlance would necessarily be the test. This calls for consideration of the scope of the term 'forest'.

9. Chambers Twentieth Century Dictionary defines 'forest' as "a large uncultivated tract of land covered with trees and underwood". The Webster's New World Dictionary defines forest as "a large tract of land covered with trees: a tract of woodland and open uncultivated ground". The

Random House Dictionary defines 'forest' as "a large tract of land covered with trees and under-bush; extensive wooded area." The word 'forest' is derived from Latin 'foris' meaning outside, the reference being to village boundary or fence, and must have included all uncultivated and uninhabited land. (Vide Page I, Forests and Forestry by K.P. Sagreiya). The World of the Knowledge Encyclopedia, Vol. 10 defines 'forest' at page 2201 as "a circuit of wooded ground and pastures, known in its bounds and privileged for the abiding of wild beasts and fowls of forest, chase and carron to be under the Kin-,-,'s protection for his princely delight."

10. It is seen from these definitions that what is understood by the term forest is a large tract of uncultivated land covered with trees and underwood. But according to the Additional Advocate General the term forest applies not only to wooded areas of spontaneous growth but also wooded areas planted, regulated, regrown and scientifically managed. It is contended by the learned Additional Advocate General that eucalyptus is a species of forest tree and therefore when eucalyptus is grown for the purpose of exploitation of its timber what is so grown scientifically would be a forest if such growth is in a fairly large area or tract. In support of this view the learned Additional advocate General refers to treatises on forestry where the term forest is understood as an area set aside for the production of timber and other forest produce, or maintained under woody vegetation for certain indirect benefits which it provides; e.g ,climatic or protective. (Vide: Abridged Glossary of Technical Terms published by Forest Research Institute and Colleges, Dehra Dun, Page 52). The definition of the term 'forest' in the context of forestry may not be a definition appropriate for our purpose. Forestry is the science of planting and taking care of forests and systematic forest management for the production of timber (Webster's New World Dictionary). The practice of scientific forestry in India is said to have begun in 1864 and the first Forest Act was passed in 1865. The term 'forest' as understood in the context of forestry is of a different context from what we commonly understand of the term in general or common parlance. 'Forestry' is the theory and practice of scientific management of forests including their creation when necessary for the continuous provision of produce and services. We are dealing with an enactment here which is intended as part of the measures of agrarian reforms. The Kerala Land Reforms Act envisaged certain measures of agrarian reforms including the taking over of lands in excess of the ceiling limit. But one of the classes of lands excluded from the operation of the ceiling provisions of the Land Reforms Act is the private forest. In regard to this category a separate treatment was given in the Kerala Private. Forests (Vesting and Assignment) Act, S. 10 of which provided for the utilization of lands which vest in the State under S. 3 of the Act. In the context in which the term 'private forests' has been used in Act 26 of 1971 it is evident that it applies to lands other than those on which human skill, labour and resources ha%e been spent for agricultural operations.

11. For the State the contention is that there are no agricultural operations for planting and growing eucalyptus. It is said that the operations are silvicultural operations and not agricultural operations. The term agricultural operation has wide import and could cover even silvicultural operations. We may also notice here that when Act 26 of 1971 was challenged in this court it was sought to be supported as a measure of agrarian reforms. Though this court struck down the Act the decision was reversed by the Supreme Court in *State of Kerala v. Gwaliur Rayons Co<sup>l</sup>.*, In that judgment the Supreme Court had made reference to paragraph 19 of the affidavit filed by the Joint Secretary to Government of Kerala, Law Department. It may be useful to refer to this here. Para. 19 runs as follows:

"It is also pertinent to place before this Honourable Court the fact that in large tracts of areas which had been already clear felled by the owners of the private forests or their contractors, food-crops like coffee, coconut, pepper etc. have been raised converting them into such food-crop plantations. Even planting teak and other plantation is agricultural operation and the lands on which these are planted are agricultural lands."

We may also notice that the stand taken in that case was that on clear felling forests and as a result of agricultural operations teak and other plantation crops have been raised.

12. The Supreme Court has in that case noticed the feature of conversion of forests into plantations like that of eucalyptus. The court observed at page 905 in that judgment thus:

"Several types of produce were obtained by agriculture and a large population lives on the same. Plantations of coffee, tea, rubber, cardamom and the like were grown on an extensive scale in these forests In recent years industrialists have taken leases of vast areas of these forests from their owners and a fraction of the same has been brought under cultivation by planting eucalyptus and other types of trees useful for paper and other industries."

13. Again the Supreme Court adverted to the following passage in the decisions of the Kerala High Court in *Venugopala Varmu Raja v. Controller of Estate Duty, Kerala*<sup>2</sup>,

"It is well known that the extensive areas of different varieties of plantations that we have got in this State were once forest lands; and it is also equally well-known that year after year large areas of forest lands in this State are being cleared and converted into valuable plantations. In the absence of exceptional circumstances such as the land being entirely rocky or barren for other reasons, all forests lands in this State are agricultural lands in the sense that they can be prudently and profitably exploited for agricultural purposes."

<sup>1</sup>1973 KLT. (SC.) 896

<sup>2</sup>1969 KLT. 320

Certain provisions of the Kerala Land Reforms Act had come up for attack in a batch of Original Petitions before the Supreme Court the decision in which is reported in *Malankara Rubber & Produce Co. v. State of Kerala*<sup>3</sup>, In that case whether certain categories of lands had the protection of Article 31A of the Constitution was the question that the court had to consider. The court observed in that case that a jungle unless it is included within an estate consisting, inter alia, of lands held for agricultural purposes cannot be acquired so as to have the protection of Article 31A. If the holding or tenure in which the jungle lies consists only of jungle it cannot be so acquired. It is in that context that the court observed thus:

"Lands under eucalyptus or teak which are the result of agricultural operations normally would be agricultural lands. They would certainly not be forests but the statements in the petitions seem to suggest that operations were carried thereon for the express purpose of growing these plants and trees. However, lands which are covered by eucalyptus or teak

growing spontaneously as in a jungle or a forest, would be outside the purview of acquisition."

14. In the light of what we have adverted to we do not think that the State has succeeded in establishing that the land in which eucalyptus has been planted in the Tea plantations could be said to be forest land and if so we should agree with the decision of the Forest Tribunal that it would be outside the purview of the vesting provisions in Act 26 of 1971.

15. We may mention here that the decision of the Full Bench in *State of Kerala v. Amalgamated Malabar Estates P Ltd*<sup>4</sup>, may not have a bearing on the question before us. That concerned land to which Madras Preservation of Private Forest Act applied, but the land had been converted into eucalyptus plantation. The question was whether the land would be excluded by reason of S. 2(f)(i)(e). It would be excluded under that clause only if it was shown that the land was principally cultivated with agricultural crops. The Full Bench found that even though eucalyptus plantation may be the result of agricultural operations eucalyptus cannot be said to be an agricultural crop. The question whether eucalyptus plantation would be a forest did not as such arise in the Full Bench case.

16. Of course if our view on the question whether eucalyptus plantation is a forest had been otherwise. the applicants might have failed since we would have held against the applicants on the other question raised before us. The lands used for any purpose ancillary to the cultivation of Tea, Coffee, Cocoa, Rubber, Cardamom or Cinnamon or for the preparation of the said crops to the market are excluded by reason of S. 2(f)(1)(i)(B) of the Act. What is said in regard to eucalyptus planted area is that Tea cannot be prepared for the market except after processing, such processing requires fuel and it is the timber of eucalyptus trees which serve as such fuel. Assuming that eucalyptus area serves the fuel requirements of the estate that would not be sufficient to exclude the land, for, what is excluded in the sub-clauses are lands used for the preparation of the crops for the market. The lands in which the eucalyptus trees are

<sup>3</sup>1972 KLT. 411. (SC)

<sup>4</sup>1979 KLT 829

grown are not used for the preparation of the Tea for the (market. The timber of the trees standing in the lands are used for the preparation of the Tea for the market and that would not entitle exclusion of the land on which such trees stand. We have expressed our views on this on earlier occasions and therefore we are not elaborating further. In these circumstances had we held against the applicants on the first of the points possibly the result might have been different. But as it is in view of our finding that eucalyptus plantations are not forests there is no question of vesting. The appeals are dismissed. In the circumstances of the case there will be no order as to costs.

Dismissed.