

STATE OF KERALA AND ANR.

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v.

A.C.K. RAJAH AND ANR.

AUGUST 17, 1994

[J.S. VERMA AND K.S. PARIPOORNAN, JJ.]

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Kerala Forests (vesting and Assignment) Act, 1971/Kerala Land Reforms Act. 1963 :

Ss. 3(2), 3(3), 8, 8A/s. 82—Agricultural Land—Private Forest—Claimants, members of 'Kovilakam' claiming land under personal cultivation—Claim rejected by Tribunal but allowed by High Court—High Court's power to reappreciate evidence—Held, High Court in deciding appeal under s.8A has got very wide powers—Competent to adjudicate all questions of fact and law—Can re-appraise and re-evaluate evidence—Findings and conclusions arrived at by High Court warranted and justified—Provisions of Chapter III and s. 82 of Land Reforms Act applicable to allocation of land exempted under s.3(3) of Vesting Act.

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The claimant-respondents, members of 'Nilambur Kovilakam' filed a petition under section 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1973 before the Forest Tribunal, claiming that the land in dispute, admeasuring 60 acres, did not vest in the Government under Section 3 of the Act, and they were entitled to retain the same. The claim was dismissed. On appeal, the High Court reversed the order of the Tribunal holding that the "thavazhi" (family) claimants consisted of at least 10 members at the relevant time and they were entitled to retain the land in dispute in terms of section 3(2) of the Act, as it formed part of the private forest held by them and under their personal cultivation at the time of coming into force of the Act, i.e. on 10.5.1971. Aggrieved, the State of Government and the Custodian of vested forests filed the appeal by special leave.

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It was contended on behalf of the appellants that the High Court, while deciding the appeal under section 8-A of the Act, erred in re-appreciating the evidence and holding that the land in dispute formed part of the private forest held by the claimants and under their personal cultivation at the relevant time; there was no legal material to establish

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A that the claimants' family consisted of the least 10 members so as to retain the land in dispute u/s. 3(2) of the Act; and that in view of the decision of this Court regarding total extent of land to be held by 'Nilambur Kovilakam' under s.3(3) of the Act, appropriate safeguard should be made in the matter of total area allocable to the 'Kovilakam'.

B Disposing of the appeal, this Court

HELD : 1.1 In deciding the appeal under section 8A of the Kerala Private Forests (Vesting and Assignment) Act 1973, the High Court has got very wide powers. It is not hedged in by any limitation. When the matter comes up before the High Court, it is the correctness and propriety of the order under appeal which arises for consideration. The High Court can independently consider the evidence and satisfy itself whether the findings and conclusions arrived at by the Forest Tribunal are proper. The High Court is competent to adjudicate all questions of fact and law and record its findings. It can reappraise and re-evaluate the evidence and arrive at its own findings and conclusions. The findings and conclusions arrived at by the High Court are warranted and justified. [684-G-H; 685-A-B]

1.2 On the basis of the material on record, the High Court was justified in holding that the lands in dispute formed part of the private forest held by the claimants and under their personal cultivation at the time of coming into force of the act, namely, on 10.5.1971. [685-D-E]

2. In view of the genealogy chart of the family and registered copy of Karar, executed in the claimants 'thavazhi' (family), the High Court was right in holding that on 10.5.71, the 'thavazhi' had atleast 10 members and at the relevant time, the 'thavazhi' could retain a minimum 75 acres. Since the land in dispute was only about 60 acres in extent, the claimants are entitled to retain the land in terms of section 3(2) of the Act. [685-F-G]

3. The claimants are entitled to exemption from vesting under s.3(3) of the Act. However, having regard to the area allocable to members of the 'Kovilakam' and the ceiling area applicable to each claimant under s.82 of the Kerala Land Reforms Act, 1963, each claimant would make an appropriate application in this regard, and the appropriate authority would pass consequential orders in accordance with the directions given in T.N. Goda verman Thirumalpad's case".* [686-F, G]

**T.N. Goda Varman Thirumulpad & Ors. v. State of Kerala & Ors.,* A
[1991] Supp. 2 SCC 665, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2000 of
1992.

From the Judgment and Order dated 5.9.91 of the Kerala High Court B
in M.F.A. No. 287 of 1991.

M.A. Firoz for the Appellants.

G. Vishwanatha Iyer, S. Balakrishnan and M.K.D. Namboodri for the
Respondents. C

The Judgment of the Court was delivered by

PARIPOORNAN, J. The State of Kerala and the Custodian of vested
forests are the appellants in this appeal. The respondents in this appeal are
the applicants in O.A. 88 of 90 of the Forest Tribunal, Palakkad D
(hereinafter called the Forest Tribunal). They are members of Nilambur
Kovilakam. This appeal is filed against the Judgment dated 5.9.91 passed
by the High Court of Kerala in M.F.A.NO. 287 of 1991, reversing the order
passed by the Forest Tribunal, holding that the applicants before the Forest
Tribunal are entitled to retain 60 acres of land in terms of section 3(2) of
the Kerala Private Forests (Vesting and Assignment) Act, 1971, (Act 26 of
1971), hereinafter called the Act. E

2. The facts relevant for the decision of this appeal are in a narrow
compass. The respondents (hereinafter called the applicants) filed a peti-
tion under section 8 of the Act before the Tribunal for the settlement of
the dispute alleged by them. It was claimed that the property shown in the
petition, 60 acres of land in R.S. 25/part and R.S. 31/2A of Chungathara
village, Ernad Taluk, did not vest in the Government under section 3 of
the Act. The Forest Tribunal by order dated 27.3.1990 held that the
petitioners/applicants have not proved that they have got exclusive title to
the schedule properties, and that there is no acceptable evidence to show
that the properties were under the 'personal' cultivation of the
petitioners/applicants on the appointed day to afford relief under section
3(2) of the Act. It was observed that the schedule properties taken along
with other properties belonging to the petitioners/applicants would not
exceed the ceiling area permissible under the provisions of the Kerala Land H

A Reforms Act, (Act 1 of 1964). The petition was dismissed since the title and possession of the properties as claimed by the petitioners/applications were found against.

B 3. In the appeal filed by the applicants, the High Court of Kerala by its Judgment dated 5.9.91 reversed the order passed by the Forest Tribunal. Relying on Exhibits A1, A2, A6 and A7, the High Court held that the land in dispute (scheduled to the petition) formed part of the private forest held by the applicants and under their personal cultivation at the time of the coming into force of the vesting Act, namely, on 10.5.1971. The High Court further that the Thavazhi represented by the applicants as on 10.5.1971 consisted of atleast 10 members and the family at the relevant time could in any event retain a minimum of 75 acres. Since the land in dispute is only about 60 acres, it was held that the applicants are entitled to retain the land in dispute in terms of section 3(2) of the Vesting Act. The Custodian was directed to identify the property in the presence of the representatives of the applicants and hand over the same to the applicants. Aggrieved by the aforesaid Judgment of the High Court, the State of Kerala and the Custodian have come up in appeal.

4. We heard Mr. M.A. Firoz, counsel for the appellants and also Mr. G. Vishwanatha Iyer, Senior Advocate who appeared for the respondents. E Counsel for the appellants urged the following three points. They are :

F (1) In adjudicating the appeal filed under section 8A of the Act, the High Court was in error in reappreciating the evidence and in holding that the land in dispute formed part of the private forest held by the applicants and under their personal cultivation on the date when the Act came into force (10.5.71).

(2) There is no legal material to hold that the applicants' family constituted atleast 10 members and so could retain the land in dispute, about 60 acres, under Section 3(2) of the Act.

G (3) At any rate, in view of the decision of this Court in *T.N. Goda Varman Thirumulpad & Ors. v. State of Kerala & Ors.*, [1991] Supp. 2 SCC 665, regarding the total extent of land that could be held by the "Nilambur Kovilakam" comprising of 112 members and the total area allocable will not exceed 1680 acres of land under section H 3(3) of the Act, appropriate safeguard should be made, reckoning

the decision in this case, in the matter of the 'total area' allocable to the Kovilakam. A

5. On the other hand counsel for the respondents contended that the appellate powers vested in the High Court under section 8A of the Act is of wide amplitude, and the High Court was competent to reappraise and reappraise the evidence and enter its own findings and conclusions. In the instant case, the findings and conclusions of the High Court have been arrived at on a proper appraisal of the evidence in the case, and are justified. Counsel for the respondents conceded that in working out the total extent that is allocable to Nilambur Kovilakam (Main Tarwad) comprising of 112 members, the decision of the Hon'ble Court in *T.N. Goda Varman Thirumulpad & Ors. v. State of Kerala & Ors.*, [1991] Supp. (2) SCC 665, Should prevail and in giving effect to the Judgment under appeal, appropriate adjustments should be made by the concerned authorities. B C

6. In order to appreciate the rival pleas urged before us, it will be useful to quote sections 3(1), 3(2) and 3(3) of the Act and section 8A of the Act : D

"3. Private Forests 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. E F

(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. G

Explanation. - for the purposes of this sub-section 'cultivation' includes cultivation of trees or plants of any species. H

A (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
 B 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."

"8A Appeal to the High Court.- (1) The Government or any person
 objecting to any decision of the Tribunal may, within a period of
 sixty days from the date of that decision, appeal against such
 C decision to the High Court :

Provided that the High Court may admit an appeal preferred
 after the expiration of the period of sixty days aforesaid if it is
 satisfied that the appellant had sufficient cause for not preferring
 appeal within the said period.

D (2) The appeal shall be in the prescribed form and shall be verified
 in the prescribed manner and shall be accompanied by a fee of
 one hundred rupees.

E (3) On receipt of an appeal under sub-section (1), the High Court
 may, after giving the parties a reasonable opportunity of being
 heard, either in person or by a representative-

(a) confirm or cancel the decision of the Tribunal appealed
 against; or

F (b) set aside such decision and remand the case to the Tribunal
 for decision after such further inquiry as may be directed; or

(c) pass such other orders as it may think fit."

G 7. The Act provides for a regular *first appeal* to be High Court under
 section 8A, from the order passed by the Forest Tribunal. On a mere look
 of section 8A of the Act, we are of the view that in deciding the appeal
 under section 8A of the Act, the High Court has got very wide powers. It
 is not hedged in by any limitation. When the matter comes up before the
 High Court, it is the correctness and properties of the order under appeal
 H which arises for consideration. The High Court can independently consider

the evidence and satisfy itself whether the findings and conclusions arrived at by the Forest Tribunal are proper. The High Court is competent to adjudicate all questions of fact and law and record its findings. It can reappraise and reevaluate the evidence and arrive at its own findings and conclusions. In the above perspective, we are of the view that in this case the finding and conclusions arrived at by the High Court are warranted and justified.

8. The High Court has placed reliance on Exhibits A1 and A2, the earlier Judgments of the High Court rendered in O.P. No. 5435 of 1972, and O.P. No. 1297 of 1973 wherein the applicants' rights to remove the poles obtained by them in the thinning process in the plantation were recognised. Reliance was also placed on Exhibits A6 and A7 dated 8.2.51 and 21.5.55 (long before the Act came into force) wherein the authority under the Madras Preservation of Private Forests Act, 1949 recognised the applicants' possession of the land in dispute and granted permission to cut and remove the trees and the forest products from R.S. 25 and R.S. 31/2A of Nilambur amsom. On the basis of Exhibits A1, A2, A6 and A7 the High Court concluded that the aforesaid documents show that the lands in dispute form part of the private forest held by the applicants and under their personal cultivation at the time of coming into force of the Vesting Act, namely, on 10.5.71. We are satisfied that the above findings and conclusions are justified in law.

9. Similarly, regarding the extent of land which the applicants can retain, the High Court referred to Exhibit A5, a genealogy chart of the family and also Exhibit A12, dated 27.2.63, registered copy of Karar, executed in the applicants Thavazhi, to hold that on 10.5.71, the thavazhi had atleast 10 members and at the relevant time, the thavazhi (family) could retain a minimum 75 acres. Since the land in dispute was only about 60 acres in extent the applicants are entitled to retain the land in dispute in terms of section 3(2) of the Act. The said conclusion is amply justified on the basis of Exhibit A5 and A12. There is no error in the aforesaid finding and conclusion of the High Court.

10. We hold that the Judgment of the High Court does not merit interference. But in giving effect to the Judgment, the directions given by this Court in *T.N. Goda Varman Thrumulpad & Ors. v. State of Kerala & Ors.* (Civil Appeal No. 1780-81 of 1991) decided on 4.4.91 and reported in

A 1991 Supp. (2) SCC 665, at page 671, to the following effect should be reckoned and appropriate modification or consequential orders should be passed by the appropriate authority. At page 671 of the report this Court held thus :

B "We would, therefore, directed Kovilakam comprising 112 family members or their legal representatives, as the case may be, to make an application in Form 1 under Rule 3 for determination of the area to which they would be entitled having regard to Chapter III of the Kerala Land Reforms Act, 1963 not exceeding the ceiling area applicable to them under Section 82 of the said Act. Such applications may be made within six months from today. On receipt of such applications the custodian will deal with them in accordance with Act and the Rules for the limited purpose of finding out the area allocable to each claimant under Chapter III of the Kerala Land Reforms Act, 1963, not exceeding the ceiling area applicable under Section 82 thereof. To put the matter beyond doubt we may state that the custodian will proceed on the premiss that the applicants are entitled to exemption from vesting under Section 3(3) of the Act and the only question which he will enter upon will be as regards to the area allocable keeping in mind the ceiling area and Section 82 of the Kerala Land Reforms Act, 1963. It is needless to clarify that the total area allocable will in no case exceed 1680 acres but on account of the applicants having any other land or opting for any other land there may be shrinkage in the total area claimed. The benefit of the shrinkage, if any, will go to the State Government. We may also clarify that the area to be allocated will be on the right bank of Shaliyar River in one single block."

We make it clear that the applicants in this case are bound by the aforesaid directions of this Hon'ble Court and in giving effect to the Judgment under appeal, it is open to the authorities concerned to pass appropriate or consequential order or take steps in this regard.

The appeal is disposed of as above. There shall be no order as to costs.

R.P.

Appeal disposed of.