

KUNJANAM ANTONY (DEAD) BY LRS.

v.

STATE OF KERALA AND ANR.

FEBRUARY 6, 2003

[SYED SHAH MOHAMMED QUADRI AND ASHOK BHAN, JJ.]

Kerala Private Forests (Vesting and Assignment) Act, 1971:

Ss. 2f(1)(i)(B) and 3—Private forest—Vesting of in State—Appellant's claim for exclusion from vesting of in State certain land allegedly used principally for cultivation of rubber plantation—Rejected by High Court—Held, High Court is right in holding that the burden of showing that the land was not a private forest was on the appellant and the appellant had failed to establish her claim—The material on record indicates that the appellant has been cultivating topioca—There is also nothing on record to show that absence of rubber plantation was for short period and that the land was in the process of rubber plantation—Appellant has not established that the lands were used principally for cultivation of rubber plantation.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5351 of 1995.

From the Judgment and Order dated 03.10.1990 of the High Court of Kerala at Ernakulam in MFA No. 513/85.

T.L.V. Iyer, and K.V. Sreekumar for the Appellants.

Ramesh Babu M.R. for the Respondents.

The following Order of the Court was delivered :

In this appeal, the order of a Division Bench of the High Court of Kerala in M.F.A. No. 513 of 1985, dated October 3, 1990, is brought under challenge.

The proceedings arise out of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short, 'the Forest Act') which came into force on May 10, 1971. Section 3 of the Forest Act is a vesting section which says, *inter alia*, that notwithstanding anything contained in any other law for the

- A** time being in force, or in any contract or other document with effect on and from the appointed day (10.5.1971) the ownership and possession of all private forests in the State of Kerala shall by virtue of that 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. This provision is subject to sub-section (2) and (3) of Section 3 with which we are not concerned here.

For understanding the scope of this provision, it is necessary to examine the definition of the expression 'private forest' in clause (f) of Section 2 of the Forest Act. The relevant provision of the definition reads as under:

- C** "(f) 'private forest' means

(1) in relation to the Malabar district referred to in sub-section (2) of section 5 of the State Reorganisation Act, 1956 (central Act 37 of 1956)-

- D** (i) any land to which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-

(A) land which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964).

- E** (B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamon 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."

- F** A plain reading of the definition, extracted above, shows, inter alia, that if any land is under the Madras Preservation of Private Forest Act, 1949 (Madras Act 27 of 1949) before the appointed day, it would be a private forest. From the scope of the private forest are excluded lands, inter alia, which are used principally for the cultivation of tea, coffee, cocoa, *rubber*, cardamon or cinnamon and also those lands which are used for any purpose ancillary to cultivation of such crops or for preparation of the same for the market. For exclusion of the land from the application of the Act as not being private forest, it is not necessary that the land should be in actual cultivation of rubber, tea, coffee, etc. at all times. It is enough to prove that it is used principally for the cultivation of rubber, tea, coffee, etc. There should be
- G**
- H** continuity in cultivation of rubber, tea, coffee, etc. to prove principal use; and

absence of cultivation for short periods due to clear felling or other ancillary purposes would not militate against the principal use of the land for cultivation rubber, tea, coffee, etc. A

The appellant claims to be the owner of an extent of 17.74 acres of land in R.S.No.12/11 of vedakkethara village in Alathur Taluk (referred to as the 'disputed area') and that it contains rubber plantation therein. B

On the ground that the authorities under the Forest Act were not allowing her to enter the disputed area (17.74 acres), the appellant filed an application under Section 8 of the Forest Act before the Forest Tribunal for a declaration that the said area did not vest in the State as a private forest and that it was a part of the rubber estate. The Forest Tribunal found that the disputed area was not a private forest, and, accordingly, granted declaration to the appellant holding it to be rubber plantation. That finding was challenged in the High Court by the respondent-State. A Division Bench of the High Court deemed it fit to remand the matter to the Forest Tribunal to enable the appellant to lead further evidence to establish that the disputed area was principally used as rubber plantation. After remand, the Forest Tribunal, after giving opportunity to the parties, came to the conclusion that the area in dispute continued to be a rubber estate. That finding was again challenged by the State before the High Court in M.F.A.No.513 of 1985. A Division Bench of the High Court, by order dated October 3,, 1990, set aside the finding of the Tribunal and held that the appellant was not entitled to the exemption as the land was not principally used for cultivation of rubber plantation. It is this order of the High Court which is brought under challenge in this appeal. C D E

Mr. T.L.V. Iyer, the learned senior counsel for the appellant, has strenuously contended that just before the vesting of the land under the Forest Act, proceedings were conducted under the Kerala Land Reforms Act in which a total extent of 32.74 acres of land was exempted as rubber plantation; that order of the Thaluka Land Board had become final and would bind the authorities under the Forest Act; therefore, the Forest Act does not apply to the land in dispute. F

Mr. Ramesh Babu, learned counsel for the State, pointed out that the appellant stated before the Tribunal, contrary to the claim for the ceiling authorities, that the rubber plantation was destroyed by fire but no specific date of destruction of the rubber plantation was mentioned and that when the appellant approached the Tribunal in October 1977, no particulars of destruction of forest by fire had been furnished. It is also brought to our G H

A notice that the declaration given under the Ceiling Act did not disclose any destruction of the rubber plantation by fire; on the contrary, submitted the learned counsel. the appellant had been cultivating tapioca in the land in question as such. it cannot be accepted that the principal object of the appellant was to cultivate the land for rubber plantation.

B There can be no doubt that the order of the Thaluka Land Board, a statutory authority, is binding on the authorities under the Land Reforms Act. So far as the proceedings under the Forest Act are concerned, the order of the Thaluka Land Board would be a piece of evidence but it cannot be treated as a binding on the authorities under the Forest Act. Unless a contrary state of affairs is shown to exist, the order of the Thaluka Land Board would have to be given due weight. From the material placed before the High Court and also before us, it appears that there is no evidence in regard to the destruction of the rubber plantation due to fire. There is, however, material to show that the appellant has been cultivating tapioca. Further, the High Court recorded a finding that there was no evidence indicating that the appellant had intention to cultivate the land which only meant cultivation of rubber plantation. There is also nothing on record to show that absence of rubber plantation was for short period and that the land was in the process of rubber plantation.

E For these reasons, we are of the view that the High court is right in holding that the burden of showing that the land was not a private forest was on the appellant and the appellant had failed to establish her claim.

On the above facts, we are unable to hold that the appellant established that the lands were used principally for cultivations of rubber plantation, so, we do not find any valid ground to interfere with the order under challenge.

F The appeal is, accordingly, dismissed but, in the circumstances of the case, without costs.

R.P.

Appeal dismissed.