

A THE STATE OF KERALA & ANR.

v.

GOURI & ORS.

(Civil Appeal No. 7694 of 2009)

B SEPTEMBER 25, 2018

[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]

C *Kerala Private Forests (Vesting and Assignment) Act, 1971: s.3(3) – The land in question was acquired by the respondents prior to the appointed day and was being used for personal cultivation by respondents – Therefore, respondents-land owners were entitled to exemption of their land from being vested in the State under the Act – Land Acquisition.*

Dismissing the appeal, the Court

D **HELD: 1. The High Court held that the land was acquired by the respondents (landowners) prior to the appointed day and was being used for personal cultivation by the respondents-landowners. These findings were recorded on the basis of the commissioner’s report, who made on the spot inspection of the land in presence of both the parties. No kind of any perversity or arbitrariness or illegality is noticed in these findings. These findings were rendered in conformity with the law laid down by this Court in *Joseph case. The High Court, therefore, rightly held that the respondents are entitled to claim exemption of their land in question. [Paras 7, 8] [684-B-C, D]**

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F ***Joseph & Anr. v. State of Kerala & Anr. (2007) 10 SCC 414 : [2007] 6 SCR 347 – relied on.**

Case Law Reference

[2007] 6 SCR 347 relied on Para 8

G **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7694 of 2009.**

From the Judgment and Order dated 10.08.2007 of the High Court of Kerala at Ernakulam in MFA No. 297 of 2001.

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K. N. Balgopal, Sr. Adv., G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Ms. Beena Prakash, Mukundan, Jogy Scaria and Nishe Rajen Shonker, Advs., for the appellants. A

R. Basant, Sr. Adv., Vishnu P. and P. K. Manohar, Advs., for the respondents.

The Judgment of the Court was delivered by B

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the State against the final judgment and order dated 10.08.2007 passed by the Division Bench of the High Court of Kerala at Ernakulam in M.F.A. No.297 of 2001 whereby the High Court allowed the MFA filed by the respondents herein (land owners) and set aside the order of the Forest Tribunal. C

2. Few facts for the disposal of this appeal need mention hereinbelow.

3. At the outset, we consider it apposite to mention that this appeal was heard analogously with the Civil Appeal No.9912/2010 because the controversy involved in this appeal and in Civil Appeal No.9912/2010 was identical in nature. This Court by detailed order passed today has dismissed Civil Appeal No.9912/2010. D

4. Having heard the learned counsel for the appellant (State) and on perusal of the record of this case and keeping in view our reasoning contained in the detailed order passed in Civil Appeal No.9912/2010, we find no good ground to interfere with the impugned order for the following reasons. E

5. First, so far as the question of interpretation of relevant provisions of Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as "the Act") is concerned, this Court has dealt with the said question in detail in the order passed in Civil Appeal No.9912/2010. It would be applicable to this case also while examining the facts of this case because the case at hand also arises out of the same Act. F

6. Second, so far as the issues relating to respondents' land is concerned such as - when the respondents acquired the land in question, whether such acquisition by the respondents was prior to the appointed day, i.e., 10.05.1971 or later and, if so, how it was made, whether the acquired land was being used for personal cultivation by the landowners G

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A (respondents herein) and, if so, since when, all these questions were examined by the High Court and the categorical findings were recorded in respondents' favour by setting aside the findings of the Tribunal.

7. In other words, the High Court held that the land was acquired by the respondents (landowners) prior to the appointed day and was being used for personal cultivation by the respondents-landowners. These findings were recorded on the basis of the commissioner's report, who made on the spot inspection of the land in presence of both the parties.

8. These findings are based on proper appreciation of evidence. No kind of any perversity or arbitrariness or illegality is noticed in these findings. In other words, these findings satisfy the twin requirements of Section 3 (3) of the Act and, therefore, entitle the respondents to claim exemption of their land from being vested in the State under the Act. In our view, these findings are rendered in conformity with the law laid down by this Court in **Joseph & Anr. vs. State of Kerala & Anr.**, (2007)10 SCC 414. The High Court, therefore, rightly held that the respondents are entitled to claim exemption of their land in question.

9. In view of the foregoing discussion, we find no merit in this appeal.

10. The appeal thus fails and is accordingly dismissed.

E Devika Gujral

Appeal dismissed.