A THE INDIAN TIMBER AND PLYWOOD CORPORATION LTD. AND ORS.

v.

THE STATE OF KERALA AND ORS.

MARCH 31, 1994

B [KULDIP SINGH, J.S. VERMA AND R.M. SAHAI, JJ.]

Kerala Escheats and Forfeitures Act, 1964 : Sections 3, 4, 5, 6, 7 and 11.

C *Land—Abandonment of by owner—Escheat Proceedings—Collector's order escheating lands in favour of State—No appeal or suit against Collector's order—Order attaining finality—Suit for possession of land by State—Maintainability of.*

D **The Respondent-State filed a suit against the appellants for recovery of possession of suit lands on the ground that they were in unlawful possesssion of the same. The case of the State was that consequent to the abandonment of the disputed lands by its owner, escheat proceedings in respect of the said lands were initiated under the Kerala Escheats and** E **Forfeiture Act, 1964 wherein the Collector passed an order dated 24.12.1968 holding that the suit lands had escheated and belonged to the State and that since the appellants filed neither an appeal under section 7 nor any suit under section 11 against the Collector's order it became final and therefore the appellants were in unauthorised possession of suit lands.**

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The appellants resisted the suit claiming title to the suit lands and challenged the escheat proceedings contendings that the identity of the suit lands did not match with those acquired. They also stated that they had challenged the validity of the escheat order in writ petitions and by an G **order dated 24.12.70 passed by the High Court all questions regarding the validity of escheat proceedings and the order made therein were left open "to the extent permissible in law" for being raised in the pending suit filed by the State.**

The Trial Court rejected the State's claim and dismissed the suit. H **On State's appeal the High Court reversed the decree of the Trial Court**

and decreed the suit holding that (i) the plaint schedule properties were properly identified; and (ii) since the State has proved that the owner had left the property for good without any intention of asserting title to the said property at any time the escheat proceedings were justified. A

In appeal to this Court it was contended on behalf of the appellant that (i) the High Court was not justified in reversing the Trial Court's decree; and (ii) that in view of the High Court's order dated 24.12.1970 all questions raised in writ petitions remained open to them. B

Dismissing the appeal, this Court

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HELD : 1.1. The scheme of the Kerala Escheats and Forfeitures Act, 1964 is that the decision of the Collector made under Section 6 of the Act is final subject to the decision in appeal under Section 7 or a suit under Section 11 filed within the prescribed period. The decision of the Collector was made in the present case after investigating into the claim of the defendants made under Section 5 of the Act and the defendants did not prefer any appeal under Section 7 or file a civil suit under Section 11 of the Act to challenge the Collector's decision against it. The escheat order having attained finality, the suit filed by the State of Kerala for recovery of possession on that basis had to succeed for that reason alone. D

[245-E-G; 246-G] E

1.2. There is also no misreading of evidence or any other inifirmity in the discussion of evidence made by the High Court before reaching the conclusion relating to identity of the suit lands. [244-C]

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2. The observation made by the High Court while dismissing the appellants' writ petitions are of no avail to circumvent the effect of finality attaching to the decision of the Collector made under Section 6 of the Act, on account of the failure of the appellants to assail the same on merits in accordance with Sections 7 and 11 of the Act. The only challenge in the writ petitions was to the continuance of the escheat proceedings under the 1964 Act when the proceedings had been initiated under the 1817 Regulations, and not to merits of the decision of the Collector. Thus in the suit filed by the State the correctness on merits of the collector's decision could not be gone into, which is the challenge now made and not any challenge on the ground on which the writ petitions were filed. [246-D-G] G H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6120 of 1990.

From the Judgment and Order dated 21.3.90 of the Kerala High Court in Appeal Suit No. 214 of 1980.

B S. Rangarajan, Sanjay Parekh and B.P. Singh for the Appellants.

A.S. Nambiar and M.A Firoz for the Respondents.

The Judgment of the Court was delivered by

C **VERMA, J.** This appeal by special leave is against the judgment of the Kerala High Court dated 21st March, 1990 in A.S. No. 214 of 1980 arising out of judgment and decree of the subordinate court, Kozhikode in O.S. No.153 of 1972. The trial court had dismissed the original suit filed by the State of Kerala but the High Court has allowed the appeal of the State of Kerala. Hence this further appeal by special leave by the defen-
D dants in the suit.

The subject matter of the suit is 4,200 acres of land in Jenmakaran Tharakan. In short, the claim of the plaintiff-State of Kerala is that these lands had escheated and belong to the State of Kerala and Order Ex. A-17 dated 24.12.1968 to this effect made by the Collector of the district under
E the Kerala Escheats and Forfeitures Act, 1964 had become final under the Act, there having been no appeal under Section 7 or any suit in accordance with Section 11 of the Act by defendants/appellants against the Order Ex. A-17 made by the Collector. On this basis the suit for recovery of possession of these lands was filed against the defendants/appellants who were in
F unlawful possession of the same. The suit was resisted by the defendants/appellants claiming title in these lands and denying the claim of escheat. The trial court rejected the claim of the plaintiff-State and dismissed the suit. The High Court has reversed that decree and decreed the suit. The appellants contend that reversal of the trial court's decree by the
G High Court is without any justification.

It would be appropriate to mention the findings of the High Court in the background of the rival claims. It is beyond controversy that the disputed lands were in the possession of some European planters in the middle of the 19th century when they occupied the high lands of Malabar
H wherein Wynad hills were found to be congenial for coffee plantation.

Apparently such lands then were available in abundance for such occupation. According to the plaintiff-State of Karala, the suit lands came to be assigned by their original owner to one Antoon Lopez while there was a transfer also to M/s Leckie & Co. M/s Leckie & co. in order to avoid any possible dispute of title made a purchase also from Antoon Lopez. Nothing was heard of Antoon Lopez after he sold his right to M/s. Leckie & Co. while that company seems to have gone out of existence during the early years of the 20th century and had abandoned the lands near about 1910. Escheat proceedings were initiated by issue of Ex. A-10 dated 26.4.1965 to which erratum Ex. A-11 was issued in view of the objection Ex. A-37 filed by the defendant/appellant. It was thereafter that the decision of the Collector Ex. A-17 dated 24.12.1968 was made holding that the suit lands had escheated to the State Government of Kerala. The defendants/appellants being in unauthorised possession of these lands a suit for recovery of possession was filed by the State of Kerala on 1.1.1969. The defendants challenged the validity of the escheat proceedings and also contended that identity of the suit lands did not match with those acquired by the documents Ex. A-1, A-2 and A-3 on which plaintiff-State relies. To get over the effect of failure to appeal under Section 7 or file a suit in accordance with Section 11 of Kerala Escheats and Forfeitures Act, 1964 the defendants contended that the validity of the order of escheat was challenged in a writ petition wherein all questions regarding the validity of escheat proceedings and the order made therein were left open "to the extent permissible in law" for being raised in the pending suit filed by the State of Kerala. The defendants also claimed to have acquired title through one L.S. Krishnan who had obtained a lease Ex. B-1 dated 18.3.1921, and executed sale deed Ex. B-2 dated 11.5.1921 in favour of United India Lumbering (Pvt.) Ltd. Co. which went into liquidation and the properties thereof were then purchased by M. Cherian Pothen who then transferred the same in the manner indicated to enable defendants to acquire title to the suit lands.

The first question relates to the identity of the suit lands. The High Court has considered at length the rival contentions in the light of the entire evidence led by the parties and rejected the defendants' plea disputing the identity of lands. After discussing the entire evidence the High Court held in para 45 of its judgement as under :

> "We therefore hold on issues 1 to 3, differing from the findings of the trial court, that the plaint schedule property was properly

A identified, that it originally belonged to Jenmakaran Tharakan and that Mr. Antoon Lopez and M/s. Leckie & Company had title and possession over the plaint schedule property. We also hold, in the alternative, on issues 2 and 3 that the rights of M/s. Leckie & Company under Ex. A-1 had priority over the later transfer by Anoth Tharwad under Ex. B-1 in favour of Shri L.S. Krishnan, B which rights alone could have devolved on defendants 19 to 21."

We do not find any misreading of evidence or any other infirmity in the discussion of evidence made by the High Court before reaching the above conclusion relating to identity of the suit lands. The submission of C learned counsel for the appellants to the contrary does not require any further discussion.

The High Court has then considered the evidence relating to the justification for commencing the escheat proceedings and making the order and the decision Ex. A-17 by the Collector as a result of the enquiry held D for that purpose. The High Court on this aspect held as under :

"The only inference possible therefore was that M/s Leckie & Company was not registered either in Bombay or in London or elsewhere in U.K. either as a company or as a firm. The concern has gone completely out of existence. That seems to us to be a E situation justifying escheat proceedings.

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We hold that the plaintiff has succeeded in proving that the concern, M/s Leckie & Company, Bombay, which was the owner F of the property according to Exs. A-1 and A-2, had gone out of existence somewhere about 1910 and the constitutents of the concern, whether they be joint owners or partners or share-holders, had left the property for good without any intention of assenting title to the property at any time.

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We have held that M/s. Leckie & Company was the owner of the property and that the property became ownerless by about 1910. We have also held that Ex. A-10, A-11 and A-17 were valid. We H therefore set aside the findings of the trial court on these issues

and hold in favour of the appellant". A

A brief reference to the escheat proceedings and the impact of the order Ex.A-17 dated 24.12.1968 may be made at this stage. The Kerala Escheats and Forfeitres Act, 1964 provides for administration, supervision, custody and disposal of escheats and unclaimed property. Section 3 provides for escheat of the property of a person who dies intestate and without leaving heirs. Section 4 prescribes for a preliminary enquiry by the Collector whenever he receives information about any such property within his jurisdiction. Section 5 requires publication in the Gazette of a notice calling upon all persons who may have any claim to the property to appear and prefer the claim within six months of the date of the publication of the notice if as a result of the enquiry under section 4 the Collector is satisfied that the deceased has died intestate and without leaving any heirs and that it is a *prima facie* case of escheat. Section 6 then provides for investigation into any claim so made under Section 5 and for a decision by the Collector. It also provides that "the decision of the Collector shall be final, subject to the provisions of sections 7 and 11". Section 7 provides for an appeal to the Board from the decision of the Collector under Section 6 within the prescribed period and it says that the decision on such appeal shall be final subject to the further appeal prescribed therein to the Government within the prescribed period and Section 11 which provides for a suit within the prescribed period by the aggrieved person. Section 11 provides for a civil suit within the prescribed period. The scheme, therefore, is that the decision of the Collector made under Section 6 of the Act is final subject to the decision in appeal under Section 7 or a suit under Section 11 filed within the prescribed period.

The decision of the Collector Ex. A-17 dated 24.12.1968 was made in the present case after investigating into the claim of the defendants made under Section 5 of the Act and the defendants did not prefer any appeal under Section 7 or file a civil suit under Section 11 of the Act to challenge the Collector's decision against it. In an attempt to overcome the consequence of finality of the Collector's decision against it by virtue of the provisions in the Act, learned counsel for the appellants placed reliance on the writ petitions filed by the defendants and the order made therein. He contended that the questions raised in the writ petitions remain open to the defendants/appellants even now. Learned counsel placed reliance particularly on a portion of the judgment dated 24.12.1970 in O.P. Nos.

A 1107 and 1467 of 1969 filed by the appellants which were dismissed by the Kerala High Court. The only challenge made by the appellants in the writ petitions was to the validity of the escheat order on the ground that the proceedings having been started under the Madras Endowments and Escheats Regulations, 1817 it could not be continued under the Kerala
B Escheats and Forfeitures Act, 1964. There was no challenge by the appellants in the writ petitions to the escheat order on the ground of jurisdiction or violation of rules of natural justice. The High Court while dismissing the writ petitions on the ground of pendency of the suit filed by the State of Kerala,. observed as under :

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> "It is not disputed that all questions regarding the validity of the escheat proceedings and the legality of the orders can be raised, *to the extent permisible in law,* in the suits which are pending."

(Emphasis supplied)

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In our opinion the above observation made by the High Court while dismissing the appellants' writ petitions are of no avail to circumvent the effect of finality attaching to the decision of the Collector made under Section 6 of the Act, on account of the failure of the appellants to assail the same on merits in accordance with Sections 7 and 11 of the Act. The
E only challenge in the writ petitions was to the continuance of the escheat proceedings under the 1964 Act when the proceedings has been initiated under the 1817 Regulations, and not to merits of the decision of the Collector. Moreover, the High Court in its observation has merely said that the grounds, "to the extent permissible in law" would remain open in the
F suit. Obviously in the suit filed by the State of Kerala the correctness on merits of the Collector's decision could not be gone into, which is the challenge now made and not any challenge on the ground on which the writ petitions were filed, assuming the liberty to the defendant-appellant extended to raising the available grounds as a defendant in the suit. It would thus appear that the finality of the Collector's decision Ex.A-17
G made under Section 6 of the Kerala Escheats and Forfeitures Act, 1964 is by itself sufficient to negative the defence in the present suit. In other words, the Escheat Order Ex-A-17 having attained finality, the suit filed by the State of Kerala for recovery of possession on that basis had to succeed for that reason alone. No further question does really arise for any serious
H consideration in this appeal. This alone is sufficient to uphold the High

Court's decision decreeing the suit of the State of Kerala. A

In view of the above conclusion, it is unnecessary to deal with any other submission of learned counsel for the appellants or even with the submission of learned counsel for the respondents made in the alternative that the suit lands are "private forest" as defined in Section 2(f) of the Kerala Private Forests (Vesting & Assignment) Act, 1971 and therefore B they have vested in the State of Kerala by virtue of that Act free from all encumbrances. This alternative submission of learned counsel for the respondents was to contend that even if the claim of plaintiff-State could not be upheld on the ground of escheat, it must succeed on the ground of vesting of private forest in the State of Kerala. In the view that we have C taken it is unnecessary to examine this alternative submission of learned counsel for the as well as reply of learned Counsel for the appellants respondents that the suit lands do not fall within the definition of 'private forest'.

We do not see any ground to interfere in the appeal. Consequently, D the appeal is dismissed with costs.

T.N.A. Appeal dismissed.