THE STATE OF KERALA AND ANR. A

v.

THE PULLANGODE RUBBER AND PRODUCE CO. LTD. ETC.

JULY 27, 1999

[S.P. BHARUCHA, R.C. LAHOTI AND N. SANTOSH HEGDE, JJ.] B

Land Laws :

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

C

S.2 —"Private forest"—Vesting in State Government—Land used for cultivating tea, coffee, cocoa, rubber, cardamom or cinnamon and for any purposes ancillary to the cultivation of such crops, excluded from the definition of 'private forest'—Company engaged in rubber cultivation—Certain lands used for fuel purposes in smoke houses for manufacture of rubber and supply of firewood to employees—Held exempted—Madras Preservation of Private D *Forests Act, 1949.*

S.2 —"Private forest"—Claim for exemption from the definition—Burden of proof—Held, claimant to establish by evidence that the landfalls within the exception to the definition under the Act—On facts, company failed to E *establish that its lands were used for the purposes mentioned in the exception—Thus, High Court erred in granting exemption to company for lands used for firewood purpose.*

"Private forests"—Claim for exemption—Company principally engaged in rubber cultivation—Wooded areas in enclaves surrounded by its rubber F *plantation—Held, if large part of a parcel of land is used for cultivating specific crop, leaving a small portion, the whole area of land will be treated as used for cultivation of that specified crop—Thus, areas in the enclaves surrounded by rubber plantation covered—However, lands on the periphery of the company's plantation not bounded elsewhere by rubber plantation* G *cannot be granted exemption.*

Words & Phrases:

"Private forest"—Meaning of in the context of Section 2 of Kerala Private Forests (Vesting and Assignment) Act, 1971. H

A Respondent—Company owned certain areas of land on which it cultivated rubber plants. The Kerala Private Forests (Vesting and Assignment) Act, 1971 was enacted for the vesting of private forests in the State Government, Section 2 thereof defined 'private forests'. It excluded inter alia lands which were used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purposes ancillary to the cultivation of such crops or for the preparation of same for the market. The company claimed that the lands which were reserved for fuel purpose for manufacture of rubber in smoke houses and for supply of firewood to the employees were not 'private forests' under the Act. The company also claimed exemption for the wooded areas in enclaves surrounded by its rubber plantation. The said claims were rejected by the Forest Tribunal. On appeal, High Court held that the supply of firewood to the employees could not be said to be a purpose ancillary to the cultivation of the plantation crops. However, it allowed the claim for exemption of land used for supply of firewood for smoke houses. Aggrieved, both the appellant State and Company have preferred the present appeals.

Allowing the appeals, this Court

HELD: 1. High Court was justified in holding that lands used for supplying firewood for the smoke houses of the company was excludible from the definition of 'private forest' under the Kerala private forests(Vesting and Assignment) Act, 1971. [1169-F]

Pioneer Rubber Plantation, Nalambur, Kerala State v. *State of Kerala and another,* [1992] 4 SCC 175, relied on.

2. It is for the claimant to establish by appropriate evidence that the land in respect of which it seeks an exemption was being used on the appointed day under the Act for a purpose which falls within the exception to the definition under the Act. However, in the instant case the company's claim statement before the Tribunal shows that it had not even made an averment that the area of 594,78 acres or some specific part thereof was being used on the appointed day for supplying firewood to its smoke-houses or its workmen. Even so, the Tribunal discussed the company's evidence, oral and documentary, and rightly found that the evidence did not establish that this acreage of land or any specific part was being used by the company for supply of firewood to its smoke houses and its workmen. In the absence of evidence the company's claim must fail in regard to the entire area of 594.78

acres. Thus, High Court erred in making an assessment and exempting an extant of 75 acres of land. [1171-G; 1170-A-B; 1169-G] A

3. Having regard particularly to the words in the definition, "lands which are used principally for the cultivation of.....", where the large part of a parcel of land is used for plantation of the specified crops leaving only a small part within not so cultivated, it is reasonable to say that the parcel of land as a whole is used principally for the cultivation of the specified crops. The principle would apply in the instant case to the land in the enclave within the company's plantation. However, regarding the area on the periphery of the company's plantation there is nothing to suggest that it bounded elsewhere also by a rubber plantation. The exemption, therefore, cannot be made applicable to this land. [1174-B-C] B C

***Bhavani Tea and Produce Co. Ltd.* v. *State of Kerala & Ors.*, [1991] 2 SCC 463, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No 4253 of 1984 Etc. D

From the Judgment and Order dated 23.3.84 of the Kerala High Court in M.F.A. No. 426 of 1978.

T.L.V. Iyer, V.R. Reddy, Dr. Abhishek M. Singhvi, K.M.K. Nair, Vipin Nair, P.B. Suresh, N. Ramachandran, Jaideep Gupta, Mrs. Meera Mathur, O.C. Mathur, Antinic Doninic, D. Ramakrishna Reddy, Mrs. D. Barathi Reddy, A.V. Velayudhan Nair, K.M. Nambiar and B.V. Deepak, (Dilip pillai) for G. Prakash for the appearing parties. E F

The Judgment of the Court was delivered by

BHARUCHA, J. CIVIL APPEAL NO. 4253/1984 AND CIVIL APPEAL NO. 4423/1984 :

The pullangode Rubber & Produce co. Ltd. (hereinafter referred to as "the company") is the appellant in Civil Appeal No. 4423 of 1984. It owned 3687.48 acres of land, on 2148.28 acres of which rubber trees were planted. The said land fell within the Malabar District of the State of Madras *prior to* the coming into force of the States Reorganisation Act, 1956; thereafter it fell within the State or Kerala. The said land was governed by the Madras G H

A Preservation of Private Forest Act, 1949, immediately before the appointed day, 10th May, 1971, under the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as " the said Act").

The said Act was enacted to provide for the vesting of private forests in the State Government and the assignment thereof to agriculturists and B agricultural labourers for cultivation. Section 2 of the said Act defined 'private forest' to mean, in relation to the Malabar District aforementioned, land to which the Madras Preservation of Private Forests Act, 1949, applied immediately before the appointed day under the said Act, excluding, *inter alia*, " lands which are used principally for the cultivation of tea, coffee, C cocoa, rubber, cardamom or cinnamon and lands used for any purposes ancillary to the cultivation of such crops or for the preparation of the same for the market."

The company contended, among other things, that an area of 594.78 acres out of the said land was not a private forest within the meaning thereof D quoted above being " uncultivated jungle area reserved for fuel purpose for manufacture of rubber, for use of labourers employed in the estate numbering about 1000, and for green manure/mulching ancillary to the plantation and rocky area". It was stated in the company's claim statement thus :

E "This is a chunk of land overgrown with wild growth whose retention with the applicant is absolutely necessary for reasons more than one. It is the only source of firewood necessary for the use as fuel for the manufacture of rubber and the vast plantations owned by the applicant depend for their economic exploitation on the firewood made available by the bit of jungle area. The firewood F required by the large contingent of labourers and members of the staff employed in the estate is also supplied by this area. It also constituted the sole source of green manure so vitally required by the rubber plantations ground, which would be in their absence devoid of manure. Besides they are also the grazing ground for the G cattle of the petitioner and its employees."

The Forest Tribunal constituted under the said Act which adjudicated the Company's claim noted :

"The date of commencement of the Act is 10.5.1971. So the state of H affairs as on that date has to be considered. The requirement of

firewood may increase as years go by. The point to be considered is whether this vast extent of jungle area was being used for taking firewood and not whether this property is not (sic) required by the petitioner to meet all its needs regarding firewood."

The Tribunal discussed the evidence of the witness on behalf of the company and the stock books that it had produced. It noted that the stock books, especially those prior to 1971, did not show that firewood was being regularly supplied to the workers and staff. According to the witness, firewood was necessary for making charcoal for sharpening the tools for tapping and for other maintenance work in the company's estate. He had also stated that firewood was being supplied to the canteen and the hospitals in the estate. The stock registers of the period prior to 10th May 1971, the Tribunal found, did not show that considerable quantities of firewood were being used for these purposes at that time. Further, in the Tribunal's view, the requirements of firewood for the domestic use of workers and staff for converting into charcoal and for supplying to the hospital and canteen could not be stated to be purposes ancillary to the cultivation of rubber or for the preparation of the same for the market. The company's witness had stated that it was a condition of employment in the company that it would supply firewood free and so the workers were allowed to collect firewood. He had also stated that such a condition was contained in the written agreement between the workers' union and the management of the company, but no such agreement was produced and it was also not known whether such agreement was prior to or subsequent to 10th May, 1971. The Tribunal found, based upon the evidence, that there were miscellaneous trees in the company's estate, at least on the boundaries thereof, which could be cut and used for firewood; also, that vast areas within the said land had been clear-felled during the period 1964-71, as could be seen from clear- felling permits on the record. The Tribunal concluded that there would have been no necessity for cutting any trees from the jungle area of 594.78 acres, at least prior to 10th May, 1971. It found that the company's case that firewood had been taken from this area did not appear probable and true. There was also no satisfactory material to show that this area was being used by the company at the commencement of the said Act for obtaining firewood for use in the smoke- houses in its estate. The Tribunal concluded that this area of 594.78 acres was a private forest under the said Act.

The company's appeal in this behalf, along with other appeals, was considered by a Five Judge Bench of the Kerala High Court and its judgment

A and order is under challenge before us.

The High Court said that the question was whether the supply of firewood for staff and workmen could be treated as satisfying a purpose ancillary to cultivation and whether the smoke-house needs were relatable to use of land in the preparation of rubber for the market. It added that the B further problem was of fixing up the jungle area which could reasonably be ear-marked for the purpose. It held that the supply of firewood to the employees could not be said to be a purpose ancillary to the cultivation of the plantation crops, and in this regard it followed the judgment of this Court in *Chettian Veetil Ammad & Anr.* v. *Taluk Land Board & Ors.*, [1980] 1 SCC 499. It then C proceeded to consider whether the use of land for supply of firewood for smoke-house purposes would exempt the land, and held that it would. It then said :

> "The next point is what area of the jungle land could be excluded on the above basis? A precise assessment will almost be impossible, D because the quantum of fire-wood needed for smoking purposes will depend on the volume of rubber to be processed, the yield of the trees, the quality of the wood and other factors. The best solution seems to be to make an approximate assessment as was made by the Taluk Land Board in *Ammad's case* (supra). Taking into account the E finding of the Tribunal that the yield in 1971 was lower, and that dry branches of rubber trees are also likely to be available for fire-wood purposes, we fix the extent as 75 acres."

The Company is in appeal from the decision of the High Court in so far as it relates to the aspect of supply of firewood to its staff. The State is in F appeal (C.A. No. 4253 of 1984) in so far as the decision relates to the aspect of firewood for the smoke-house.

It is necessary first, we think, to construe the definition of "private forest" in the said Act. It means, as aforestated, in relation to the erstwhile G Malabar District of the State of Madras, land to which the Madras Preservation of Private Forests Act applied immediately before 10th May, 1971, being the appointed day under the said Act, but excluding, inter alia, "lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands for any purpose ancillary to the cultivation of such crops or to the preparation for the same to the market." Such lands so used are, H therefore, not private forests within the meaning of the said Act. Now what

this means is that lands in the Malabar District aforementioned which are used (a) principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon, (b) for any purpose ancillary to the cultivation of such crops, and (c) for the preparation of such crops for the market are not private forests under the said Act. The use of the words "are used" in this context necessarily refers to such use as on the appointed date under the said Act, namely, 10th May, 1971. It is not possible to give any other meaning to the words "are used". They must relate to use on that particular day for it is on that day that land is or is not a private forest within the meaning of the said Act.

What, therefore, is necessary for a claimant for exemption to establish in regard to land within the aforementioned Malabar District is that on 10th May, 1971, its lands were being used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon or that they were being used on that day for any purpose ancillary to the cultivation of such crops or that they were being used on that day for the preparation of such crops for the market.

We now turn to the question whether land used for providing firewood to a rubber estate's smoke-houses and its workers is land that is not a private forest within the meaning of the said Act. The question is now answered by the judgment of this Court in *Pioneer Rubber Plantation, Nalambur, Kerala State* v. *State of Kerala and another,* [1992] 4 SCC 175. The majority on the Bench of three learned Judges held that it appeared reasonable that the area "required for the purpose of growing firewood trees for fuel in the factories and smoke-houses (of rubber plantations) as well as for supply to the employees of the estate for their domestic use should be excluded from the definition of the term 'private forest'."

The High Court was, therefore, right in holding that land used for supplying firewood for the smoke-houses of the company was excludible from the definition of 'private forest' under the said Act. The consequential question is whether the High Court was right in making an assessment thereof as indicated above and fixing an extent of 75 acres in this behalf. The answer must be in the negative.

As demonstrated above by an analysis of the definition, it was for the company to plead and establish by evidence that on 10th May, 1971 the land admeasuring 594.78 acres or some specific part thereof was being used for supplying firewood to its smoke-houses and its workmen.

A As the company's claim statement before the Tribunal, which we have quoted above, shows, it had not even made an averment that the area of 594.78 acres or some specific part thereof was being used on 10th May, 1971 for supplying firewood to its smoke-houses or its workmen. Even so, and concentrating very properly on the date 10th May, 1971, the Tribunal discussed the company's evidence, oral and documentary, in some detail. It found, and B rightly, that the evidence did not establish that this acreage of land or any specific part thereof was being used by the company for these purposes on 10th May, 1971. In the absence of evidence the company's claim must fail in regard to the entire area of 594.78 acres.

C In the same proceeding, the company contended before the Tribunal that two areas of land (R.S. 1032 admeasuring 28.40 acres and R.S. 1964 admeasuring 37.75 acres) were wooded areas in enclaves surrounded by its rubber plantation and that these should not be considered private forests. The Tribunal noted the evidence of the company's witness that if such land was treated as a forest vested in the State, the company's surrounding D plantation would be jeopardised. The Tribunal found that it could not be held that these were lands utilised for any purpose covered by the definition quoted above and held them to be private forests. The High Court, in appeal, noted that the wooded area of 28.40 acres in R.S. 1032 was an enclave surrounded by rubber trees but that the area of 37.75 acres in R.S. 739 lay E on the boundary of the company's estate. The High Court, being unsatisfied with the evidence in this behalf, rejected the company's claim in regard to these two areas of the said land, and the company is in appeal.

Our attention was drawn by learned counsel for the company to the judgment of this Court in *Bhavani Tea and Produce Co. Ltd.* v. *State of* F *Kerala and Ors.*, [1991] 2 SCC 463. Among other claims in this matter was a claim by the appellant tea company that certain areas of land within its plantation were excluded from the purview of the said Act. A Bench of two learned Judges of this Court said that the said Act, the Kerala Forest Act, the Kerala Land Reforms Act and the Madras Preservation of Private Forest G Act considered plantations as units by providing that they would include land used for ancillary purposes as well. Therefore, while applying the said Act, the same principle was applicable. Accordingly, it was reasonable to take each division of the plantation as a unit and apply the principle aforementioned. Based thereon, this Court held that plots admeasuring 25.08 acres, 1.65 acres, 3.82 acres, 10.70 acres, 10.58 acres, 8.10 acres and 24.84 acres formed small H portions of the respective divisions of the plantation and could be taken to

have been principally cultivated. Accordingly, these plots were found to be exempt from vesting under the said Act. A

We respectfully agree, having regard particularly to the words in the definition, "lands which are used principally for the cultivation of .....", where the large part of a parcel of land is used for plantation of the specified crops leaving only a small part within not so cultivated, it is reasonable to say that the parcel of land as a whole is used principally for the cultivation of the specified crops. The principle would apply in the instant case to the land admeasuring 28.40 acres in R.S. 1032 because it is an enclave within the company's plantation of 2148.28 acres. The area of 37.75 acres in R.S. 1964 is on the periphery of the company's plantation and there is nothing to suggest that it is bounded elsewhere also by a rubber plantation. The exemption, therefore, cannot be made applicable to Rs. 1964. B C

Before parting with these appeals we must mention that they were ordered to be heard by a three Judge Bench because it had been contended, based upon the decision in the case of *Bhavani Tea and Produce Co. Ltd.* (supra), that a cultivated plantation was excluded from the operation of the Madras Preservation of Private Forest Act. No such argument has been advanced before us, even after we pointed out the referral order. It is, therefore, not necessary for us to consider the correctness of the decision in *Bhavani Tea and Produce Co. Ltd.* in its entirety. D E

CIVIL APPEAL NO.4925 OF 1985 :

The State is in appeal and the respondent is not represented. The High Court made an assessment of the land claimed to be used for providing firewood trees or a fire-belt and exempted an area of 15 acres, taking the total extent of the land, the nature of land and other aspects into consideration. As we have pointed out above, it is for the claimant to establish by appropriate evidence that the land in respect of which he seeks an exemption was being used on the appointed day under the said Act for a purpose which falls within the exception to the definition quoted above and that no assessment of this kind is permissible. The judgment of the High Court is, therefore, erroneous. F G

In the result, Civil Appeal No. 4253 of 1984 is allowed and the order of the High Court in so far as it exempts an area of 75 acres from the purview of the said Act is set aside. Civil Appeal No. 4223 of 1984 is allowed only to the extent that an area of 28.40 acres in R.S. 1032 is exempt from the purview H

A of the said Act. Civil Appeal No. 4925 of 1985 is allowed and the judgment and order of the High Court is set aside in its entirety.

There shall be no order as to costs.

S.V.K. Appeals allowed.

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