CASE NO.:
Appeal (civil) 7111 of 1999

PETITIONER:
State of Kerala and Anr.

RESPONDENT:
M/s Popular Estates and Anr.

DATE OF JUDGMENT: 04/11/2004

BENCH:
Shivaraj V. Patil & B. N. Srikrishna

JUDGMENT:
J U D G M E N T

SRIKRISHNA, J.

This appeal by special leave impugns the judgment of the Division Bench of the Kerala High Court dated 7.4.1994. The High Court by its impugned judgment set aside the judgment of the Forest Tribunal and directed the Custodian & Conservator of Vested Forests to hand over possession of a large area of land to the respondents.

The respondents claim to be owners of 1534.40 acres of land comprising 265.85 acres of cardamom plantation, 334.85 acres of paddy field and 585.90 acres of cultivable dry land and forest land. They claim that these lands were purchased by M/s Popular Automobiles, a registered firm, by registered deeds alleged to have been executed in the year 1963 and further that these lands were given to them upon partition of the assets of the said firm. The Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as 'the Act') came into force with effect from 10.5.1971. Under Section 3 of the Act, all private forests stand vested in the State Government. The Act was challenged before the Kerala High Court and was struck down as unconstitutional by the judgment delivered sometime in 1972. The judgment of the High Court was reversed by this Court's Order dated 15.9.1973 holding that the Act was a valid piece of Legislation.

After the Act was upheld by the Supreme Court, the forest authorities attempted to take possession of large areas of land in the occupation of the respondents on the ground that they were private forests which had vested in the State Government under Section 3 of the Act. The respondents moved two Original Applications Nos. 242 and 243 of 1974 before the Forest Tribunal under Section 8 of the Act. The substantive prayer made therein was for a declaration that no part of the estate comprising 1534.40 acres was liable to vest in the State as it was exempted under the provisions of the Act from vesting. The applications were opposed by the State Government, which disputed the facts alleged in the applications. The Forest Tribunal appointed a Commissioner to inspect the entire area and report about the state of the land to the Tribunal. The Commissioner after a preliminary inspection was of the view that a detailed survey of the land was necessary as most of the land was situated on hills hence inaccessible. Private surveyors were appointed to carry out the survey but they could not complete the work. On the directions issued by the Forest Tribunal, the Forest Survey Department officers were directed to carry out the survey of the land in question. After considering the report of the departmental Surveyors and hearing the parties, the Tribunal dismissed Original Applications Nos. 242 and 243 of 1974 after making critical comments about the manner in which the surveyors had made the report and observed:

"What exactly is the evidence on the basis of which the

petitioners were able to convince those responsible for demarcating the undeveloped areas that all plants whether coffee or cardamom found in the property were raised before the appointed day as stated by the Commissioner is not known. Anyhow no such evidence has been adduced before this Tribunal. But in view of the fact that the claims has now been confined to 100 hectares on behalf of the respondents, it is not necessary for me to consider whether the area which was originally claimed as vested forest by the respondents over and above the 100 hectares and which has been excluded subsequently at the time of the demarcation was really area which has to be excluded or not."

and further,

"This exclusion by the forest officials, may be due to the fact that the magic money lulled them to sleep over the rights of the Government or may be due to the fact that the claim originally put forward by the forest officials was false. Neither way it is not very complimentary to the respondents here or to those officials concerned. It is for the Government to make necessary immediate enquiry in this matter through some official, other than Forest Department official, if the Government so think and ascertain whether any area which legitimately come under the classification of private forest and which had vested in the Government besides bits 1 to 7 have been excluded by the Forest officials or by the forest survey officials. On the basis of the Commissioner's report and the facts mentioned by him, I am inclined to think that prima facie it appears that areas which should really be vested forest have been excluded, when the claim was confined to 100 hectares."

Pursuant to the orders of the Forest Tribunal, when the forest authorities attempted to take possession of the land, the respondents filed Suit Nos. 69 and 71 of 1987 before the Munsiff's Court, Hosdurg seeking permanent injunction against the State from taking possession. Though, initially, the Munsiff's Court refused to register the plaint on the ground that their suits were not maintainable, subsequently, the suits came to be entertained on the orders passed by the High Court in a civil revision petition filed by the respondents.

On 22.7.1987 when the two suits of the Respondents were pending, the Custodian & Conservator of Vested Forests issued a notification under Section 6 of the Act demarcating 324 hectares of land belonging to the plaintiff-respondent as vested forests under the Act. This notification was challenged before the High Court of Kerala in O.P. No. 7498 of 1987. The two Civil Suits 69 and 71 of 1987 were withdrawn by the respondents. The original petition filed before the High Court was dismissed on the ground that the respondents had alternate remedy available before the Forest Tribunal.

The respondents filed Original Applications Nos. 28 and 29 of 1988 before the Forest Tribunal under Section 8 of the Act seeking a declaration that the property covered by the applications was not private forest vested in the State Government. Simultaneously, the respondents also filed a writ appeal against the order dismissing O.P. No. 7498 of 1987. The writ appeal was admitted subject to the condition that the respondents withdrew their original applications pending before the Forest Tribunal. The original applications before the Forest Tribunal were withdrawn, later, the writ appeal was also dismissed directing the respondents to approach the Forest Tribunal for appropriate relief.

The respondents filed Original Applications Nos. 166 and 167 of 1990 before the Forest Tribunal challenging the jurisdiction of the State Government to issue the notification after a long lapse of time. The respondents also filed Civil Appeal No. 200 of 1991 in this Court, which was disposed of by Order dated 11.1.1991 as follows:

"In view of this, the impugned order is set aside and the appellants are given liberty to file an application to the Tribunal within one month from today or to proceed with the application they have already filed before the Tribunal. The appellants agree to confine the application which has already made to the Tribunal to challenging the validity of the said notification on the grounds set out in the writ petition filed in the High Court. In the event of the Tribunal coming to the conclusion that it has no jurisdiction to entertain the dispute, the appellants will be at liberty to file an appeal and or a writ petition to the High Court to challenge the said notification but only on the said grounds. The interim orders passed by the High Court shall continue to operate till the Tribunal decides the application of the appellants and for a period of two weeks thereafter, it will be for the High Court to pass such orders as it may think fit. The Tribunal to dispose of the aforesaid application within a period of six months from receiving this order. The Registry to transmit a copy of this order as early as possible. In order to challenge the said notification and limit the grounds of challenge as aforesaid the appellants will be at liberty to amend the application which he has made to the Tribunal. The condition imposed by the High Court on the appellants in its orders dated 13th February, 1989, and 29th September, 1989 respectively shall continue to operate. The appeal is disposed as aforestated. No order as to costs."

Pursuant to the liberty given by this Court, the respondents amended their original applications pending before the Forest Tribunal and also filed a writ petition O.P. No. 4751 of 1993 before the High Court challenging the validity of the notification dated 22.7.1987 issued by the Custodian & Conservator of Vested Forests. By an Order made on 30.10.1992, the Forest Tribunal dismissed Original Applications Nos. 166 and 167 of 1990 holding that by its earlier order it had only dealt with the status of 100 hectares of the land and, therefore, with regard to rest of the land the State Government had power to issue a fresh notification. The respondents challenged this judgment of the Forest Tribunal by their appeal M.F.A. No. 72 of 1993 before the High Court. By the impugned common judgment dated 7.4.1994 the High Court allowed M.F.A. No. 72 of 1993 and writ petition O.P. No. 4751 of 1993. The High Court held as valid the notification only in respect of 100 hectares of vested forest and held it to be invalid vis-‘-vis the rest of the land. The High Court also directed the Custodian of Vested Forests to demarcate the boundaries of this extent of 156 acres (100 hectares) under Section 6 of the Act and restore possession of the remaining extent of the properties to the respondents. The State being aggrieved is in appeal before us.

We notice from the impugned judgment of the High Court that the High Court has proceeded on the basis of the Order made by the Taluk Land Board in the land ceiling case pertaining to the respondents would amount to res judicata. We may mention here that the respondents had filed a draft statement under the provisions of the Kerala Land Reforms Act, 1963. Section 81 of this Act inter alia exempts private forests and plantations. Rule 10 of the Kerala Land Reforms (Ceiling) Rules, 1970 prescribes that the Taluk Land Board is to prepare a draft statement of lands to be

surrendered and a copy thereof is to be served on the persons interested in the lands. In the draft statement prepared by the Taluk Land Board, the respondents were shown to hold an extent of 1576-73-257 acres of land of which 1537-25-645 acres fell under the exempted category, and that the respondents were eligible to retain the balance extent within the ceiling area. The Taluk Land Board came to the conclusion that there was no surplus land to be surrendered to the State. Though, the State Government did not file any proceedings to challenge the declaration made by the Taluk Land Board, proceedings under Section 85(9A) of the Kerala Land Reforms Act, 1963 had been initiated for reopening the final order by a notice dated 18.5.1992. That notice was challenged by the respondents by their civil revision petition C.R.P. No. 1409 of 1992 before the Kerala High Court and further proceedings have been stayed.

Learned counsel for the State Government urged before us that there were strong circumstances which impelled the State Government to reopen the determination of the ceiling case pertaining to the respondents. Since the matter is sub judice before the High Court, any determination made therein could not be treated as res judicata.

In our view, the appellants are justified in their contention that the Taluk Land Board determination could not operate as res judicata for two reasons. In the first place, the decision of the Taluk Land Board has been reopened by the proceedings under Section 85(9A) of the Kerala Land Reforms Act, 1963 and it is only because of the challenge thereto made by the respondents that further proceedings have been stayed by the High Court. Thus, it is not possible to say that the decision of the Taluk Land Board had become final. Secondly, the Taluk Land Board was only concerned with the issue as to whether the lands held by the respondents were liable to be exempted from the ceiling limits. As long as the land fell into one of the exempted categories, the Board was not concerned with the exact category under which the land fell since both private forest and plantation are exempted categories. Apart from the determination of the extent of the exempted land, the Board was strictly not required to go into the question as to whether the land was plantation or private forest. For both these reasons, we are unable to accept that the decision of the Taluk Land Board could operate as res judicata and prejudiced the rights of the State Government before the Forest Tribunal. In any event, this question is no longer res integra. As held in Kunjanam Antony v. State of Kerala and Anr. the order of the Taluka Land Board, though a statutory authority, may be binding on the authorities under the Land Reforms Act; so far as the proceedings under the Kerala Private Forests (Vesting and Assignment) Act, 1971 are concerned, the order of the Taluka Land Board would be a piece of evidence, but it cannot be treated as binding on the authorities under the Forest Act.

Learned counsel for the respondents produced before us copies of registered deeds and contended that these formed the title deeds by which the respondents' predecessor in title had purchased the land, way back, in the year 1963. He attempted to support the reasoning of the High Court in its judgment that there was an admission on the part of the State Government and its officers that only 155.90 acres was forest. We are unable to accept these contentions urged by the learned counsel for the respondents. The Scheme of the Act is that upon the Act coming into force, all private forests would vest in the State Government. The demarcation of the forests under Section 6 of the Act is merely a consequential act and the vesting is not postponed depending on the said act. If anyone claims that his land had not vested in the State Government, Section 8 of the Act gives remedy of moving the Forest Tribunal with full details. The Forest Tribunal would then adjudicate the dispute and decide as to how much of the land claimed by the applicant was not vested forest. It is only upon such determination that the State would be divested of the vested forest. In the instant case, the burden of establishing that certain disputed land was not vested forest rested squarely upon the respondents before the Forest

Tribunal. The respondents would succeed or fail on the merits of their own case of showing that the land fell within the exempted category.

In the first round before the Forest Tribunal, the respondents filed O.A. No. 242 and 243 of 1974 claiming the full extent of 1534.40 acres of vested land as liable to be exempted from vesting under the provisions of the Act. The Forest Tribunal by its order dated 15.2.1978 declared 100 hectares of land as vested forest land, but, at the same time, did not grant any declaration with regard to the rest of the land and dismissed the applications by making strong observations.

In the second round of litigation before the Forest Tribunal, the Forest Tribunal has not granted any declaration in favour of the applicants-respondents, but has dismissed the applications by holding that under Section 8 of the Act it had to be shown before the Forest Tribunal that the property was not a private forest as on 10.5.1971, or that it was a private forest but liable to be exempted from vesting under Section 3(2) of the Act. The Tribunal obeserved:

"\005.the order in OAs. 242/74 and 243/74 was not based on any admission as contended to be secondly the decision in OAs. 242/74 and 243/74 was only in respect of 100 hectares and there was absolutely no decision regarding the rest of the properties shown in the OAs. Further after finding that the 'disputed' 100 hectares were private forests the petitions were dismissed. That means that there was no order against the State and so there was no question of the State filing an application for review of the Order."

The Forest Tribunal noted that the petitions did not give a correct description of the properties in respect of which the relief was sought, inasmuch as no schedules were attached, nor the extent or the boundaries of the properties were given. It was rightly pointed out by the Tribunal that in an application under Section 8 of the Act, it was for the claimant to prove that the properties in respect of which relief if sought were not private forests as defined under the Act. Considering the material on record, the Tribunal rejected the claim in toto.

In the impugned judgment, the High Court has not been able to make a finding as to the exact extent of the land or the nature of the land as on the date of the Act coming into force. Nor has the High Court discussed the evidence to record a finding that the lands claimed were not private forests or were exempted as on 10.5.1971. The judgment of the High Court proceeds, as we have already pointed out, firstly on the footing that there was a decision on the land in question by the Taluk Land Board which operates as res judicata, and, secondly, that there was an admission by the forest authorities before the Forest Tribunal. In our view, both the reasons adduced by the impugned judgment for allowing the applications under Section 8 of the Act are not correct. We notice from the common Order of the Forest Tribunal dated 30.10.1992 made in O.A. Nos. 166 and 167 of 1990 that, although, the respondents (applicants before the Forest Tribunal) had placed on record the title deeds, partition deeds and several other documents and relied upon them in support of their cases, the land to the extent described in the said applications did not vest in the State Government, there is hardly any discussion in the Tribunal's order with regard to these facts. The discussion proceeds mostly on the question as to whether the Taluk Land Board decision was binding on the Forest Tribunal and, secondly, as to the effect of the previous orders of the Forest Tribunal. In the impugned judgment of the High Court also, there is no discussion with regard to the assessment of the evidence placed on record by the respondents. Here also, the decision proceeded on the aforesaid legal contentions. In the result, although valuable time has been lost, no one has decided the claim of the respondents on the merits of the evidence produced by the respondents. In the circumstances, we are of the view that the

respondents are entitled to another opportunity of satisfying the Forest Tribunal on the merits of the case.

In the result, we set aside the impugned judgment of the High Court and restore the Original Applications Nos. 166 and 167 of 1990 before the Forest Tribunal. We are of the view that the finding of the Forest Tribunal on the issue of the jurisdiction is correct and needs to be upheld. There is no question of the respondents being permitted to challenge the jurisdiction of the Custodian & Conservator of Vested Forests to issue the notification in question. The only thing now permitted to be done in the said applications is to try the applications on merits and decide the claims of the respondents in accordance with the law in the light of the evidence already led before the Forest Tribunal.

Since the matter is pendente lite for quite sometime, it is preferable that the Forest Tribunal decides the two applications O.A. Nos. 166 and 167 of 1990 within a period of eight months from the date of receipt of a copy of this judgment. The appeal is accordingly allowed.

In the circumstances, there shall be no order as to costs.