CASE NO.:
Appeal (civil) 8061-8062 of 2001

PETITIONER:
Joseph & Anr

RESPONDENT:
State of Kerala & Anr

DATE OF JUDGMENT: 10/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

1. This appeal is directed against a judgment and order dated 16.11.1999 passed by a Division Bench of the Kerala High Court in MFA No. 137 of 1989 whereby and whereunder the appeal preferred by the respondents herein questioning the order dated 21.02.1979 passed by the Forest Tribunal, Manjeri in OA No. 594 of 1976 was allowed.

2. The basic facts of the case are not in dispute.

Appellants herein purchased 14 acres of land in Thenkara Village of Mannarghat taluk in the District of Kerala. The said 14 acres of land was a part of 47.35 acres of land purchased jointly in the name of the appellants, their father and uncle. There allegedly existed rubber plantation in the said land. Teak and other trees had also been planted there. A partition in the family took place as a result whereof 23.5 acres of land out of 47.35 acres of land was allotted to the appellants and their father. A question arose as to whether the said 14 acres of land out of total 23.5 acres vested in the State by virtue of the provisions of the Kerala Private Forest (Vesting and Assignment) Act, 1971 (for short "the 1971 Act"). As their right to possession over the said land was questioned, the appellants filed an application before the Forest Tribunal claiming exemption of the said land.

3. The question which arose for consideration before the Tribunal and consequently the High Court was as to whether they had any intention to cultivate the land.

4. The 1971 Act was enacted to provide for vesting the private forests with the government in the State of Kerala and for the assignment thereof to agriculturists and agricultural labourers for cultivation.

5. Section 2(a) of the 1971 Act defines the "appointed day" to mean the 10th day of May, 1971. "Owner" in relation to a private forest has been defined in Section 2(c) to include a mortgagee, lessee or other person having right to possession and enjoyment of the private forest. The term "private forest" has been defined in Section 2(f) to mean:

"(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)
(i) any land which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding \026
(A) land which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964).

(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom 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.
Explanation \026 Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used purposes ancillary to the cultivation of such crops;
(C) lands which are principally cultivated with cashed or other fruit bearing trees or are principally cultivated and any other agricultural crop and
(D) sites of buildings and land appurtenant to and necessary for the convenient enjoyment or use of such buildings;
(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.
(2) in relation to the remaining areas in the State of Kerala any forest not owned by the Government including waste lands which are enclaves within wooded areas."

Section 3 of the 1971 Act provides that the private forest would vest in the government. Sub-section (2) of Section 3 thereof, however, carves out an exception thereto stating that nothing contained in Sub-section (1) shall apply in respect of land comprised in private forests held by an owner under his personal cultivation, as is within the ceiling limit applicable under the Kerala Land Reforms Act, 1963 or any building or structure standing thereon or appurtenant thereto. The Explanation appended to Sub-section (2) of Section 3 includes cultivation of trees or plants of any species. Sub-section (3) of Section 3, however, deals with a situation stating that sub-section (1) shall apply in respect of private forests held by an owner under a valid registered document executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963 is applicable, does not exceed the extent of the ceiling area applicable to him under Section 82 thereof.

6. The fact that the lands in question was purchased under a registered deed of sale dated 13.09.1966 is not in dispute. The lands were, therefore, held by the appellants prior to the appointed day specified in the 1971 Act. According to the appellants, they planted teak, irul and maruthu trees on or before 31.12.1970 covering an extent of 1.60 hectares, as would appear from grant of a new planting licence granted by the Rubber Board. It further appears from a certificate dated 30.11.1999 that in the year 1972, they planted 1300 trees over an area of 2.83 hectares.

7. By reason of the 1971 Act, a forum for settlement of disputes has been provided in the form of Tribunal constituted thereunder inter alia for resolution of disputes in regard to the questions such as whether any private forest or portion thereof has been vested in the government or not, or whether the land in question is a private forest or not. The High Court has been conferred with the appellate power thereunder.

8. An application appeared to have been filed by the appellants before the Forest Tribunal which was marked as OA No. 594 of 1976 stating that 13.50 acres (5.46 hectares) of rubber had been planted. The dispute was only in relation to the 14 acres of land. The said application was allowed by the Tribunal by an order dated 21.02.1979 holding that the appellants have got title and possession thereto and have been holding lands within the ceiling limits. The Tribunal granted exemption in respect of the land in

question in terms of Section 3(3) of the 1971 Act. It was held:

"8. It was contended for the petitioners that they are entitled to the exemption provided in section 3(3) of the Act. The petitioners had obtained right over this property as per the registered documents executed prior to 10.5.1971. In the circumstances of this case, it can also be held that the property was obtained by the petitioners with the intention to cultivate the same. PW1 has stated that besides the petition scheduled property he has got 3-1/2 acres of rubber plantation and one acre of property where coconut, pepper, coffee, etc. are planted. He had a wife and 5 minor children as on 1.1.1970. His wife and minor children have also no other property. According to PW 1 the second petitioner has got only 2 acres of rubber estate besides the property obtained by him under Ext. A1. The second petitioner had also a wife on 1.1.1970. She has no other property. PW 1 has further stated that the third petitioner has also no property apart from what was obtained under Ext. A 1. The third petitioner had no family as on 1.1.1970. There is no evidence on the side of the respondents to show that the above statements of PW 1 are false and that the petitioners have other properties also. In the circumstances, it can be held that including the petition scheduled property, the petitioners will be having only properties within ceiling limits applicable under the Kerala Land Reforms Act. Therefore, I find that even though the petition scheduled property is a private forest, the same is not liable to be vested in the Government under section 3(3) of Act 26 of 1971."

9. Against the said order, no appeal was preferred. The said order, therefore, was allowed to attain finality. However, on or about 1.12.1986, a provision for review of the order of the Tribunal was introduced by way of insertion of Section 8B of the 1971 Act which reads as under:

"8B. Power of Custodian to apply for review of decisions of Tribunal.
(1) Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgement, decree or order of any court or other authority, the Custodian may, if he is satisfied that any decision of the Tribunal under Section 8 requires to be reviewed on the ground that such decision has been made on the basis of concessions made before the Tribunal without the authority in writing of the Custodian or the Government or due to the failure to produce relevant data or other particulars before the Tribunal or that an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy of such decision, make an application to be Tribunal during the period beginning with the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986 and ending on the 31st day of March, 1987 for review of such decision.
(2) An application under sub-section (1) shall be in the prescribed form and shall be verified in the

prescribed manner.
(3) On receipt of an application under sub-section (1), the Tribunal shall, notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any law for the time being in force, or in any judgement decree or order of any court or other authority review decision and pass such orders as it may think fit."

10. "Custodian of Vested Forests" and "Conservator of Forests" filed a revision petition before the Forest Tribunal. Column 6 of the prescribed form, however, was not filled. In the said revision petition, it was inter alia stated:

"3. It is noticed that the relevant data and certain particulars that are very relevant and necessary for the proper appreciation and for arriving at a just decision, were not produced earlier before the Tribunal.
4. Certain material particulars, relevant data and evidence are now available, which will help the revision petitioners to substantiate that the disputed property is a private forest and that the respondent herein is not eligible for any relief of exclusion or exemption from vesting."

11. A Commissioner was appointed by the Tribunal. He submitted a report stating:

"From the present nature of the property, the sign of cultivation as on the appointed day cannot be ascertained. I was told by the 3rd respondent that the teak wood were planted. But the same were seen scattered except some of teak trees on the South-Western portion are seen stood in the lined up nature and some of them are seen in the boundary of this portion.

The other point which I was told by the Forest Official is that on the western side in between the disputed property and property belong to Ayilloor, there is no clear boundary demarcation, and the nature of the species seen in the disputed property where the forest nature trees like Teak and other trees found is the same in the property of Ayilloor in certain portion only."

12. By reason of an order dated 24.08.1983, the said review petition filed by the Custodian was dismissed stating:

"10. The question is regarding ceiling area. The first petitioner is having his wife and 5 minor children. Apart from the other two applicants his share in the disputed property is 7.72 acres. He can keep upto 20 acres or 14 standard acres. He has produced Ext. A4 possession certificate from the Tahsildar, Meenachil, 11.28 acres is the total holding of three applicants. He has produced Exts. A5 and A6 the registration from the Rubber Board to show that about 3.65 acres out of his property is planted with rubber. It has to be excluded for the purpose of ceiling. Even otherwise, if we add 11.28 acres by 7.72 acres of the disputed property, the total makes only 19 acres. The first applicant and his wife and children are entitled to keep up to

20 acres, and therefore, they are within the ceiling area. Second petitioner has produced Ext. A3 possession certificate from the Tahsildar stating that he is in possession of 2 acres of land. Ext. A7 will show that these two acres is planted with rubber. He is also married. Therefore, he is also within the ceiling area. The third petitioner was not married and he can keep only this property. He has not produced a possession certificate because he has no lands in his native place. Therefore, I find that the applicants are within the ceiling area.

11. My learned predecessor has found that the applicants were holding the lands with intention to cultivate. The very fact that the entire property is now planted with rubber is revealed from the Commissioner's report proved that the applicant has acquired the property with intention to cultivate. In these circumstances, I do not find any ground to interfere with the orders passed by my learned predecessor.

In the result, there is no merit in the review application and the same is dismissed."

13. The High Court, however, by reason of the impugned judgment has allowed the appeal preferred by the respondents herein stating:

"\005The tribunal properly held that the respondents had title to the property. But there was no evidence to show that the respondents herein were holding the property with intention to cultivate on the appointed day. No documents were produced to show that they had the intention to cultivate the land with rubber, coffee or any other type of cultivation as on or prior to the appointed day. The tribunal allowed the application solely because these applicants were not having land in excess of the ceiling area and that the property had been found cultivated at the time of the visit of the Commissioner. For applying sec. 3(3) of the Act, the cultivation of the property subsequent to the vesting cannot be taken into account. For exempting the land u/s 3(3) of the Act, the intention to cultivate the land must be evident at least prior to or as on 10.5.1971 and it should be pleaded and proved. In fact there was no pleading in the application for claiming exemption u/s 3(3) of the Act. As there was no pleading and evidence regarding the intention to hold the property as on the date of vesting or prior to it, sec. 3(3) of the Act cannot be applied. In the absence of any such evidence, the tribunal cannot be justified in allowing the petition as per the order dt. 21.2.1979 and in dismissing the review application. Hence the review application has only to be allowed and the O.A. to be dismissed."

14. Mr. T.L.V. Iyer, learned senior counsel appearing on behalf of the appellants, in support of this appeal, would submit that the High Court committed a serious error insofar as it failed to take into consideration that it was not a case where the review petition could have been entertained. In any event, the learned counsel would contend that having regard to the limited scope of appeal in terms of Section 8A of the 1971 Act, the order of

the Tribunal should not have been interfered with by the High Court. The High Court, the learned counsel would contend, misconstrued and misinterpreted the provisions of Section 3(3) of the 1971 Act. According to the learned counsel, Sub-sections (2) and (3) of Section 3 must be read conjointly so as to give an effective meaning thereto.

15. Mr. G. Prakash, learned counsel appearing on behalf of the respondents, however, would submit that the review petition was maintainable.

16. Several questions arose for consideration before the High Court. The High Court indisputably had a limited role to play. We, as at present advised, are not inclined to accept the submission of Mr. Iyer that Sub-sections (2) and (3) of Section 3 of the 1971 Act would operate in the same field. In our opinion, both operate in different fields. However, on a plain reading of the impugned order passed by the High Court, we are of the opinion that the High Court was not correct in its view in regard to its construction of Section 3(3) of the 1971 Act. The Tribunal, while exercising its power under Section 8 of the 1971 Act, had taken into consideration the question which arose before it, viz., as to whether the appellants herein had intention to cultivate the land on the appointed day. Appointed day having been defined in the 1971 Act, the relevant aspect was the situation as it existed on that day, i.e., on 10.05.1971. For the purpose of attracting Sub-section (3) of Section 3 of the 1971 Act, it was not necessary that the entire area should have been cultivated for arriving at a decision as to whether the owner of the land had the intention to cultivate or not. Also, it was required to be considered having regard to the activities carried on by the owner from the day of purchase till the appointed day. For the said purpose, subsequent conduct of the owner of the land was also relevant. Development of the land by plantation of rubber plants is not in dispute. The Explanation appended to Section 3(2) of the 1971 Act clearly suggests that cultivation would include cultivation of trees or plants of any species. Intention to cultivate by the owner of the land, we think, has to be gathered not only in regard to the fact situation obtaining at a particular time but also with regard to the subsequent conduct of the parties. If the activity in regard to cultivation of land or development thereof is systematic and not sporadic, the same also may give an idea as to whether the owner intended to cultivate the land. The words 'intend to cultivate' clearly signify that on the date of vesting the land in question had not actually been cultivated in its entirety but the purchaser had the intention of doing so. Such intention on the part of the purchaser can be gathered from his conduct in regard to the development of land for making it fit for cultivation preceding to and subsequent to the date of vesting.

17. The High Court, in our opinion, was not correct in opining that for applying Section 3(3) of the 1971 Act, the cultivation of the property subsequent to the vesting cannot be taken into account. The High Court also was not correct in arriving at finding that there had been no evidence whatsoever that the owners intended to cultivate the land prior to 10.05.1971. As the provision contained in Sub-section (3) of Section 3 of the 1971 Act clearly provides for exclusion of the operation of Sub-section (1) thereof, the same has to be construed liberally. So construed, the conduct of the parties was a relevant fact. The High Court, in our opinion, therefore was not correct in ignoring the findings of the Tribunal. Also, the High Court should bestow its attention to the findings arrived at by the Tribunal having regard to the limited nature of the scope and ambit of appeal in terms of Section 8A of the 1971 Act and, particularly, in view of the fact that the order dated 21.02.1979 had not been appealed against.

18. For the reasons aforementioned, the impugned judgment is set aside and the matter is remitted to the High Court for its consideration thereof afresh in accordance with law. The appeals are allowed with the aforementioned observations. No costs.