

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4304 OF 2009

(@SPECIAL LEAVE PETITION (CIVIL)NO.250 OF 2007)

STATE OF KERALA & ORS.

Appellant(s)

VERSUS

MANAGING TRUSTEE, ARYA VAIDYASALA

Respondent(s)

O R D E R

Leave granted.

2. The State of Kerala has challenged the order passed by the Division Bench of the Kerala High Court in this appeal. The first respondent owned about 130 acres of land, which originally formed part of Anakkaranam Malavaram to which the Madras Preservation of Private Forests Act (for short the 'M.P.P.F. Act') was applicable. In the year 1960, the first respondent got permission to fell the trees and use this land for cultivating medicinal plants and herbs. Part of the land was also used for cultivating a particular variety of paddy mainly to be used for medicinal purposes. Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short 'the 1971 Act'), which came into force in 1971, provides that all private forests are vested with the State Government. The respondent, filed an application before the Forest Tribunal contending that the land owned by the respondent is not covered by the 1971 Act. The Tribunal held that it was not a 'private forest' as the land was used for

purpose of cultivation of medicinal plants and herbs. The order passed by the Forest Tribunal was challenged before the High Court and the High Court has also held that the land owned by the respondent was not 'private forest'. That finding has become final.

3. In the meanwhile, the Kerala State Legislature has passed the Kerala Preservation of Trees Act, 1986 (for short 'the 1986 Act'). Section 5 of the 1986 Act prohibited the cutting of trees from forest areas. The first respondent filed a Writ Petition when the appellant State authorities raised objection to the cutting of trees from this land. Before the High Court the first respondent urged that this was not a 'private forest', hence the 1986 Act has no application. The appellant State contended that this was an area where the M.P.P.F. Act was applicable and going by the definition given in the 1986 Act, the respondent is not entitled to cut trees without the permission of the State authorities. The plea raised by the State Government was rejected by the High Court and the Writ Petition was allowed by holding that the sub-section (1) of Section 5 of 1986 Act would not apply to the land owned by the respondent herein. This is challenged before this Court.

4. Heard learned senior counsel for the State of Kerala as well as learned senior counsel for the respondent.

5. Our attention was drawn to the definition of 'private forest' as given in the Explanation II to Section 5 of the

1986 Act. In the Explanation it is stated that "For the purpose of sub-section (1) the expression "private forest" means any land which immediately before the 10th day of May, 1971 was a private forest as defined in Kerala Private Forest (Vesting and Assignment) Act, 1971." Learned counsel appearing for the State contended that this is an area to which the M.P.P.F.Act was applicable and even though the permission was granted to fell the trees in 1960, the Act continue to apply to this property and therefore, it form part of the "private forest" as defined under the 1971 Act.

6. We are not inclined to accept this contention for the reason that when it was declared by the Forest Tribunal as well as by the High Court that it is not a "private forest" and it is difficult to hold that it continued to be a "private forest" as it was allegedly covered by M.P.P.F.Act. If it continued to be a "private forest" it should have been vested with the Government as per the provisions of the 1971 Act. Moreover, the "private forest" as defined in Section 2(f) of the 1971 Act which provides that "'Private Forest" means (1) in relation to Malabar District referred to in sub-section (2) of Section 5 of the State Re-organisation Act, 1956 : (i) any land to which the Madras Preservation of Forests Act, 1949 (Madras Act XXVII of 1949) applied immediately before the appointed day excluding ...

(C) Lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop."

Therefore, it is not correct to contend that going by the definition as given in the 1971 Act this is a "private forest". As the Tribunal's order has become final, it is not possible for us to hold that it is a "private forest" to which the 1986 Act applied. We find no error in the impugned judgment of the High Court. Therefore, the appeal is dismissed. No costs.



.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(P. SATHASIVAM)

JUDGMENT

.....J.
(J.M. PANCHAL)

NEW DELHI;
13TH JULY, 2009.