

State Of Kerala And Anr vs Kanan Devan Hills Produce Co. Ltd on 7 February, 1991

Equivalent citations: 1991 SCR (1) 261, 1991 SCC (2) 272, 1991 AIR SCW 384, 1991 (2) SCC 272, 1991 UJ(SC) 1 456, (1991) 1 SCR 261 (SC), (1991) 1 JT 330 (SC), 1991 AIR SCW 392, 1991 (2) SCC 282, 1991 UJ(SC) 1 394, (1991) 5 JT 133(1) (SC)

Author: Kuldeep Singh

Bench: Kuldeep Singh, N.M. Kasliwal

PETITIONER:
STATE OF KERALA AND ANR.

Vs.

RESPONDENT:
KANAN DEVAN HILLS PRODUCE CO. LTD.

DATE OF JUDGMENT 07/02/1991

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1991 SCR (1) 261 1991 SCC (2) 272
JT 1991 (1) 330 1991 SCALE (1) 145

ACT:
Forests: Travancore Cochin Forest Act, 1951-
Section 93(2)(d) (dd) & (e)-Rules regulating the levy
of Kuttikanam on trees in respect of Government
lands-Kuttikanam-Govt. share of the value of the
trees-Ownership over the growth-Held Government has
right to levy and demand Kuttikanam under the 1951
rules saved by Section 85(3) of the Kerala Forest Act,
1961.

HEADNOTE:
The dispute between the parties is regarding the
ownership rights and right of removal of timber clear-
felled from 150 acres of jungle area in Kallar Valley

in the erstwhile Travancore territory of Kerala State commonly called the Kanan Devan Hills Concession area over which the Poonjar Raja held free-hold proprietary rights under the suzerainty of Travancore State.

By a deed dated July 11, 1877 called the 'First Concession' (Exhibit P-1) the Raja conveyed the concession area with all the Hills and Forests to one J.D. Munro for a certain cash consideration and a deferred perpetual annual payment from 1884 onwards. This was followed by another deed (exhibit P-2) between the same parties reiterating all the original terms. This grant to Munro was ratified by the Travancore Government by a deed dated November 28, 1878 (Exhibit P-62). Munro in turn assigned the area to the North Travancore Land Planting & Agricultural Society Ltd. Later an agreement was executed between the Travancore Government and the Society in August 1886 (Exhibit P-64). In 1899 the entire territory comprising the Kanan Devan Hills including the concession area was declared part of Travancore State. After several transfers the concession area finally came to be vested in the Respondent Company in virtue of a Deed dated July 16, 1900.

Somewhere in 1963 the Respondent Company clear-felled about 150 acres in the concession area for cultivation and sought permission from the State Government for grant of free passes to carry the felled timber out of the concession area. The Government by order dated 25.11.1966 informed the company that it could not take out the timber

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from the concession area without payment of Kuttikanamin terms of the deeds of conveyance/ratification. Thereupon the company filed a suit against the State praying inter alia for a declaration claiming full ownership, title and right to remove the timber without payment of Kuttikanam, a mandatory injunction directing the defendants to grant free passes for removal of the timber and a prohibitory injunction to restrain it from taking any further steps under its order dated 25.11.1966. On the interpretation of Exhibits P-1, P-2, P-62 and P-64 the trial court came to the findings that the company did not acquire absolute proprietary rights over the concession area or the trees and timber. It also held that the Government was justified in demanding Kuttikanam in terms of the Rules framed under the Travancore Cochin Forest Act, 1951. Accordingly the suit was dismissed.

The Company preferred an appeal to the High Court which was allowed and the decree of the Trial Court set aside. The decision of the High Court has been challenged by the State in this appeal by way of special leave. This court while allowing the appeal and setting aside the judgment of

the High Court,

HELD: The respondent-company did not acquire absolute proprietary rights over the Concession Area or the trees and the timber therein. The company only acquired the right to fell the trees and use the timber subject to the restrictions imposed in clause 7 of the agreement Exhibit P-64. Since the respondent-company has no right to remove the timber beyond the limits of the Concession Area, the State Government was justified in refusing to permit free transportation of timber from the said area. [269C]

Clause 7 states that no unworked timber or articles manufactured therefrom shall be carried outside the limits of the grant except in conformity with the rules of the forest department for the time being in force. [270D]

The Government of Kerala, in exercise of its rule making power under Section 93 of the Travancore-Cochin Forest Act, 1951 had by a notification dated July 9, 1958 framed rules regulating the levy of Kuttikanam on trees standing on Government land. [270E]

The rules were holding the field at the relevant time and the Government was justified in demanding Kuttikanam from the Company. [272A-B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1277 of 1979.

From the Judgment and Decree dated 4.8.1977 of the Kerala High Court in A. S. No. 640 of 1971.

G. Viswanath Iyer, F.S. Nariman, K. Parasaran, K.R. Nambiar, P. K. Pillai, S. Balakrishnan, S. Ganesh, Joy Joseph, Mrs. A.K. Verma, S. Sukumaran for J.B.D. & Co., Baby Krishnan and V.J Francis for the appearing parties.

The Judgment of the Court was delivered by KULDIP SINGH, J. The dispute before us is regarding the ownership rights over the timber clear- felled from about 150 acres of jungle-area in Kallar Valley and the right to transport the timber so felled from the said area.

The Kallar Valley area forms part of the tract of land originally known as Kanan Devan Anchanatu Mala in the erstwhile Travancore territory of Kerala State. This area is generally called the Kanan Devan Hills concession (hereinafter called the 'Concession Area') ' The Poonjar Rajs, held free-hold proprietary rights in the Concession Area. Originally the Raja was exercising sovereign rights but later on he came under the suzerainty of Travancore State.

The Poonjar Rajsa, by a deed dated July 11, 1877 (hereinafter called 'First Concession'), conveyed the concession area with all the hills and forests therein to one J.D. Munro for cash consideration of Rs.5,000 and a deferred perpetual annual payment of Rs-3,000 from 1884 onwards. Thereafter on July 26, 1879 a second document was executed between the same parties (hereinafter called 'Second Concession'). The terms of the first concession were reiterated enuring to Munro, his heirs, successors and assigns absolute right for ever to make all kinds of cultivations and improvements on the Concession Area.

The grant of rights to Munro by the First Concession was ratified by the Travancore Government by a deed of ratification dated November 28, 1878. Munro assigned the Concession Area to The North Travancore Land Planting and Agricultural Society Limited by a deed dated December 8, 1879. Thereafter an agreement was executed between the Travancore Government and the Society on August 2, 1886.

By virtue of the agreement dated September 18, 1889 between the Poonjar Raja and the Travancore Government and the proclamation of the Maharaja of Travancore dated August 24, 1899 the territory comprising the Kanan Devan Hills including the Concession Area was declared part of the Travancore State. There were various transfers in respect of the Concession Area but finally by a deed dated July 16, 1900, the Concession Area came to be vested in the Kanan Devan Hills Produce Company Limited, (hereinafter called 'the company').

In and around May 1963 the company clear-felled about 150 acres in the Concession Area for cultivation. The Company applied to the State Government for grant of free passes to transport the timber from the Concession Area. The State Government by an order dated November 25, 1966 informed the company that it could not take away timber outside the limits of the Concession Area except in accordance with the Rules of the forest department and on payment of levy in the shape of Kuttikanam. According to the Government in terms of the deeds of conveyance/ratification the company was liable to pay Kuttikanam in respect of the timber taken out of the Concession Area.

The company filed a suit in the year 1968 in the Court of Subordinate Judge, Kottayam against the State of Kerala and its officers. In the suit, the company prayed for the following reliefs:

- (a) A declaration that the plaintiff-company has full and unqualified ownership and title over, and right of removal of the said timber from the Concession Area;
- (b) Declaration that the State has no right to claim seigniorage, Kuttikanam or any other payment in respect of the said timber;
- (c) A mandatory injunction directing the defendants to grant the necessary free passes for the free transit of the timber outside the Concession Area;
- (d) Prohibitory injunction restraining the defendants from taking any steps under the order dated 25.11.1966.

The State Government resisted the suit and controverted the interpretation placed by the company on the deeds of conveyance/ ratification. According to the State the company was only a lessee of the Concession Area and in terms of the deeds of conveyance/ratification the State Government had the absolute right over the trees and timber in the Concession Area. The company only acquired the right to use and remove the timber subject to the restrictions imposed in the said documents. It was further contended by the State Government that the title and ownership in the trees and timber in the Concession area always remained with the State Government and the company could only take the timber outside the limits of the Concession Area in accordance with the rules framed by the State Government and on payment of Kuttikanam.

The Trial Court in a detailed and well reasoned judgment dismissed the suit of the company. The Trial Court on the interpretation of First Concession (Exhibit P- 1), Second Concession (Exhibit P-2), deed of ratification (Exhibit P-62) and the Government agreement with the Society dated August 2, 1866 (Exhibit P-64) came to the conclusion that the company did not acquire absolute proprietary rights over the Concession Area or the trees and timber in the said area. It was held that the Poonjar Chief had only conveyed heritable and transferable possessory rights over the Concession area to the grantee. It was also held that absolute rights over the trees and timber in the Concession Area did not pass to the grantee and it had only the right to use and remove timber subject to the restrictions imposed in the deeds of conveyance/ratification. The Court further held that the relevant rules framed under the Travancore Forest Act, 1952 for levy of Kuttikanam were applicable to the timber transported from the Concession Area. The contention of the company that it was entitled to free passes for transportation of timber outside the Concession Area under the Transit Rules was rejected. The suit of the company was thus dismissed with costs.

The company went up in appeal before the High Court. It was contended that the Trial Court misinterpreted the documents P- 1, P-2, P-62 and P-64. It was contended that the Poonjar Raja had conveyed absolute possession to the grantee to be enjoyed perpetually with heritable and transferable right and it ought to have been held that the natural consequence of such a conveyance was to grant the company absolute title to the trees standing on the area so conveyed. It was argued before the High Court that the State Government had no right over the trees and the timber within the Concession Area.

Before advertng to the various contentions raised by the parties before it the High Court indicated the approach it adopted to the questions involved in the case in the following words:

"For resolving the real controversy in the case we do not think there should be an enquiry into the question whether the plaintiff-company is the absolute owner of the Concession Area as alleged by them or the company is only a lessee as contended by the defendants. Nor do we think any decision is necessary here as to whether at the time, the agreement and proclamation of 1899 came into existence, the Poonjar Chief had vested in him any proprietary rights over the Concession Area which he could pass to the government. We also do not think we should make a general enquiry as to the nature and extent of the rights conveyed and secured by the First Poonjar Concession of 11.7.1877 and second Poonjar Concession of 26.7.1879 (Exs. P 1 and

P2). We can well proceed in the matter on the basis, as stated by the court below, that absolute rights over the Concession Area had not been conveyed under Exs. P-1 and P- 2, that by virtue of the transactions the plaintiff had only absolute possession with heritable and transferable interest and the right to enjoy the land subject to the terms and conditions declared and defined in the Ratifica- tion Deed and agreement of modification, namely Exs. P-62 and P-64. The question is what is the plaintiff's right over the timber and tree-growth in the area on the basis of the grant under Exs. P- 1 and P-2, wherein it gets wide rights in regard to the jungles and forest in the Concession Area-unqualified rights to clear the land and improve the source. It is no doubt true that the rights which the plaintiff has acquired as per the grant of the Poonjar Raja are subject to the terms and conditions imposed by the Sovereign power of the Maharaja under Ex. P-62 and P-64. In short the question for a decision in the appeal will revolve round the interpretation of the relevant clauses in these documents."

The High Court then considered the contents of the documents P-62 and P-64 and came to the conclusion that the company had full rights over the timber clear-felled from the Concession Area and it had right of removal of the timber with the necessary free passes issued under the timber transit rules. It was further held that the State of Kerala had no right or claim for the seigniorage or Kuttikanam or any other payment in respect of the said timber. The High Court allowed the appeal of the company and set aside the judgment and decree of the Trial Court. This appeal via special leave petition is against the judgment of the High Court.

The High Court proceeded on the basis that absolute rights over the Concession Area had not been conveyed under the documents of conveyance/ratification and the right to enjoy the land was subject to the terms and conditions declared in the ratification deed P-62 and the agreement of modification P-64. We agree with the approach of the High Court. The question, therefore, is what are the company's rights over the timber and the tree-growth in the Concession Area. This takes us to clause 5 of P-62 and clause 7 of P-64 which are relevant.

Clause fifth of the ratification dated November 28, 1878 Exhibit P-62 is as under:

"Fifth: The grantee can appropriate to his own use within the limits of the grant all timber except the following and such as may hereafter be reserved, viz., Teak, Coal-teak, Black-wood, Aboney, Karinthali Sandalwood. Should he carry any timber without the limits of the grant it will be subject to the payment of Kuttikanam or customs duty or both as the case may be in the same way as timber ordinarily felled. In the case of the excepted timber the grantee is required to pay seigniorage according to the undermentioned scale..... The grantee is bound to deliver to the Poonjar Chief, to enable him to make over to the Sirkar, all ivory, cardamoms and other royalties produced in the land and all captured elephants and he will be paid by the said Chief according to agreement with him the regulated price for the articles of produce and the regulated reward for the elephants. Clause 7 of the agreement dated August 2, 1886 Exhibit P-64 is as under:

"7. The society, its successors and assigns may use and appropriate to its own use within the limits of the said tract of land all timber except the following and such as may hereafter be reserved, viz., Teak, Coak-teak, Black-wood, Aboney, Karinthali and Sandalwood. But such society, its successors and assigns shall not fell any timber beyond what is necessary for clearing the ground for cultivation and for building, furniture and machinery within the limits of the grant. No unworked timber or articles manufactured therefrom shall be carried outside the limits of the grant except in conformity with the rules of the forest and customs department for the time being in force. In the case of the excepted timber the society for itself, its successors and assigns agrees to pay seigniorage according to the undermentioned scale..... The society for itself, its successors and assigns agrees to deliver to the said Poonjar Raja or Chief to enable him to make over the same to the government of Travancore, all ivory and cardamoms and other royalties..... captured elephants.....

Mr. Parasaran, learned counsel appearing for the respondent-company contended that in P-62 it was provided that the grantee could not carry timber beyond the limits of the grant without payment of Kuttikanam but by the time the agreement P-64 was executed in the year 1886 Kuttikanam had been abolished and as such there was no provision for the payment of Kuttikanam in the document P-64.

Clause 7 of P-64 reproduced above makes it clear that the respondent-company may use and appropriate to its own use within the limits of the Concession Area all timber except to the extent mentioned therein. It was further provided that..... society, its successors and assigns shall not fell any timber beyond what is necessary for clearing the ground for cultivation and for building, furniture and machinery within the limits of the grant. No unworked timber or articles manufactured therefrom shall be carried outside the limits of the grant except in conformity with the rules of the forest and customs department for the time being in force". It is thus clear that the company has no right under the said clause to carry the unworked timber beyond the limits of the grant. The company could not fell timber beyond what was necessary for clearing the ground for cultivation and for building, furniture and machinery within the limits of the grant. Clause 7 clearly indicates that the grantee has no absolute right of ownership over the tree- growth and the timber within the Concession Area. The ownership remains with the Government and the grantee has been given the right to fell the trees for clearing the ground for cultivation and to use the timber for specified purposes within the limits of the grant. An identical clause in another grant entered into by the Travancore Government came for consideration before a Full Bench of the Kerala High Court in *George A Leslie v. State of Kerala*, [1969] K. L.T. 378. K. K. Mathew, J. (as the learned Judge then was) interpreted the clause as under: "We think that if title to the reserved trees passed to the grantees, a provision of this nature would have been quite unnecessary. There was no purpose in stating that the grantees will be free to appropriate the reserved trees for consumption within the limits of the grant, if title to the trees passed to the grantees; the provision is a clear indication that the grantees were allowed to cut and appropriate the reserved trees

for consumption within the limits of the grant as a matter of concession.

We agree with the interpretation given to the clause by Mathew, J. and hold that the respondent- company did not acquire absolute proprietary rights over the Concession Area or the trees and the timber therein. The company acquired the right to fell the trees and use the timber subject to the restrictions imposed in clause 7 of P-64. Since the respondent- company has no right to remove the timber beyond the limits of the Concession Area, the State Government was justified in refusing to permit free transportation of timber from the said area.

We do not agree with Mr. Parasaran that Kuttikanam having been abolished in the year 1884 the respondent-company was not liable to pay Kuttikanam while transporting the timber from within the Concession Area. In *Leslie v. State of Kerala* (supra) the term "Kuttikanam" was explained as under:

"In the Malayalam and English Dictionary by Rev. H. Gundert D. Ph. page 278, 'Kuttikanam' is defined as meaning 'the price of timber; fee cliambable by the owner for every tree cut down by the renter'. In 'The Manual of Malabar Law' by Kadaloor Ramachandra Iyer, Chapter, VII, page 44, it is stated:

'Kuttikanam is a mortgage of forests by which the landlord assigns on mortgage a tract of forest land receiving a stipulated fee for every trees felled by the mortgagee, the entire number of the trees, to be cut down and the period within which they are to be felled being expressly fixed in the karar entered into between the parties.....

In the Glossary attached to the Land Revenue Manual (1916) Vol. IV, at page 883, the word 'Kutti kanam' is said to mean 'a fee paid to the Sirkar for felling trees other than royal trees and tax-paying trees'. In the Glossary of Administrative Terms, English-Malayalam, by the Official Language Committee, at page 302, 'seigniorage' is defined as meaning.....

We do not think that 'Kuttikanam' is either a fee or tax. A tax or fee is levied in the exercise of sovereign power. We think that in the context 'Kuttikanam' means the Government's share of the value of the reserved trees."

It was further held by Mathew, J. that Kuttikanam being the Government's share of the value of the trees owned by the Government it has the power to fix the value of the trees. We agree with the reasoning and conclusions reached by Mathew J. Since the ownership cover the tree-growth and timber in Concession area vests with the Government it has a right to impose Kuttikanam on the removal of the trees from within the Concession area.

We may examine the justification for levying Kuttikanam from another angle. Clause 7 of P-64 states that no unworked timber or articles manufactured therefrom shall be

carried outside the limits of the grant except in conformity with the rules of the forest department for the time being in force. The Government of Kerala, in exercise of its rule making power under Section 93 of the Travancore- Cochin Forest Act, 1951, framed rules regulating the levy of Kuttikanam on trees, standing on Government land by a notification dated July 9, 1958. The said rules are reproduced hereinafter.

"TRAVANCORE-COCHIN FOREST ACT, 1951 (111 OF 1952) RULES REGULATING THE LEVY OF KUTTIKANAM ON TREES IN GOVERNMENT LANDS. (Section 93(2)(d)(dd) and (e) Notification No. 14824/58-3/Agri./F.(B) 3 dated 9th July 1958 published in the Gazette dated 15th July 1958 Part 1, Page 2189.

In exercise of the powers conferred by sub- section (2)(d)(dd) and (e) of Section 93 of the Travancore-Cochin Forest Act, 1951 (Act Ill of 1952) the Government of Kerala hereby make the following rules, regulating the levy of Kuttikanam on trees, standing on Government lands, namely:

1. All trees standing on land temporarily or permanently assigned, the right of Government over which has been expressly reserved in the deed of grant or assignment of such land, shall be the absolute property of Government.

2. It shall not be lawful to fell, lop, cut or maim or otherwise maltreat any tree which is the property of Government without proper sanction in writing granted by an officer of the Forest Department not below the rank of an Assistant Conservator:

Provided that in cases where the holder of the land is allowed under the title deed to lop or fell any such tree, such lopping or felling may be done by such holder in the manner and subject to such conditions and payment as may be specified in the title deed in that behalf. Any lopping or felling of such trees otherwise than in accordance with the conditions and limitation specified in the deed of grant shall be unlawful.

3. Government may, in the absence of any provision to the contrary in the title deed, sanction the sale of timber which is the property of Government to the holder of the land on which such timber is standing, on payment of Kuttikanam or Seigniorage or such other rates as may be specified by Government in each individual case. In cases where the title deed specified the rate at which the timber will be sold to the holder of the land, such rates only will be levied.

Explanation: 'Kuttikanam' means the seigniorage rate that may be in force in the Forest Department from time to time and notified by Government.

4. The Collector of each District shall forward to the Chief Conservator of Forests a statement showing the full details of the trees standing on such lands at the disposal of Government as may hereafter be granted for permanent cultivation, under the Land Assignment Act and the rules framed thereunder. On receipt of such statement, the Chief Conservator of Forests will take

appropriate action for the disposal of such tree growth within the period allowed under Section 99 of the Forest Act.

The Travancore-Cochin Forest Act 1951 was repealed by the Kerala Forest Act, 1961 but Section 85(3) of the said Act saves the rules framed under the repealed Act. It is thus obvious that the rules reproduced above were holding the field at the relevant time. The trial Judge primarily relied on these rules for holding that the Government was justified in demanding Kuttikanam from the respondent- company. The High Court, however, did not take into consideration these rules while interpreting clause 7 of Exhibit P-64. We agree with the findings of the trial court to the effect that the above quoted rules read with clause 7 of Exhibit P-64 empowers the State Government to levy and demand Kuttikanam from the respondent company in respect of timber taken out of the limits of the Concession area.

Mr. Parasaran invited our attention to a letter dated May 21, 1932 (Exhibit P-4) from Chief Secretary to Government to the General Manager of the respondent-company. The letter reads as under:

"With reference to your letter dated the 25th January, 1928 regarding the payment of seigniorage on reserved trees felled from the K.D.H.P- Company's Concession Area, I have the honour to inform you that Government accept your view that no seigniorage is due from the Company on trees other than the Royal Trees specifically mentioned in Clause 7 of the Agreement and sanction accordingly."

Mr. Parasan contended that the State Government interpreted clause 7 of P-64 to mean that no seigniorage (Kuttikanam) was due from the company on trees other than the Royal Trees specified in the said clause. He argued that in the face of the Government decision in the above letter the Government could not demand Kuttikanam from the respondent-company in respect of the non-Royal Trees removed from within the limits of the Concession Area. We do not agree with the contention of the learned counsel. The letter re-produced above refers to the letter dated January 25, 1928 (exhibit P-3) written by the General Manager of the company to the Government. The letter P--1 states as under:

"The question arose through the Forest Department claiming seigniorage on certain species of timber, used by this Company within the concession area for building purposes, and which have been reserved under the Forest Regulation.

The letter also states as under:

A "..... I think it advisable that the whole question of Timber Rights in the Concession should be considered and settled if possible."

It is no doubt correct that while focusing the controversy in respect of the timber used by the company within the Concession Area the General Manager dealt with the larger question of timber rights in the Concession Area but reading the two letters P-3 and P-4 together the only conclusion which could be reached is that the letter P-4 was with respect to the use of timber by the company

within the Concession Area. The letter P-4 cannot be read to mean that no Kuttikanam was leviable on the timber removed by the respondent- company outside the Concession Area. In any case the wording of clause 7 of P-64 is clear and unambiguous. The Government letter P-4 is to be read in the light of clear phraseology of clause 7 and not the vice-versa.

We allow the appeal and set aside the judgment of the High Court. We uphold and approve the judgment and findings of the Trial Court. The suit of the respondent-plaintiff is dismissed with costs which we quantify as Rs.5,000 R. N. J. Appeal allowed.