

VILLAGE OFFICER AND OTHERS

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v.

CHUNAYAMAKKAL JOSEPH AND ANOTHER

(Civil Appeal No. 207 of 2022)

JANUARY 19, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Kerala Private Forests (Vesting and Assignment) Act, 1971 – ss. 2(f), 3, 4, 8 & 13 – Kerala Private Forest (Tribunal) Rules, 1972 – r.2A – Kerala Land Tax Act, 1961– s.5 – Area/land in question was notified as vested Forest u/s. 4 of 1971 Act –Land Tribunal issued Purchase Certificates in favour of respondents which was later on cancelled – In writ Petition before High Court, respondents submitted that when they are in possession of the properties in question, the revenue authorities are obliged and bound to accept the basic tax, leviable under the 1961 Act –Whether the High Court erred in issuing the writ of mandamus directing the appellants to accept the basic tax from respondents – Held: Respondent nos. 1 & 2 cannot claim any right over the disputed lands in question considering the notification issued under Rule 2A declaring the lands in question as vested forest land and no jenmam rights and/or purchase certificates in favour of the respondents with respect to the lands in question – Respondents cannot be said to be the owner and/or cannot be said to be having a valid title in their favour – Therefore, there is no question of any acceptance of basic tax from respondents, leviable under the 1961 Act – High Court did not properly appreciate the mala fide intention on the part of respondents to pray for such a writ and indirectly establishing their right, title and ownership over the disputed lands in question which, as such, is declared as a vested forest land – Impugned judgment and order set aside.

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Allowing the appeal, the Court

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HELD: 1. The respondents filed writ petition before the High Court for a writ of *mandamus* directing the revenue authorities and more particularly the Village Officer to accept the basic tax leviable under section 5 of the 1961 Act with respect

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A to the lands in question. The said writ petition was filed on the premise that they are the owner and in possession of the disputed land and jenmam rights and purchase certificates were issued in their favour and that their possession and ownership have been admitted by the Divisional Forest Officer in the two counter affidavits filed before the Tribunal in OA Nos. 13 & 14 of 1986.

B The High Court has accepted the same and issued a writ of mandamus directing the revenue authorities – Village Officer to accept the basic tax from the respondents. [Para 5.1][1985-C-E]

2. However, the High Court has not at all appreciated and/or considered the fact that as such the jenmam rights and purchase certificates which were earlier issued in the years 1975 & 1979 in favour of the respondents have been cancelled by the appropriate authority. The High Court has also not appreciated the fact that as such a notification has been issued under Rule 2A of the Kerala Private Forest (Tribunal) Rules, 1972 and the lands in question have been declared as a “private forest land”, vide notification issued in the year 1977. The private respondent nos. 1 & 2 filed an application under Section 8 of the 1971 Act challenging the said notification and vesting of the lands in question as a private forest land and declaring the same as a forest land, however, the said application came to be dismissed by the Forest Tribunal, vide order dated 12.3.1990 and thereafter there is no challenge to the aforesaid notification including the land in question as a vested forest land. [Para 5.2][1985-F-H; 1986-A]

3. The High Court has also not appreciated that in order dated 16.4.2002 passed by the Land Tribunal cancelling the order of assignment of jenmam rights and certificates of purchase, the Land Tribunal specifically observed that OA applicants failed to establish tenancy rights claimed by them and the survey plan clearly shows that the lands in question are covered by the vested forest land of the government. Thus, as per the Land Tribunal, respondent nos. 1 & 2 cannot claim any right over the disputed lands in question. Once the notification issued under Section 2A of the 1972 Rules declaring the lands in question as vested forest land stands and as on today there is no jenmam rights and/or

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purchase certificates in favour of the respondents with respect to the lands in question, respondent nos. 1 & 2 cannot be said to be the owner and/or cannot be said to be having a valid title in their favour and therefore there is no question of any acceptance of basic tax from them, leviable under the 1961 Act. It appears that by asking such a relief of writ of mandamus directing the Village Officer/revenue authorities to accept the basic tax from them, the original writ petitioners – respondents want to create title/ownership in their favour. Any dispute with respect to the forest land can only be settled under Section 8 of the 1971 Act. Therefore, the High Court has not properly appreciated the mala fide intention on the part of the respondents to pray for such a writ of mandamus and indirectly establishing their right, title and ownership over the disputed lands in question which, as such, is declared as a vested forest land as far back as in the years 1975/1977, pursuant to the notification issued under Rule 2A of the 1972 Rules. [Para 6][986-B-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 207 of 2022.

From the Judgment and Order dated 23.11.2017 of the High Court of Kerala at Ernakulam in W.A. No.29 of 2011.

Nishe Rajen Shonker, Ms. Anu K. Joy, Alim Anvar, Advs. for the Appellants.

P. A. Noor Muhamed, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.11.2017 passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 29/2011, by which the Division Bench of the High Court has dismissed the said appeal preferred by the appellants herein and has not interfered with the judgment and order dated 8.7.2010 passed by the learned Single Judge of the High Court in Writ Petition (C) No.11252/2008, by which the learned Single Judge directed the appellants herein to accept the basic tax from the respondents herein – original writ petitioners under the provisions of the Kerala Land Tax

A Act, 1961 (hereinafter referred to as the '1961 Act') with respect to the lands in question, the Village Officer, Kannur District, Kerala and others have preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

B That the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as the '1971 Act') came into force in the year 1971. Section 3 of the 1971 Act provides that notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections
C (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of the 1971 Act stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished. Section 4
D of the 1971 Act provides that all vested forests are deemed Reserved Forests.

2.1 The area/land in question was notified as vested Forest on 8.7.1977 under Section 4 of the 1971 Act. That the Land Tribunal, Taliparamba (hereinafter referred to as the 'Land Tribunal') issued Purchase Certificates in favour of the respondents herein in respect of
E 12 acres of land in R.S. No. 292/1A in Naduvil village. That the Tahsildar, Taliparamba and the Taluk Surveyor, Taliparamba inspected the schedule property and surveyed the area. It was found that part of the property involved in the patta was actually the vested forest in R.S. No. 292/1A in Naduvil village. The survey sketch was produced before the Land
F Tribunal in the objections filed by the Forest department before the Land Tribunal.

2.2 Thereafter, the respondents herein filed OA Nos. 13/1986 and 14/1986 before the Forest Tribunal, Kozhikode (hereinafter referred to as the 'Forest Tribunal'), constituted under the 1971 Act. A counter
G affidavit was filed on behalf of the appellants to the aforesaid OAs before the Forest Tribunal.

2.3 Based on the decision of the District Development Committee, a site inspection of the property was conducted on 25.9.1989. It was reported by the Deputy Collector vide letter dated 30.09.1989 addressed
H to the District Collector that the survey rock mark has been destroyed

and that a re-fixation of the boundary is absolutely necessary. The respondents herein submitted a representation to the District Collector, Kannur to remedy their grievance. A

2.4 The OAs filed by the respondents herein came to be dismissed by the Forest Tribunal vide order dated 12.3.1990. Thereafter as per the decision of the District Development Committee, the Taluk Surveyor, Taliparamba conducted a survey of the area on 30.5.1991 and re-fixed the boundary of the land in the possession of the respondents and the vested forest. Subsequently, notices were issued to the respondents on 23.12.1992 to show cause as to why the earlier decision granting Purchase Certificates should not be re-opened/cancelled. The said notices were challenged by the respondents before the High Court by way of O.P. No. 2678/1993. The High Court disposed of the said OP No. 2678/1993 vide order dated 9.9.1998 directing the authorities to complete the proceedings initiated. B C

2.5 Thereafter the Land Tribunal, vide order dated 16.4.2002, cancelled the order of assignment of jenmam rights and the Purchase Certificates issued to the respondents. The said order was passed in O.A. No. 2745 of 1973 in a reopened case in the year 1992, which was reopened in view of order dated 21.11.1990 of the Secretary, State Land Board, Thiruvananthapuram to review the assignment of jenmam rights ordered on vested forest land in O.A. No. 2745/1973 dated 29.6.1974 of the Land Tribunal No. III, Taliparamba. Against the aforesaid order, the respondents filed appeals before the appellate authority, which remanded the matter to the Tribunal. D E

2.6 Subsequently, the respondents filed O.S. No. 2/2005 and 3/2005 before the Munsiff's Court, Taliparamba seeking for a permanent prohibitory injunction. The learned Munsiff's Court decreed the suits. However, the judgments and decrees passed by the learned Munsiff's Court were set aside by the Subordinate Judge's Court, Payyannur. The second appeals filed against the judgment of the Subordinate Judge's Court came to be dismissed by the High Court holding that the civil Court has no jurisdiction as per Section 13 of the 1971 Act in respect of matters which are to be decided by the Forest Tribunal constituted under the said Act. F G

2.7 Instead of initiating any further proceedings under the 1971 Act, the respondents filed Writ Petition No. 11252/2008 before the learned Single Judge of the High Court and prayed for a writ of mandamus H

- A directing original respondent no.1 – appellant no.1 herein to accept the basic tax of the properties from them. Before the learned Single Judge, it was the case on behalf of the respondents that they are in possession of the disputed properties and that their possession has been admitted by the authorities in their affidavits filed in earlier proceedings being O.A. Nos. 13 & 14 of 1986. Therefore, it was submitted that when they are in possession of the properties in question, the revenue authorities are obliged and bound to accept the basic tax, leviable under the 1961 Act.

- 2.8 That the said writ petition was opposed by the Divisional Forest Officer, Kannur. A written statement was filed by the Divisional Forest Officer, Kannur wherein it was specifically stated that the respondents herein have no right over the forest land vested with the government. That vide judgment and order dated 8.7.2010, learned Single Judge allowed the said writ petition and directed the Village Officer – appellant no.1 herein to accept the basic tax from the respondents herein solely on the basis of the affidavits filed in the earlier proceedings in OA Nos. 13 & 14 of 1986.

- 2.9 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge allowing the writ petition and directing appellant no.1 herein – Village Officer, Kannur to accept the basic tax from the respondents payable under the 1961 Act, the appellants preferred writ appeal before the Division Bench of the High Court. By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal by observing that the learned Single Judge has simply directed to accept the basic tax from the respondents and that the learned Single Judge has granted the relief by referring to the affidavits filed by the State authorities filed in the earlier round of litigation in OA Nos. 13 & 14 of 1986 and therefore no interference of the appellate Court is called for.

- 2.10 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court dismissing the appeal and not interfering with the judgment and order passed by the learned Single Judge, by which the learned Single Judge directed the revenue authorities to accept the basic tax from the respondents, the Village Officer, Kannur and others have preferred the present appeal.

3. Learned counsel appearing on behalf of the appellants has vehemently submitted that both, the Division Bench of the High Court as well as the learned Single Judge of the High Court have not appreciated

that the disputed land in question is vested with the forest department and it is a private forest land for which a notification has been issued as far back as in the year 1975 and therefore there is no question of accepting any basic tax from the respondents herein. A

3.1 It is submitted that both, the Division Bench of the High Court as well as the learned Single Judge have materially erred in not appreciating the fact that before the appropriate authority – Forest Tribunal, the respondents have lost and the matter has not been carried further. The jenmam rights and Purchase Certificates in respect of the respondents have been cancelled and the same has attained finality. B

3.2 It is submitted that so long as the land in question is vested with the forest department pursuant to the notification issued under the 1971 Act and the jenmam rights and purchase certificates in favour of the respondents herein have been cancelled, respondent nos. 1 & 2 herein have no right, title or interest in the property in question and therefore there is no question of accepting any basic tax from them. C

3.3 It is further submitted that even the judgments and decrees passed by the Munsiff's Court granting permanent injunction in favour of the respondents have been set aside by the Subordinate Judge's Court, which has been affirmed by the High Court in a second appeal holding that civil Court has no jurisdiction and the dispute in respect of forest land is to be decided by the Forest Tribunal constituted under the 1971 Act. It is submitted that thereafter no further proceedings are initiated by the respondents herein under the provisions of the 1971 Act. D E

3.4 It is further submitted that the High Court has not properly appreciated the mala fide intention on the part of the respondents in seeking a writ of mandamus directing the revenue authorities to accept the basic tax. It is submitted that the High Court ought to have appreciated that by asking such a writ of mandamus, respondent nos. 1 & 2 wanted to establish their right and ownership over the land which as such is vested with the Government/Forest Department, pursuant to the notification issued in the year 1975, by which the land in question is declared as a forest land. It is therefore submitted that the High Court has committed a grave error in issuing a writ of mandamus directing the revenue authorities to accept the basic tax from respondent nos. 1 & 2 herein. F G

4. The present appeal is vehemently opposed by the learned counsel appearing on behalf of the respondents. H

A 4.1 It is submitted that the properties involved in this case are two pieces of land of 12 acres each owned and possessed by the respondents, who are the writ petitioners before the High Court.

 4.2 It is submitted that the said properties originally belonged to C.K. Kerala Varma Raja in Jenm. That the respondents initially obtained
B possession of the properties in the year 1956 on leasehold rights and they were regularly paying tax, enjoying the properties by residing therein and effecting improvements and cultivating rubber, pepper, coffee, etc. It is submitted that thereafter the respondents herein obtained the said properties assigned in their favour by certificates of purchase issued by
C the Land Tribunal under the Kerala Land Reforms Act in recognition of their status as cultivating tenants of the said properties as defined under the said Act. It is submitted that thus the respective lands in question stood assigned to them by virtue of Ex. P1 and P2 produced before the High Court. It is submitted that the learned Single Judge also observed in the judgment that though the said certificates of purchase were
D cancelled subsequently, the appellate authority set aside the said order of cancellation and remanded the matter to the Land Tribunal.

 4.3 It is submitted that Section 8 of the 1971 Act deals with “Settlement of Disputes”. As per section 3(1) of the said Act, “private forest” shall stand vest in Government. The term “private forest” is
E defined under section 2(f) of the 1971 Act and it excludes, inter alia, the lands which are used principally for the cultivation of tea, coffee, cocoa, rubber etc. and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market. It is submitted that as per section 8 if there is any dispute as to whether the land is a “private forest” or any “private forest” or any portion thereof
F has vested in the Government or not, the concerned person may apply to the Forest Tribunal. It is submitted that in the two OAs filed by the respondents, the Divisional Forest Officer (Custodian of vested forests) filed two separate counter affidavits in which he specifically admitted the possession of the respondents. It is therefore submitted that the High
G Court has rightly relied upon the aforesaid two counter affidavits filed by the Divisional Forest Officer and has rightly directed the revenue authorities - Village Officer to accept the basic tax payable under the 1961 Act from the respondents.

 4.4 It is submitted that once the appellants herein admitted in their
H counter affidavits filed before the Forest Tribunal that there are

certificates of purchase in favour of the respondents and that they are in possession of 12 acres each and that the department does not have a claim over the said properties, there is no “dispute for settlement” so as to be raised or settled under section 8 of the 1971 Act and therefore the dismissal of the two OAs by the Forest Tribunal on the ground of limitation is inconsequential.

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4.5 Making the above submissions, it is prayed to dismiss the present appeal.

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5. We have heard learned counsel for the respective parties at length.

5.1 At the outset, it is required to be noted that the respondents herein filed writ petition before the learned Single Judge for a writ of mandamus directing the revenue authorities and more particularly the Village Officer to accept the basic tax leviable under section 5 of the 1961 Act with respect to the lands in question. The said writ petition was filed on the premise that they are the owner and in possession of the disputed land and jenmam rights and purchase certificates were issued in their favour and that their possession and ownership have been admitted by the Divisional Forest Officer in the two counter affidavits filed before the Tribunal in OA Nos. 13 & 14 of 1986. The High Court has accepted the same and issued a writ of mandamus directing the revenue authorities – Village Officer to accept the basic tax from the respondents herein. That the said judgment and order passed by the learned Single Judge has been affirmed by the Division Bench of the High Court, by the impugned judgment and order.

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5.2 However, the High Court has not at all appreciated and/or considered the fact that as such the jenmam rights and purchase certificates which were earlier issued in the years 1975 & 1979 in favour of the respondents have been cancelled by the appropriate authority. The High Court has also not appreciated the fact that as such a notification has been issued under Rule 2A of the Kerala Private Forest (Tribunal) Rules, 1972 (hereinafter referred to as the ‘1972 Rules’) and the lands in question have been declared as a “private forest land”, vide notification issued in the year 1977. It is to be noted that the private respondent nos. 1 & 2 herein filed an application under Section 8 of the 1971 Act challenging the said notification and vesting of the lands in question as a private forest land and declaring the same as a forest land, however, the

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A said application came to be dismissed by the Forest Tribunal, vide order dated 12.3.1990 and thereafter there is no challenge to the aforesaid notification including the land in question as a vested forest land.

B 6. The High Court has also not appreciated that in order dated 16.4.2002 passed by the Land Tribunal cancelling the order of assignment of jenmam rights and certificates of purchase, the Land Tribunal specifically observed that OA applicants failed to establish tenancy rights claimed by them and the survey plan clearly shows that the lands in question are covered by the vested forest land of the government. Thus, as per the Land Tribunal, respondent nos. 1 & 2 herein cannot claim any right over the disputed lands in question. Once the notification issued under Section 2A of the 1972 Rules declaring the lands in question as vested forest land stands and as on today there is no jenmam rights and/or purchase certificates in favour of the respondents herein with respect to the lands in question, respondent nos. 1 & 2 herein cannot be said to be the owner and/or cannot be said to be having a valid title in their favour and therefore there is no question of any acceptance of basic tax from them, leviable under the 1961 Act. It appears that by asking such a relief of writ of mandamus directing the Village Officer/revenue authorities to accept the basic tax from them, the original writ petitioners – respondents herein want to create title/ownership in their favour. Any dispute with respect to the forest land can only be settled under Section 8 of the 1971 Act. Therefore, the High Court has not properly appreciated the mala fide intention on the part of the respondents to pray for such a writ of mandamus and indirectly establishing their right, title and ownership over the disputed lands in question which, as such, is declared as a vested forest land as far back as in the years 1975/1977, pursuant to the notification issued under Rule 2A of the 1972 Rules.

G 7. In view of the above and for the reasons stated above, the impugned judgments and orders passed by the Division Bench of the High Court as well as by the learned Single Judge are not sustainable and the same deserve to be quashed and set aside.

H 8. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order passed by the Division Bench of the High Court dated 23.11.2017 passed in Writ Appeal No. 29/2011 and the judgment and order dated 08.07.2010 passed in Writ Petition No. 11252/2008, as also the order dated 22.10.2010

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passed in Review Petition No. 877/2010 are hereby quashed and set A
aside. However, in the facts and circumstances of the case, there shall
be no order as to costs.

Bibhuti Bhushan Bose
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.