

A THE CONSERVATOR AND CUSTODIAN OF FOREST & ORS.

v.

SOBHA JOHN KOSHY & ANR.

(Civil Appeal No. 414 of 2021)

B FEBRUARY 10, 2021

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

- Kerala Private Forest (Vesting and Assignment) Act, 1971 – s.8 – Respondents filed application in the Forest Tribunal u/s.8 for declaration that the lands were not vested forest – Rejected – Eventually, High Court declared that the land did not vest in the Govt. – However, land could not be restored to respondents – Later it was decided that instead of restoration of the land, compensation be paid to land owners whose land could not be restored – Agreed by respondents – Writ Petition filed by the respondents that either they may be restored the original land or compensation be paid as assessed by District Tehsildar – Allowed by Single Judge – Writ appeal dismissed – Held: Subject land is ecologically fragile land and is now vested in the Govt. – As per s.8, 2003 Act in respect of land which is vested in the Govt. u/s.3(1), 2003 Act, no compensation is payable – But the right on land lost by the respondents under 2003 Act shall not wipe out their right to enjoy the possession and yield of the land prior to 2003 enactment, which right was held to be established by the High Court – Respondents entitled to compensation to the extent of 50% of value of the land as computed by Tehsildar and noted in the judgment of Single Judge – Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 – ss.2(b), 3, 4, 8.*

Partly allowing the appeal, the Court

- HELD: 1.1 It is undisputed that the subject land, which was claimed to be vested with the Government under Act, 1971 was not ultimately accepted and Kerala High Court allowed the objection of the land owners declaring that land is not covered under the Act, 1971 and has been exempted from Act, 1971. The order of the Forest Tribunal was set aside. Result of the judgment**

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of the High Court was that the respondents were entitled for immediate restoration of their land. Further, there is no dispute that land could not be restored to the respondents and some alternative proposals were submitted including allotment of alternative land at three different places. Allotment of alternative land was not possible as was communicated by Forest authorities. Divisional Forest Officer had informed the Conservator of Forests that owners suggested that they are prepared to accept the compensation for the land. The High Court informed that a communication has been received from the Tehsildar of the District Collector, Wayanad where Tehsildar has assessed the value of the land as Rs. 1000/- per cent covered by O.A. No. 67 of 1976 and Rs. 800/- per cent of the land covered by O.A. No.68 of 1975. The Single Judge, thus, allowed the writ petition directing payment of compensation as per computation by the Tehsildar. [Paras 7, 8][100-F-G; 101-B-D]

1.2 Under Section 2(b), Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 “ecologically fragile lands” has been defined. As per Section 3, ecologically fragile land is to vest in the Government. Section 4 further empowers the Government to declare ecologically fragile land. There is no dispute in the present case that a notification has already been issued notifying the subject land as ecologically fragile land vide notification published on 12.03.2007. The notification dated 12.03.2007 is not under challenge. It has been submitted by the respondents that neither they are challenging the validity of vires of Act, 2003 nor they are challenging the notification dated 12.03.2007. Thus, there is no option but to accept that subject land is ecologically fragile land and is now vested in the Government. As per Section 8 of the Act, 2003 in respect of land, which is vested in the Government under Section 3(1) of The Act, 2003, no compensation is payable. The present is a case where the respondents claim is not based on any compensation under the Act, 2003. The Single Judge directed for payment of compensation to the respondents in view of adjudication under Act, 1971 where it was held after prolonged litigation that land is not covered by Act, 1971 and the respondents

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- A are the owner of the land, entitled to restoration of possession to the respondents. The State being the custodian having not been able to restore the possession, two alternatives were suggested by Forest Officer themselves, first, of allotment of alternative land and second for payment of compensation. The valuation of the land was done by the Tehsildar in the above context. The
 - B Single Judge directed for compensation as an alternative for not being able to restore the possession to the respondents. The very same land having been declared as ecologically fragile land under Act, 2003, the right and entitlement of the respondents to the land is lost in view of Section 3 of Act, 2003. But right on land
 - C lost by the respondents under Act, 2003 shall in no manner wipe out their right to enjoy the possession and yield of the land during the period prior to 2003 enactment, which right was held to be established by the High Court vide its judgment dated 10.02.1998. Due to the claim of the State that subject land vests in the Government under Act, 1971, the respondents were deprived of
 - D the possession and enjoyment of land. After 1971, they were kept out of possession of the property and denied the enjoyment of land. It is just and proper that even if the respondents are not compensated for the value of the land, they need to be compensated for the benefits arisen out of the lands for the period they were kept out of possession by action of the respondents,
 - E treating it to be vested land under Act, 1971, which did not find favour by the High Court. [Paras 9-12][101-D-E; 102-A-H; 103-A-B]
- 1.3 There are no material on the record to determine the benefits arising out of the land during the period the respondents
- F were deprived the enjoyment of the possession. The litigation with regard to said land has continued for at-least for last 45 years and in the facts of the present case, the parties need not to be relegated to any other Forum for determination of compensation with regard to benefits of the land to which they were entitled
 - G during the period they were deprived of the possession. The ends of justice be met by allowing the claim of compensation to the respondents to the extent of 50% of value of the land as computed by Tehsildar and noted in the judgment of learned Single Judge. The judgment of the Single Judge and the Division Bench of the Kerala High Court is modified to the above extent. [Paras 13, 14][103-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 414 of A
2021.

From the Judgment and Order dated 05.06.2008 of the High Court of Kerala at Ernakulam in W.A. No. 1757 of 2007

Pallav Shishodia, Sr. Adv. Ms. Priyanka Prakash, Ms. Beena Prakash, G. Prakash, Kuriakose Varghese, V. Shyamohan, Surya Prakash, Ms. Sohini Chowdhury For M/S. KMNP Law, Advs. for the appearing parties. B

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. C

1. Leave granted.

2. This appeal has been filed by the Conservator and Custodian of Forest and other appellants challenging the judgment of the Division Bench of Kerala High Court dated 05.06.2008 dismissing the writ appeal filed by the appellants. Writ Appeal was filed by the appellants questioning the judgment of the learned Single Judge dated 19.01.2007 allowing the writ petition filed by the respondents directing the respondents, appellants herein, to pay to the writ petitioners compensation for the land directed to be restored to them by the earlier judgment of the High Court. D

3. Brief facts of the case giving rise to this appeal are:- E

3.1 The land which is subject matter of this appeal alongwith other land situate at Pannu Valley in Wayanad, State of Kerala was said to be vested in the Government under the Kerala Private Forest (Vesting and Assignment) Act, 1971 (hereinafter referred to as "Act, 1971"). The respondents with their predecessor-in-interest filed application in the Forest Tribunal under Section 8 of the Act, 1971 for declaration that the lands were not vested forest. F

3.2 The Forest Tribunal rejected the claim, against which matter was taken to the High Court, the High Court remanded the matter to the Tribunal for fresh determination. After prolong litigation, ultimately by Division Bench judgment of the Kerala High Court dated 10.02.1998, the MFA filed by the respondents was allowed by the High Court and it was declared that land in questions are exempted from provisions of G

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- A Act, 1971. The High Court also held that writ petitioners proved cultivation and that the area was cultivated with plantation and crop. The judgment of the Forest Tribunal was set aside declaring that land not vested in the Government on the appointed date under Act, 1971.

3.3 After the above judgment of the High Court, it was incumbent

- B upon the custodian to restore back the possession of the land. Restoration of several other pockets of land which were subject matter of MFA No.934 of 1990 before the High Court were done to the owners, but the land, which were subject matter of O.A. No.67 of 1995 and O.A. No. 68 of 1995 could not be restored due to one or other reasons.

- C 3.4 On part of land, Adivasis were in possession, who could not be dispossessed by the State. For certain period, there was interim order operating in favour of the Adivasis against their dispossession of the land. There were correspondences between respondents as well as State Forest Officer regarding restoration of land. A proposal was submitted by the Divisional Forest Officer to allot alternative land to the respondents, which could not be materialised. Divisional Forest Officer recommended that instead of restoration of the land, compensation be paid to the land owners whose land could not be restored, the respondent expressed their agreement to receive compensation.

3.5 A Writ Petition No. 3340 of 2004 was filed by the respondents

- E in Kerala High Court. In the writ petition, it was submitted that land in question was valued by Tehsildar Mananthavady recommending value of land involved in O.A. No.67 as Rs.1,000/- per cent and the land involved in O.A. No.68 as Rs.800/- per cent. In the writ petition, writ petitioners prayed that either they may be restored the original land or they may be paid compensation as assessed by the District Tehsildar. The learned Single Judge allowed the writ petition. In paragraph 6 of the judgment, following was held by the High Court:-

- G “6.In view of these developments, I am of opinion that in so far as the respondents are not able to restore the land in compliance with the judgment of this Court, the petitioners are certainly entitled to compensation for the land, which is to be restored to them. Now that the Tahsildar has assessed the value of the land which, according to him, is very reasonable compared to the market value of the land in the area, I am of opinion that the petitioners should be paid compensation for their land at the rate assessed by the Tahsildar as per Ext. P10.

Accordingly, there would be a direction to the respondents to pay to the petitioners compensation for the land directed to be restored to them as per Ext. P1 judgment of this Court in respect of the lands covered by O.A. Nos. 67 and 68 of 1975 at the rates assessed by the Tahsildar as per Ext. P10. Amounts calculated as above shall be disbursed to the respective petitioners within a period four months from the date of receipt of a copy of this judgment. The writ petition is allowed as above.”

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3.6 The Conservator of Forest and other State authorities aggrieved by the judgment filed a Writ Appeal No.1757 of 2007 before the Division Bench of the Kerala High Court. The writ appeal has been dismissed by the Division Bench. The Division Bench held that under Section 8 of Act, 1971, the custodian had statutory duty to restore the possession of such land on the basis of the order, which having not done, the statutory duty is violated. By holding so, the writ appeal was dismissed. The Conservator of Forest and other State respondents have filed this appeal challenging the judgment of the Division Bench.

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4. Shri Pallav Shishodia, learned senior counsel appearing for the appellants submits that under Section 8(2), all the land in dispute is a ecological fragile land within the meaning of Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (hereinafter referred to as “Act, 2003”). It is submitted that notification dated 03.04.2007 has already been issued under Section 3 of Act, 2003 whereby the said land vested in State for which no compensation is payable. Learned senior counsel has referred to Section 8(2) of the Act, 2003, which provides that no compensation shall be payable for the vesting in Government of any ecologically fragile land or for the extinguishment of the right, title and interest of the owner or any person thereon under subsection(1) of Section 3. There being no challenge to the notification dated 12.03.2007 by respondents, no compensation is payable by the State under Section 8(2). It is submitted that prior to 2003 enactment, ordinance was promulgated namely Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2000. It is further submitted that by virtue of interim order dated 06.12.2000 passed by the High Court in OP No. 30181 of 2000 filed by Adivasi Vikasana Pravarthaka Samithy, possession cannot be delivered to the respondents. There being no challenge to the vesting under Act, 2003, learned Single Judge could not have been directed for payment of compensation.

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- A 5. Learned counsel appearing for the respondents, Shri Kuriakose Varghese refuting the submissions of the learned senior counsel for the appellants contends that right of possession is a crystallised right. When it became impossible for the State to evict Adivasis, who were occupying the land, the respondents were left with no other option but to accept the compensation in lieu of their valuable land. The action of non-restoration of the land by the State was in the teeth of Section 8(3) of the Act, 1971. The judgment delivered by learned Single Judge has rightly recognised the legitimate right of the respondents. The judgment of the High Court dated 10.02.1998 in favour of the respondents being prior in time to Act, 2003, the valid and just compensation claim of the respondents could be negated. In any event, even if notification dated 19.01.2007 published on 12.03.2007 has been validly passed, the same cannot alter the respondents' right to claim compensation for the land, which could not be restored by the State. It is further submitted that Act, 2003 is not applicable in the facts of the present case. It is submitted that the land in question does not fall in the definition of ecologically fragile lands as given in Section 2(b)(i) of Act, 2003. The land is not a fragile land rather it was land, which was cultivated with cardamom and pepper. The land which is under cultivation would not qualify as forest land and, therefore, could not have declared as ecologically fragile land under Section 2(b)(i). The custodian having violated his duty as entrusted under Section 8 of Act, 1971, there was denial of rightful claim of the appellant for enjoyment of their property for a period of 45 years. It is submitted that even the compensation assessed by Tehsildar which was offered was also a meagre compensation.

- F 6. We have considered the submissions of the learned counsel for the parties and have perused the records.

- G 7. From the facts noticed above, it is undisputed that the subject land, which was claimed to be vested with the Government under Act, 1971 was not ultimately accepted and Kerala High Court allowed the objection of the land owners declaring that land is not covered under the Act, 1971 and has been exempted from Act, 1971. In paragraph 18 of the judgment, following was held by the High Court:-

"18. XXXXXXXXXXXXXXXXXXXXXXX"

.....They have pleaded and proved that the lands in question are exempted from the provisions of Act 26 of 1971.

They have proved cultivation and that the area cultivated with plantation crops cannot be forest. The appellants have proved positively their case as on the appointed day.”

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8. The order of the Forest Tribunal was set aside. Result of the judgment of the High Court was that the respondents were entitled for immediate restoration of their land. Further, there is no dispute that land could not be restored to the respondents and some alternative proposals were submitted including allotment of alternative land at three different places. Allotment of alternative land was not possible as was communicated by Forest authorities. Divisional Forest Officer had informed the Conservator of Forests that owners suggested that they are prepared to accept the compensation for the land. The High Court informed that a communication has been received from the Tehsildar of the District Collector, Wayanad where Tehsildar has assessed the value of the land as Rs. 1000/- per cent covered by O.A. No. 67 of 1976 and Rs. 800/- per cent of the land covered by O.A. No.68 of 1975. The learned Single Judge, thus, allowed the writ petition directing payment of compensation as per computation by the Tehsildar.

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9. We need now to consider the consequence of subject land being notified under Act, 2003. Under Section 2(b), “ecologically fragile lands” has been defined. As per Section 3, ecologically fragile land is to vest in the Government. Section 3 is as follows:-

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“3. Ecologically fragile land to vest in Government: - (1) Notwithstanding anything contained in any other law for the time being in force, or in any judgment, decree or order of any Court or Tribunal or in any custom, contract or other documents, with effect from the date of commencement of this Act, the ownership and possession of all ecologically fragile lands held by any person or any other form of right over them, shall 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 thereon shall stand extinguished from the said date.

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(2) The lands vested in the Government under sub-section (1) shall be notified in the Gazette and the owner shall be informed in writing by the custodian and the notification shall be placed before the Advisory Committee constituted under section 15 for perusal.”

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- A 10. Section 4 further empowers the Government to declare ecologically fragile land. There is no dispute in the present case that a notification has already been issued notifying the subject land as ecologically fragile land vide notification published on 12.03.2007. Although, learned counsel for the respondents contend that subject land is not ecologically fragile land and is not covered by definition of forest
- B land under Act, 2003 but in view of the fact that the notification dated 12.03.2007 being not under challenge, we need not dwell on the question any further. In these proceedings, it has been submitted by the respondents that neither they are challenging the validity of vires of Act, 2003 nor they are challenging the notification dated 12.03.2007. We, thus, have
- C no option but to accept that subject land is ecologically fragile land and is now vested in the Government.

- D 11. Learned senior counsel for the appellant is also right in his submission that as per Section 8 of the Act, 2003 in respect of land, which is vested in the Government under Section 3(1) of The Act, 2003,
- E D no compensation is payable. The present is a case where the respondents claim is not based on any compensation under the Act, 2003. The learned Single Judge directed for payment of compensation to the respondents in view of adjudication under Act, 1971 where it was held after prolonged litigation that land is not covered by Act, 1971 and the respondents are the owner of the land, entitled to restoration of possession to the
- F respondents. The State being the custodian having not been able to restore the possession, two alternatives were suggested by Forest Officer themselves, first, of allotment of alternative land and second for payment of compensation. The valuation of the land was done by the Tehsildar in the above context.

- G F 12. It is also relevant to notice that the learned Single Judge directed for compensation as an alternative for not being able to restore the possession to the respondents. The very same land having been declared as ecologically fragile land under Act, 2003, the right and entitlement of the respondents to the land is lost in view of Section 3 of Act, 2003 as extracted above. But right on land lost by the respondents under Act, 2003 shall in no manner wipe out their right to enjoy the possession and yield of the land during the period prior to 2003 enactment, which right was held to be established by the High Court vide its judgment dated 10.02.1998 as noticed above. Due to the claim of the State that subject land vests in the Government under Act, 1971, the respondents were
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deprived of the possession and enjoyment of land. After 1971, they were kept out of possession of the property and denied the enjoyment of land. It is just and proper that even if the respondents are not compensated for the value of the land, they need to be compensated for the benefits arisen out of the lands for the period they were kept out of possession by action of the respondents, treating it to be vested land under Act, 1971, which did not find favour by the High Court.

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13. On our enquiry from learned counsel for the parties, as to whether there are any material on record to determine the computation of yield and benefits arising of the land, both the counsel have very candidly admitted that there are no material on the record to determine the benefits arising out of the land during the period the respondents were deprived the enjoyment of the possession. As noted above, the litigation with regard to said land has continued for at-least for last 45 years and we are of the view that in the facts of the present case, the parties need not to be relegated to any other Forum for determination of compensation with regard to benefits of the land to which they were entitled during the period they were deprived of the possession.

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14. We are of the view that the ends of justice be met by allowing the claim of compensation to the respondents to the extent of 50% of value of the land as computed by Tehsildar and noted in the judgment of learned Single Judge. We, thus, determine the compensation to be paid to the respondents @50% of the value computed by the Tehsildar as the value of the land which would be payable to the respondents. The judgment of the learned Single Judge and the Division Bench of the Kerala High Court is modified to the above extent. We direct that 50% of compensation as directed by learned Single Judge in its judgment dated 19.01.2007 shall be paid to the respondents within a period of three months from today failing which the respondents shall be entitled to receive the payment with interest @7% p.a. The appeal is partly allowed to the above extent. Parties shall bear their own costs.

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