Supreme Court of India
Sri Bagawati Tea Estates Ltd. & Anr ... vs Government Of India & Ors on 3 February, 1995
Equivalent citations: 1996 AIR 209, 1995 SCC (2) 452
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
SRI BAGAWATI TEA ESTATES LTD. & ANR ETC.

Vs.

RESPONDENT:
GOVERNMENT OF INDIA & ORS.

DATE OF JUDGMENT03/02/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1996 AIR 209 1995 SCC (2) 452
JT 1995 (2) 274 1995 SCALE (1)429

ACT:

HEADNOTE:

JUDGMENT:

1. The Kerala Private Forests (Vesting and Assignment) Act, (Act 26 of 197 1 ) was enacted by the Kerala Legislature to acquire forest lands held on janmam right as a measure of agrarian reform. The Act did not provide for any compensation being paid to the owners of these private forests. The forest lands so vesting in government were intended to be assigned to landless agriculturists and agricultural labourers for cultivation. Sub-section (1) of Section 10 says that the government shall first reserve such extent of the private forests vesting in the government un- der the Act as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population or for purposes ancillary thereto. Balance extent of the vested private forests were to be assigned on registry or lease to agriculturists, agricultural labourers, members of Scheduled Castes and Scheduled Tribes who are willing to take up agriculture as means of their livelihood and other categories of persons mentioned therein. Section 11 expected that such assignment "shall, as far as may, be completed within two years from the date of publication of this Act in the Gazette"

2. Soon after the Act was made, which had the effect of vesting the ownership and possession of private forests in the government, the affected owners filed writ petitions in the Kerala High Court challenging the constitutional validity of the enactment. A Full Bench of the Kerala High Court struck down the Act holding it to be outside the protective umbrella of Article 3 1 A of the Constitution, which decision is reported in A.I.R. 1973 Kerala 63. He State of Kerala questioned the said judgment in this court which, by its judgment and order dated September 18, 1973, allowed the appeals, set aside the judgment of the Kerala High Court and upheld the validity of the enactment. The decision of this court is reported in State of Kerala and Another v. Gwalior Rayons Silk Manufacturing Company (1974 (1) S.C.R.671). The main judgment of the Constitution Bench was delivered by Palekar,J., while V.R.Krishna Iyer,j. de- livered a separate concurring judgment.

3. After the judgment of this court, the Government of Kerala constituted a committee comprising certain high officials to study the forest areas and to formulate guidelines for the assignment of the vested forests. After receiving the report of the said committee, the government says, it started the process of assignment. It is stated in the counter-affidavit that out of a total area of 2,26,975 hectares vesting in the government under the Act, 4000 hectares has been given to tribals, cooperatives and agricultural reforms and an additional area of 6,878 hectares has been handed over to the revenue department for being distributed. An extent of 8000 hectares is said to be under the possession of encroachers.

4. While so, the Parliament enacted the Forest (Conservation) Act, 1980 by virtue of Entry 17A of List-III of the Seventh Schedule to the Constitution. It may be recalled that the subject-matter of forests was originally in List-II but by virtue of the 42nd (Amendment) Act to the Constitution, it was deleted from List-II and inserted in List-III. Section 2 of the Forest (Conservation) Act provides that "(N)otwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing (i) that any reserved forest (within the meaning of the expression "reserved forest' in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose". The explanation to Section 2 says that for the purpose of Section 2 'non -forest purposes' means breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation. The enactment of the Conservation Act certainly placed an hurdle in the way of the implementation of the objectives of the Kerala Act inasmuch as one of the main objectives was assignment of said forest land for cultivation and cultivation meant clearance' of forest growth - and no such clearance was possible without the prior approval of the Central Government. No doubt, the forest land could probably be assigned as such, i.e., with the forest growth but this was not done. In the year 1988, the Parliament amended the Forest (Conservation) Act prohibiting the leasing of forest land or any portion thereof to any private person or to any authority, corporation, agency or any other Organisation not owned, managed or controlled by the government. The explanation to Section 2 was also substituted which says inter alia that 'non-forest purpose' means any purpose other than reafforestation. Be that as it may,, the fact remains that the private forests acquired under the Kerala Act could not be reserved or assigned so far, as contemplated by Sec- tion IO of the Act, except assignment of a small portion mentioned above.

5. Having failed to challenge successfully the validity of the Act, some of the affected owners applied for exemption of certain portions of the private forests under Section 3. Their applications were rejected against which they filed appeals which too were dismissed. Some of them approached this court by way of Special Leave Petitions which were dismissed. It is then that some of them have come. forward with these writ petitions.

6. The relief sought for by the petitioners in these writ petitions is for a declaration that the Kerala Act is unconstitutional and for a direction restraining the State of Kerala and its officers from enforcing the provisions of the said Act with respect to the private forests owned by them prior to their vesting in the government. It is also prayed that the possession of the private forests be restored to the erstwhile owners. The main ground urged in support of these writ petitions is this: the Act is a measure of agrarian reform; because it was supposed to be a measure of agrarian reform, it was held protected by Article 3 1 A of the Constitution though it provided no compensation whatsoever to the deprived owners. The Act contemplates distribution of the forest lands so acquired to specified categories of persons for the purposes of cultivation. Though a period of more than twenty years has elapsed since the said Act was enforced, the forest lands have not been assigned as contemplated by Section 10, except perhaps a minor portion. The government is deriving income from the forest wealth just as the owners were doing prior to their vesting in the government. In other words, the government is using the said forest lands for augmenting its income. It is not really interested in distribution/assignment of the land. Moreover, with the enactment of the Forest (Conservation) Act, 1980, the assignment of the forest land has become impossible. It is idle to presume that that Central Government would permit the clearance of such vast tracts of forests. Since clearance of forest growth from such a large extent of land would affect the ecology and environment of the State, the Central Government would never agree to it, which means that the object of the enactment has become impossible to achieve. Since the main objective of the Act has failed, the entire Act falls and the private forests must be restored to their erstwhile owners. The inclusion of the Act in the Ninth Schedule to the Constitution (at Sl.No.146) by Constitution 40th (Amendment) Act, does in no manner stand in the way of the above submission. Not only has it been included in the Ninth schedule by a post-Bharati Amendment Act, the protection afforded by Article 3 1 B is no answer to the submission of the petitioners. The counsel for the petitions submitted further that the Kerala Act and the Forest (Conservation) Act are repugnant to each other and that in any event until the prior approval of the Central Government is granted, the inconsistency remains.

7. Section 3 of the Kerala Act vests all the private forests in the State in the government on the appointed day. "Appointed day" means 10th day of May, 1971 as per clause

(a) of Section 2. The constitutional validity of the enactment was questioned by the affected owners but they failed ultimately as stated hereinbefore. The decision of this court upholding the validity of the Act was rendered in September 1973. Having waited for about sixteen years, some of the owners have come forward with the present writ peti- tions again impugning the constitutional validity of the said enactment, no doubt on a different ground. The main ground now urged, in substance, is that inasmuch as the acquired forest lands have not been assigned as contemplated by Section 10 of the Act inspite of more than twenty years having elapsed, the main objective of the Act has failed. It

is submitted that the, enactment of Forest (Conservation) Act by the Parliament in the year, 1980 and its subsequent amendment in 1988 has made the achievement of the objective of the Act impossible. In other words, they say, the Act has failed as a measure of agrarian reform. It has turned out to be a mere and sheer measure of expropriation of private property. The Act incorporates a composite scheme; if one part falls, the whole scheme/enactment fails, it is submitted. It does not even appear, say the counsel for the petitioners, that the Government of Kerala had ever applied for the prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 which fact according to them establishes that the government is never minded to enforce the Act. Since it is sitting pretty upon the forest wealth and deriving income therefrom, it has no inclination to distribute the land, they say. Strong reliance is placed upon the following observations in the opinion of Krishna Iyer,J. in Gwalior Rayons:

> "We may, however, point out here that in ascertaining whether the impugned enactment outlines a blueprint for agrarian reform the Court will look to the substance of the statutory proposal and not its mere outward form. The Court will closely study to see if the legislation merely wears the mask of agrarian reform or it is in reality such. A label cannot salvage a statute from the clutches of constitutional limitations if the agrarian reform envisaged by it is "a teasing illusion or promise of unreality". The Court should not be too gullible to accept a scheme of agrarian reform when it is nothing but a verbal subterfuge, but at the same time the Court should not be too astute to reject such a scheme because it is not satisfied with the wisdom of the scheme or its technical soundness. Can the State take over an industrial unit or a business undertaking without payment of compensation and claim the protection of art.31A by stating that the profit arising from such industrial unit or business undertaking would be utilised for purposes directed to agriculture or welfare of the rural population? Such an acquisition would obviously not be an acquisition for carrying out a scheme of agrarian reform because there will be no direct nexus between the subject-matter acquired and its utilisation for agrarian reform. It would not be enough merely to say that the income of the property acquired is to be utilised for purposes of agrarian reform. The property itself must be acquired for carrying out such a reform. This requirement is satisfied in the present case because forest lands reserved under s. 10 are to be utilised "for purposes directed to the promotion of agriculture or for the welfare of the agricultural population or for purposes ancillary thereto." We do not think it would have been sufficient merely to provide that the income from the produce of the forests shall be utilised for promotion of agriculture or the welfare of the agricultural population, but the forest lands need not be so utilised. That would have been merely a devise for augmenting the revenues of the State though with a direction that such addition to the revenue shall be expended only on purposes of promotion of agriculture or the welfare of the agricultural population. But here it is clear on a reading of s. IO that the forests and not merely the income are to be devoted to or directed towards the promotion of agriculture or the welfare of the agricultural population or for ancillary uses closely related to agrarian reform. The details of the scheme of agrarian reform to which the acquired forests would be subjected cannot obviously be embodied in the statute and they are

left to be provided by rules which are to be made under s. 17 for the purpose of carrying out the provisions of the statute. No rules could so far be made by the State Government, it is said, because there was a stay against the implementation of the Act when the petition was pending in the Kerala High Court and thereafter the Act was declared to be ultra vires and void by the judgment of the Kerala High Court which is under appeal before us. Now that the Act is being declared by us as constitutionally valid, the State Government will have to make rules setting out the precise programme of agrarian reform which is intended to be carried out.

Counsel for the forest owners has expressed an apprehension before us that the State Government may keep the forests as they arc for a long number of years and namely go on augmenting the revenues of the state by cutting and selling timber growing on them and thereby defeat the rationale of art. 3lA itself But there is no basis or justification for this apprehension because we are of the view that the agrarian project would have to be spelt out concretely by the State Govern- ment within the prescribed period of two years or at any rate within a reasonable time thereafter. If the State Government merely goes on making money by cutting and selling the timber grown on the forests without implementing the definite proposals of agrarian reform contemplated in s. IO within a reasonable period of time, it would be a subversion of the statute and in such a case it would be competent to the aggrieved parties to take legal action compelling the State to make good the statutory promise and to act in terms of s. IO and if the forests are diverted for uses outside the scope of s.10 the court could restrain the State from such illegiti- mate adventures."

8. We are unable to agree with the learned counsel for the petitioners. While we see the force of the argument that the Government of Kerala has, to a large extent, failed. in carrying out the objectives of the enactment as contemplated by Section 10, we see no ground for holding that such failure of the government renders the enactment void. It has never been held by any court that failure to fully carry out the objectives of an enactment renders the enactment void or unconstitutional. There is no such principle known to law. We are equally unable to agree that the Forest (Conservation) Act has made the Kerala Act unworkable. The Conservation Act does not prohibit the clearance of forests altogether. All that it says is that no such clearance shall take place without the prior approval of the Central Government. The bar is not absolute one but qualified. Even the 1988 Amendment to Forest (Conservation) Act does not make the implementation of the State Act impossible. It may be remembered that Section 10 does not contemplate assignment or distribution of entire private forest lands (vesting in the government under the Act) but only a portion of it. First, it requires the government to reserve an appropriate portion of the acquired forests for purposes directed towards the promotion of agriculture and other matters mentioned therein. The remaining land has to be given out on lease or registry to individuals or cooperatives. All this can still be done without violating the provisions of the Act. It is also not possible to agree with the submission Of the learned counsel for the petitioners that the Central Government is bound to decline prior approval under Section 2 of the Forest (Conservation) Act. We cannot decide for the Central Government nor can we presume so and invalidate the Act on that ground.

9. Indeed, the very observations in the opinion of Krishna Iyer,J. in Gwalior Rayons, quoted hereinbefore, militate against the contention of the petitioners. The learned Judge observed that if the State Government fails in carrying out the provisions of Section 10 within a reasonable period, it would be competent to the aggrieved parties to take legal action compelling the State to make good the statutory promise and to act in terms of Section 10". The petitioners cannot be treated as aggrieved parties contemplated by the learned Judge. In the context, the expression means those persons who stand to gain if the forest land is reserved or assigned as contemplated by Section IO. The learned Judge had also observed that "if the forests are diverted for uses outside the scope of Section 10, the court could restrain the State from such illegitimate adventures" All that can be done, if a proper party comes to court, will be to direct the Government of Kerala to make good the statutory promise by acting in terms of Section 10.

10.We must also mention that the counsel for the petitioners could not bring to our notice any decision of this Court or of any other Court where such acquisition was invalidated on the ground that the objects of acquisition were not achieved within a reasonable period or that permission/approval of some other authority has to be obtained before taking steps for implementation of its objectives.

11.Learned counsel for the petitioners relied upon certain observations in Bhim Singhji v. Union of India (1985 Suppl.S.C.R.862) to say that inclusion in the Ninth Schedule does not save an Act if it damages the basic structure of the Constitution. We see no relevance of those observations herein, in view of what we have said hereinabove.

12.For the above reasons, the writ petitions fall and are dismissed. No costs.

CIVIL APPEAL NO. 120 OF 1986:

13.This appeal is preferred against the judgment of the Kerala High Court allowing a review petition filed by the State and setting aside its earlier judgment dated August 3, 1983.

14. The appellant states that he entered into an agreement on August 7, 1963 with the karta and the senior members of the Venkunadu Kovilkam to take on lease 550 acres of land belonging to the said Kovilkam in janmam, situated in Neelamala Palghat district. He says that he, was put in possession of the entire extent and that he raised coffee on 215 acres and Cardamom on 225 acres before May 10, 1971, the date on which the Kerala Forests (Vesting and Assignment) Act, 1971 came into force, The appellant further says that he has been paying land tax and basic tax for the said plantation from 1974 onwards, i.e., after the plantation started yielding. Contending that the said extent had vested in the government under Section 2 of the Act, he says, the authorities encroached upon the said extent where- upon he instituted O.A.139 of 1977 under Section 8 of the Act before the appropriate Tribunal. His contention before the Tribunal was that the said land did not vest in the government under Section 3 for the reason that well before the date of coming into force of the Act it had ceased to be a private forest within the meaning of Section 2(f). By its order dated May 25, 1981, the Forest Tribunal upheld the appellant's claim against which the State of Kerala filed an appeal, M.F.A.No.1 of 1982 before the High Court. The Division Bench which heard the appeal dismissed

the same on August 3, 1983 affirming the findings of the Tribunal. One of the contentions urged by the State before the Division Bench was that the said agreement of lease having been entered into without obtaining previous sanction of the Collector, as required by the Madras Preservation of Private Forests Act, the lease is not only void but the said fact also establishes that the alleged agreement of lease and delivery of possession pleaded by the appellant is not true. This argument was rejected by the Division Bench relying upon A-20, the report of the receiver appointed in O.S.1/64 on the file of the learned District Judge, Palghat and upon the recitals in the formal lease deed Exh.A21 executed pursuant to the agreement of lease in the year 1973. In addition to the above, the Division Bench also relied upon Exh.A-8, the rent receipt dated November 9, 1963 issued by the Kariastha of the Kovilkam to the appellant. He Bench held that the appellant had indeed come into possession of the said land on August 7, 1963 and had also converted the said extent into plantation prior to May 10, 1971. This order became final, not having been questioned by the State in this Court or otherwise.

15.On November 18, 1983, the Governor of Kerala issued an ordinance being Ordinance No.39 of 1983 amending Section 8 of the Act and inserting new Sections 8-B, 8-C and 8-D after Section 8-A in the Principal Act. Section 8-B extended the period of limitation for the State to apply for review of a judgment rendered by the Tribunal on the grounds specified therein. Section 8-C(3), which is relevant for our purposes, extended the period of limitation for the State to apply for review of judgment delivered by the High Court on the grounds specified therein. For the purpose of this case, it is enough to notice sub-section (3) of Section 8-C. It reads as follows:

> "(3) 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 judgment, decree or order of any Court or other authority, the Government, if they are satisfied that any judgment or order other than an order referred to in subsection (2) passed by the High Court in any proceeding, relates to any land which is a private forest and that such judgment or order has been passed due to suppression or misrepresentation of facts or due to the failure to produce relevant data or other particulars or that an appeal against such judgment or order could not be filed by reason of the delay in applying for and, obtaining an certified copy of such judgment or order, may, within six months from the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance, 1983, make an application to the High Court for review of such judgment or order."
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> (Quoted from the Paper Book)

16. It is brought to our notice that after the lapse of the original ordinance, successive ordinances were issued from time to time. Be that as it may, taking advantage, of Section 8-C(3), the State of Kerala filed a petition for reviewing the judgment of the High Court dated August 3, 1983. It was posted before Thommen,J., who was one of the two members of the Division Bench which had dismissed the appeal on August 3, 1983. The learned Judge allowed the review petition and restored the appeal to file under the impugned order dated September 17, 1985.

17.A reading of Section 8-C(3) shows that the High Court can review its order on any of the following three grounds: (1) that such judgment or order has been passed due to suppression or misrepresentation of facts; (2)that such judgment or order has been passed due to the failure to produce relevant data or other particulars; or (3) that an appeal against such judg-

ment or order could not be filed by reason of the delay in applying for or obtaining a certified copy of such judgment or order.

18. The review petition filed by the State was based upon the second ground, viz., failure of the State to produce relevant data or other particulars, a fact specifically noted in the very first paragraph of the impugned order. The contention urged on behalf of the Government Pleader before the learned Judge was that it was not brought to the notice of the High Court that prior to the execution of Exh.A-5 in 1963. the sanction of the District Collector as required under Section 3 of the Madras Preservation of Private Forests Act had not been obtained. The learned Judge took note of the fact that this contention was urged before the Division Bench when it heard the appeal and had rejected it. Even so the learned Judge observed, after noticing Section 3 of the Madras Act, that according to the said provision any alienation without the previous sanction of the District Collector is null and void and that the said circumstance raises several questions for consideration, viz., whether the agreement-of lease amounts to alienation within the meaning of Section 3 of the Madras Act and if so whether it was entered into with the previous sanction of the Collector and further whether such alienation without such previous permisSion can constitute a foundation for ex- cluding the land from the purview of the Kerala Act and certain other questions. What is of relevance is that the learned Judge did not say or find that the order of the High Court was made, or vitiated, due to the failure to produce relevant data or other particulars. Indeed, no such data or particulars were placed before the Court by the State in the review petition. On the same material, which was on record in the appeal, the impugned order has been made. We are of the opinion that the words "due to failure to produce relevant data or other particulars" mean what they say. It must be a failure to produce relevant data or particulars; it cannot mean a mere change of opinion on the same material or on the same evidence. We are, therefore, of the opinion that the ground on which the review petition was filed was not made out and hence the order dated August 3, 1983 could not have been reviewed and set aside. It is true that under the impugned order the learned Judge has merely restored the appeal to file after setting aside the order dated August 3, 1983, which meant that appeal is yet to be heard, but, in our opinion, the very setting aside of the order dated August 3, 1983 was not called for until and unless one or the other ground specified by statute is made out.

19. In view of the above, it is not necessary to consider the other question raised in this appeal, viz., the validity of the successive ordinances inserting the aforesaid sections in the Kerala Act.

20. Accordingly, we allow the appeal and set aside the impugned judgment and restore the judgment of the Division Bench dated August 3, 1983. It is made clear that if pursuant to the order impugned herein, any orders are passed in the appeal, whether interim or final, they shall equally stand set aside. No costs.