

# The State Of Kerala vs Mohammed Basheer on 22 January, 2019

**Equivalent citations:** AIR 2019 SUPREME COURT 2994, 2019 (4) SCC 260, AIRONLINE 2019 SC 618, (2019) 1 KER LT 386, (2019) 1 WLC(SC)CVL 263, (2019) 2 KER LJ 60, 2019 (4) KCCR SN 396 (SC), AIR 2019 SC (CIV) 3036

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**Bench:** A.K. Sikri, S. Abdul Nazeer, M.R. Shah

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REP

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10075-10076 of 2014

STATE OF KERALA AND ANR.

... APPELLANT

VERSUS

MOHAMMED BASHEER

... RESPONDENT

## J U D G M E N T

S. ABDUL NAZEER, J.

1. The appellant-State of Kerala has preferred these appeals challenging the legality and correctness of the judgment passed by the High Court of Kerala in M.F.A. No.160 of 1991 dated 18.09.2001 and the order in RP No.572 of 2001 in M.F.A. No.160 of 1991 dated 06.02.2007.

2. The respondent herein filed a petition in the Forest Tribunal, Palakkad under Section 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short 'the KPF Act') for settlement of the dispute in relation to land measuring about 2 acres bearing R.S No. 1200, Muppenad (now in Vellar mala village) Vythiri Taluk, Wynad district (for short 'the land'). In the petition, it was contended that one K.C. Kunji Moosa had orally leased the land in favour of the respondent's father in the year 1962 and that his father was personally cultivating the land; after the death of his father, he was personally cultivating the land. It is not a private forest as defined under Section 2(f) of the KPF Act; the land was principally planted with coffee long before the appointed day; thus, it had not

vested in the government under Section 3 of the KPF Act; he was issued a certificate of purchase under Section 72K of the Kerala Land Reforms Act, 1963 (for short 'the Land Reforms Act') by the Land Tribunal in respect of the said land. It was further contended that on 25.02.1987, the officials of Social Forestry Department entered the land and destroyed the coffee plants. In this connection, he had complained to the local police and the Village Officer, and that till 25.02.1987, there was no obstruction for cultivating the land from the forest officials.

3. The appellants filed a counter-affidavit disputing the claim of the respondent. It was contended that the land has not been cultivated and that the certificate of purchase produced by the respondent is not binding on them. The respondent was not in possession of the land as on the date of vesting or subsequent to that date. The land was vested in the government on 10.05.1971 and is under the custody of the Forest Department since then. Since there is no evidence to show the respondent's title or possession over the land on the appointed day, his claim under Sections 3(2) and 3(3) of the KPF Act is not sustainable.

4. The Tribunal, by its order dated 30.06.1990, dismissed the petition. The respondent challenged the said order by filing an appeal before the High Court. The High Court, by its order dated 18.09.2001, allowed the writ petition and set aside the order of the Tribunal. The review petition filed by the appellant-State was dismissed by the High Court on 06.02.2007.

5. Appearing for the appellant-State, Shri Jaideep Gupta, learned senior counsel, submits that the local inspection report shows that no cultivation whatsoever was seen in the land. The Tribunal found that the land was a private forest at the time of coming into force of the KPF Act. The only document produced by the respondent was the certificate of purchase issued by the Land Tribunal to prove his title to the property. The certificate of purchase is not conclusive as regards the title and possession. Forest Department was not a party to the said proceedings and hence, it is not bound by the said certificate. The other documents produced by the respondent, such as revenue receipts do not prove title of the respondent over the land. It is argued that the respondent has failed to establish his possession with valid title to the land as on 10.05.1974 or thereafter. Therefore, the High Court was not justified in interfering with the order of the Tribunal.

6. Shri K. Rajeev, learned counsel for the respondent submits that the father of the respondent had taken the property in the year 1962. In the year 1968 the land was planted with coffee. The respondent got possession of the property from his father. Since then, the respondent has been in possession of the land. The Land Tribunal took suo motu proceedings under Rule 5 of the Kerala Land Reforms (Vesting and Assignment) Rules, 1970 (for short 'Land Reforms Rules') for assignment of the right, title and interest of the said land to the cultivating tenant in possession, under Section 72B of the Land Reforms Act. The Land Tribunal, after inquiry, issued certificate of purchase in favour of the respondent, as he was found to be the cultivating tenant in possession of the said land. The land is not a private forest and it did not vest in the State in terms of sub-section (1) of Section 3 as it is exempted under sub-section (2) of Section 3 of the KPF Act. Taking into consideration the materials placed on record, the High Court has rightly allowed the writ petition. In the year 1987, the Forest officials illegally destroyed the coffee cultivation claiming that it is a private Forest vested in the Government. He prays for dismissal of the appeals.

7. We have carefully considered the submission of the learned counsel made at the Bar.

8. The KPF Act has been enacted to provide for the vesting in the Government of private forests in the State of Kerala, and for the assignment thereof to agriculturists and agricultural labourers for cultivation. Section 3 is an important section in this Act, in the sense that it provides for the vesting of all private forests in the State Government free from all encumbrances. But by virtue of sub-sections (2) and (3), two categories of lands are exempted or excluded from the application of the provision for vesting. These provisions are as under:

"3. Private forests to vest in Government:- (1) 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 (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 this 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.

(2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964) or any building or structure standing thereon or appurtenant thereto.

Explanation: - For the purposes of this sub-

section, 'cultivation' includes cultivation of trees or plants of any species.

(3) Nothing contained in sub-section (1) shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him under Section 82 of the said Act."

(emphasis supplied)

9. It is clear from sub-section (2) of Section 3 that the extent of land comprised in private forests held by the owner under his personal cultivation is exempted from vesting, if the ceiling limit under the Kerala Land Reforms Act is not exceeded. Similarly, sub-section (3) of Section 3 does not apply in respect of so much of extent of private forests as is held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, if the ceiling limit under Chapter III of the Kerala Land Reforms Act is not exceeded. The appointed day for the purpose of Section 3 is 10.5.1971, which is clear from Section 2(a) of the KPF Act.

10. The contention of the respondent is that his father had taken the land on lease from K.C. Kunji Moosa in the year 1962, and that his father was cultivating seasonal crops in the lands till 1967. He

planted coffee in the year 1969. In pursuance of suo moto proceedings initiated by the Land Tribunal, the jenman right (right of the landlord) was assigned in his favour. In support of his contention, he has produced exhibit A1, the certificate of purchase issued by the Land Tribunal under Section 72K of the Land Reforms Act. The question is whether this document establishes the respondent's ownership and possession over the land as on the date of vesting in the government under the KPF Act and whether it is exempted from vesting in the State Government.

11. The Land Reforms Act received the assent of the President on 31.12.1963. Sections 2 to 71, 73 to 82, 84, 99 to 108 and 110 to 132 came into force on 01.01.1970. The expression "landlord" is defined in sub-section (29) of Section 2 as a person under whom a tenant holds and includes a landowner. "Landowner" is defined in sub-section (30) of Section 2 as the owner of the land comprised in a holding and includes (i) a landholder holding Sree Pandaravaka lands on pattam, otti, jenmam, kudijenmam, danam or any other tenure; and (ii) a landholder holding Sreepadam lands on Sreepadam-pattam or other favourable tenure. The land in question is genmam land which is clear from the records. Sub-section (32) of Section 2 defines "Land Tribunal" as Land tribunal constituted under Section 99. Sub-section (57) of Section 2 defines a "tenant" as any person who has paid or agreed to pay rent or other consideration for his being allowed to possess and to enjoy any land by a person entitled to lease that land. It is an inclusive definition containing clauses (a) to (j)

12. Section 72 of the Land Reforms Act provides for vesting of landlord's rights in Government. As per this provision, all right, title and interest of the landowners and intermediaries in respect of holdings held by cultivating tenants (including holders of kudiyruppus and karaimas) entitled to fixity of tenure under Section 13 and in respect of which certificates of purchase under sub-section (2) of Section 59 have not been issued, vest in the Government free from all encumbrances created by the landowners and intermediaries subsisting thereon on the date to be notified by the Government in that behalf in the Gazette.

13. Section 72B of the Land Reforms Act lays down that the cultivating tenant of any holding or part of a holding, the right, title and interest in respect of which have vested in the Government under Section 72, shall be entitled to assignment of such right, title and interest.

14. Sub-section (1) of Section 72K states that as soon as may be after the determination of the purchase price under Section 72F or the passing of an order under sub-section (3) of Section 72MM, the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any. Sub-section (2) of Section 72K states that the certificate of purchase issued as above, shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates. These two provisions are as under:

"72K. Issue of certificate of purchase – (1) As soon as may be after the determination of the purchase price under Section 72F [or the passing of an order under sub-

section (3) of Section 72MM] the Land Tribunal shall issue a certificate of purchase to the cultivating tenant, and thereupon the right, title and interest of the landowner and the intermediaries, if any, in respect of the holding or part thereof to which the certificate relates, shall vest in the cultivating tenant free from all encumbrances created by the landowner or the intermediaries, if any.

Explanation – For the removal of doubts, it is hereby declared that on the issue of the certificate of purchase, the landowner or any intermediary shall have no right in the land comprised in the holding, and all his rights including rights, if any, in respect of trees reserved for his enjoyment shall stand extinguished. (2) The certificate of purchase issued as above, shall be conclusive proof of the assignment to the tenant of the right, title and interest of the landowner and the intermediaries, if any, over the holding or portion thereof to which the assignment relates."

(emphasis supplied)

15. Section 102 of the Land Reforms Act authorises the Government or any person aggrieved by any order of the Land Tribunal to file an appeal within such time, as may be prescribed, to the Appellate Authority.

16. Rule 5 of the Land Reforms Rules authorizes the Land Tribunal to initiate suo motu proceedings; which is as under:

"5. Land Tribunal to initiate suo motu proceedings. – (1) Where a Land Tribunal receives information that the right, title and interest of the landowner and intermediaries in respect of a holding or part of a holding situate within its jurisdiction have vested in the Government under Section 72, it shall, notwithstanding that an application referred to in Rule 4 has not been received in respect of that holding or part, as the case may be, of its own motion assign such right, title and interest to the cultivating tenants entitled thereto in the manner hereinafter provided."

17. As noticed above, sub-section (2) of Section 3 of the KPF Act provides for the exemption of the private forest from vesting. It states that the land comprised in private forest held by an owner under his personal cultivation is exempted from vesting, if the ceiling limit under the Kerala Land Reforms Act is not exceeded. The land in question measures about 2 acres. It is not the case of the appellants that the land exceeds the ceiling limit under the Kerala Land Reforms Act. The expression 'held by the owner under his personal cultivation' contained in sub-section (2) of Section 3 of the KPF Act is crucial. To bring the land under the exempted category, the claimant should hold the same as an owner and that it should be under his personal cultivation. 'To own' is to have good legal title to hold and possess the property. Black's Law Dictionary, Ninth Edition defines the word 'own' as 'to rightfully have or possess as property; to have legal title to'.

18. It is well settled that when the enactment enjoins that any evidence would be treated as a conclusive proof of certain factual situation or legal hypothesis, the law would forbid other evidence to be adduced for the purpose of contradicting or varying the aforesaid conclusiveness. This is the principle embodied in Section 4 of the Evidence Act, 1872 when it defines "conclusive proof" (See: *Cheeranthoodika Ahmmedkutty and Anr. v. Parambur Mariakutty Umma and Ors.* reported in 2000 (2) SCC 417).

19. In the instant case, the land in question is jenmam land. The Land Tribunal initiated suo motu proceedings under Rule 5 of the Land Reform Rules, after obtaining information that the cultivating tenant had been in possession, obviously on a report of the revenue inspector. It is evident from Section 74 of the Land Reforms Act that any tenancy after 01.04.1964 is prohibited. Any tenancy created after that date is invalid. The Land Tribunal initiating proceedings under Section 72B in favour of the cultivating tenant would be considering the possession of a tenant as on the said date which is far earlier than the KPF Act. Possession and title under the certificate of purchase have to relate back to a date prior to the date of vesting under the Land Reforms Act, i.e. 01.04.1964. Therefore, there is no question of vesting of the land in the Government under the KPF Act which has come into force subsequent to the date of Land Reforms Act. As noted above, the certificate of purchase issued under the Land Reforms Act is attributed with statutory conclusiveness as regards ownership/title under sub-section (2) of Section 72K. The certificate issued by a competent Land Tribunal after finding that the tenant was in possession of the property as a cultivating tenant is a conclusive proof of possession as well.

20. In the instant case, certificate of purchase has been issued in favour of the respondent after enquiry by the Land Tribunal. Though the State Government is not a party to this order, there was no bar for it to challenge this order under Section 102 of the Land Reforms Act. No appeal has been filed challenging the certificate of purchase either by the Government or by any other person. Thus, the certificate of purchase has become final.

21. To sum up, the certificate of purchase was issued by the Land Tribunal, under sub-section (1) of Section 72K. Sub-section (2) of Section 72K of the Land Reforms Act clearly states that the certificate of purchase issued under sub-section (1) shall be a conclusive proof of the assignment to the tenant of the right, title and interest of the landlord and the intermediaries, if any, over the holding or portion thereof to which the assignment relates. Thus whatever right, title and interest, the landlord had in the land, has been assigned in favour of the respondent under the certificate of purchase. Therefore, it can safely be concluded that the respondent is the owner of the land as he has legal title to hold the said land. As noticed above, the certificate is also a conclusive proof of the fact that the respondent has been in possession of the land as a cultivating tenant right from the date of vesting of the land under the Kerala Land Reforms Act. In our view, the land in question is exempted from vesting in the State under sub-section (2) of Section 3 of the KPF Act.

22. In *Kunjanam Antony (Dead) by LRs. v. State of Kerala and Anr.* (2003) 3 SCC 221, relied on by the learned senior counsel for the appellants, it has been held that the order of the Thaluka Land Board is a piece of evidence so far as the proceedings under the Kerala Private Forests (Vesting and Assignment) Act, 1971 are concerned, but it cannot be treated as binding on the authorities. In this

judgment, the statutory conclusiveness of title under sub-section (2) of Section 72K of the Land Reforms Act has not been considered. Apart from the above, it was held that the certificate of purchase is also a piece of evidence which cannot be totally discarded. In the instant case, the respondent has established that he is the owner and in possession of the land on the appointed day on the basis of certificate of purchase and other materials placed on record.

23. The appeals are devoid of merit and are accordingly dismissed without order as to costs.

.....J. (S. ABDUL NAZEER) .....J. (DEEPAK GUPTA) New  
Delhi;

January 22, 2019.