

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 8TH DAY OF APRIL 2022 / 18TH CHAITHRA, 1944

MFA (EFL ACT) NO. 34 OF 2011

AGAINST THE JUDGMENT IN OA 2/2008 DATED 31.12.2010 OF
TRIBUNAL FOR ECOLOGICALLY FRAGILE LANDS CASES, KOZHIKODE.

APPELLANTS/APPLICANTS:

- 1 S.RAVEENDRANATH PAI
S/O.SREENIVASA PAI, AGED 71 YEARS, RESIDING AT
SREENIVAS, PALLIKUNNU ROAD, THALASSERY, KANNUR
DISTRICT.
- 2 R.NARENDRANATH PAI SO.RAVEENDRANATH
PAI, (WRONGLY SHOWN AS S/O.R.SREENIVASA PAI IN
OA JUDGMENT) AGED 46 YEARS, RESIDING AT
SREENIVAS, PALLIKUNNU ROAD, THALASSERY, KANNUR
DISTRICT.
- 3 R.VASANTH PAI S/O.RAVEENDRANATH PAI (WRONGLY
SHOWN AS S/O.R.SREENIVASA PAI IN OA JUDGMENT),
AGED 45 YEARS, RESIDING AT SREENIVAS, PALLIKUNNU
ROAD, THALASSERY, KANNUR DISTRICT.
BY ADVS.
SRI.BABU JOSEPH KURUVATHAZHA
SRI.N.SHAMSUL HUDA

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA REP. BY ITS SECRETARY TO
GOVERNMENT, DEPT. OF FOREST AND WILD LIFE,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM - 1.
- 2 THE CUSTODIAN OF ECOLOGICALLY FRAGILE
LANDS (THE PRINCIPAL CHIEF CONSERVATOR OF
FOREST) FOREST HEADQUARTERS, VAZHUTHACAUD,,
THIRUVANANTHAPURAM-14.

3 THE DIVISIONAL FOREST OFFICER
NORTH WAYANAD DIVISION, MANANTHAVADY, WAYANAD
DISTRICT, PIN-670 645.

4 THE FOREST RANGE OFFICER
PERIYA FOREST RANGE, MANANTHAVADY, WAYANAD
DISTRICT, PIN-670 645.

BY ADV SRI.NAGARAJ NARAYANAN, SPL.G.P (FORESTS)

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 08.04.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

MFA (EFL.Act) No.34 of 2011

Dated this the 8th day of April, 2022

J U D G M E N T

P.B.Suresh Kumar, J.

This appeal under Section 11 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (the Act), is directed against the judgment dated 31.12.2010 in Original Application No.2 of 2008 on the files of the Tribunal for Ecologically Fragile Lands Cases, Kozhikode. The appellants were the applicants in the said original application.

2. 6.0720 Hectares of land situated in re-survey No.8/1A1A2 of Peria Village, Mananthavadi Taluk, Wayanad District has been declared to be ecologically fragile land by the Government in terms of a notification issued under Section 4 of

the Act. The case of the appellants is that the notified land is part of 30 acres owned by them and cultivated by them with cardamom, coffee, pepper etc. from the year 1970; that the said land does not fall within the definition of 'forest' in terms of the provisions of the Act and that the same cannot, therefore, be declared as an ecologically fragile land. The appellants, therefore, sought a declaration to that effect in the original application.

3. A written statement has been filed by the third respondent, the Divisional Forest Officer in the original application contending, among others, that the declared land is lying contiguous to the vested forest in re-survey No.8/1A1A2 and that although there are cultivations of cardamom, coffee, pepper etc., it is an area with predominant natural vegetation which supports important endemic flora and fauna of western ghats and hence, liable to be declared as an ecologically fragile land.

4. On the side of the appellants, the first appellant gave evidence as PW1. Two other persons were also examined

on the side of the appellants as PW2 and PW3, of which PW2 was the Advocate Commissioner appointed in the proceedings and PW3 was the Expert who assisted the Advocate Commissioner. Exts.A1 to A30 were the documents produced by the appellants, which include documents relating to the registration obtained by the appellants for cultivation of coffee and cardamom in the land owned by them including the declared land. Exts.C1 and C1(a) are the report and sketch prepared by the Advocate Commissioner. Ext.C1(b) is the report furnished to the Advocate Commissioner by the Expert and Ext.C1(c) is the survey sketch of the declared land. On the side of the respondents, the concerned Forest Range Officer gave evidence as RW1. Exts.B1 to B4 were the documents produced on the side of the respondents.

5. The Tribunal found that the notified land is an area having predominant natural vegetation and a wildlife habitat encircled by vested forest on its three sides. The Tribunal also found that the registration claimed to have been obtained by the appellants for cultivation of coffee and

cardamom is not in respect of the notified land. It also found that the boundaries of the land scheduled in the original application shown in the title deeds of the appellants do not match with the boundaries of the notified land. In the light of the said findings, the Tribunal dismissed the original application. As noted, the appellants are aggrieved by the said decision of the Tribunal.

6. Heard the learned counsel for the appellants as also the learned Special Government Pleader (Forests).

7. The essence of the elaborate submissions made by the learned counsel for the appellants was that the notified land does not fall within the definition of 'forest' in terms of the provisions of the Act inasmuch as it is a land which is used principally for cultivation of crops of long duration, such as coffee, pepper, cardamom, arecanut etc. and that the declaration of the same as an ecologically fragile land in terms of the provisions of the Act is therefore bad in law. The learned counsel has taken us through the reports submitted by the Advocate Commissioner as also the Expert who assisted the

Advocate Commissioner. The learned counsel has also taken us through the evidence given by the Advocate Commissioner in the proceedings to establish the stand of the appellants that the notified land is a plantation.

8. Per contra, the learned Special Government Pleader supported the decision of the Tribunal mainly pointing out that there are no reasons to interfere with the cogent and convincing grounds on which the impugned decision has been taken. The learned Special Government Pleader did not however dispute the findings and observations in the reports of the Advocate Commissioner and the Expert who assisted the Advocate Commissioner. The learned Special Government Pleader did not also dispute the competency of the Expert to ascertain the facts mentioned in his report.

9. We have considered the submissions made by the learned counsel for the parties on either side. We have also perused the records of the Tribunal.

10. As noted, the Tribunal has found that the boundaries of the land described in the title deeds of the

appellants and the boundaries of the notified land do not match, even though the survey number is one and the same, indicating that the notified land is not part of the land claimed to have been owned and possessed by the appellants. The confusion created in the light of the said finding needs to be removed at the outset so as to formulate the questions to be adjudicated in the matter. Ext.A30 is the document, on the basis of which the appellants are claiming possession over the land described in the schedule to the original application. It is a document in favour of the first appellant executed as early as on 18.03.1968. Ext.A4 is the purchase certificate, in terms of which the first appellant obtained the right, title and interest of the landlord over the said land in terms of the provisions of the Kerala Land Reforms Act, 1963. Ext.B2 notification is one issued about 30 years after Ext.A30 document. As such, merely for the reason that descriptions of the boundaries of the land appear to be different in the notification, it cannot be said that the land is different. Be that as it may, a close scrutiny of the materials on record, however, indicates that there was no

dispute between the parties in the proceedings as regards the identity of the notified land. The Advocate Commissioner appointed in the proceedings identified the notified land on the northern side of the land described in the schedule to the application. The Advocate Commissioner has shown the same in the rough sketch produced by him along with his report which is marked as Ext.C1(a). The Taluk Surveyor who assisted the Advocate Commissioner has also identified the notified land as part of the land described in the original application. Ext.C1(c) is the plan prepared by the Taluk Surveyor. The only anomaly found by the Taluk Surveyor was as to the extent of the land. In terms of Ext.B2 notification, the extent of the land declared to be ecologically fragile is 6.0720 Hectares, whereas the extent of the declared land in terms of Ext.C1(c) survey sketch is only 4.7884 Hectares. On a query from the court, the learned Special Government Pleader clarified that the respondents do not have a case that the notified land is not part of the land covered by Ext.A30 document. As regards the deficiency in the extent of the notified land, the learned Special Government Pleader did

not give a satisfactory answer. Insofar as there is no dispute between the parties as regards the identity of the notified land, we are of the view that the matter can be disposed of as if there is no dispute as regards the identity of the notified land.

11. Section 2(c) of the Act defines “forest” thus:

(c) “forest” means any land principally covered with naturally grown trees and under growth and includes any forest statutorily recognized and declared as reserved forest, protected forest or otherwise but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other sites of residential building and surroundings essential for the convenient use of such buildings;

Section 2(b) of the Act defines “ecologically fragile lands” thus:

(b) “ecologically fragile lands” means,-

(i) any forest land or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest of a vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation; and

(ii) any land declared to be an ecologically fragile land by the Government by notification in the official Gazette under section 4;

As noted, a land which is used principally for the cultivation of

crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew is not brought under the definition of “forest”, even if it is covered with naturally grown trees and undergrowth as in the case of a forest. A land which is not a forest does not, going by the definition, become an ecologically fragile land. On the admitted facts, the question therefore, is as to whether the notified land is one which is used principally for the cultivation of crops of long duration such as coffee, pepper, cardamom and arecanut, as claimed by the appellants.

12. The fact that the first appellant who initially obtained the land scheduled in the application has later assigned 10 acres each out of the same to appellants 2 and 3 is not in dispute. Ext.A1 is the permission granted to the first appellant by the District Collector, Kannur for clearing the undergrowth in the 30 acres of land covered by Ext.A30 document as early as on 13.03.1970 under the Madras Preservation of Private Forest Act, 1949. Ext.A3 is the certificate of registration granted to the first appellant by the Tahsildar,

Mananthavadi on 02.09.1970 for cultivating cardamom in 15 acres of land covered by Ext.A30 under the Cardamom Act, 1965. The extent of the land shown in Ext.A3 has been later reduced to 5 acres when the first appellant sold 20 acres out of the 30 acres held by him to appellants 2 and 3. The first appellant has also obtained registration for cultivating coffee in 4 acres out of the scheduled land in terms of Ext.A11 order dated 08.04.1983. Exts.A8, A9, A12 and A13 documents would show that appellants 2 and 3 have jointly obtained registration for cardamom plantation in 10 acres of land and coffee plantation in 9 acres of land. It is necessary to mention in this context that the respondents do not have a case that the appellants have not obtained permission for cultivation of cardamom and coffee in 28 acres out of 30 acres of land originally held by the first appellant. Exts.A17 to A25 would show that the appellants were assessed under the Agricultural Income Tax Act from the year 1995. The respondents do not also have a case that the documents aforesaid do not pertain to the land described in the schedule to the application. As such,

in the light of the said documents, it is more or less established that there was cultivation of crops of long duration such as cardamom, coffee etc. in the land scheduled in the application. As noted, what is scheduled in the application is not the land notified under the Act. The appellants, instead, scheduled in the application the entire extent of land held by them. It may not, therefore, be possible to infer from the documents aforesaid that the notified land is one cultivated with crops of long duration.

13. Let us now go to the report of the Advocate Commissioner, Ext.C1, as also the report of the Expert who assisted the Advocate Commissioner, Ext.C1(b). As noted, the Advocate Commissioner gave evidence as PW2 and the Expert gave evidence as PW3 in the proceedings. Since the issue is as to whether the notified land is one which is used principally for the cultivation of crops of long duration, it is apposite to refer to the report of the Expert first, for the report of the Advocate Commissioner is essentially one prepared based on the report of the Expert.

14. In Ext.C1(b), PW3 has referred to two sample plots of the notified land. It is stated in the report that in one sample plot, 40% of the trees are indigenous i.e., original forest species of south India and 60% are exotic plants i.e., introduced from other countries as shade trees. It is stated that in the second sample plot, all the trees are indigenous. It is reported by PW3 that the approximate number of trees in the notified land is 35000. It is stated by PW3 in the report that there are coffee plants of 25-30 years growth, arecanut trees of 2-6 years old, black pepper of 2-12 years old and cardamom of 2-7 years old in the notified land. It is observed in the report that in some areas, cardamom plants are sporadic and not maintained well and in some other areas, they are maintained well. PW3 has made a comparison between the vegetation in the vested forest adjoining to the notified land and in the notified land. It is stated in the report that 19 species of trees are common in both the areas and the similarity between the notified land and the adjoining vested forest is 57%. PW3 has noted that the appellants have a case that even the indigenous plants found in

the notified land are planted by them. PW3 has also stated that there is no undergrowth in the notified land and there is thick undergrowth in the vested forest adjoining the notified land. PW3 has noted in his report that two streams originating from the vested forest flow through the notified land. PW3 has observed that the entire area is encircled with electric fence indicating that there is good wildlife in the vested forest adjoining the area and that there is wildlife crossing. The Advocate Commissioner has stated in his report, Ext.C1 that there are three stables, two houses, two pump houses with pump, one store room and one labour rest room in the land described in the original application which are assessed by the local grama panchayat, of which a pump house and the store room which are electrified are situated in the notified land. The Advocate Commissioner has also taken note of the fact that sprinkling facility for irrigation with permanent underground pipes has been established in the notified land. The Advocate Commissioner has also noted absence of undergrowth in the notified land and thick undergrowth in the adjoining vested

forest. The tenor of the reports of the Advocate Commissioner and the Expert is that there is cultivation of coffee, cardamom, arecanut, black pepper etc. in the entire land including the notified land. The reports aforesaid would also show that the cultivation of orange and lemon are only at random.

15. As noted from the extracted definitions, the scheme of the Act is that a land which otherwise possesses characteristics of a forest, is liable to be excluded from the purview of the definition of forest, if it is used principally for cultivation of crops of long duration. The expression “used principally for cultivation of crops of long duration”, according to us, is used in the definition in contradistinction not only to lands which are not predominantly used for cultivation but also to lands which are not cultivated with crops of long duration made mention of in the definition. In other words, cultivation here and there in the land may not be sufficient to take the same out of the purview of the definition of “forest” [See **Government of Kerala v. Jacob Thomas Arikupuram**, 2019 (4) KLT 1022]. But that does not mean that there shall be

plantation throughout the length and breadth of the land. It is suffice to establish that the land is used for cultivation and for related and ancillary activities including construction of buildings and other structures. Similarly, even if there is cultivation throughout the length and breadth of the land, if the same is not of crops of long duration made mention of in the definition, it cannot be said that the land is not a forest in terms of the Act [See **State of Kerala and another v. Pullangode Rubber & Produce Co. Ltd.**, (1999) 6 SCC 92].

16. Reverting to the facts, a close reading of the report of the Advocate Commissioner as also the report of the Expert, especially the findings as to the cultivation of crops of long duration, the age of the plants of such crops, the comparison of the notified land with the adjoining forest land, absence of undergrowth in the notified land, presence of electrified buildings, presence of permanent facilities like pump house, sprinklers, store room, electric fence etc, would indicate that the agricultural activity taking place in the notified land is not confined to an insignificant portion of the property. On the

other hand, it is clear from the report that the predominant activity in the land is agriculture and that too, of crops of long duration made mention of in the definition of “forest” in terms of the Act. In the light of the said finding, the views expressed by the Tribunal that the notified land is encircled by vested forest on three sides, that the area is a wildlife habitat, that there are large number of indigenous trees in the notified land etc. are not of any significance. Needless to say, the impugned judgment is liable to be set aside.

In the result, the appeal is allowed, the impugned judgment as also Ext.B2 notification, insofar it relates to the land of the appellants covered by Exts.A4 and A30 in re-survey No.8/1A1A2 of Periya Village, are set aside.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

**Sd/-
C.S.SUDHA, JUDGE.**