

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present

The Hon'ble Mr.Justice P.Krishnamoorthy  
Thursday, the 21<sup>st</sup> June, 1990/31<sup>st</sup> Jyaistha, 1912  
S.A. No.7 of 1985-A

A.S.157/80 of the Sub Court, Ernakulam.

O.S.259/75 of the Munsiff's Court, Muvattupuzha.

Appellants – Appellants – Defendants

1. The Chief Secretary to Government of India, Trivandrum.
2. The Divisional Forest Officer, Malayattoor Forest Division, Kodanad
3. The Forest Range Officer, Kothamangalam, Forest Range, Kothamangalam.

By Government Pleader Mr.P.M.Poulose.

Respondent – Respondent – Plaintiff

Aylumpilla Muhammed, Veliyathukudiyil Veedu, Kadavoorkara, Kadavoor Village.

By Advocate General. Sri.M.M.Thomas

This S.A. having been finally heard on 14-6-1990 along with S.A. 10/85, the court on 21-6-1990 delivered the following.

P.Krishnamoorthy.J.

S.A. Nos. 7 and 10 of 1985

Dated this the 21<sup>st</sup> day of June, 1990

JUDGMENT

In both the appeals the State and its officials are the appellants. S.A.No.7/85 arises out of O.S.No.259/75 of the Munsiff's Court, Muvattupuzha and S.A.10/85 arises out of O.S.260/75 of the Munsiff's Court, Muvattupuzha. Both the suits are by persons who are admittedly encroachers are trespassers on Government forest land. It is stated in the plaint that the plaint

properties from part of forest land and that they are in the possession of the plaintiffs from 1965 onwards. The Plaintiffs cleared the forest and effected improvements such as arecanut trees, coconut trees, cashew etc. they alleged that they have constructed a house in the property occupied by them. The allegation in the plaint is that the defendants are harassing and disturbing the plaintiff's possession of the property and attempting to evict them from the property. They filed an O.P. under Art. 226 of the constitution of India before this Court, claiming right over the property which was later withdrawn. Plaintiffs are claiming protection under G.O.(P)289/68/Agri (Forest Establishment) dated 7-6-68 (Ext.A3) whereby possession of forest land by all people inclusive of trespassers was legalised and recognised. The suits were for a perpetual injunction restraining the defendants from interfering with the possession and cultivation by the plaintiffs in the suit properties and also for a declaration that possession and cultivation by the plaintiffs in the properties is prior to 01-01-68 and hence entitled to the benefits under Ext.A3.

2. The defendants filed a joint written statement contending that Ext. A3 G.O. has no statutory effect so as to protect the plaintiff's unlawful possession and that they are entitled to take action against encroachers and trespassers in accordance with the provisions of the Forest Act. They further contended that the plaintiffs came into possession of the property after obtaining a temporary injunction – order in the O.P. filed before this court and that they have no exclusive possession. They contended that the forest officials are entitled to take appropriate action to prevent encroachment into forest land and that the plaintiffs have no cause of action.

3. Originally the suits were dismissed by the trial court from which appeals were filed by the plaintiffs. The appellants court held that Ext.A3 Government order has got statutory force and that it has conferred rights on persons like the plaintiffs who are encroachers of Government forest land. The suits were remanded by the appellate court for fresh trial after giving the parties an opportunity to let in evidence. The appellate court further observed:

“If the plaintiffs are able to establish that they were in possession of the respective properties prior to 1-1-77, they can succeed in the action. Since they were not allowed by the Court below to prove possession, it is only just and fair that the suits should be remanded to the trial court for enabling the parties to prove possession on the date of suit’.

With the above observation the matter was remanded. Though the State filed C.M.A. Nos.184, 185 and 186/80 against the above judgment of the appellate court, there was no stay of further proceedings and the trial court decided the matter before final orders were passed by this court on the above C.M. Appeals. The trial court after taking evidence found that the plaintiffs were in possession of the properties prior to the date of suits and hence they are entitled to an injunction. The trial court decreed the suit in part and held that the plaintiffs are entitled to the protection under Ext. A3. G.O. and also granted a perfectual injunction restraining the

defendants from interfering with their possession. The judgment of the trial court was dated 30-10-1979.

4. By judgment dated the 10-12-81 the C.M. Appeals filed by the state were disposed of and this court held.

“It appears to me that the defendant-State should be allowed to agitate the question as regards the legal effect of G.O.(P)289/68/Agri. Dated 7-6-68, namely, Ext. Almarked by the learned Munsiff in all the 3 suits and as to whether the same would in any manners operate as equitable or promissory estoppels so far as the State is concerned. In that view all findings entered by the learned subordinate judge as regards the said Government order by the respective remand order are hereby set aside. It is made clear that the defendant State would be free to agitate the said questions before whichever court the cases are now pending.

From the judgment of this court it is clear that the validity and the binding nature of Ext.A3 G.O. was left upon to be decided by the Court in which the matter is pending. The State filed an appeal against the judgment of the trail court and the appellate court also confirmed the judgment and decree of the court below after holding that Ext. A3. Is binding on the state and its officers and that the plaintiffs are entitled to the protection afforded under that G.O. The appeal is by the State against the above judgments and decrees.

5. The main contention raised by Counsel for the appellants is that Ext. A3 has no statutory force and that it is against the provisions of section 22 of the Forest Act. Secretary to Government .22 of the Act is to the following effect.

“22. No right acquired over Reserved Forests except as herein provided. No right of any description shall be acquired in on over a Reserved Forest except under a grant or contract in writing made by or on behalf of some person in who, such right or the power to create such right was vested when the notification under section 19 was published or by succession from such person”.

It is clear from the above section that a person can claim no right over a Reserved Forest except in the manner provided for in that section. Even according to the allegation in the plaint they are encroachers or in other words, they are claiming protection and the right to continue in possession only by virtue of Ext. A3. G.O. which gives protection to persons in occupation of forest land including persons unauthorised occupation before 1-1-68 or 1-1-77, as the case may be. Learned Government Pleader is perfectly right in his submission that Ext.A3 can not have any validity in the light of the statutory provision contained in the Forest Act or any other law governing the matter. Ext.A3 Order is in clear violation of the statutory provision contained in the Act. Though many authorities were cited before me by the learned Government Pleader, it is

not necessary to refer to them as it is well settled that by an executive order the Government can not vary the provisions of a statute. So unless and until any right is vested in the plaintiffs in accordance with any statute or law, they can not be said to have any right over Government forest land and Ext.A3 being only an executive order can not give them any right to continue in possession of the property over which they have admittedly trespassed or encroached. In this view of the matter, I am of the opinion that the courts below erred in granting relief to the plaintiffs on the basis of Ext.A3. G.O.

6. The other prayer made in the plaint is for a perpetual injunction restraining the defendants from interfering with their possession of the property. Admittedly the land in question is Government forest land and the title of the state over such lands can not be disputed. but from the evidence in the case it is clear that the plaintiffs have encroached upon the lands in question and are in possession of the same. Though they were in possession for some time, that alone can not prevent the State or its officials from taking action or initiating proceedings under the relevant law for evicting them. In these circumstances, the only declaration that can be given in favour of the plaintiffs is that they shall not be evicted from the plaint properties otherwise than in due course of law.
7. In the result, I allow the appeals, set aside the judgments and decrees of the courts below and hold that Ext. A3. Has no statutory force and that the plaintiffs can not claim any protection under that. The possession of the plaintiffs are declared and it is made clear that this judgment shall not prevent the state and its officials from taking any action against the plaintiffs for evicting them from the plaint properties in which they are in unauthorised occupation, in accordance with the Forest Act or any other provision of law by which the defendants are entitled to evict them. In the circumstances of the case, there will be no order as to costs.

Sd/-  
(P.Krishnamoorthy)  
Judge

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For Chief Conservator of Forests