REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 903 OF 2011

STATE OF KERALA & ANR. ...APPELLANT(S)

VERSUS

M/S POPULAR ESTATES
(NOW DISSOLVED) & ANR. ...RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. This appeal by special leave challenges a judgment of the Kerala High Court[1], which allowed an appeal preferred by the respondent (hereafter called "Popular Estates") and held that an area of slightly over 402 acres (i.e., 100 hectares and 155.90 acres) vested in the State of Kerala (hereafter "the state"), and the rest of the land (of a total 1534.40 acres) had to be treated as plantation, and thus, belonged to the said respondent.

2. Popular Estates became owners of 1534.40 acres of land. Those lands were acquired by sale, by M/s Popular Automobiles, a registered firm, through four registered deeds executed in 1963. These lands fell to Popular Estate's share upon partition of the firm's assets. The Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereafter "the Vesting Act") came into force with effect from 10.5.1971. Under Section 3 of the Vesting Act, all private forests vested in

[1] In MFA 108/2006 decided on 05.12.2008

the State Government. The Act was challenged before the Kerala High Court, which struck it down, by a judgment, in 1972. That judgment was reversed by this Court's ruling in 1973[2].

3. The forest authorities attempted to take possession of large areas of land occupied by Popular Estates, arguing that they were private forests and had vested in the state, under the Act. Popular Estates moved two Original Applications[3] before the Forest Tribunal ("tribunal" hereafter) under Section 8 of the Act claiming a declaration that no part of the estate consisting 1534.40 acres was liable to vest in the state. Since it was being cultivated and hence, it was exempt under the provisions of the Vesting Act. The state opposed those applications. The tribunal appointed a commissioner to inspect the entire area and report about its state to it. The commissioner after a preliminary inspection was of the view that a detailed survey of the land was necessary as most of the land was situated on hills, and therefore, inaccessible. Private surveyors, appointed to survey the land were unable to complete the work. The tribunal directed Forest Department Survey Officers to survey the lands. The tribunal, thereafter dismissed the Original Applications[4]. It made critical comments about the manner in which the surveyors had made the report and recorded that:

> *"This exclusion by the forest officials, may be due to the fact that the magic money lulled them to sleep over the rights of the Government or may be due to the fact that the claim originally put forward by the forest officials was false. Neither way it is not very complimentary to the respondents here or to those officials concerned. It is for the Government to make necessary immediate enquiry in this matter through some official, other than Forest Department official, if the Government so think and ascertain whether any area which legitimately come under the classification of private forest and which had vested in the Government besides bits 1 to 7 have been excluded by the forest officials or by the forest survey officials. On the basis of the Commissioner's report and the facts mentioned by him, I am inclined to think that prima facie it appears that areas which should really be vested forest have been excluded, when the claim was confined to 100 hectares."*

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[2] *State of Kerala v Gwalior Rayon Silk Manufacturing and Weaving Co.*1974 (1) SCR 671
[3] O.P Nos. Nos. 242 & 243/ 1974
[4] By order dated 15.02.1978

After orders of the tribunal, forest authorities attempted to take possession of the land. In the meanwhile, the state also issued notification no. 4713/1977 notifying 100 hectares of the respondent estate as private forest, based on survey undertaken by the forest department. Popular Estates filed two appeals[5] impugning the tribunal's orders, before the High Court. These were dismissed; the special leave petition against those orders too, were dismissed. Popular Estates then filed civil suits[6] claiming that the state be permanently injuncted from taking possession. Initially, the civil court refused to register the plaint on grounds of maintainability, later, the suits were entertained on the intervention of the High Court in civil revision.

4. On 22.7.1987, the Custodian and Conservator of Vested Forests issued a notification (Ex. A-27) under Section 6 of the Act demarcating 324 hectares of land belonging to Popular Plantation as vested forests under the Act. This notification was challenged in writ proceedings[7]. Popular Plantation also withdrew the two suits. Their writ petitions were dismissed on the ground that the respondents had alternate remedy available before the tribunal. In these circumstances, Popular Estates filed applications[8] before the tribunal under Section 8 of the Vesting Act challenging the notification dated 22.07.1987 and seeking a declaration that the property covered by the applications was not private forest and had not vested in the state government. Simultaneously, they also filed a writ appeal[9] against the order dismissing their writ petition. The writ appeal was admitted subject to the condition that Popular Plantation withdraw its original applications pending before the tribunal, and upon complying with the same, they approached the tribunal as directed, by filing original applications in 1990[10] challenging the state's jurisdiction to issue the notification after a long lapse of

[5] MFA 230 & 231/1978
[6] Suit Nos. 69 & 71/ 1987 before the civil court Munsif's Court, Hosdurg
[7] Before the Kerala High Court in OP No. 7498/ 1987
[8] Original Applications Nos. 28 & 29/ 1988
[9] Before the Kerala High court in WA No. 165/1989.
[10] Original Applications Nos. 166 & 167/ 1990

time. Popular Plantation also filed an appeal before this court, which was disposed of[11]. This court observed that Popular Plantation had the liberty of appearing and pursuing their application before the tribunal, confining the challenge to the validity of the notification *"on the grounds set out in the writ petition filed in the High Court"*. In the event the tribunal held it had no jurisdiction, liberty was given to file an appeal and/or a writ petition before the High Court to challenge the notification *"but only on the said grounds"*.

5. Popular Estates amended its original applications pending before the tribunal (OA Nos. 166 & 167/1990) and also filed a writ petition before the High Court[12] challenging the validity of the notification dated 22.7.1987. The tribunal dismissed[13] the two original applications holding that in its earlier order it had only dealt with the status of 100 hectares of the land and, therefore, with regard to rest of the land the State was empowered to issue a fresh notification. This order was challenged in an appeal before the High Court[14]. By a common judgment[15] the High Court allowed the appeal and writ petition, holding the notification to be valid only in respect of the 100 hectares of vested forest. It was held that there was no vesting so far as the rest of the land was concerned. The High Court also directed the Custodian of Vested Forests to demarcate the boundaries of the certain extent under Section 6 of the Act and restore possession of the remaining extent of the properties to Popular Plantation.

6. The state appealed to this court, by special leave. The appeal[16] was decided by a judgment[17] dated 04.11.2004 (hereafter referred to as "*Popular-II*"). This court, in *Popular-II* noticed that the High Court had proceeded on the basis that the order made by the Taluk Land Board in a land ceiling case pertaining to

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[11] Civil Appeal No. 200/ 1991 disposed by order dated 11.1.1991 [reported in *Popular Plantation* v. *State of Kerala*, 1991 Supp (2) SCC 720]
[12] OP No. 4751/ 1993
[13] By order dated 30.10.1992
[14] MFA No. 72/ 1993
[15] Dated 07.04.1994 the High Court allowed MFA No. 72/1993 and writ petition OP No. 4751/1993
[16] C.A 7111/1999
[17] *State of Kerala v. Popular Estates*, (2004) 12 SCC 434

Popular Plantation would amount to *res judicata*. A draft statement under the provisions of the Kerala Land Reforms Act, 1963 (hereafter, "KLR Act") was filed. Section 81 of the KLR Act exempted private forests and plantations. Rule 10 of the Kerala Land Reforms (Ceiling) Rules, 1970 prescribed that Taluk Land Boards were to prepare a draft statement of lands to be surrendered and serve copies of such drafts on persons interested in the lands. In the draft statement prepared by the Taluk Land Board (hereafter, "the Board"), Popular Estates was shown to hold an extent of 1576-73-257 acres of land, of which 1537-25-645 acres fell under the *exempted category*, and that Popular Estates was eligible to retain the balance extent within the ceiling area. The Board concluded[18] that there was no surplus land to be surrendered to the state. The state government did not challenge the declaration made by the Board but sought to initiate proceedings under Section 85(9-A) of the KLR Act, by issuing notice dated 18.05.1992 for reopening the final order of the Taluk Land Board. That notice had been challenged by Popular Estates by their civil revision petition[19] before the Kerala High Court by which further proceedings were stayed. Based on a previous judgment rendered in *Kunjanam Antony* v. *State of Kerala*[20] this court held that the Board's determination could not operate as res judicata, but would be a piece of evidence. This court remanded the matter back to the tribunal.

7. The tribunal re-appreciated the evidence on the record as required by this court and rejected Popular Estates' appeal[21]. Noticing that the burden was upon Popular Estates to establish that the disputed properties were not private forests but were cultivated as plantations, the tribunal observed that in terms of the Vesting Act, especially Section 2(f) and its various components, the first requirement was to consider whether the lands or any part of the lands fell within the purview of the Madras Preservation of Private Forests Act, 1949 (hereafter,

[18] Order of Taluk Land Board dated 04.11.1980.
[19] CRP No. 1409/ 1992
[20] (2003) 3 SCC 221
[21] By its order dated 25.05.2005

"the Madras Act") which was immediately in force before the Vesting Act was enacted. It was noticed that the Madras Act applied to all private forests in Malabar and south Kanara having a contiguous area of 100 acres. The disputed properties were situated at a place within erstwhile Malabar district and the tribunal took note of the Range Officer's evidence (RW-1) which suggested that the Madras Act applied to the disputed property. The tribunal's order also took into account Ex. A-37, one of the title deeds which referred to the permission granted by the District Collector to sell the property and held that such permission was necessary having regard to the provisions of the Madras Act. Relying on Section 2(f)(1)(i)(B) of the Vesting Act, the tribunal stated that this provision takes lands which were principally used for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to such cultivation, out of its coverage. In this regard Popular Estates had examined PW-5 and relied on a few documents to establish that the properties were cultivated with rubber, coffee and cardamom. PW-5 was the manager of the plantation: his services began in 1969 as Office Assistant. He stated, in his evidence that at that stage (in 1969), 1130 acres of the estate was plantation and that 160 acres were also planted before commencement of the Act. The tribunal brushed aside this evidence, concluding that nothing tangible emerged from it and that Popular Estates necessarily had to prove that the disputed properties were principally cultivated with rubber, coffee or cardamom. The tribunal faulted PW-5's evidence as not being precise with respect to the extent of properties which had been planted with the different crops. It also faulted his evidence on the ground that he had limited knowledge since he had to deal only with the estate when he became an Estate Supervisor in 1974-75; it was concluded that he did not have any direct knowledge with respect to the nature or extent of cultivation. The tribunal considered Ex. A37-A41 holding that they were title deeds. It was noted that Ex. A41 was executed in 1972, i.e. after the appointment date; and being a photocopy - was in any case inadmissible. The other documents had come into

existence before the appointed day, however, their recitals did not disclose expressly that before the appointed date, the properties were cultivated with rubber, coffee and cardamon. The tribunal noted that the schedules in two of the documents - Ex. A-37 and 38 - showed that the properties were cultivated with cardamom. These were to the extent of 72.762 hectares and 89.92 acres, but were not proved to be land within the disputed properties.

8. The tribunal noted that this court's holding was that the Board's orders were not binding on the authorities under the Vesting Act. It proceeded to analyse Ex. A-50 & 51 which was the draft statement of lands surrendered to the government under the KLR Act and the certified copy of the order of the Taluk Land Board, respectively. In this context, the tribunal considered Objection no.7, that Popular Automobiles owned 1530.4 acres in Maloth village and that out of this, the private forest coming within the purview of the Madras Act - an extent of 1127.50 acres - had been converted into plantation. The tribunal discarded the Board's findings as inconclusive.

9. The tribunal further rejected the evidence of PW-1, the Range Forest Officer, who had deposed before the earlier tribunal proceedings in O.A. 242 & 243/1974 to say that the dispute was confined to 100 hectares. In this regard, the tribunal relied firstly, upon certain observations of this court in *Popular-II* and secondly, that PW-1 had no authority to admit any fact to the detriment of the state. Likewise, the tribunal rejected other documentary evidence in the form of Ex. A-11 and A-14 as well as Ex. A-6 and A-7 as insufficient to prove that the disputed properties were principally planted with rubber, coffee or cardamom. In the final analysis, the tribunal went by the fact that the disputed properties were covered by the Madras Act immediately before the appointed date. It consequently held that Popular Estates failed to bring their case under any of the clauses to Section 2(f)(1)(i) of the Vesting Act (i.e. the exclusionary part), and therefore, failed to prove that any part of such properties were Estates meant for the cultivation of coffee, rubber, cardamom etc.

10. Aggrieved by the tribunal's order, Popular Estates preferred an appeal. the High Court in the impugned judgment recounted the entire proceedings particularly the judgement of this court in *Popular-II* and the decision in *Kunjanum Anthony* (Supra). It gave certain weight and credence to the observations and findings of the Board and held that the land ceiling proceedings were not *res judicata* in the proceedings under the Vesting Act but constituted a valid piece of evidence. The impugned judgement relied upon the judgment in *Kunjanum Antony's* case (supra) that until a contrary state of affairs is shown to exist, the order of the Board would have to be given due weight. The High Court observed that the excess land automatically vests with the state like in the private forests vesting under Section 3 (1) of the Vesting Act. The purpose of or intent of both enactments is to distribute excess lands to landless agricultural labourers. The High Court was of the view that the state never alleged that the Board's order was obtained under fraud but rather that it was passed after considering all statutory formalities. The Board, noted the High Court, rendered findings with respect to the nature of the land as on the appointed date of the KLR Act, i.e., 01.01.1970. The appointed date for the Vesting Act was 10.05.1971. The High Court held that there is not much difference between the two dates in point of time and that there was nothing on record to suggest that the land usage had changed in between. Proceeding with its analysis on the evidence on record, the Court took note of the title deeds (Ex. A-37 to A-40) and the balance sheets and profit and loss account (Ex. A-59 to A-64) to show that Popular Estates was earning agricultural income from the land before the appointed date, and that it maintained regular balance sheet, and profit and loss account. The High Court was of the opinion that the notification issued on 08.07.1977 ultimately led to the state establishing that only 100 hectares were private forest. It was also stated that Ex. A-27, i.e., the notification dated 22.07.1987, was issued after demarcating the land under Section 6 and taking those 100 hectares as included in the 1534.40 acres purchased by the firm after nine years when legal proceedings were

pending. Ex. A-65 is the accounts ledger for 1970-71 which showed that there was cultivation in the relevant accounting year. There were other letters in the form of exhibits, i.e., Ex. A-66, A-69 and A-70 which showed that Labour authorities such as the Labour Commissioner and Provident Fund authorities were involved with respect to labour unrest in the estate. Exhibit A-67 and A-68 were addressed to the Agricultural Income Tax Officer and Ex. A-71 and A-72 were letters addressed to the Sales Tax Officer. These also showed that some labour disputes in the estate starting from 1983 existed and that production had slowed down. It was only after these that Ex. A-27, notification dated 22.08.1987 was issued.

11. The High Court was of the opinion that all these documents clearly showed that the entire area other than the 100 hectares of land earlier notified by notification dated 08.07.1977 were not private forests on the appointed date but exempted in view of the definition of private forest. The court also noted the location sketch given by PW-3 the Commissioner, a copy of the memorandum submitted before the Advocate Commissioner by forest officials (Ex. A-4), and the reports of the Commissioner (Ex. A-6 and A-7), all of which revealed that only 100 hectares in the entire lands were private forest on the appointed date. The final report Ex. A-7, Ex A-8 and A-9 (location sketches) also showed the details of the survey by the forest officials. All these were produced by the Commissioner. Also, the demarcated areas by the official survey ascertained the extent by actual theodolite survey. The High Court observed that all these showed only the disputed area marked as Bits 1-7; the plan was also exhibited as Ex. C-3. The High Court took into account the evidence of the then Range Officer (PW-1), the Commissioner (PW-3), PW-4 & PW-5 – all of which pointed that the disputed area covered by Ex. A-7 was plantation on the date when the act came into force.

12. The High Court then relied on the full bench decision of the Kerala High Court in *Parameswara Sastrigal K.S. v. State of Kerala & Ors.*[22]. That judgment observed that if the land vested in the government as a private forest on the appointed date, the owner cannot thereafter alienate or transfer or assign the land for certain. However, if it is not a private forest vested in the government there is no impediment for the title holder to transfer the land. The Court also took note of the judgment of this court in *Bhawani Tea & Produce Co. Ltd. v. State of Kerala & Ors.*[23] where it was observed that:

> *"The reverse question is involved in this case, namely if the land was not private forest but plantation under the M.P.P.F. Act and was similarly not private forest but plantation on 10.5.1971, it could not, without anything more, become private forest thereafter even though it was not under the same efficient or successful plantation as it was earlier. Whether the plantation yielded any crop or not was for the owners to decide and not by the authorities under the Vesting Act, unless it did make specific provisions to cover such a situation."*

13. Taking note of these circumstances the court concluded that on the appointed date, except the area of 155.9 acres of land, the rest of the lands covered by Ex. A-27 were not private forest but plantations falling within the exclusions under Section 2(f)(1)(i)(A) to (D) of the Vesting Act. The High Court finally held that 1127.50 acres of land were plantation and 100 hectares, i.e. 247 acres were private forest. Since there was no claim with respect to 155.90 acres of land nor any proof that it was converted into plantation on the appointed date, that extent was also held to vest in the state. However with respect to the rest, i.e. 1127.50 acres minus 155.90 acres of land, the appeal was allowed and Ex.A-27 notification to that extent was set aside.

Submission of parties

14. Mr. Pallav Sisodia, learned senior counsel argued on behalf of the state that the impugned judgement requires interference as it is based on a misappreciation

[22] 2008 2 ILR 371
[23] 1991 (2) SCC 463

of the facts on record. Learned counsel urged that the primary onus to establish that the extent of land notified by the state was not a private forest covered by the Vesting Act lies upon the party or individual asserting it to be so. Thus, the burden lay upon the appellant before the High Court, i.e. Popular Estates to prove that the entire extent of 1534.40 acres of land were in fact under cultivation as plantation. Mr. Sisodia submitted that before 10.05.1971, Popular Estates was not the owner of the forest land; two partnerships had formed since the earlier partnership was dissolved by deed dated 07.01.1972 produced as Ex. A-41. In these circumstances Popular Estates was not entitled to maintain the original application since the vesting took place on 10.05.1971 and therefore, as the subsequent purchaser could not agitate with respect to the vesting. It was alleged that the High Court principally relied on Ex A-50 and A-51 proceedings under the KLR Act or the determination of the Land Board to allow the appeal. In this regard, learned counsel stressed that the decision of this court in *Popular-II* was clear that such determinations by the Board for an entirely different purpose could not constitute *res judicata by* giving undue weight to that piece of evidence and ignoring that the other evidence led before the tribunal was utterly inadequate; the appellant state urged that the High Court fell into error.

15. The State argued that the High Court erred in holding that Ex. A-6 and A-7 showed that only 100 hectares were private forest. In this respect, learned counsel highlighted the observations of the tribunal that the said two documents do not prove the fact that the rest of the lands were in fact cultivated with plantation crops. He also relied upon the deposition of PW-3 (Commissioner) who had stated that he could not ascertain the planted areas, the number of plants or the age of such plants in his first inspection and that he had confined his second inspection to Plot numbers 1 to 7. Learned counsel emphasised that by Ex. A-6 and A-7 the Commissioner had reported that a thick forest existed and had highlighted the need to conduct a detailed survey. It was urged that the Commissioner had visited the area in December 1975, long after the date

of vesting, i.e. 10.05.1971 and therefore, the report was not determinative. It was further argued that the High Court completely ignored examining whether the plantations were registered under the Coffee Act, the Rubber Act or the Cardamom Act which now fall within the purview of the Spices Board under the Spices Board Act, 1986 or whether they had any valid registration in law. In these circumstances there could have been no conclusive finding that plantations existed, as was asserted by Popular Estates.

16. Learned counsel relied upon the pleadings made by Popular Estates in the earlier rounds of litigation, especially in the first writ petition which had challenged the enactment of the Vesting Act, in which an assertion was made that more than 1000 acres was forest area. He also submitted that a comparison of the respondent's pleadings clearly showed that there were glaring inconsistencies in this regard. It was submitted that in the writ petition filed at the earliest point of time in 1971, the total plantation area mentioned was 923 acres and that 682.47 acres grasslands were leased for dairy purposes. According to that writ petition, the total extent of land was 1589.47 acres. In another writ petition filed subsequently, another version that the plantation area was only 228.55 acres was asserted, in relation to one block; 780.34 acres was leased out for dairy purposes. A total of 573.69 acres of balance land were mentioned out of which 194.44 acres were plantation in one area, and the entire plantation area in both parcels of land put together in this writ petition did not exceed 425 acres. It was highlighted that if one took into account these pleadings, a conflicting picture emerged. On an overall analysis of the pleadings, the nature of oral testimony, over reliance on the suspect testimony and the deposition of PW-1, a Forest range officer who had no business to depose against the state and PW-5, whose evidence did not inspire confidence with respect to the specifics regarding the area of cultivation, could not have led the High Court to reasonably conclude that 1127 acres were in fact cultivated, based upon on almost similar finding of the land board. It was also urged that the High Court failed to see that the burden of

proving that the lands claimed by Popular Estates as not covered by forest, remained unproved and undischarged. Consequently, the High Court, even on an independent analysis of the evidence could not have allowed the appeal.

17. Mr Sisodia concluded his arguments by saying that the primary objective of the Vesting Act is to ensure that large chunks of private forests held by a few individuals or entities, but which constituted valuable economic resource which required redistribution in terms of Directive Principles of State Policy, were made over to those sections of society who did not own any land. The impugned judgement therefore failed in noticing the salutary purposes of the Act by holding that Ex. A- 27 could be upheld only to the extent of 155.90 acres and in setting aside the rest.

18. It was argued on behalf of the respondent, Popular Estates, that the order of the High Court impugned in this case, should not be interfered with. Mr K.V. Viswanathan, learned senior counsel appearing on behalf of Popular Estates, argued that the judgement in *Popular-II* declared that even though the determinations of Boards could not be treated as *res judicata* in proceedings under the Vesting Act, nevertheless, they had to be given due weight. They carried credibility as long as the basis of such decision indicated factual investigation and the order was not under a cloud. In the present case too, there was no reason for the tribunal to doubt or question the Board's findings. Reiterating the nature of the KLR Act and the objectives of the Vesting Act, it was submitted that both enactments observed common public good, namely determination of either excess lands or uncultivated forest lands, but not plantation; and ensuring redistribution to deserving categories of persons.

19. Referring to the record, Mr. Vishwanathan argued that the High Court took all evidence: oral and documentary, into consideration. He stressed that not only the survey by the Commissioner, but also survey conducted by Forest range

officers and the report of such officials confirmed that the entire area was inspected, and only those portions - covered in Bits 1 to 7 - were found to be forest lands, and consequently demarcated. There was general agreement that the rest of the lands were not forest land, but were cultivated for rubber, coffee and cardamom. Learned counsel relied on Ex A-7, Ex A-8 and Ex. A-9 (location sketch) and the commissioner's sketch as well. The senior counsel further argued that Ex. A-59 to A-64 proved that Popular Estates was earning agricultural income from the lands, much prior to the appointed date. These documents also established that it maintained regular balance sheet, and profit and loss accounts.

20. Popular Estates relied on the depositions of PW-1 and PW-5. Commenting on the statement of PW-5, learned senior counsel urged that the tribunal wrongly rejected his testimony. It was argued that he was an employee, though not working as a Superintendent when he joined in 1969, that alone could not have been a ground to reject his evidence.

21. It was argued next that under Section 8A of the Vesting Act, an appeal lay, as a matter of right, to the High Court against the order of the tribunal. In terms of Section 8A (3), the High Court could confirm cancel, or set aside the decision of the tribunal appealed against, remand the matter, or pass such orders as it deemed fit. In these circumstances, the High Court had opportunity to undertake a full margin of appreciation of the entire evidence and arrive at its own conclusions. In support of this, learned counsel relied upon the judgment of this Court in *State of Kerala v ACK Rajah*[24] in which the Court had observed that in deciding the appeal under Section 8A, the High Court has very wide powers which are not hedged by any limitation. The High Court could, in any given matter consider the correctness and propriety of the tribunal's view under appeal, which arose for its consideration; it could independently consider the evidence and satisfy itself whether the findings of the tribunal and its conclusions were

[24] 1994 Supp. (3) SCC 250

proper. It was contended that in these circumstances, the view of the High Court based upon its overall appreciation of the circumstances was sound and just and did not call for interference.

22. It was reiterated by the learned counsel that the decision in *Kunjanom Antony* (supra) and *Popular Estates-II* are binding on the question of law that though the decision of the Land Board under the KLR Act cannot be conclusive as *res judicata*, nevertheless it has considerable evidentiary weight and that unless the contrary state of affairs is shown, the Board's order would have to be given due weight. Therefore, since the Board's order was not under cloud or under appeal, prima facie, due weight had to be given. Unfortunately, the tribunal entirely discarded the Board's determination which was based on the appreciation of the objective facts. Counsel highlighted that in the present case, the inspection undertaken was in the context of assertions made in the mid-1970s. The determination of the Board was decisive. Therefore, it had considerable evidentiary weight and could not be brushed aside as a mere piece of paper.

23. It was urged that the preliminary and final report of the Commissioner in the earlier proceedings instituted by Popular Estates in 1974 through its two applications were also earliest in point of time. The preliminary report, Ex. A-6 which was filed on 15.01.1976 shows that there was extensive cultivation of coffee, cardamom, rubber, areca nut, etc. Learned counsel invited the attention of this court to the concerned documents. He submitted that the final report, Ex. A-7 furnished by the Commissioner on 12.09.1977 recorded what was observed by the Forest Range Officer, i.e. only that disputed portions in Bit Nos. 1 to 7 had been demarcated and that the other areas were cultivated. The counsel underlined that these reflected the true ground reality. Coupled with the Range Officer's memorandum (Ex.A-4) which was furnished before the Commissioner on 01.09.1977, it was clear that the areas were inspected in detail and that only those areas that vested with the government were demarcated by the survey party attached with the Superintendent, Land Records.

24. It was urged that what was demarcated was only 100 hectares and the other areas were not demarcated since they were cultivated. This was endorsed in the final report, Ex. A-7. It was submitted that the possession with respect to 100 hectares of uncultivated forest lands was also covered by draft statement of land dated 24.01.1979, Ex. A-50 which was furnished to the Board in proceedings under the KLR Act. This document, Ex. A-50 was the basis for the Board's order dated 04.11.1980 (Ex. A-51). These two confirmed that only 100 hectares was vested forest. Furthermore, learned counsel submitted that an extent of 533 acres was under cardamom cultivation; 120 acres under rubber plantations; 257 acres under coffee plantation; 155.9 acres was forest land; and 17.5 acres of roads and buildings. Given these circumstances, the reliance by the High Court on these materials to conclude that only 100 hectares and 155.90 acres was forest land that vested with the state and that the rest was under cultivation, is unexceptionable.

25. Learned counsel submitted that the tribunal fell into error in rejecting the evidence of PW-1 - the Forest Range Officer, who gave memorandum to the Commissioner on 01.09.1977. Somehow, the proceedings in the tribunal and the evidence of this officer were always viewed in a coloured manner as was evident from the oft repeated phrase of "magic money", insinuating that PW-1 had been bribed. It was submitted that there was no such suggestion to him nor was any material placed on record that he was criminally prosecuted or proceeded with departmentally. Learned counsel likewise submitted that the tribunal erred in overlooking and rejecting the evidence on record such as the auditor's balance sheets (Ex. A-57 to A-64) as well as the auditor's deposition as PW-4, and the deposition of the manager of Popular Estates (PW-5 - who had worked since 1969, though not a Superintendent but later having regard to these accounts). It was also highlighted that the title deeds of the predecessor-in-interest of the partners of the Popular Estates who had acquired the lands in 1963 clearly showed that considerable areas were shown as cardamon plantation. The Popular Estates had filed agricultural income returns and even as on 1970, it was producing

coffee, rubber and cardamom. The fact that it had some labour trouble also supported its contention that Popular Estates' plantation activities were on in full scale.

Relevant provisions of law

26. Before proceeding with the discussion of merits of this case, it would be necessary to extract the relevant provisions of law, which the High Court took into consideration, and which the parties relied on. The first enactment relevant in this regard, is the Madras Act, of 1949. It applied[25], to private forests in the districts of Malabar and South Kanara (now Dakshina Kannada district of Karnataka) having a contiguous area of 100 acres or more. The Act also applied[26] to forests in estates, falling under the Madras Estates Land Act, 1908. "Forest" was defined as including *"waste or communal land containing trees and shrubs, pasture land and any other class of land declared by the State Government to be a forest by notification"*[27]. By virtue of Section 3 (1), no owner of any forest could, without previous sanction of the District Collector, sell, mortgage lease or *"otherwise alienate the whole or any portion of the forest."*

27. The second enactment in question, is the KLR Act. It defined[28] private forests as meaning:

> *"a forest which is not owned by the Government, but does not include-*
>
> *(i) areas which are waste and are not enclaves within wooded areas;*
>
> *(ii) areas which are gardens or nilams;*
>
> *(iii) areas which are planted with tea, coffee, cocoa, rubber, cardamom or cinnamon; and*
>
> *(iv) other areas which are cultivated with pepper, areca nut, coconut, cashew or other fruit-bearing trees or are cultivated with any other agricultural crop;*

[25] Section 1 (2) (i)
[26] Section 1 (2) (ii).
[27] Section 2 (a)
[28] By Section 2 (47)

Section 81 provided for exceptions, and enacted *inter alia* that provisions of the chapter relating to vesting of excess did not apply to private forests. The relevant parts of Section 81 are extracted below:

> ***"81. Exemptions.*** *- (1) The provisions of this Chapter shall not apply to -*
> *(a) lands owned or held by the Government of Kerala or the Government of any other State in India or the Government of India or a local authority or the Cochin Port Trust or any other authority which the Government may, in public interest, exempt, by notification in the Gazette, from the provisions of this Chapter.*
> ********** **********
> *********
> *(b) lands taken under the management of the Court of Wards:*
> *Provided that the exemption under this clause shall cease to apply at the end of three years from the commencement of this Act;*
> *(c) lands comprised in mills, factories or workshops and which are necessary for the use of such mills, factories or workshops;*
> *(d) private forests;*
> *(e) plantations;*
> *(f) cashew estate*
> *Explanation. - For the purpose of this clause "cashew estate" shall mean dry land principally cultivated with not less than 150 cashew trees per hectare.]*
> *(g)****** **********
> *******"

28. By Section 2 (a) of the Vesting Act, 10.05.1971 was deemed as the *"appointed date."* Section 2(f) of the Vesting Act defined *"private forest"* in the following terms:

> *"(f) "private forest" means-*
>
> *(1) in relation to the Malabar district referred to in subsection (2) of Section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956)-*
>
> *(i) any land to which the Madras Preservation of Private Forest Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-*
>
> *(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964);*
>
> *(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.*

> ***Explanation***.-*Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;*
>
> *(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and*
>
> *(D) sites of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;*
>
> *(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forest Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.*
>
> *(2) in relation to the remaining areas in the State of Kerala, any forest not owned by the Government, including waste lands which are enclaves within wooded areas.*
>
> ***Explanation***.- *For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs."*

29. Section 2 (1) (f) of the Vesting Act defines "private forest", in relation to Malabar District. Section 2(f)(1)(i) says that "private forest" means any land to which the Madras Act applied immediately before the appointed day, viz., 10.05.1971. It thereafter, enacts that certain lands are excluded from the definition of *"private forest"* falling under sub-clauses (A) to (D). Lands, which are gardens or *nilams* (defined in the KLR Act, 1963), are excluded from the definition of "private forest" under the Vesting Act under sub-clause (A). Likewise, lands used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market are excluded from the definition of *"private forest"* by reason of sub-clause (B). Explanation to Section 2 (1) (i) (B) further showed that lands used for the purpose of construction of office buildings, go-downs, factories, quarters for workmen, hospitals, schools and playgrounds were deemed to be lands used for purposes ancillary to the cultivation of such crops. Therefore, Section 2 (1) (i) (B) evidences that lands used principally for cultivation of certain crops and lands used for construction of buildings for the purpose of running and maintaining a plantation are excluded from the definition of "private forest". Section 3 of the Vesting Act under which private forests were to vest in the Government said:

> *"**3. Private forests to vest in Government.** -(1) Notwithstanding any thing 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-section (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.*
>
> *(4) Notwithstanding anything contained in the Kerala Land Reforms Act, 1963, private forests shall, for the purposes of sub-section (2) or sub- section (3), be deemed to be lands to which chapter III of the said Act is applicable and for the purposes of calculating the ceiling limit applicable to an owner, private forests shall be deemed to be `other dry lands' specified in Schedule II to the said Act."*

30. Section 4 of the Vesting Act provided that private forests after being vested in the state were to be deemed to be reserved forests, and Section 5 provided for eviction of persons in unauthorised occupation of any such private forest. Section 6 provided for demarcation of boundaries of the private forests vested in the government by the Custodian.

Analysis and Conclusions

31. The definition of private forest given in Section 2(f) of the Vesting Act and Section 2(47) of the KLR Act were considered by this court in *Gwalior Rayons Silk Mfg. (Wvg.) Ltd v. The Custodian of Vested Forests, Palghat & Anr*[29]. The lands involved in that case were forests as defined in the Madras Act and

[29] 1990 (Supp) SCC 785

continued to be so when the Vesting Act came into force in 1971. It was observed that the definition of private forests applicable to the Malabar district was not general in terms but limited to the area and lands to which the Madras Act applied, and exempted therefrom land described under sub-clause (A) to (D). It was held that the previous decision of this court in *Malankara Rubber & Produce Co. v. State of Kerala & Ors.*[30] and the earlier decision in *State of Kerala v. Gwalior Rayons Silk Mfg. (Wvg.) Ltd*[31] (supra) was a

> *" a judicial recognition of the distinction between private forest in Travancore-Cochin area in Kerala State and the private forest in Malabar district. This distinction by itself is sufficient to dispel the anomalies suggested by counsel for the appellant. Look at the definition. Sub-clause (A) refers to gardens or nilams as defined in the KLR Act. 'Garden' means lands used principally for growing coconut trees, arecanut trees or pepper vines or any two or more of the same. 'Nilam' means lands adapted for the cultivation of paddy. Sub-clause (B) deals with what may be called plantation crops, cultivation of which in the general sense would be cultivation of agricultural crops. Such agricultural crops are by name specified. Lands used for any purpose ancillary to such cultivation or for preparation of the same for the market are also included thereunder. Next follows sub-clause (C). It first refers to lands which are principally cultivated with cashew or other fruit-bearing trees. It thus refers to only the fruit beating trees. It next refers to 'lands which are principally cultivated with any other agricultural crop. If the legislature had intended to use the term 'agricultural crop' in a wide sense so as to take within its fold all species of trees fruit-beating or otherwise, it would be unnecessary to have the first limb denoting only the cashew or other fruit-beating trees. It may be significant to note that the Legislature in each sub-clause (A) to (C) has used the words to identify the different categories of crops or trees. The words used in every sub-clause too have "associations, echoes and overtones".*

32. In *Bhavani Tea & Produce Co. Ltd* (supra) this court had to consider the correct method of determining what is a private forest, under the Vesting Act; the determination made was in connection with the interplay of provisions of the other enactments, i.e. the KLR Act, and the Madras Act. It was held as follows:

> *"Division into plots was done by the Commissioner as he found these plots to have been different and the demarcation was of compact areas with few isolated areas, and such a demarcation was contemplated under the Act. It was pointed out that the company also contested the case on plot-by-plot basis. The Tribunal as well as the High Court also proceeded on that basis. It is pointed out the*

[30] [1973] 1 SCR 399
[31] [1974] 1 SCR 67 1

company objected to the principle of division before the High Court but did not question the correctness of the actual division made and hence the High Court could decide only on plot-by-plot basis. We have no difficulty in holding that the forest area is generally described or notified with reference to land in forest laws. But that does not mean that what stood on the land has to be ignored, particularly in case of plantations which were exempted under the M.P.P.F.Act.

While we are not inclined to agree that the entire estate of the company was required to be taken as one whole, we find it difficult to agree that wherever some forest was found inside the company's estate the Vesting Act would apply. We find that the M.P.P.F. Act, the Kerala Forest Act, the Kerala Land Reform Acts considered the plantations as units by providing that they would include the land used for ancillary purposes as well. Therefore, while applying the Vesting Act to such plantations the same principle would be applicable."

33. The correct manner of interpreting the interplay between the Madras Act and the Vesting Act, was explained lucidly in the judgment of this court in *State of Kerala v. Pullangode Rubber & Produce Co. Ltd*[32]. This court observed that:

*"**8.** It is necessary first, we think, to construe the definition of "private forest" in the said Act. It means, as aforestated, in relation to the erstwhile Malabar District of the State of Madras, land to which the Madras Preservation of Private Forests Act applied immediately before 10-5-1971, being the appointed day under the said Act, but excluding, inter alia,*
"lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market".
Such lands so used are, therefore, not private forests within the meaning of the said Act. Now what this means is that the lands in Malabar District aforementioned which are used (a) principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon, (b) for any purpose ancillary to the cultivation of such crops, and (c) for the preparation of such crops for the market are not private forests under the said Act. The use of the words "are used" in this context necessarily refers to such use as on the appointed date under the said Act, namely, 10-5-1971. It is not possible to give any other meaning to the words "are used". They must relate to use on that particular day for it is on that day that land is or is not a private forest within the meaning of the said Act."

34. The state's contention that as Popular Estates had mentioned in its petition that a certain area was forest (since it was so, by virtue of provisions of the Madras Act) therefore, does not preclude the latter's contention that no vesting could take place; whether the lands were "forest" or cultivated plantations or estates, for the

[32] (1999) 6 SCC 92

purposes of Section 2(f)(1)(i)(B) of the Vesting Act, especially whether they stood excluded from operation of that Act, had to be considered independently.

35. The judgment in *Kunjanam Antony* (supra) enunciated the rule that where the Land Board arrives at a determination about the character of lands, under the KLR Act, that becomes a piece of evidence for the purposes of the Vesting Act. It was observed that:

> *"There can be no doubt that the order of the Thaluka Land Board, a statutory authority, is binding on the authorities under the Land Reforms Act. So far as the proceedings under the Forest Act are concerned, the order of the Thaluka Land Board would be a piece of evidence but it cannot be treated as a binding on the authorities under the Forest Act. Unless a contrary state of affairs is shown to exist, the order of the Thaluka Land Board would have to be given due weight. From the material placed before the High Court and also before us, it appears that there is no evidence in regard to the destruction of the rubber plantation due to fire. There is, however, material to show that the appellant has been cultivating tapioca. Further, the High Court recorded a finding that there was no evidence indicating that the appellant had intention to cultivate the land which only meant cultivation of rubber plantation. There is also nothing on record to show that absence of rubber plantation was for short period and that the land was in the process of rubber plantation."*

36. Apart from this court's judgment in *Popular II,* another recent judgment, in *State of Kerala v. Mohammed Basheer*[33] has also followed the rule in *Kunjanam Antony.* Therefore, it is no longer open for the state to argue that the Board's determination or order, had little or no evidentiary value. In view of the judgments of this court, including *Popular II,* the enunciation of the principle that "*unless a contrary state of affairs"* were shown to exist, the Board's order *"would have to be given due weight"* had to apply, and was correctly invoked by the High Court.

37. Coming to the facts of this case, what can be seen is that the two reports: preliminary and final, filed by the Commissioner, in the first proceeding (instituted by Popular Estates in 1974 by two applications) were the nearest in

[33] (2019) 2 SCC 260

point of time, to the appointed date. The preliminary report, Ex. A-6 (filed on 15.01.1976) discloses widespread cultivation of coffee, cardamom, rubber, areca nut, etc. The two reports are part of the record. Ex. A-7 by the Commissioner, i.e. the final report dated 12.09.1977 recorded that the Forest Range Officer, after inspection stated that "*only disputed portions in Bit Nos. 1 to 7 had been demarcated and that the other areas were cultivated"*. The respondents contention was that this reflected the true factual position, coupled with the Range Officer's memorandum (Ex. A-4) filed before the Commissioner on 01.09.1977.

38. A combined reading of these materials, leads one to infer that a detailed inspection of the area took place. Only those areas that vested with the government were demarcated by the survey party, attached with the Superintendent, Land Records. It was in these circumstances that the respondent successfully urged before the High Court that what was demarcated was only 100 hectares and the others were not demarcated since they were cultivated. This was borne out by Ex. A-7, the final report. The possession with respect to 100 hectares of uncultivated forest lands was also covered by draft statement of land (Ex. A-50, dated 24.01.1979) furnished to the Board in proceedings under the KLR Act. Ex. A-50 was the foundation for the Board's order dated 04.11.1980 (Ex. A-51). Both these documents confirmed that 100 hectares was vested forest. Popular Estates had submitted that 533 acres was under cardamom cultivation; 120 acres under rubber plantation; 257 acres under coffee plantation and that 155.9 acres was forest land; and 17.5 acres of were comprised of roads and buildings. These arguments found favour with the High Court. In our considered opinion, there is no glaring error in the impugned judgment, having regard to these circumstances.

39. The tribunal entirely rejected the evidence of PW-1, the Forest Range Officer, who gave the memorandum to the Commissioner on 01.09.1977. The tribunal wholly discredited and brushed aside the evidence of this officer and viewed it with suspicion. This is clear from the repeated use of the phrase *"magic money"* suggesting that PW-1 was devious and had been bribed. A reading of his

deposition shows no such suggestion to him; no material was placed on record that he was prosecuted for an offence, nor were departmental proceedings initiated, for misconduct.

40. The other materials on record (the auditor's balance sheets, Ex. A-57 to A-64) the evidence of the auditor (PW-4), the deposition of the manager of the respondent/ Popular Estates, PW-5, who had worked since 1969 onwards reinforce the respondent's contentions that the largest part of the area was cultivation for plantation crops. The tribunal, in this court's opinion unreasonably discarded these materials.

41. The other documents, i.e. Ex. A-66, Settlement arrived at between Popular Estates and its workers after closure on 25.6.1982 reveal that it had 80 permanent workers and 29 temporary workers on its rolls. Likewise, copies of income tax returns for various dates showed that income from these estates was consistently reported, along with expenditure. For the year ending on 31.3.1968 income was reported as ₹ 81,319; for the year ending 31.3.1969 it was ₹95,707/-; the year ending 31.3.1970 it was ₹ 1,12,524; and for the year ending 31.3.1971 it was ₹ 1,38,918. The respondent Popular Estates was apparently depositing agricultural income tax and employees provident fund (Ex. A-67, A-69 and A-70). It had produced correspondence with these statutory authorities, as well as sales tax returns (Ex. A-71).

42. The title deeds of the predecessor-in-interest of the partners of the Popular Estates who had acquired the lands in 1963, show that large areas were shown as cardamon plantation. Popular Estates had filed agricultural income returns and even in 1970, it was producing coffee, rubber and cardamom. The fact that it had some labour trouble also supported its contention that Popular Estates' plantation activities were on in full scale. All these materials, in the opinion of the court, support the conclusions of the High Court, which are based on plausible (and not an unreasonable) inference of the overall analysis of the evidence on the record.

43. There is some authority for the proposition that where two plausible views on the conclusions that can be drawn from facts on the record exist, this court, in exercise of its discretionary jurisdiction under Article 136 of the Constitution would not interfere with the findings of the High Court. It has been observed in *Pritam Singh v. The State*[34], this Court observed that:

> *"On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under is to be exercised sparingly and in exceptional cases only, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article."*

Similar observations were made in *Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar*[35]. In *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai*[36], this Court observed that-

> *"The discretionary power of the Supreme Court is plenary in the sense that there are no words in Article 136 itself qualifying that power. The very conferment of the discretionary power defies any attempt at exhaustive definition of such power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as when a question of law of general public importance arises or a decision sought to be impugned before the Supreme Court shocks the conscience. This overriding and exceptional power has been vested in the Supreme Court to be exercised sparingly and only in furtherance of the cause of justice in the Supreme Court in exceptional cases only when special circumstances are shown to exist."*

44. Likewise, in *Union of India v. Gangadhar Narsingdas Agarwal & Anr*[37] this court, declining to interfere with the order of the High Court in exercise of its power under Article 136 of the Constitution, said that even if two views are possible, the view taken by the High Court being a plausible one, it would not call for intervention by this court. A similar view was expressed in *Jai Mangal Oraon v. Mira Nayak (Smt) & Ors*[38], wherein this court held that when there was nothing illegal and wrong in the reasoning and conclusions arrived at by the High

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[34] 1950 SCR 453
[35] (2004) 5 SCC 1
[36] (2004) 3 SCC 214
[37] (1997) 10 SCC 305
[38] (2000) 5 SCC 141

Court and it appeared to be merited and in accordance with the interpretation of statutory provisions, this court would not interfere with the order of the High Court under Article 136 of the Constitution. In *Taherakhatoon (D) By Lrs. v. Salambin Mohammad*[39], this Court at observed as follows:

> *"In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error- still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion."*

45. This court has carefully considered the findings of the High Court while setting aside the order of the tribunal. The reasons which led the High Court to conclude that the tribunal's findings called for interference are merited and in accord with the material evidence on record. This Court is therefore of the opinion that no interference with the impugned judgment of the High Court is called for. The appeal is therefore, dismissed, without order on costs.

.....J.
[INDIRA BANERJEE]

.....J.
[S. RAVINDRA BHAT]

NEW DELHI
OCTOBER 29, 2021

[39] (1992) 2 SCC 635