

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2099 OF 2008

State of Kerala & Ors.

....Appellant(s)

VERSUS

Yusuff & Ors.

...Respondent(s)

WITH

CIVIL APPEAL No. 2100 OF 2008

State of Kerala & Ors.

....Appellant(s)

VERSUS

Yusuff & Ors.

...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) **Civil appeal No. 2099 of 2008** is filed against the final judgment dated 22.01.2004 passed by the

High Court of Kerala at Ernakulam in Writ Appeal No. 198 of 2000 whereby the High Court disposed of the writ appeal filed by the appellants herein by granting six months' time to complete the demarcation and to hand over the land in question.

2) **Civil Appeal No. 2100 of 2008** is filed against the final order dated 11.06.2004 passed by the High Court of Kerala at Ernakulam in R.P.No. 254 of 2004 filed against the judgment dated 22.01.2004 in W.A. No. 198 of 2000 by which the High Court closed the review petition on the basis of the submission of the Government pleader that the Government is resorting to other remedies.

3) We herein set out the facts, in brief, to appreciate the issue involved in these appeals.

4) The impugned judgment and order read as under:

“Judgment in W.A. No. 198 of 2000

The learned Government Pleader submits that what the Government requires is only some time to demarcate the land in question for the purpose of restoration to the Respondents. Accordingly, the Writ Appeal is disposed of, as suggested by the Government

Pleader, granting six months' time from today to complete the demarcation and to hand over the land in question.”

“Order in R.P. No. 254 of 2004

Government Pleader submits that the Government is resorting to other remedies.

Review Petition is closed.”

5) The dispute in these appeals essentially center around to the forest land measuring around 4.0755 Hectares in Sy. No 2019/Part, situated in Pattassery (Agaly) Village, Mannaghat Taluk, District Palakkad in the State of Kerala. It is between the State (Forest Department) on the one hand and the private individuals(respondents) on the other hand. The respondents assert their rights on the said land to the exclusion of the State on variety of grounds whereas the State equally disputes the respondents' claim and assert their rights.

6) The Forest Tribunal, Manjeri, by order dated 03.10.1979, in O.A. No. 97 of 1978 first decided the dispute. It was then carried in writ jurisdiction to

the High Court in O.P. No 1470 of 1991 and was decided on merits and then was taken in appeal being W.A. No 198 of 2000 before the Division Bench which resulted in passing the impugned judgment giving rise to filing of C.A. No. 2099 of 2008 by the State. Against the judgment in W.A. No. 198 of 2000, Review Petition No. 254 of 2004 was filed before the High Court, which was closed by order dated 11.06.2004. Against the said order, C.A. No. 2100 of 2008 is filed.

7) Heard Mr. V. Giri, learned senior counsel for the appellants and Mr. M.S. Vishnu Sankar, learned counsel for the respondents.

8) Submission of learned Senior counsel for the appellant(State) was only one. According to him, having regard to the nature of controversy which was the subject matter before the Forest Tribunal in O.A. No. 97 of 1978 and then carried to the High Court in O.P. No. 1470 of 1991 and lastly, in appeal being W.A. No. 198 of 2000 at the instance of the

State, which is now finally brought to this Court in these appeals, the High Court ought to have dealt with and decided variety of grounds urged on merits by the parties.

9) Learned Counsel pointed out that presumably due to reason that the State's counsel did not argue any point, the High Court did not consider it necessary to go into any of the contentious issues but, according to learned counsel, it caused serious prejudice to the State.

10) Learned counsel pointed out from the record that the State's counsel was neither authorized to make such statement before the Division Bench on behalf of the State and nor was there any occasion for him to make such statement which unfortunately resulted in disposal of the State's appeal without deciding any of the contentious issues. Learned counsel, therefore, urged for hearing the State's writ appeal on merits by the High Court afresh in accordance with law.

11) In reply, learned counsel for the respondents (writ petitioners) while supporting the impugned judgment/order contended that the impugned judgment/order deserve to be upheld calling no interference therein. Learned counsel urged that the State's counsel rightly made the concession which was duly recorded by the Division Bench resulting in disposal of the appeal.

12) Learned counsel also urged several issues arising in the case on merits to show that the appellant (State) has no case even on facts.

13) Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part and while setting aside the impugned judgment remand the case to the High Court (Division Bench) to decide the writ appeal afresh on merits.

14) In our view, having regard to the nature of controversy involved in these appeals, the contentious issues decided by the Tribunal and the

Single Judge of the High Court, the implications of various Forest and Revenue laws governing the issues and further keeping in view the Commissioner's report obtained by the Division Bench pursuant to the order dated 29.10.2000 in relation to the disputed land in question, the writ appeal deserves to be heard on merits.

15) So far as the issue with regard to the statement of the appellants' counsel made before the High Court is concerned, we find from the record of the case that it was not called for inasmuch as the same appears to have been made under some misconception. Be that as it may, in the light of what we have observed supra, it is not necessary to go into this question any more.

16) In our view, the remand of the appeal to the High Court for its decision on merits would not, in any way, cause prejudice to the respondents because they would also be heard in appeal.

17) In the light of foregoing discussion, we allow the appeals, set aside the impugned judgment and order, restore Writ Appeal No. 198 of 2000 out of which these appeals arise and request the High Court to decide the writ appeal afresh on merits in accordance with law expeditiously.

18) We make it clear that we have not expressed any opinion on the merits of the controversy involved in these appeals and, therefore, the writ appeal would be decided by the High Court uninfluenced by any of our observations.

JUDGMENT.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
February 23, 2017