

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.MC.No. 4745 of 2015 ()

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OR NO. 32/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, NEDUMKANDAM,
IDUKKI
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PETITIONER/ACCUSED :

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GRACY
W/O.JOSEPH THOMAS @ SUNNY, THARAPPEL HOUSE
EZHUKUMVAYAL, KALKOONTHAL VILLAGE, UDUMBANCHOLA
IDUKKI, PIN-685 558.**

BY ADV. SRI.M.C.JOHN

RESPONDENT/COMPLAINANT :

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1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 035.**

**2. THE RANGE FOREST OFFICER
KUMILY RANGE, KUMILY, IDUKKI DISTRICT
PIN-685 509.**

R1 & R2 BY SPL.GOV.T.PLEADER SRI. MADHAVANKUTTY

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE-I.** CERTIFIED COPY OF THE OR NO.32/2013 RECEIVED ON 1/6/2015 FROM THE JFCM, NEDUMKANDAM.
- ANNEXURE-II.** TRUE COPY OF THANDAPER EXTRACT DATED 16/4/2013 OF THE PROPERTY.
- ANNEXURE-III.** TRUE COPY OF BASIC TAX RECEIPT DATED 15/6/2012 ISSUED BY THE VILLAGE OFFICE.
- ANNEXURE-IV.** TRUE COPY OF G.O.(RT) NO.301/70/AD DATED 6/02/1990.
- ANNEXURE-V.** TRUE COPY OF 'VILACHIT' NO.41 ISSUED BY P.D.VARGHESE.
- ANNEXURE-VI.** TRUE COPY OF INVOICE NO.139 DATED 30/3/1969 ISSUED BY THE P.D.VARGHESE TO THE PETITIONER'S HUSBAND'S FATHER.
- ANNEXURE-VII.** TRUE COPY OF APPLICATION DATED 2/5/2013 SUBMITTED TO THE 2ND RESPONDENT.
- ANNEXURE-VIII.** TRUE COPY OF STATUS REPORT NO.1 DIS G4/8294/13 DATED 16/4/2013 AND THE SKETCH.
- ANNEXURE-IX.** TRUE COPY OF REPORT DATED 18/5/2013 OF THE SECTION FORESTER, KUMILY.
- ANNEXURE-X.** COPY OF THE LETTER NO. G4-12819/14 DATED 30.10.2014 FROM THE TAHSILDAR TO GOVERNMENT.
- ANNEXURE-XI.** COPY OF THE NOTICE OF HEARING NO. 61978/A2/2014/RD DATED 29.4.2015.
- ANNEXURE-XII.** COPY OF THE FOREST PASS NO. 34/10-11 DATED 4.3.2011 ISSUED BY THE FOREST RANGE OFFICER, AYYAPPANCOVIL IN KATTAPPANA VILLAGE.
- ANNEXURE-XII(a)** COPY OF THE FOREST PASS NO. 15/12-13 DATED 20.9.2012.
- ANNEXURE-XII(b)** COPY OF THE DECLARATION AND THE ORDER DATED 9.11.2012 THEREON ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R2(a)** COPY OF THE JUDGMENT DATED 9.10.2014 IN WP(C) NO. 24980/2014.

(Contd...)

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**ANNEXURE R2(b) COPY OF APPENDIX II OF RULE 9(2) OF THE KERALA LAND
ASSIGNMENT RULE, 1964.**

ANNEXURE R2(c) COPY OF THE RESERVE NOTIFICATION DATED 24.8.1897.

**ANNEXURE R2(d) COPY OF NOTIFICATION NO. 2356/B1/87/FOREST DATED
4.5.1987.**

ANNEXURE R2(e) COPY OF JUDGMENT DATED 3.12.2011 IN WP(C) NO. 804/2006.

//TRUE COPY//

P.A. TO JUDGE

Mn

B. KEMAL PASHA, J.

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CrI.M.C. No.4745 of 2015 F
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Dated this the 6th day of October, 2015

ORDER

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Certain trees from the property assigned to the petitioner were cut and removed, evidently, based on the permission granted by the Forest Department under the provisions of the Kerala Promotion of Tree Growth Act, 2005 (hereinafter referred to as 'the 2005 Act', for short). The teak trees were felled and attempted to be removed. At that juncture, O.R No.32/2013 has been registered against the petitioner alleging an offence under Section 9 of the Kerala Preservation of Trees Act, 1986 (hereinafter referred to as 'the 1986 Act', for short) on account of the alleged violation of Section 5 of the said Act.

2. According to the petitioner, it was on a specific permission that the trees were felled and, therefore, no offence can be attracted against her.

3. The learned Special Government Pleader for Forests has pointed out that the provisions of the 2005 Act cannot override the provisions of the 1986 Act. It seems that the Government has notified the properties coming within the Kalkoonthal village also as portions of Cardamom Hill Reserve(CHR) area. It is the case of the petitioner that the property assigned to the petitioner will not come within the purview of the notification. These are matters to be proved before the concerned court. This Court cannot jump into conclusion that the property assigned to the petitioner will not form part of the CHR and, therefore, it cannot be brought within the purview of the 1986 Act. Let the investigation continue.

4. In the event of any further grievance on the part of the petitioner in respect of such final report, the petitioner

is free to approach this Court or the court below for appropriate relief.

With the said observation, this CrI.M.C. is presently closed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/06/10

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PA to Judge