

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

OP.No. 7833 of 2000 (G)

PETITIONER(S) :

1. KUNNAKKADAN MUSTAPHA,
S/O.HAMSA, PUTHUR AMSOM, DESOM,
THIRURANGADI TALUK.
2. VARGHESE, S/O.OUSEPH,
PULIKALAN HOUSE, NADUVATTOM KARA,
MALAYATTOOR VILLAGE.
3. KARTHANIKKUNNATH SAIDU,
S/O.ASSAN, PUTHUR AMSOM, DESOM,
THIRURANGADI TALUK.
4. DAVIS, S/O.KOCHUVAREETHU,
NEELESWARAM KARA, KALADY VILLAGE,
ALUVA TALUK.
5. CHOLAPPURATHU BEERAN,
S/O.MOITHU, VILLUR DESOM, INDIANNOOR AMSOM,
TIRUR TALUK.
6. ALIYAR, S/O.ANDOOTHU KOCHUPILLA,
MEKKALADYKARA, KALADY VILLAGE, ALUVA TALUK.
7. PANGIDIKKADAN AALASSAN,
VILLUR DESOM, INDIANNOOR AMSOM, TIRUR TALUK.
8. PAPPACHHAN, S/O.AUTTOKAARAN CHERIA,
NEELESWARAM KARA, KALADY VILLAGE, ALUVA TALUK.

**(ALL PETITIONERS REPRESENTED BY THE POWER OF ATTORNEY HOLDER
S.P.ALI, S/O.MOIDU, CHOLAPURATHU, P.O.PUTHOOR, THIRURANGADI TALUK).**

BY ADV. SRI.SAIBI JOSE KIDANGOOR

OP.No. 7833 of 2000 (G)

RESPONDENT(S) :

1. THE DIVISIONAL FOREST OFFICER,
NORTH WAYANAD.
2. THE THASILDAR,
MANANTHAWADY TALUK.
3. THE FOREST RANGER,
PERIYA RANGE, WAYANAD DISTRICT.

*** ADDITIONAL R4 & R5 IMPEALED**

4. MADHAVAN NAIR,
S/O.MADHAVI NETHIYAR, RESIDING AT KALLADIKODE HOUSE,
MUPPAUNADE AMSOM, MEPPADI DESOM,
VYTHIRI TALUK, WYANAD DISTRICT.
5. VISWANATHAN,
S/O.LAKSHMI NETHIYAR, RESIDING AT KUNNATHIDAVAKA AMSOM,
LAKKIDI, WAYNAD DISTRICT.

*** ARE IMPEALED AS ADDITIONAL RESPONDENTS AS PER ORDER
DATED 30.03.2000 IN I.A.NO.15721 OF 2000.**

**R1 TO R3 BY SPL.GOVERNMENT PLEADER SRI.M.A.THOMASKUTTY
ADDL.R4 & R5 BY ADV. SRI.PHILIP ANTONY CHACKO**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 08-06-2015, ALONG WITH O.P.NO.10012 OF 2000, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE ORDER DATED 06.03.2000 ISSUED BY
THE DISTRICT COLLECTOR, WAYANAD.**

EXHIBIT P2: NIL

EXHIBIT P3: NIL

**EXHIBIT P4: TRUE COPY OF THE LETTER DATED 26.02.2000 GIVEN BY
THE DFO TO THE DISTRICT COLLECTOR.**

**EXHIBIT P4(A): TRUE COPY OF THE LETTER DATED 23.02.2000 GIVEN BY
DFO TO R1.**

EXHIBIT P5: TRUE COPY OF THE REPORT DATED 23.03.1999 OF THE DFO.

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R1(A): PHOTOCOPY OF DOCUMENT NO.425/1943 (LEASE DEED)
DATED 03.03.1943 OF THE S.R.O. MANANTHAVADY.**

**EXHIBIT R1(B): PHOTOCOPY OF DOCUMENT NO.2102/1964 OF THE S.R.O.
MANANTHAVADY.**

**EXHIBIT R1(C): PHOTOCOPY OF RETURN FILED BY KHADARKUTTY IN
FORM NO.1-A UNDER SECTION 85A OF THE KERALA LAND
REFORMS ACT ON 15.01.1973.**

**EXHIBIT R1(D): PHOTOCOPY OF PROCEEDINGS NO.TLB 1083/73
DATED 10.08.1989 ISSUED BY THE TALUK LAND BOARD.**

**EXHIBIT R1(E): PHOTOCOPY OF SALE DEED NO.174/92 DATED 22.01.1992
EXECUTED BY THE SUBORDINATE JUDGE, SULTHANBATHERY
TO RASHEEDA AND OTHERS.**

**EXHIBIT R1(F): PHOTOCOPY OF CHITTA (SETTLEMENT REGISTER) OF
SY.NOS.88/1A, 88/1B & 88/1C, WITH SUB DIVISIONS, VIZ.80/1A1,
88/1A2, 88/1A3 & 88/1A4.**

**EXHIBIT R1(G): PHOTOCOPY OF NOTIFICATION S.R.O.NO.4/86 PUBLISHED IN
KERALA GAZETTE NO.4 DATED 01.01.1986.**

**EXHIBIT R1(H): PHOTOCOPY OF NOTIFICATION NO.4713/77-B DATED 08.07.1977
ISSUED BY THE CUSTODIAN OF VESTED FORESTS WITH
THE RELEVANT PAGE (PAGE NO.8).**

- EXHIBIT R1(I): PHOTOCOPY OF FORM A1 REPORT IN OR.NO.3/99-2000.**
- EXHIBIT R1(J): PHOTOCOPY OF MAHAZAR IN OR.NO.3/99-2000.**
- EXHIBIT R1(K): PHOTOCOPY OF FORM A1 REPORT IN OR.NO.4/99-2000.**
- EXHIBIT R1(L): PHOTOCOPY OF MAHAZAR - IN- -DO-**
- EXHIBIT R1(M): PHOTOCOPY OF FORM A1 REPORT IN OR.NO.4/99-2000.**
- EXHIBIT R1(N): PHOTOCOPY OF MAHAZAR IN -DO-**
- EXHIBIT R1(O): PHOTOCOPY OF FORM A1 REPORT IN OR.NO.6/99-2000.**
- EXHIBIT R1(P): PHOTOCOPY OF MAHAZAR IN -DO-**
- EXHIBIT R1(Q): PHOTOCOPY OF FORM A1 REPORT IN OR.NO.7/99-2000.**
- EXHIBIT R1(R): PHOTOCOPY OF MAHAZAR IN -DO-**
- EXHIBIT R1(S): PHOTOCOPY OF FORM A1 REPORT IN OR.NO.8/99-2000.**
- EXHIBIT R1(T): PHOTOCOPY OF MAHAZAR IN -DO-**
- EXHIBIT R1(U): PHOTOCOPY OF ORDER OF THE HON'BLE SUPREME
COURT DATED 12.12.1996 IN W.P(C).NO.202/1995.**
- EXHIBIT R1(V): PHOTOCOPY OF SUBSEQUENT ORDER OF THE HON'BLE
SUPREME COURT IN -DO-**
- EXHIBIT R4(A): THE TRUE COPY OF THE DOCUMENT NO.425 OF 1943
DATED 06.03.43 BY THE THEN EXISTING MEMBERS OF
THE THARAWAD TO ONE KADARKUTTY.**
- EXHIBIT R4(B): THE TRUE COPY OF THE DOCUMENT NO.2102 OF 1964
DATED 17.09.64.**
- EXHIBIT R4(C): THE ROUGH SKETCH OF THE PALN NOTED FROM THE SUB
REGISTRAR'S OFFICE, MANANTHAVADY TO
THE 2ND PETITIONER.**
- EXHIBIT R4(D): THE TRUE COPY OF THE CARDAMOM REGISTRATION
CERTIFICATE DATED 13.07.67 ISSUED BY THE SUB
COLLECTOR, TELLICHERRY.**
- EXHIBIT R4(E): THE TRUE COPY OF THE ORDER DATED 28.02.2000
REJECTING THE COPY APPLICATION OF THE
2ND PETITIONER BY THE SPECIAL TAHSILDAR (L.R.)
MANANTHAVADY.**

OP.No. 7833 of 2000 (G)

**EXHIBIT R4(F): THE TRUE COPY OF THE PETITION DATED 18.02.2000 FILED BY
THE 1ST PETITIONER BEFORE THE D.F.O MANANTHAVADY.**

**EXHIBIT R4(G): THE TRUE COPY OF THE REPORT IN PAGE NOS.28 AND 29 OF
KERALA SABDAM WEEKLY PUBLISHED ON 26.03.2000.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

O.P. Nos. 7833 & 10012 of 2000 (G)

Dated this the 8th day of June, 2015

J U D G M E N T

The above original petitions were filed with respect to timber lying in a property, which was the subject matter of dispute between the respective petitioners and the Forest Department. In O.P. No. 7833/2000, a learned Single Judge of this Court permitted the petitioners in the said original petition to remove the timber on an undertaking that if any amount is found to be due and payable eventually, the same will be paid by the petitioners therein. The State filed an appeal from the above order as W.A. No.748/2000, in which there was an order directing the timber to be sold in auction and the sale proceeds to be kept in deposit with the Registry. The same was done and eventually, the Writ Appeal was disposed of by judgment dated 21.7.2006, wherein the Registry was directed to retain the deposit made and also directed to post the original petitions for

hearing before the appropriate Bench. It was directed that the disbursement of the amount so deposited would depend upon the orders passed in the original petitions. The original petitions have now come up for hearing.

2. Having heard the learned counsel for the petitioners as also the learned Special Government Pleader (Forest), this Court is of the opinion that no decision on merits need be entered into in the above original petitions.

3. In fact, the dispute with respect to the property between the petitioners in O.P. No.7833/2000 and the Forest Department was agitated in two separate original petitions, being O.P. Nos. 28097 and 23839 of 2000, which were disposed of by judgment dated 27.09.2006, the operative portion of which is as under:

“Resultantly, we allow the original petition and quash Ext.P16. The learned counsel submits that a substantial amount has been in deposit in this Court as per interim orders earlier passed.

However, appropriation or release of such amounts will ultimately depend upon the decision that is to be taken in O.P. No.7833 of 2000 as the petitioner who is a stranger will have to satisfy the Court that the timber is received from the area belonging to the owners. With these observations, the original petitions are closed.”

4. A Special Leave was filed before the Hon'ble Supreme Court from the aforesaid judgment dated 27.09.2006 of the Division Bench in O.P. Nos. 28097 & 23839 of 2000. The Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.19721/2006 found that the appropriate remedy of the petitioners would be to file an application before the Tribunal having jurisdiction over the area, to question the legality of notification dated 21.7.2000 and also raise other related issues. The notification dated 21.7.2000 was with respect to the declaration of the subject land as vested forest. The petitioners having taken up that

remedy before the Tribunal, as directed by the Hon'ble Supreme Court, the learned Special Government Pleader (Forest) submits that in O.A. No.31/2013, the Forest Tribunal, Kozhikode, as per Order dated 12.2.2014 affirmed such notification.

5. In such circumstance, the above original petitions need not be decided on merits. O.P. No.10012/2000 would not survive since the petitioners therein had not challenged the notification at all. With respect to the petitioners in O.P. No.7833/2000, the same stands decided against them by the order of the Forest Tribunal. If at all any challenge is made against the order of the Forest Tribunal, necessarily the State would have to concede to such orders. But, however, in the meanwhile, there is absolutely no reason why the amount should be still retained with the Registry. The Registry shall release the amount deposited on auction, to the State on an application being made by the Custodian of Vested Forest or any authorised officer, who now has the

authority over the subject land. The 1st respondent shall hence obtain necessary authorisation from the Custodian of Vested Forest and file an application before the Registry for return of the amounts deposited and the same shall be disbursed by the Registry expeditiously on receipt of such application. Definitely such disbursement of amount would depend upon any challenge made to the order of the Forest Tribunal.

The Original Petitions are disposed of. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE