

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

OP(C).NO. 401 OF 2012 (O)

AGAINST THE JUDGMENT IN CMA 27/2009 OF DISTRICT COURT, PATHANAMTHITTA

PETITIONER:

**AMMINI,
W/O.MATHEW, ETTUPANKIL HOUSE, ANGAMOOZHI,
SEETHATHODU, CHITTAR-SEETHATHODU VILLAGE, RANNI.**

**BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S**

RESPONDENTS:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
PATHANAMTHITTA, PIN-689 645.**
- 2. THE DIVISIONAL FOREST OFFICER,
RANNI, PATHANAMTHITTA DISTRICT-689 625.**

BY SRI.M.P.MADHAVANKUTTY, SPL. GOVERNMENT PLEADER FOR FOREST

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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OP(C).NO. 401 OF 2012 (O)

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE IMPUGNED ORDER NO.C3-4353/08 DATED 12/3/2009.
- EXT.P2: COPY OF THE JUDGMENT DATED 3.11.2011 PASSED BY THE DISTRICT COURT, PATHANAMTHITTA IN CMA NO.27/2009.
- EXT.P3: COPY OF L.A.NO.2997/66 FPA OF THE SPECIAL TAHSILDAR, LAND ASSIGNMENT, PATHANAMTHITTA.
- EXT.P4: COPY OF L.A.NO.46/76 KKLY OF THE SPECIAL TAHSILDAR, LAND ASSIGNMENT, PATHANAMTHITTA.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

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A.HARIPRASAD, J.

O.P.(C).No.401 of 2012

Dated this the 15th day of June, 2015

J U D G M E N T

Petitioner's lorry was seized by the officers of the Forest Department while it was carrying timber on the allegation that the timber were forest produce. It is alleged that the vehicle was loaded with Anjili, Azhantha, Therakam, Kadaplavu and Vatta trees cut and removed from a food production area of Chitar-Seethathodu village. It is also alleged that the trees cut and removed were standing on Government land. On these allegations the vehicle was seized by the officers and two persons found in the lorry were arrested. A crime was registered in the concerned Forest Station. The accused and the contraband articles, including the vehicle, were produced before the Divisional Forest Officer (the Authorised Officer) for further action under Section 61 A of the Kerala Forest Act, 1961 (in short 'the Act of 1961'). The authorised officer, on being satisfied that this is a fit case to be

proceed under Section 61A of the Act of 1961, drew up a detailed mahazar of seizure. After investigation, a final report was submitted in this matter. The petitioner, along with other persons allegedly involved in the offence, was summoned to the Range office as part of investigation and their statements were recorded. On the basis of evidence collected, the authorised officer (Divisional Forest Officer) passed an order under Section 61 A of the Act of 1961.

2. That order was carried in appeal before the learned District Judge. After appreciating the evidence and hearing the parties, the learned District Judge dismissed the appeal confirming the confiscation order. Hence the petitioner has approached this court with a petition under Article 227 of the Constitution of India.

3. Heard Shri.Vishnu, learned counsel appearing for the petitioner and Shri.Madhavankutty, the learned Special Government Pleader.

4. Shri.Vishnu contended that the order passed in this matter is legally unsustainable. The petitioner raises

twofold contentions. Firstly, none of the contraband forest produce was transported in the vehicle belonging to the petitioner. Secondly, the articles transported in the vehicle of the petitioner cannot be said to be a forest produce as those were trees cut and removed from a property assigned to an individual by the Government. Exts.P3 and P4 are the documents namely relied on by the learned counsel for the petitioner. Ext.P3 is a copy of the patta issued in the name of Kesavan Narayanan, from whose property the trees under dispute were cut and removed. From Ext.P3 it can be seen that a total extent of 83.98 cents of Government property had been assigned to him on 30.01.1970. It was assigned under the provisions of the Kerala Government Land Assignment Act, 1960 (in short 'the Act of 1960') and the Rules framed thereunder. Rule 9 (2) reads as follows:

In cases where registry is made, patta shall be issued in the form in Appendix II to these rules. Where such patta is issued pending survey and demarcation, a note to the effect that the area noted in the patta is subject to revision after

finalisation of the survey and demarcation shall be made in the patta. In such cases, when survey and demarcation is completed, the exact area assigned shall be noted in the patta by the assigning authority.

5. There are certain conditions mentioned in the form of patta itself restricting the enjoyment of the property by the assignee from Government. Condition No.(1) is relevant for our purpose; it reads as follows:

The full right over all the trees within the grant and specified in the Schedule vests in the Government and the assignee is bound to take care of all such trees standing on the land at the time of assignment or that may come into existence subsequent to it.

6. In the schedule to Ext.P3 patta, it can be seen that two Rosewood saplings alone were reserved as the property of the Government in terms of the condition quoted above. Even though a list in Ext.P3 shows the names Teak, Blackwood, Ebony and Sandalwood trees all those entries were scored off. It is the submission of the learned counsel for the petitioner that none of the trees

described in the schedule, except two Rosewood saplings, were reserved by the Government as not included in the assignment. Ext.P4 is the provisional patta. Even though the same condition has been incorporated in Ext.P4 as well, the schedule does not take in any tree. On the basis of these facts, it is argued by the learned counsel for the petitioner that the prosecution itself is bad, since none of the trees described in Exts.P3 and P4 had been recovered from the lorry belonging to the petitioner. As mentioned earlier, the trees allegedly recovered while transporting were Anjili, Azhantha, Therakam, Kadaplavu and Vatta. The authorised officer has no case that either Teak, Blackwood, Ebony, Sandalwood or Rosewood were seized from the lorry belonging to the petitioner. Therefore, the entire proceedings is vitiated, contended the learned counsel for the petitioner. In answer to these contentions, the learned Special Government Pleader relying on Rule 3 of the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules 1995 (in short 'the Rules of 1995') contended that

the trees should be treated as absolute property of the Government even if it is included in a temporary or permanent assignment of land by the Government. Learned Special Government Pleader also contended that going by the order of the authorised officer, it can be seen that the trees were cut and removed from a reserve forest which was not dis-reserved at the time of the so called assignment. Learned Special Government Pleader, therefore, contended that an offence is made out in this case and hence the confiscation proceedings are legally proper. On a plain reading of Rule 3 of the Rules of 1995 it is clear that all trees standing on lands temporarily or permanently assigned by the Government will be the property of the Government, if the Government has expressly reserved in the deed of grant or order of assignment any right in respect of the trees standing thereon. In other words unless the Government specifically reserves right over the trees standing on the property included in the assignment, whether temporary or permanent, the Government cannot claim ownership of

the trees after the assignment. In this context, it is to be remembered that the law in Section 8 of the Transfer of Property Act, 1882 (in short 'the T.P. Act') is that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and the legal incidents thereof. But there is a marked distinction between an ordinary assignment between individuals envisaged under the provisions of the T.P. Act and an assignment of land by the Government under the Land Assignment Act and Rules made thereunder. Even in the matter of consideration for the assignment there is a marked difference between the concepts of assignment covered by the said enactments. Therefore, it may not be possible for an assignee of Government land to claim all the benefits of an ordinary transferee of a land. However, in this case the forest officers have no case that any of the trees mentioned in Ext.P3 was seized from the lorry owned by the petitioner.

7. The interpretation of the condition No.1 extracted above is a crucial aspect relevant for the decision of this case. If we read the first condition in Ext.P3 carefully, it can be seen that the full right over all the trees within the grant and specified in the schedule vest in the Government. It is made clear that the assignee is bound to take care of all such trees standing on the land at the time of assignment. It is further stated that the assignee is bound to take care of all such trees that may come into existence subsequent to it. The moot question is whether the assignee is bound to take care of all the trees that may grow in the property subsequent to the assignment or whether his responsibility is confined to the category of trees specified in the assignment. In order to buttress this point, learned counsel for the petitioner relies on two decisions of this court. First decision is an unreported one in W.P.(C).No.804 of 2006 (judgment dated 03.12.2011). Learned Single Judge interpreting the above condition held as follows:

But the purport of the conditions is that if the

trees are one of the species mentioned in the schedule, whether the trees were standing on the land at the time of assignment or came into existence subsequent to the assignment, the tree would belong to the Government.

8. Another decision relied on by the learned counsel for the petitioner in **Manoj v. State of Kerala** [2013 (3) KLT 649]. Learned Single Judge in this decision relied on the above mentioned unreported decision and endorsed the view therein to hold that the trees grown in the property subsequent to the assignment also belongs to the Government, if it is the same species as those described in the schedule. I also agree with the above view as that can be the only sensible interpretation to be given to condition No.1 in Ext.P3. In the absence of any allegation against the petitioner that her lorry transported any of the articles mentioned in the schedule in Ext.P3, I am of the view that the confiscation proceedings against the petitioner is devoid of any merit. The finding of the lower appellate court that the forest officers were justified in proceeding with the action under Rule 3 of the Kerala

Forest (Preservation, Reproduction and Disposal of Trees and Timber Belonging to Government but Grown on Lands in the Occupation of Private Persons) Rules, 1975, cannot be upheld for the reason that the Act applies only to persons in possession of reserve forest land which has been ultimately decided to be assigned to him or already assigned to him, but pending dis-reservation. Even though the learned Special Government Pleader contended that the property from which the trees were cut and removed was reserve forest which was not dis-reserved, there is no material to accept that contention. If at all the Government has any objection against the holder of patta, their remedy lies elsewhere. So long as the assignment stands, it cannot be contended that the assignee has no right to cut and remove the trees which are not included in the schedule to the patta. For the above said reasons, I am of the view that the confiscation proceedings against the petitioner in respect of lorry bearing No.KL-5Q-5557 is legally unsustainable and it is hereby quashed.

In the result, this Original Petition (Civil) is allowed.

The order passed by the District Court, Pathanamthitta in CMA.No.27 of 2009 and order passed by the second respondent in case No.4353 of 2008 dated 12.03.2009 are hereby set aside. Follow up action by the concerned shall be taken in this matter.

A.HARIPRASAD, JUDGE.

AS