

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

OP(C).No. 972 of 2015 (O)

MTOP 48/2015 OF MUNNAR SPECIAL TRIBUNAL, MUNNAR

PETITIONER(S)/DEFENDANT:

**CHINNAKANAL PANCHAYATH,
REPRESENTED BY ITS SECRETARY K.J.MANOJ BABU,
CHINNAKANAL VILLAGE, UDUMBANCHOLA TALUK, IDUKKI DIST.**

BY ADV. SRI.BABU PAUL

RESPONDENT(S)/PLAINTIFF:

**M/S.HARRISONS MALAYALAM LTD.,
SURYANELLE ESTATE,
REPRESENTED BY ITS AUTHORISED PERSON,
SRI SUNIL JOHN JOSEPH, SENIOR MANAGER, CHINNAKANAL
SURYANELLE.P.O. - 685 618.**

**BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 972 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PLAINT IN M.T.OP NO.48/2015 OF MUNNAR SPECIAL TRIBUNAL.**
- EXT.P2: TRUE COPY OF THE ORDER DT. 26/3/15 IN I.A.NO.438/15.**
- EXT.P3: TRUE COPY OF THE STATEMENT OF ACCOUNT OF THE PETITIONER FOR THE YEARS 2004-2006.**
- EXT.P4: TRUE COPY OF THE EXTRACT OF THE ROAD REGISTER OF THE PETITIONER.**
- EXT.P5: TRUE COPY OF THE RESOLUTION DT.23/3/15 OF THE PETITIONER.**
- EXT.P6: TRUE COPY OF THE PETITION FOR POLICE PROTECTION DT.23/3/15.**
- EXT.P7: TRUE EXTRACT OF THE FINDING OF THE SPECIAL OFFICER DT.1/12/2014.**
- EXT.P8: TRUE COPY OF THE NOTICE DT.19/3/15 ISSUED BY THE RESPONDENT.'**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) No.972 of 2015
.....

Dated this the 6th day of July, 2015

J U D G M E N T

Ext.P2 order is under challenge. It seems that an OP has been filed before the Munnar Special Tribunal claiming rights over the road by seeking a decree of perpetual injunction against the Chinnakanal Panchayath. Even though the Panchayath was made as respondent before the Tribunal, it seems that no notice as contemplated under Section 249 of the Kerala Panchayath Raj Act, 1994 has been served on the respondent. In the OP, Ext.P2 order of temporary injunction has been passed against the Panchayath thereby restraining the Panchayath from doing any works on the road.

2. According to the Panchayath, who is the

petitioner herein, the road is vested in the Panchayath and the Panchayath has got every right to maintain the road.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The learned counsel for the petitioner has argued that the Land Revenue Commissioner, after making enquires in another proceedings in which the respondent herein is also a party, has found that the entire land claimed by the respondent is Government land, on which the said Company has no right at all. Those matters do not arise for consideration at present. Here, the question is whether the court below is justified in passing Ext.P2 order without hearing the question of maintainability of the matter. It seems that the court below ought to have heard the question of maintainability first before passing Ext.P2 order. Ext.P2 order is too premature and is liable to be set aside.

In the result, this Original Petition is allowed. Ext.P2 order stands set aside. The Munnar Special Tribunal is

O.P.(C) 972 of 2015

-: 3 :-

directed to hear the question of maintainability of the suit at first.

ul/-

Sd/- B.KEMAL PASHA, JUDGE

[True copy]

P.S. to Judge