

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

O.P.(FT).No. 1 of 2015 (R)

AGAINST THE ORDER IN I.A.NOS.4/2015 & 5/2015 IN O.A. NO. 1/2008 of FOREST TRIBUNAL,
KOLLAM DATED 11.08.2015.

PETITIONER(S):

KURIEN.E.KALATHIL, AGED 65 YEARS,
PROPRIETOR, PONMUDI ESTATE, T.C. 14/1004,
VAZHUTHACAUD, TRIVANDRUM.

BY ADV. SRI.R.RAJESH(PULLIKADA)

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, TRIVANDRUM -695 001.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
FOREST AND WILD LIFE DEPARTMENT,
TRIVANDRUM - 695 001.
3. THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS)
AND PRINCIPAL CHIEF CONSERVATOR OF FORESTS, (E & TW),
STATE OF KERALA, TRIVANDRUM -695 001.

BY SPECIAL GOVERNMENT PLEADER, SRI.M.P.MADHAVANKUTTY

THIS OP (FOREST TRIBUNAL) HAVING COME UP FOR ADMISSION ON
10-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

OP(FT).No. 1 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: THE TRUE COPY OF THE OA NO.1/2008 BEFORE THE FOREST TRIBUNAL,
KOLLAM.
- EXT.P-2: TRUE COPY I.A. NO.4/2015 IN OA 1/2008
- EXT.P-3: TRUE COPY OBJECTIONS IN I.A. NO.4/2015
- EXT.P-4: TRUE COPY OF I.A NO.5/2015 IN OA 1/2008
- EXT.P-5: TRUE COPY OF OBJECTION IN I.A. NO.5/2015
- EXT.P-6: TRUE COPY OF ORDER IN I.A. NO.4/2015 DATED 11TH AUGUST 2015.
- EXT.P-7: TRUE COPY OF ORDER IN I.A. NO.5/2015 DATED 11TH AUGUST 2015.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(FT) No.01 of 2015

Dated this the 10th day of September, 2015

JUDGMENT

Surendra Mohan, J.

The petitioner has filed this Original Petition challenging Exhibits P6 and P7 orders passed by the Forest Tribunal (I Addl. District Court, Kollam), dismissing I.A.No.4/2015 and I.A.No.5/2015 in O.A.No.1 of 2008. The petitioner is the proprietor of Ponmudi Estate in Thennur Village in Nedumangad Taluk, Thiruvananthapuram District. According to the petitioner, the Ponmudi Estate is one of the old Tea plantations of the State established more than 100 years ago by the Ponmudi Tea Company Ltd., a British Company. The Tea estate comprises of an extent of 353.265 Hectares in various survey numbers of Thennur Village. The estate was purchased by the petitioner as per Sale Deed dated 29.06.1995. The petitioner has filed O.A.No.1 of 2008 challenging a notification issued by the 3rd Respondent under the Kerala Forest (Vesting and Management of Ecologically

Fragile Lands) Act, 2003 (Act 21 of 2005) (hereinafter referred to as the "E.F.L Act"). The contention of the petitioner is that, the property being a tea estate, is not liable to be declared as Ecologically Fragile Land under the E.F.L Act. The contentions of the petitioner are disputed by the Respondents and the matter is pending adjudication of the Forest Tribunal, Kollam.

2. I.A.No.4 of 2015 was filed by the petitioner for examining three additional witnesses. One witness is the Advocate Commissioner in O.A.No.79 of 1994 of the Forest Tribunal, Kozhikode. The second witness is a retired Chief Conservator of Forests and the third is the Librarian who is the custodian of preserved documents, Archaeological Department, Thiruvananthapuram. According to the learned counsel for the petitioner, earlier, 106.5419 Hectares of land had been notified in the year 1980 under the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as "the Vesting Act" for short). The said proceedings are the subject matter of challenge before the Forest Tribunal, Kozhikode in O.A.No.79 of 1994, at the instance of the petitioner. An Advocate Commissioner had inspected the property pursuant to the orders of the Forest Tribunal and had submitted a report,

which the petitioner wants to introduce into the evidence of the present case. Since the original title deeds of the Tea estate are in the custody of the Librarian, he wanted to examine the said person to prove the authenticity of the copies of the title deeds produced by him. The retired Chief Conservator of Forests who had issued the notification under the E.F.L Act is sought to be examined for the purpose of proving the circumstances under which the notification under challenge was issued. The Forest Tribunal has dismissed the petition filed by the petitioner holding that examination of the said witnesses was unnecessary.

3. I.A.No.5 of 2015 was filed by the petitioner seeking production of the Survey Sketch prepared pursuant to the notification issued under the provisions of the Vesting and Assignment Act in respect of 106.5419 Hectares of land, earlier. The case of the petitioner is that, the said Survey Sketch would show the exact nature of the other properties that were excluded from the said notification. The said sketch would also shed light on the nature of the rest of the property in the year 1980, when the notification under the Vesting and Assignment Act was issued. Therefore, the said Survey Sketch

is also necessary for a full and final adjudication of the issues raised by the petitioner, it is contended. However, the said petition has also been dismissed by the Tribunal.

4. According to the learned counsel for the petitioner, if the notification that is under challenge is sustained, the petitioner would lose the entire property that constitutes the Ponmudi Tea estate. Considering the extent of property involved and taking into account the fact that the same is an old Tea estate, established by the Britishers, it is only appropriate that the petitioner is given every opportunity to prove his case by adducing all the available evidence.

5. According to the learned Government Pleader, who opposes the contentions of the petitioner, as many as 13 witnesses have already been examined in the case and a number of documents have been produced and marked. It is contended that no purpose would be served by examining the Chief Conservator of Forests who had issued the impugned notification. He was only performing an official act and he has since retired. The Librarian also is not necessary to be examined for the reason that, the petitioner has already produced copies of the title deeds. However, according to the

learned counsel for the petitioner, it is necessary to verify the authenticity of the copies produced, with reference to the originals. We notice that, the Tribunal has taken note of the fact that the documents have been directed to be kept in safe custody by this Court. Therefore, directing production thereof would violate the orders of this Court also.

6. Having considered the contentions advanced before us by the respective counsel, we are of the view that it is not necessary to shut out any evidence. We also take note of the fact that the property involved is substantial and that the possibility of the petitioner losing the entire property is imminent in the event of the notification being sustained by the Tribunal. Therefore, it is only appropriate that the petitioner is provided with every opportunity to place and prove his case. It is not in dispute that, in the year 1980, a notification had been issued under the Vesting and Assignment Act, in respect of an extent of 106.5419 Hectares of land. The said notification has been challenged by the petitioner in O.A.No.79 of 1994 of the Forest Tribunal, Kozhikode, which is still pending. In the said proceedings, an Advocate Commissioner is stated to have inspected the property in the

year 1980 and submitted a report. According to the learned counsel for the petitioner, the said report would throw light on the nature and condition of the property in the year 1980. Since the proceedings are still pending before the Forest Tribunal, examination of the Advocate Commissioner for proving his report cannot be found fault with. We also do not find anything wrong in the petitioner wanting to examine the Chief Conservator of Forests, who had issued the notification that is under challenge. With respect to the examination of the Librarian, Archaeology Department, Thiruvananthapuram, his evidence could be let in without a direction being issued to him to produce the documents that are kept in safe custody as per the orders of this Court. He could be directed to either issue certified copies of the originals to the petitioner or to produce such certified copies before the Forest Tribunal, while appearing as a witness. The recitals in the said documents would also be relevant in determining the nature and condition of the property at that time and the nature of the cultivation that was available in the property. With respect to the production of the Survey Sketch that has been sought for in I.A.No.5 of 2015, we notice that the Survey Sketch referred to

is the one that was prepared in connection with the notification issued under the Vesting and Assignment Act. According to the learned Government Pleader, the notification under the E.F.L Act is not issued after a survey measurement of the entire property that has been notified. Be that as it may, what is sought to be produced is only the Survey Sketch in respect of the notification issued in 1980. It is not necessary to shut out the said evidence, since the petitioner is desirous of relying upon the same.

For the foregoing reasons, this Original Petition is allowed. The impugned orders, Exts.P6 and P7 are set aside and I.A.Nos.4 of 2015 and 5 of 2015 are allowed, subject to the observations made hereinabove.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-

28.09.2015