

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

OP(FT).No. 2 of 2014 (R)

AGAINST THE ORDER IN OA 45/2008 of THE COURT OF THE KERALA FOREST (VESTING AND MANAGEMENT OF ECOLOGICALLY FRAGILE LANDS) TRIBUNAL, PALAKKAD.

PETITIONER:

N.K.SIVARAMAN
S/O.KRISHNANKUTTY, NOKKARA HOUSE, VELLAPARAKUNNU
KAVASSERY PO, PALAKKAD - 678 543.

BY ADV. SRI.P.BABU KUMAR

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM
2. THE CUSTODIAN (ECOLOGICALLY FRAGILE LAND) AND PRINCIPAL CHIEF
CONSERVATIVE OF FORESTS (EXTW),
STATE OF KERALA, THIRUVANANTHAPURAM

R1 BY SPECIAL GOVERNMENT PLEADERSRI. M.P.MADHAVAN KUTTY.

THIS OP (FOREST TRIBUNAL) HAVING BEEN FINALLY HEARD ON 25-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1: COPY OF THE ORDERS IN IA NO.1799/13 IN MFA 46/10 OF THE HIGH COURT OF KERALA DATED 8/7/2013

EXHIBIT P2: COPY OF THE COMMISSION REPORT AND PLAN DATED 17/10/2013

EXHIBIT P3 COPY OF THE ADDITIONAL COMMISSION REPORT DATED 21/10/2013

EXHIBIT P4 COPY OF THE OBJECTION TO SET ASIDE COMMISSION REPORT FILED BY THE FOREST AUTHORITIES DATED NIL

EXHIBIT P5 COPY OF THE PETITION TO SET ASIDE COMMISSION REPORT FILED BY THE FOREST AUTHORITIES DATED NIL

EXHIBIT P6 COPY OF THE DEPOSITION OF THE ADVOCATE COMMISSIONER OFFICER DATED 16/12/2013

EXHIBIT P7 COPY OF THE DEPOSITION OF THE TALUK SURVEYOR DATED 19/12/2013

EXHIBIT P8 COPY OF THE AFFIDAVIT AND DEPOSITION OF THE DIVISIONAL FOREST SURVEY DATED 23/1/2014

EXHIBIT P9 COPY OF THE PROOF AFFIDAVIT AND DEPOSITION OF THE FOREST RANGE OFFICER, ALATHUR DATED 28/1/2014

EXHIBIT P10 COPY OF THE ORDER PASSED BY THE FORSET TRIBUNAL, PALAKKAD DATED 4/3/2014

EXHIBIT P11 COPY OF THE FRESH COMMISSION APPLICATION FILED BY THE DFO

EXHIBIT P12 COPY OF THE IA NO.1075/2014 DATED 31/3/2014

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

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

O.P.(FT) No.2 of 2014

Dated this the 25th day of November, 2015

JUDGMENT

Surendra Mohan,J.

The petitioner claims to be the owner of an extent of 17.90 Acres of land purchased as per properly executed sale deeds. The property is comprised in various survey numbers of Kavassery I Village in Alathur Taluk. The petitioner claimed that he was in possession of the land, that he was running a stone crusher unit operating a quarry, that he has his residential house in the said property and that he had cultivated rubber over an extent of 15.50 acres. Proceedings were initiated against the said property under the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (hereinafter referred to as “the Act” for short). The petitioner preferred O.A No.45 of 2008 before the Tribunal constituted under the Act at Palakkad contending that the lands were liable to be excluded from the notification. The Tribunal considered

the claims of the petitioner and passed an order dated 18.12.2009. The said order is under challenge before this Court in MFA No.46 of 2010 at the instance of the petitioner and MFA No.54 of 2010 at the instance of the State. Both the appeals are pending.

2. During the course of hearing of those appeals, this Court accepted the contention of the counsel for the appellant in MFA No.46 of 2010 that the property was required to be identified. This Court found that, the property had not been clearly identified with reference to the old and new survey numbers and documents. It was also contended that the major portion of the property was rubber plantation. This Court held that the property was required to be identified. Therefore, the following directions were issued:

“Drawing power from Order 41 Rule 25 of the Code of Civil Procedure, we find that following points can be framed and referred to the Tribunal for determination:

i) What is the correct identity of the disputed property with reference to old Survey Nos.(428/J3, J4 and J5) and new Survey Nos.(236/3 Part I, 236/3 Part II) and also with reference to the documents relied on by rival parties?

ii) What is the area of the rocky portion

within the planted area?

Iii) How many rubber tree are standing in the disputed property and its total extent ?

These points shall be determined by the Tribunal and if necessary additional evidence may be taken by the Tribunal. After specifically finding all the points, the Tribunal shall return the evidence along with its findings to this Court within a period of three months from the date of appearance of the parties.

The parties shall appear before the Tribunal on 8th August, 2013.”

3. Accordingly the Tribunal at Palakkad appointed an Advocate Commissioner who conducted an inspection of the property and submitted a report and plan. The report and plan have been marked as Exts.C1 and C1(a). The Tribunal has also examined PW1, PW2, RW2 and RW3 as witnesses. CW1 and CW2 were also examined. Exts.A56 to A75 documents in continuation of the documents marked earlier were marked. The State filed I.A No.47 of 2013 for setting aside the report and plan of the Advocate Commissioner. On a consideration of the evidence as well as the contention of the parties, the Tribunal has by Ext.P10 order dated 4.3.2014, set aside Exts.C1 and C1 (a), commissioner report and plan. The petitioner challenges the said order in this Original Petition.

4. According to the learned Senior Counsel Sri. N.N. Sugunapalan, a perusal of Exts.C1 and C1(a) would show that, the Advocate Commissioner has correctly identified the property after conducting a survey measurement thereof with respect to the survey records. The Commissioner has correctly identified the portions converted into rubber plantations. He has counted the number of rubber trees standing in the property. The rocky areas have also been separately identified and measured. The areas so identified properly are shown along with their side measurements, in Exts.C1(a) plan. The properties are identifiable without any difficulty with reference to the description contained in the report. Therefore, the Commissioner report Ext.C1 and C1(a) plan have clearly identified the property and ascertained the exact measurement thereof. In view of the above, the Tribunal seriously went wrong in setting aside the Commissioner report and plan.

5. Contentions of the counsel for the petitioner are disputed by the learned Senior Government Pleader Sri.Madhavankutty. According to the learned Senior Government Pleader, the aspects that were required to be ascertained by the Tribunal are clear from Ext.P1 judgment of this Court. However, Ext.C1

Commissioner report and C1(a) plan have not identified the property clearly. It is for the said reason that, the report and plan have been set aside by the Tribunal. It is contended that there are absolutely no grounds to interfere with the impugned order Ext.P10.

6. Heard. We have been taken through Ext.C1 report as well as Ext.C1(a) plan in detail. The Commission report is Ext.P2 in the Original Petition and the plan submitted by the Commissioner forms part thereof. The grounds on which the Tribunal has found the Commissioner report to be unacceptable are:

7. Firstly, as per the old survey numbers, the property of the petitioner is comprised in Sy.Nos.428/J3, J4 and J5. According to the Tribunal, C2 and C3 having an unspecified area and a blue shaded portion on the northern and eastern side of the rocky area are included in the property of the petitioner. Going by the schedule, an extent of 61 cents comprised in Sy.No.428/J3, 4 acres in Sy.No.428/J4 and 13.27 acres in Sy.No.428/J5. As per the re-survey, the property has been shown to be comprised in field 236/3 in the schedule. Going by the above description, in Ext.C1(a) plan, the area shown in yellow

shade on the northern side is also included in the field. However, plot C3 is excluded and plots C and C1 are included, while parts of C2 and C3 and the blue shaded portions are excluded. For the above reasons, it has been found that the identification of the schedule property by the Advocate Commissioner is faulty. However, a perusal of the report of the Advocate Commissioner, C1 shows that though the extent of property shown in the schedule is only 17.90 acres, on actual measurement, the total extent is found to be 18.23 acres. The said extent has been identified in Ext.C1(a) plan as being included in the plots shown therein as A1, A2 , A3 and B. The rocky portion has been demarcated and shown as extending on the north-western side of A3 plot. It is true that, a large extent of property has been measured as evident from Ext.C1(a) plan. However, the same has been done on the basis of the survey stones that could be identified by the Advocate Commissioner. Therefore, the objection on the above count is not very relevant.

8. The second ground on which Ext.C1 plan has been set aside is that, the area of rocky portion within the rubber plantations as per the old survey is shown as 4.3 acres. According to the Tribunal, Ext.C1 report is not specific whether

plot B is also rubber plantation. The Tribunal has further relied upon the statements of witnesses that there were rocky portions within the plantation and has held that the said areas were not specified. According to the Tribunal, the vagueness in the said description, causes uncertainty in the identity of the exact area planted with rubber. Therefore, the second point of reference cannot be answered. However, a perusal of Ext.C1(a) shows that an extent of 4.5 cents forming part of the plot A3, 1.5 cents just above A1 and 0.5 cents forming part of A1 in Ext.C1 have been identified as the rocky portion. The Advocate Commissioner has reported the total extent of the said area to be 6.5 cents. The number of rubber trees in the disputed property has been reported by the Advocate Commissioner as 1960. The Tribunal has found the said points have been answered by the Commissioner correctly. 9. The result of the above discussion is that, grounds on which the Tribunal has relied upon to set aside the report of the Advocate Commissioner are found to be unsubstantiated on an examination of the Commissioner report Ext.C1 and C1(a) plan. Therefore, the order of the Tribunal setting aside the Commissioner report and plan is unsustainable.

In view of the above, Ext.P10 order of the Tribunal is set

aside. The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Tribunal, Palakkad is directed to pass fresh orders in accordance with the directions of this Court contained in the order dated 8.7.2013 in I.A No.1799 of 2013 in MFA No.46 of 2010 and MFA No.54 of 2010. Such orders shall be issued within a period of six weeks from the date of receipt of a copy of this judgment. The petitioner shall be at liberty to produce a certified copy of this judgment before the Tribunal, for compliance.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. To Judge

smv
28.11.2015