

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

RP.No. 763 of 2015 () IN RSA.735/2014

AGAINST THE JUDGMENT IN RSA NO. 735/2014 of HIGH COURT OF KERALA
DATED 21-07-2015

REVIEW PETITIONER(S)/APPELLANTS:

1. N.K.SIVARAMAN
S/O.KRISHNANKUTTY, NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR 678 543, PALAKKAD
2. KOMALAM P.N
W/O. SIVARAMAN, NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR 678 543, PALAKKAD
3. ANITHA
D/O. SIVARAMAN, NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR 678 543, PALAKKAD
4. ARUNKUMAR, S/O. SIVARAMAN, AGED 32 YEARS
NOKKARA HOUSE, VELLAPPARAKUNNU
KAVASSERRY POST, ALATHUR 678 543, PALAKKAD
5. AGREJAN, S/O. NARAYANAN, AGED 47 YEARS
POOKODAN HOUSE, VELLUPADAM
PALAPILLY(PO)
THRISSUR DISTRICT BY POWER OF ATTORNEY P.NKOMALAM
KAVASSERY POST, PIN 678 543

BY ADVS.SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE)
SRI.S.SUJIN

RESPONDENT(S)/RESPONDENTS:

1. CHIEF SECRETARY
GOVT.OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM - 695 001
2. THE CONSERVATOR OF FORESTS,
EASTERN CIRCLE, ARANYA BHAVAN, OLAVAKKODE(PO)
PALAKKAD - 678 002
3. THE DIVISIONAL FOREST OFFICER,
NEMMARA DIVISION, (P.O), CHITTUR TALUK
PALAKKAD 678 508

R1 TO R3 BY SRI.M.P.MADHAVANKUTTY, SPECIAL GOVT. PLEADER FOR
FORESTS

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 16.09.2015, THE
COURT ON 14-10-2015 PASSED THE FOLLOWING:

A.HARIPRASAD, J.

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in

R.S.A.No.735 of 2014

Dated this the 14th day of October, 2015

ORDER

Review petitioners are the appellants in R.S.A.No.735 of 2014. The appeal was disposed of by this Court vide judgment dated 21.07.2015. This Court found that the appeal is devoid of any merit and it was dismissed.

2. Appellants/review petitioners filed a suit before the trial court for a permanent prohibitory injunction. The State and the Officers of the Department of Forests are the defendants. The Government declared a portion of the land owned and possessed by the appellants as ecologically fragile land under the provisions of the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (in short, "Act of 2003"). It is to be noted that parallel proceedings were there before the court and a Tribunal constituted under the Act. The decision of the Tribunal is under challenge in appeals pending before this Court.

3. The contention of the defendants is that the property has been vested under the Act of 2003. It is also contended that the stone crusher unit established by the review petitioners in their property cannot function

as it violates various laws relating to preservation of environment.

4. After hearing both sides, this Court confirmed the view taken by the trial court and the first appellate court.

5. Heard the learned Senior Counsel for the review petitioners and the learned Special Government Pleader for the respondents.

6. I have carefully perused the grounds urged in the review petition. It is well settled that in order to maintain a review petition, there must be a mistake or an error apparent on the face of the record. Equally settled is the principle of law that mistake or error apparent on the face of the record shall be visible patently. If a roving enquiry is to be undertaken to find out mistake or error apparent on the face of the record, that will not be a matter falling within Order XLVII Rule 1 of the Code of Civil Procedure.

7. The observation of this Court in paragraph 11 that as per Ext.A11(a), the crusher unit established by the review petitioners, which is situated in the rocky area of the property, was found by the Tribunal to be a part of the land vested under the Act of 2003 is disputed by the petitioners. According to the learned Senior Counsel, this finding is incorrect. On a glance at the sketch submitted by the Commissioner in O.A.No.45 of 2008 before the Tribunal, it can be seen that the crusher unit is in a portion of the land which is under dispute in the proceedings. It is true that the

finding of the Tribunal is carried in appeal by both the review petitioners and by the State. Therefore it has not attained finality. Learned Senior Counsel further contended that the observation by this Court that the crusher unit is situated in the part of land vested under the Act of 2003 will adversely affect the case of the review petitioners in the appeal pending against the order passed by the Tribunal. According to the learned Senior Counsel, this finding of the court is a mistake. Since this observation of the Tribunal is under dispute, I deem it fit to modify and substitute the second sentence in paragraph 11 of the appellate judgment in the following manner:

“As per Ext.A11(a) the crusher unit is situated in the rocky area, which is claimed by the respondents/defendants to be a part of the land vested under the Act of 2003. However, this contention is seriously challenged by the appellants. That is a matter to be decided in the appeal pending against the order passed by the Tribunal.”

This modification will alleviate the anxiety of the review petitioners that the observation of this Court regarding the placement of crusher unit will adversely affect their rights in the miscellaneous appeal.

I do not find any valid reason to review any other part of the judgment passed by this Court. Therefore, the review petition is allowed to

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the extent mentioned above. The review petition is accordingly disposed of.

A. HARIPRASAD, JUDGE.

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