

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

RP.No. 942 of 2015 IN WP(C) .14298/2007

AGAINST THE JUDGMENT IN WP(C) 14298/2007 of
HIGH COURT OF KERALA DATED 17.11.2014

REVIEW PETITIONER(S)/PETITIONER:

MATHEW JOSEPH KINATTUKARA
RESIDING AT KINATTUKARA HOUSE, PINNAKKANADU, KALAKETTY
KONDOOR VILLAGE, MEENACHIL TALUK.

BY ADVS.SRI.T.M.SUNIL
SMT.S.CHITHRA

RESPONDENT(S)/RESPONDENTS:

1. THE DEPUTY RANGER
FOREST STATION, MURINJAPUZHA-685532.
2. THE RANGE OFFICER
ERUMELI FOREST RANGE, ERUMELI, KOTTAYAM-686509.
3. THE DIVISIOAL FOREST OFFICER
KOTTAYAM-686001.
4. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
KERALA AND CUSTODIAN, THIRUVANANTHAPURAM-695001.
5. SECRETARY
DEPARTMENT OF FORESTS, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

BY Spl.GOVERNMENT PLEADER SRI.M.P.MADHAVANKUTTY

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 28-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**ASHOK BHUSHAN, C.J. &
P.R.RAMACHANDRA MENON, J.**

**C.M.A.No.364 of 2015 and
R.P.No.942 of 2015 in
W.P.(C)No.14298 of 2007**

Dated this the 28th day of October, 2015.

J U D G M E N T

RAMACHANDRA MENON, J.

This review petition arises from the judgment dated 17.11.2014 rendered by this Court in W.P.(C)No.14298 of 2007 and connected cases.

2. The main issue involved in the batch of cases was with regard to the Constitutional validity of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 ('EFL' Act). The matters were heard in detail on different dates and finally, judgment was pronounced upholding the validity of the statute. With regard to the individual grievances, the parties were relegated to avail the statutory remedy. It is against the said verdict that the petitioner therein has approached this Court by filing this review petition, contending that the prayers in the

instant writ petition were different, as it was against Ext.P16 stop memo issued by the Forest Department in running a Metal Crusher Unit and Quarry run by the petitioner in the property, despite Ext.P15 interim order passed in W.P.(C) No.34524/06 preferred by the petitioner and another against eviction ; wherein validity of the 'EFL' Act was under challenge. It is also pointed out that this Court omitted to consider whether the particular statute would come within the purview of Entry nos.11, 12 and 13 of List 1 of the VIIth Schedule of the Constitution of India. The review petition has been filed along with an application to condone the delay of 281 days in filing the same.

3. According to the writ petitioner, the land in question was originally assigned by the Kerala Government to the predecessor in interest, which subsequently came to the hands of the writ petitioner, wherein a metal crushing unit and a quarry were being operated on the strength of licence/

permit/sanction/clearance given by the concerned authorities. While so, there was an instance of threat from the authorities of the Forest department, when the petitioner was constrained to move this Court by filing W.P. (C)No.34524/06, wherein Ext.P15 interim order for stay of eviction was ordered and the same was in existence. In the said writ petition, validity of the 'EFL Act' was sought to be challenged, among other reliefs. During the pendency of the above writ petition, a notification came to be issued in the year 2007 under the 'EFL Act', with respect to the instant property as well ; followed by issuance of Ext.P16 stop memo dated 24.4.2007. This was challenged by filing the present writ petition. The case of the review petitioner is that the relief sought for in the instant writ petition stands entirely different from the nature of the relief sought for in the batch of cases, which were considered together, leading to the judgment which is now sought to be reviewed. As per

the judgment, the validity of the statute was upheld, relegating the parties concerned to move the statutory authorities with regard to their individual grievances. The learned counsel submits that, in the instant writ petition, sustainability of Ext.P16 stop memo has to be considered separately.

4. Heard the learned Special Government Pleader as well.

5. It is brought on notice before this Court that the very same writ petitioner had moved this Court by another review petition (R.P.No.940/15) in respect of the verdict passed in W.P.(C)No.34524/06, along with similar petition to condone the delay of 281 days. The matter came up before this Court for consideration on 6.10.2015, when it was observed that the reason for the delay was not at all satisfactory with regard to the alleged omission on the part of this Court in not considering whether the subject

legislation fell under Entry Nos.12, 13 and 14 of List 1 of the VIIth Schedule of the Constitution of India, it was observed that there was no such case for the petitioner in the writ petition and that the specific case projected was that the disputed legislation fell only under the residuary Entry No.97 of List 1. It was noted that there was absolutely no merit and the attempt of the petitioner was only to build up a new case with reference to Entry Nos.12, 13 and 14 of List 1 of the VIIth Schedule of the Constitution of India. It was further observed that there was no case for the petitioner that any such point was argued before this Court when the matter was heard on different dates. It was accordingly, that interference was declined, not being satisfied with the explanation for the delay, as well as the merit involved, by passing an order on 26.10.2015. This Court finds that same is the reason given in the application to condone the delay and as such, the observations made by this Court in the

other case will equally govern the field, in so far as the present case is concerned. The rights and liberties of the petitioner in the instant case to run the metal crushing unit/quarry, will of course depend upon the rights, if any to be established by the petitioners in the other case, (W.P.(C) No.34524/06), by availing the statutory remedy, if so pursued.

With the above observations, interference is declined and both the application to condone delay and the review petition are dismissed as devoid of any merit.

Sd/-

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

Sd/-

**P.R.RAMACHANDRA MENON,
JUDGE.**

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P.A. to Judge