

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

RP.No. 714 of 2014 ()

AGAINST THE JUDGMENT IN WP(C).NO. 31268/2007 DATED 25-07-2014

REVIEW PETITIONERS/RESPONDENTS 1 TO 5 IN THE W.P[C] :

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, REVENUE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE COMMISSIONER
LAND REVENUE, THIRUVANANTHAPURAM.**
- 3. THE TASK FORCE
CAMP FORCE, CAMP OFFICE-GUEST HOUSE, MUNNAR
REPRESENTED BY ITS SPECIAL OFFICER.**
- 4. THE DISTRICT COLLECTOR
IDUKKI.**
- 5. THE TAHSILDAR
UDUMBANCHOLA.**

BY SPL. GOVT. PLEADER SMT. SUSHEELA R. BHATT

RESPONDENTS/PETITIONER & RESPONDENTS 6 TO 8 IN THE W.P[C] :

- 1. M/S. AUTUMN WOOD RESORTS (CLOUD 9)
CHINNAKKANAL, MUNNAR
REPRESENTED BY ITS MANAGING PARTNER
SHRI. PRAVEEN XAVIER.**
- 2. SHRI.K.SURESH KUMAR
NOW WORKING AS MANAGING DIRECTOR
GRAMEEN DEVELOPMENT BANK, THIRUVANANTHAPURAM.**

3. SRI.RAJU NARAYANASWAMY
PRESENTLY WORKING AS DISTRICT COLLECTOR
PATHANAMTHITTA.

4. SRI.RISHIRAJ SINGH
MEMBER, TASK FORCE, CAMP OFFICE-GUEST HOUSE
MUNNAR.

R1 BY ADV. SRI.P.B.KRISHNAN
R3 BY ADVS. SRI.DEVAN RAMACHANDRAN
R4 BY ADV. SRI.JOLLY JOHN

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 02-11-2015,
ALONG WITH RP NO. 810/2014 & CONNECTED CASES, THE COURT
ON 23-12-2015 PASSED THE FOLLOWING:

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APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE I : COPY OF THE JUDGMENT DATED 28.6.2013 IN WP(C)
NO. 14986/2007.**

**ANNEXURE II COPY OF THE ORDER DATED 6.6.2013 IN WP(C)
NO. 34095/2007.**

**ANNEXURE III COPY OF THE JUDGMENT DATED 25.5.2012 IN WP(C)
NO. 32000/2005.**

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

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ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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RP Nos.714/14, 810/14, 1086/15,
& 1088/15 in WP(C) No.31268/07

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Dated this, the 23rd day of December, 2015

O R D E R

Shaffique, J.

These review petitions have been filed against judgment dated 25/7/2014 in WP(C) No.31268/2007. RP No.714/2014 has been filed by the respondents in the writ petition and RP Nos. 1086/2015 and 1088/2015 have been filed by third parties after seeking leave of Court. RP No.810/2014 has been filed by the petitioner in WP(C) No.31268/07.

2. In RP No.714/2014, the main contention urged by the State and its authorities is that relevant facts which were brought to the notice of this Court were not considered in the light of the statutory provisions prevailing during the relevant time.

3. In fact, the writ petition has been decided by a Division Bench of this Court when a writ was filed seeking to quash an order passed by the Land Revenue Commissioner remitting the matter back to the District Collector for fresh disposal in

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accordance with law.

4. The District Collector had passed an order resuming certain item of land in the possession of the petitioner. Petitioner claimed title to the said land based on assignment of patta land under the Cardamom Rules, 1935 and also based on patta issued by the Government under the Land Assignment Act, 1960. When resumption order was passed, it was *inter alia* contended by the writ petitioner that the order was passed in violation of the principles of natural justice and other legal contentions. The Land Revenue Commissioner remitted the matter back to the District Collector forming an opinion that the order is passed in violation of the principles of natural justice. Writ petitioner contended that the District Collector to whom the matter has been remitted had no jurisdiction to entertain the resumption proceedings. After a detailed consideration of the issue involved in the matter and taking note of the contentions urged in the counter affidavit, the Division Bench had come to the conclusion that Ext.P11 is liable to be quashed and appropriate directions had been issued, which reads as under;

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"In the result, this writ petition is allowed as under;

- i) Ext.P11 is quashed.*
- ii) The 1st respondent is directed to pay to the petitioner an amount of Rs.10,00,000/- (Rupees ten lakhs only) as provisional compensation for destruction of the buildings in the property.*
- iii) The respondents are directed to restore possession of the property to the petitioner within a period of one month from the date of receipt of a copy of this judgment.*
- iv) The petitioner shall not make any construction activity in the cardamom area without permission from the Government until final decision is taken in appropriate proceedings."*

5. It is argued that the finding in regard to the fact that District Collector had no jurisdiction to take action under the Cardamom Rules, 1935 is absolutely baseless. It is contended that despite the repeal of the Cardamom Rules, 1935, Section 23 of the Kerala Interpretation and General Clauses Act saves all the rules framed under the repealing Act. In fact, this contention has been considered by us in **Vincy Cherian v. State of Kerala** (2014 (1) KLT 372) and we have found that Cardamom Rules, 1935 stands repealed by virtue of Section 9(3) of the Kerala Land Assignment Act, 1960. In fact, in **Vincy Cherian** (supra), it was

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the contention of the State that the Cardamom Rules, 1935 stood repealed and the Division Bench of this Court has upheld the said contention of the State. In this proceedings also, we have relied upon **Vincy Cherian** (supra) to arrive at the said conclusion.

6. Another contention urged was that the counter affidavit filed by the State before the Supreme Court was not considered by this Court. In fact, this Court was considering the substantial issue relating to the jurisdiction of the District Collector to invoke the power under the Cardamom Rules for the purpose of resuming the land which had been obtained by the petitioner by way of assignment. A perusal of the impugned order and the order passed by the District Collector resuming the land does call upon the Division Bench to decide on any other larger issues projected in the counter affidavit filed by the Government before the Supreme Court. The parties to a lis has to confine themselves to the pleadings in the case and the Division Bench of this Court had considered the entire pleadings and such issues which were germane for consideration in regard to the facts of the case. This Court was not called upon to decide on the larger hemisphere in which the Government had taken steps to drive out

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illegal encroachers from Munnar area. The fact that the writ petitioner was in possession of the premises at the relevant time when the order of resumption was passed is not disputed. It is settled law that a resumption of land cannot be made in an illegal manner. In the case on hand, the order of resumption is found to be bad in law and therefore consequential orders had been passed.

7. It is contended by the learned Special Government Pleader that there is no reason for this Court to impose on the Government damages especially in view of the fact that the building belonged to the petitioner had been demolished as permitted by a Division Bench of this Court. It is also argued that when a suit has been filed by the petitioner seeking declaration of title, there was no reason for awarding compensation against the Government. In the judgment, Division Bench had also taken note of the fact that the Division Bench in Writ Appeal No.1272/2007 did not interfere with the order of resumption and 24 hours' time was granted to remove the furnitures and fixtures. Even though the Division Bench did not interfere in the matter, it was evident from the factual materials that the writ petitioner had preferred

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an appeal before the Land Revenue Commissioner. This is an instance where even without giving an opportunity for the appellate authority to decide the matter, the person who was in long possession of the premises was suddenly evicted, his land resumed and the building in the land was brought to the ground. This Court in the judgment had found that the said approach of the Government was totally illegal. That apart, the Land Revenue Commissioner has come to a finding that orders have been passed by the District Collector in violation of the principles of natural justice. This Court in WP(C) No. 16732/2007 nor in WA No.1272/2007 had no occasion to consider the said issue. Therefore, the said judgments by itself will not preclude this Court from considering the claim for damages.

8. Learned Special Government Pleader as well as Smt. Daisy A. Philipose, learned counsel appearing in RP No. 1088/2015 argued that the entire land involved is forest land and the judgment, if not reviewed, will give wrong indication to encroachers to trespass into Government land. A perusal of impugned orders by the District Collector as well as the Land Revenue Commissioner does not indicate that the resumption has

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been ordered on the basis that it was forest land. That apart, in the judgment under review, we have not precluded the Government or its authorities from taking any other action in accordance with law. In fact in para 17, it is stated as under;

“17. The respondent has also taken a contention that the property involved comes within forest area and therefore Forest Conservation Act, 1980 applies. Ext.P1 or P11 does not contain any such indication. At any rate, if the area in question is covered by any notification stating that it is a reserved forest, it is always open for the authorities under the said Forest Conservation Act to take appropriate proceedings in accordance with law.”

9. At any rate, if the area in question is covered by any notification stating that it is a reserve forest, it is always open for the authorities under the Forest Conservation Act to take appropriate proceedings in accordance with law. Therefore, we do not think that the said contention is sustainable.

10. Another contention urged is that the District Collector has powers under various other statutes to take action against the petitioner. In fact, the Division Bench have not precluded the Government from taking any action in accordance with law. This

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Court has only considered the validity of Ext.P11 and that of Ext.P1 to the extent of challenge made by the writ petitioner. If the Government has any other right or if any officer of the Government has any other right under any other statutory provision, this judgment shall not preclude the Government or any authority from taking action in accordance with law. This aspect we make it clear and for that reason we do not think that a review of the judgment is required.

11. In fact, the writ petitioner had filed RP No.810/2014, contending that restriction imposed in the operative portion of the judgment, which requires the petitioner to make any further construction in the cardamom area with permission from the Government, requires to be reviewed. It is argued that instead of the Government, it could be any competent authority. We clarify that the word 'Government' indicate any competent authority of the Government as well, for which no review is required to the judgment.

12. In RP No.1086/2015, the review petitioner has raised the following ground:

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(A) *The pronouncement of the judgment in WP(C) No.31268 of 2007 on 25.7.2014 by the Division Bench comprising of Smt.Justice Manjula Chellur is contrary to the Constitutional spirit enshrined in Article 217 (1)(c) of the Constitution. In **M.K.Sasidharan, Advocate vs. The Hon'ble Chief Justice of Kerala** [AIR 1997 Ker 35], the Division Bench of this High Court had held, "...we understand the consistent practice and convention in the various High Courts is that when a Judge is transferred from one High Court to another High Court, he vacates the office and makes preparations to assume office in the transferee High Court. Considering the dignity and decorum of this high constitutional office, it is just and fair that on his being transferred shall vacate his office. If he continues to discharge functions as a Judge in the transferor High Court that may not be consistent with the constitutional spirit enshrined in Article 217 (1)(c) of the Constitution of India...." It is submitted that the pronouncement of the judgment three days after the transfer orders of the Chief Justice is clearly inconsistent with the spirit of the provisions of Article 217 and is also clearly inappropriate considering the dignity and decorum of this high constitutional office. This is an error apparent on the face of record and warrants interference by way of review."*

13. Learned counsel Sri. D. Anil Kumar argued only the

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said point. He relied upon Art.217 (1) (c) of the Constitution of India and contended that once the learned Judge had vacated office, when the order of transfer is received, she could not have pronounced the judgment. We are unable to accept the said contention. This issue has been considered by the Division Bench of this Court in ***M.K.Sasidharan v. Hon'ble Chief Justice of India*** (AIR 1997 KERALA 35). That was a case in which similar contention was taken by the writ petitioner. The Division Bench after considering the provision under Article 217 (1)(c) of the Constitution held that the transfer of a Judge from one High Court to another does not amount to a fresh appointment. Further, it was held at para 14 as under;

“14. If it is assumed that the Judge immediately ceases to be a Judge of the transferor High Court on his being transferred by the President of India under Article 222 of the Constitution, the cancellation of the said order will lead to a situation that the Judge is no longer a Judge of the transferor High Court and also of the transferee High Court. Till he enters upon his office at the transferee Court, he cannot be Judge of that Court. We do not think that this is a correct interpretation of Article 217(1)(c) of the Constitution.”

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14. The materials available on record in the High Court also indicate that the learned Judge was relieved from this Court on 1/8/2014 in the A.N. The learned counsel also relied upon another judgment of the Madras High Court in ***K.Venkatasubbaraju v. Union of India*** wherein the learned Judge concurred with the opinion expressed by the Division Bench of this Court in ***M.K.Sasidharan*** (supra). It is stated that there is an observation that the Judge who is transferred shall refrain from dealing with substantial or sensitive matters while he is being transferred. It is clear from the judgment in ***M.K.Sasidharan*** (supra) that there is no legal embargo on the part of any Judge deciding any case even after receiving the order of transfer until he/she is relieved from the responsibilities and joins the transferee High Court. That apart, the judgment under review were heard much prior to the order of transfer being served on the learned Judge and therefore, we do not think that the judgment calls for review on that ground.

15. Though the learned Special Government Pleader relied upon various judgments; viz., ***Prem Singh and others v.***

Birbal and others [(2006) 5 SCC 353], **Arunima Baruah v. Union of India and others** (CDJ 2007 SC 516), **Jagpal Singh v. State of Punjab and others** (2011 (1) ILR Kerala 491] and **Rajender Singh v. Lt.Governor, Andaman & Nicobar Islands** (AIR 2006 SC 75), we do not think that it is necessary to go into the details of the said judgments. The scope of review is well settled in **Kamlesh Verma v. Mayawati** [(2013) 8 SCC 320], wherein, it is held at para 20 as under:

Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been

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reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. *When the review will not be maintainable:*

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

In the light of the aforesaid findings, we do not find any ground warranting review of the judgment and accordingly all these review petitions are dismissed subject to the following

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clarifications;

- i) That the judgment shall not preclude any statutory or other competent authority to take necessary action in accordance with law and after complying with all legal formalities.
- ii) That the permission from Government as stated in the operative portion of the judgment shall include Government as well as competent statutory authorities who are vested with such powers.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

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PS to Judge