

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WA.No. 1186 of 2011 ()

AGAINST THE JUDGMENT IN WP(C) 8828/2006 of HIGH COURT OF KERALA
DATED 06-04-2011

APPELLANT(S)/RESPONDENT IN WP:

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1. THE DIVISIONAL FOREST OFFICER,
MUNNAR DIVISION, DEVIKULAM.
 2. THE FOREST RANGE OFFICER,
ADIMALY.

BY SRI.M.P.MADHAVANKUTTY,SPL.GP FOR FOREST

RESPONDENT(S)/PETITIONER IN WPC:

XAVIER PHILIP @ BENNY,
VETTIKKALAYIL HOUSE, VATTAYAR P.O., KALLAR
IDUKKY DISTRICT, PIN-685 611.

R BY ADV. SRI.K.JAJU BABU
R BY ADV. SMT.M.U.VIJAYALAKSHMI
R BY ADV. SRI.BRIJESH MOHAN
R BY ADV. SRI.T.S.SHYAM PRASANTH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.1186 of 2011

Dated this the 9th day of July, 2015

JUDGMENT

Antony Dominic, J.

- 1.Respondents in w.P(C).8828/06 are the appellants. The writ petition was filed by the respondent herein, who is the proprietor of a small scale industrial unit engaged in the manufacture of wooden furnitures.
2. Following the registration of O.R.21/03, Ext.P3 NOC issued on 16.8.2001 was cancelled by Ext.R1(a) proceedings of the first appellant. That order was set aside by this Court in the judgment in w.P(C). 32624/03 and the first appellant was directed to decide the matter afresh. Accordingly, order dated 3.3.2005 was issued cancelling the NOC. That order was also set aside by this Court in the judgment in w.P(C).26789/05, a copy of which is Ext.P6. It was thereafter that Ext.P7 order was issued on 28.2.2006, again cancelling Ext.P3 NOC.
- 3.Challenging Ext.P7, respondent herein filed w.P(C). 8828/06. That writ petition was disposed of by the

learned single Judge setting aside Ext.P7 and directing the first appellant to issue consequential orders renewing Ext.P3 NOC for a period of 5 years within one month from the date of production of a copy of the judgment. It is this judgment which is under challenge before us.

4. We heard the learned Government Pleader and the learned senior counsel appearing for the respondent.

5. Contentions raised before us were mainly regarding the impact of the Kerala Forest (Regulation of Sawmills and Other wood-based Industrial Units) Rules, 2012 (hereinafter, the 'Rules', for short) in the matter of issuing consequential orders in compliance with the judgment of the learned single Judge. According to the learned Government Pleader, in respect of wood-based industries like that of the respondent which were in existence as on 30.10.2002, application in compliance with the provisions of the Rules should be submitted in form 1A prescribed thereunder. It is submitted that on receipt of the application, it is for the Authorized Officer to pass

orders in the light of the provisions of the Rules. Learned Government Pleader pointed out that these statutory dictates were not taken note of by the learned single Judge and direction was issued to the first appellant to renew the NOC for a period of 5 years.

6. Heard learned Government Pleader and learned senior counsel for the respondent and gone through the judgment under appeal and the Rules.

7. Although the learned Government Pleader attacked the findings of the learned single Judge and contended for reversing the judgment itself, having regard to the findings that are entered into by the learned single Judge, we are not inclined to agree with the contention urged. It is the admitted case that though O.R.21/03 was registered on 2.9.2003, final report has not been filed even as on date. That apart, the order of confiscation passed by the Divisional Forest Officer has been set aside by the District Court in an appeal filed by the owner of the jeep which was seized. It is also found by the

learned single Judge that though it is a fact that a few pieces of Teak wood valued at Rs.20,000/- were allegedly seized from the establishment of the respondent, there is nothing on record to connect the timber with illicit felling of timber from the reserve forest or its transportation to his establishment. There is also no material which would prove that the respondent has knowingly violated the terms of the NOC. In the light of these findings of fact entered into by the learned single Judge, the correctness of which cannot be disputed, we see no reason at all to take a different view on the illegality of Ext.P7 order cancelling the NOC.

8. However, we do find force in the contention of the learned Government Pleader that as of now, if the NOC is to be renewed, that can be done only in compliance with the statutory provisions in the Rules. Though these Rules entitle the wood-based industrial units in existence as on 30.10.2002, like that of the respondent, for NOC, still, fact remains that an application has to be submitted in form 1A to the

Authorized Officer and its for the Authorized Officer under the Rules to issue the NOC.

In the aforesaid circumstances, we dispose of the writ appeal affirming the findings in the judgment under appeal and directing that it would be open to the respondent to submit his application in form 1A prescribed in the Rules before the first appellant Divisional Forest Officer, in which case, the first appellant will pass orders thereon in the light of the findings in the judgment and in accordance with law. This shall be done at any rate within 4 weeks of receipt of the application of the respondent.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge