

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WA.No. 1795 of 2013 () IN WP(C).6710/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 6710/2013 of HIGH COURT OF
KERALA DATED 10-10-2013

APPELLANT(S)/RESPONDENTS:

1. CHIEF CONSERVATOR OF FORESTS
AND CUSTODIAN OF VESTED FORESTS,
EASTERN CIRCLE
OLAVAKKODE, PALAKKAD-678 101.
2. DIVISIONAL FOREST OFFICER
NENMARA, FOREST DIVISION, NENMARA
PALAKKAD-678 110.
3. THE FOREST RANGE OFFICER
KOLLENGODE FOREST RANGE, KOLLENGODE
PIN-678 109.
4. THE DEPUTY RANGE OFFICER
THEKKADY RANGE, THEKKADY FOREST STATION
PALAKKAD-678 034.
5. STATE OF KERALA
REP.BY CHIEF SECRETARY, GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY ADV.M.P.MADHAVAN KUTTY, SPL. GOVERNMENT PLEADER
FOR THE DEPARTMENT OF FORESTS

RESPONDENT(S) :/PETITIONER

NELLIYAMPATHY PLANTATIONS,
MEENAMPARA ESTATE, NELLIYAMPATHY P.O.
PALAKKAD DISTRICT, REP.BY ITS MANAGING DIRECTOR
E.L.THOMAS, PIN-678 511.

R1 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R1 BY ADV. SRI.S.SUJIN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S ANNEXURES

ANNEXURE-I : COPY OF TITLE DEED BEARING NO.227/2007 DATED 20.08.2007.

ANNEXURE-II : COPY OF JUDGMENT DATED 15.03.2012 IN W.A.NO.378/2011.

ANNEXURE-III : COPY OF SLP(CIVIL) NO.21735/2012.

RESPONDENT'S ANNEXURES

DOCUMENTS SUBMITTED ALONG WITH I.A.NO.537/2014

ANNEXURE-R1(a) : PHOTOGRAPHS SHOWING THE STRUCTURES.

ANNEXURE-R1(b) : PHOTOGRAPHS SHOWING THE STRUCTURES.

ANNEXURE-R1(c) : COPY OF JUDGMENT DATED 15.03.2012 IN W.A.NO.378/2011.

ANNEXURE-R1(d) : COPY OF QUERY DATED 14.02.2013 SUBMITTED BY THE PETITIONER.

ANNEXURE-R1(e) : COPY OF COMMUNICATION DATED 30.03.2013 ISSUED BY THE CHIEF CONSERVATOR OF FORESTS.

DOCUMENTS SUBMITTED ALONG WITH I.A.NO.583/2014

ANNEXURE-R1(f) : COPY OF REVIEW PETITION SUBMITTED BY THE APPELLANT AS R.P.NO.282/2000.

ANNEXURE-R1(g) : COPY OF REPLY AFFIDAVIT FILED BY the APPELLANTS HEREIN IN R.P.NO.282/2000 DATED 15.05.2001.

ANNEXURE-R1(h) : COPY OF B2 SKETCH SHOWING THE AREA UNDER CULTIVATION ISSUED BY the FOREST AUTHORITY.

ANNEXURE-R1(i) : COPY OF ORDER DATED 01.07.2003 IN R.P.NO.282/2000.

ANNEXURE-R1(j) : COPY OF GAZETTE NOTIFICATION DATED 26.08.2000 PUBLISHED BY the FOREST DEPARTMENT, GOVERNMENT OF KERALA.

DOCUMENTS SUBMITTED ALONG WITH I.A.NO.1590/2015

ANNEXURE-R1(f) : COPY OF MEMORANDUM OF REVIEW PETITION IN R.P.NO.282/2000 IN MFA NO.357/1981.

ANNEXURE-R1(g) : COPY OF LETTER D.O.NO.1158/E2/01/F&WL DATED 04.04.2003 FROM SRI.E.K.BHARAT BHUSHAN, THE THEN SECRETARY TO GOVERNMENT, FOREST AND WILD LIFE DEPARTMENT, GOVERNMENT OF KERALA TO THE THEN LEARNED ADVOCATE GENERAL SRI.T.RATNA SINGH.

//TRUE COPY//

PA TO JUDGE.

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

.....
W.A.No.1795 of 2013
.....

Dated this the 18th day of December, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This writ appeal is by the State of Kerala; in particular, officials of the Forest Department.
- 2.The matter relates to certain lands and the applicability of the provisions of the Kerala Private Forest (Vesting and Assignment) Act, 1971, 'Act', for short.
- 3.We have heard the learned Special Government Pleader for the Department of Forests and the learned Senior counsel appearing for the respondent.
- 4.The respondent filed an original application under Section 8 of the Act before the Forest Tribunal. That led to a decision which

was the subject of two appeals, one by the State and the other by the applicant. This Court through common judgment dated 25.06.1987 in MFA Nos. 357 of 1981 and 223 of 1982 allowed the appeal by the State and dismissed the appeal by the applicant. Consequently, the original application filed before the Forest Tribunal was dismissed. The order of the Tribunal that 200 acres of land is not a private forest was thereby set aside. This means that the holder was entitled to have 200 acres as the parcel available with it. The holder carried the matter to the Apex Court seeking special leave to appeal. That was dismissed. Thereafter, the State filed an application for review of the judgment before this Court. The common judgment in the MFAs was sought to be reviewed. The review petition was supported by an affidavit of the Custodian of Vested Forests and the Conservator of Forests having jurisdiction over the area. He specifically averred in the affidavit sworn to by him that the matter essentially revolves around identification of the property, which is in terms of the revised Ext.B2 plan. This Court then noted that the finding of the

Tribunal was that the holder is entitled only to more or less 200 acres and that was the finding which was affirmed by this Court in the judgments issued in the MFAs. Quoting a portion of the Tribunal's order, this Court decided the review petition on 01.07.2003 holding that what has been affirmed by this Court through the common judgment in the MFAs is that the holder is entitled to more or less 200 acres, which is evidently not 295 acres. Thus, for all intents and purposes, the extent of land that the holder could have was found to be not 295 acres, but only more or less 200 acres. That order in the review petition has also become final.

5. Thereafter, the holder filed the writ petition seeking a direction to demarcate the lands involved in the matter to ascertain the property of the holder. Certain directions were issued by the learned single Judge. That was carried in an appeal as W.A.No.378 of 2011. While the direction given by the learned single Judge was to go by Ext.B2 plan, which was projected by the

State even in its review petition noted above, the Division Bench directed consideration of an application by the holder under Section 6 of the Act. The State carried a special leave petition, and it is submitted that the operation of the said judgment is stayed by the Apex Court.

6. After that, purportedly acting on the premise that the holder is in occupation of a building in the parcel of land, the forest officials locked up a room after sending out a couple of employees of the holder. The holder was prevented from further activity in the area. The specific plea in this regard levelled through paragraph No.4 of the writ petition from which this writ appeal arises is met in the counter affidavit only by saying that an occurrence report of a forest offence was registered and certain bail and anticipatory bail applications were filed. It essentially stands showing that the petitioner's cause of action for the present writ petition is one that was generated after the Honourable Supreme Court had granted order of stay. Challenging such action taken by the

forest officials, the holder instituted the writ petition seeking directions for return of custody of the building and also requiring the officials to deter from dispossessing the petitioner from some of the parcels. The learned single Judge essentially took note of the contents of Ext.B2 revised plan produced along with the aforementioned review petition by the State before this Court and directed that the holder be put back in possession of the building which was even one that had a number allotted in Ward No.3 of Nelliampathy Grama Panchayat and further ordered that the holder shall not be dispossessed from the property covered by bit Nos.1 to 11 of Ext.B2 revised plan in O.A.No.42 of 1977. This means that the learned single Judge strictly adhered to the finality attained in the proceedings in O.A.No.42 of 1977 which decision stands merged in the judgment rendered in the MFAs by this Court and in the decision of this Court in the review petition arising therefrom.

7.As regards the plea of the State that the present writ petition is

merely a writ petition repeating the reliefs claimed in the earlier round, the learned single Judge, in our view, quite rightly, held that the two matters are different. As already noted above, the cause of action on the basis of which the present writ petition is filed was generated only by reason of the action by the forest officials after Their Lordships of the Honourable Supreme Court had granted stay in relation to the judgment of the Division Bench in which there was a direction to consider an application under Section 6 of the Act. A subsequent cause of action which arose as a result of the commissions and omissions of the State authorities could not be held back merely on the plea that the earlier writ petition is now pending consideration through the special leave petition pending before the Honourable Supreme Court. In this view of the matter, we see that the learned single Judge was justified in granting relief in writ jurisdiction as has been granted, more particularly since the finality of the judgment rendered by this Court through the MFAs and the review petition arising therefrom stands binding on both sides.

8. For the aforesaid reasons, we do not find any illegality or infirmity in the impugned judgment of the learned single Judge. The writ appeal, therefore, fails.

In the result, this writ appeal is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)