

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WA.No. 1737 of 2015 () IN WP(C).10163/2015

AGAINST THE ORDER IN WP(C) 10163/2015 of HIGH COURT OF KERALA DATED
23.07.2015

APPELLANT(S)/RESPONDENTS 1 TO 3 IN THE WPC:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF FOREST
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIVISIONAL FOREST OFFICER
KERALA FOREST DEPARTMENT, KOTHAMANGALAM.

3. THE RENG OFFICER
KERALA FOREST DEPARTMENT, KOTHAMANGALAM.

BY ADV. GOVERNMENT PLEADER

RESPONDENT(S)/PETITIONER AND RESPONDENTS 4 TO 6 IN THE WPC:

1. RAVI C.A
S/O. AZHAKAN, CHIRAMBATTU HOUSE, THATTEKKADU
KEERAMPARA P.O., KEERAMPARA VILLAGE
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT 686691

2. THE SUPERINTENDING ENGINEER
KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE
PERUMBAVOOR 683542

3. THE ASSISTANT EXECUTIVE ENGINEER
KSEB, ELECTRICAL SUB DIVISION, KOTHAMANGALAM 686691

4. THE ASSISTANT ENGINEER
KSEB, ELECTRICAL SECTION, KEERAMPARA 686691

R1 BY SRI.K.J.KURIACHAN
R2-R4 BY ADV. SMT.P.K.RADHIKA-KSEB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

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W.A. No. 1737 of 2015

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Dated, this the 6th day of August, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal has been preferred by the State and the authorities of the Forest Department being aggrieved of the interim order dated 23.07.2015 passed by the learned single Judge, whereby the respondents in the writ petition have been directed to draw the electricity supply line to the house of the writ petitioner on the basis of Ext. P4 application within a period of two weeks.

2. Challenge is raised on various grounds, mainly that the relief sought for by the petitioner was not liable to be entertained as no power line could be drawn through an area, which is a 'Reserve Forest', as notified as per Annexure R2 notification and further that no such activity can be pursued without prior approval of the Central Government, by virtue of the mandate under the Forest [Conservation] Act 1980 and the relevant Rules. There is also a

contention that, by virtue of the interim relief granted by the learned single Judge, final relief itself has been granted.

3. The minimum factual matrix as disclosed from the proceedings is that the first respondent herein submitted Ext. P4 application for providing power supply to his residence, which is stated as situated in a purambokke property. The line has to be drawn through the forest belonging to the State, for a considerable length and involving much cost, which according to the Electricity Board is roughly around Rs.4.5 lakhs. The petitioner submitted an application under a particular Scheme known as 'Rajeev Gandhi Grameen Vidhyuti Karan Yojana' (R.G.G.V.Y. Scheme), which is fully funded by the Central Government. The matter was accordingly considered by the authorities of the Board, who sought for necessary clearance from the Forest Department, which came to be turned down as per Ext. P10 communication issued by the Divisional Forest Officer (based on the report of the Range Officer vide Ext. P11). It was in the said circumstances, that the adverse proceedings were sought to be intercepted by filing the writ petition, with prayers to set aside Exts. P10 and P11 and to direct the respondents to draw electric connection to the residential house

of the writ petitioner, based on Ext. P4 application under R.G.G.V.Y. Scheme.

4. The learned special Government Pleader appearing for the Forest Department submits that the relief sought for by the writ petitioner was not liable to be granted under any circumstances. It is asserted by the learned Government Pleader that the area comes within the purview of the 'Reserved Forest' notified by the Government vide Ext. R2(a), having a total extent of nearly 1043.35 acres and large part of the same is 'Thattekkadu Reserve Forest', where a Bird Sanctuary and much wild lives are involved. On receipt of the requisition from the Electricity Board, a report was called for from the concerned Range Officer, who submitted the same, vide Ext. P11, referring to the actual facts and figures. It was after considering the matter in all respects, that the DFO issued Ext. P10 on 23.01.2015 informing the concerned Assistant Engineer of the Electricity Board that the request cannot be acceded to. When the matter came up for consideration before the learned single Judge, an Advocate Commissioner was deputed to ascertain the factual position with reference to the various averments raised in the writ petition. The Advocate Commissioner

visited the spot and submitted a report. It was based on the report of the Advocate Commissioner, that an interim order came to be passed on 23.07.2015, which in turn is under challenge in this writ appeal.

5. A detailed counter affidavit stands filed from the part of the authorities of the Forest Department. Specific reference is made to paragraphs 3, 4, 6, 11, 13, 14, 16 and 17, as to the sanctity of the Forest Conservation Act and other relevant provisions of Law. The necessity to obtain 'prior clearance/approval/sanction' of the Central Government to make use of the property for any non-forest activities is asserted in the counter affidavit. Scope of the said activities is sought to be explained with reference to Section 2 (2) of the Forest [Conservation] Act 1980, read with the explanation thereunder. It is also pointed out that, necessary application has to be preferred in the prescribed format, in terms of Rule 6 of the Forest [Conservation] Rules 2003, through the Nodal Officer.

6. The learned Government Pleader points out that the application to be submitted through the Nodal Officer has to be forwarded to the Central Government along with the

recommendation of the Divisional Forest Officer and that no non-forest activities could be pursued after the year 1980, i.e. after commencement of the Forest Conservation Act 1980. The learned Government Pleader further submits that, some portion of the line passing through the area was actually drawn much prior to 1980; and even if it is drawn after 1980, it could only be deemed as unauthorisedly done by the Electricity Board, simultaneously adding that no permission whatsoever has been given by the authorities of the Forest Department after commencement of the Forest Conservation Act 1980 w.e.f 25.10.1980 to draw such lines.

7. The learned standing counsel for the Electricity Board further submits that the connections have given to the place of residence of the authorities of the Forest Department as well, and that the same cannot be stated as unauthorised. There is a dispute with regard to the area where the residence of the staff of the Forest Department is situated, as put forth by the learned Government Pleader. The learned counsel for the first respondent, who is the beneficiary, submits that if the electricity lines are already there in the area, extension of the same does not come within the purview of any non-forest activity. It is stated that the

factual position has been brought to light by deputing an Advocate Commissioner, who has submitted a report, which is also pressed into service. The learned counsel further submits that the particular Scheme under which Electricity supply is sought to be effected is a 'time bound' one and as such, it had to be finalized immediately, so as to make use of the fund provided under the Scheme, simultaneously adding that the petitioner is not required to spend even a 'pie' to obtain the electric connection as the entire fund is provided by the Central Government under the particular Scheme.

8. After hearing both the sides, this Court finds that the controversy with regard to the rival contentions raised by the parties to the dispute, does not require to be considered by this Court now, as the issue is still pending consideration before the learned single Judge. The only question to be considered is whether any '**final relief**' could have been granted by the learned single Judge in the form of '**interim relief**'. So as to consider this aspect, it is necessary to have a look at the prayers raised in the writ petition. The prayers raised are in the following terms :

"(i) Issue a writ of certiorari or other appropriate writ,

order or direction quashing Ext. P10 and Ext. P11 issued by the 2nd and 3rd respondents.

(ii) Issue a writ of mandamus or other appropriate writ or order or direction directing the respondents to draw the electric connection as proposed to the residential house of the petitioner on the basis of Ext. P4 application submitted by the petitioner under RGGVY Scheme.

(iii) Grant such other reliefs which this Honourable Court deems fit and proper.

Interim relief sought for in the writ petition is to the following effect:

"For the reasons stated in the Writ Petition (C) and in the accompanying affidavit, it is humble prayed that this Honourable Court may be pleaded to direct the respondents to draw the electric line to the house of the petitioner as approved on the basis of Ext. P4 application submitted by the petitioner under the R.G.G.V.Y. Scheme, in the interest of justice."

Interim order dated 23.07.2015, passed by the learned single Judge, which is under challenge reads as follows :

"The report of the Advocate Commissioner reflects that several electricity connections have been

given in the area in the years 2012, 2013 and 2014 by drawing electricity supply line. I do not think that a different yardstick should be applied in the case of the petitioner alone when the proposal to draw electricity supply line is sanctioned by the Kerala State Electricity Board.

2. Therefore there will be an interim direction to the respondents to draw the electricity supply line to the house of the petitioner as approved on the basis of Ext. P4 application within a period of two weeks.

Post after two weeks."

9. From the above, it is explicitly clear that the 'interim relief' sought for by the petitioner is virtually the same as the 'main relief'. The relief granted by the learned single Judge in the form of 'interim relief virtually amounts to the 'main relief'. This Court finds that unless and until Exts. P10 and P11 are set aside (which are sought to be set aside by the writ petitioner), no main relief could have been granted in the form of 'interim relief'. This Court finds support from the law declared by the Apex Court in the decision reported in **J.T. 1995 (3) SC 175 (Bank of Maharashtra Vs. Rice Shipping Transport Co. Pvt. Ltd and another)**. The observation made by the Apex Court in the said

decision is extracted below for convenience of reference:

'The practice of granting interim orders which practically gives the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations is deprecated.'

10. In the above circumstances, the interim order passed by the learned single Judge cannot be sustained in the eye of law. Accordingly, the order under challenge is set aside. It is open for the first respondent/writ petitioner to move the learned single Judge for an early hearing of the writ petition and to have the matter finalized accordingly.

The Writ Appeal is allowed to the said extent. No cost.

sd/-

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

sd/-

**SUNIL THOMAS,
JUDGE.**

kmd