

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

WA.No. 1971 of 2015 () IN WP(C).32583/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 32583/2014 of HIGH COURT OF
KERALA

APPELLANT(S) /PETITIONER :

P.MANIKANDAN AGED 53 YEARS
PROPRIETOR, H.K.CONSTRUCTIONS, HK COMPLEX
SATHRAMPADI, KANJIKODE, PALAKKAD DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENT(S) /RESPONDENTS :

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF PUBLIC WORKS, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DIVISIONAL FOREST OFFICER
DIVISIONAL FOREST OFFICE, KALLEKULANGARA
PALAKKAD-678 009.

3. FOREST RANGE OFFICER
WALAYAR RANGE, PALAKKAD-678 624.

4. NATIONAL HIGHWAYS AUTHORITY OF INDIA
G 5 & 6, SECTOR-10, DWARAKA
NEW DELHI-110 075.

5. PROJECT DIRECTOR
NATIONAL HIGHWAYS AUTHORITY OF INDIA, NO.8/1187
ARUMUGHAM COLONY, CHANDRANAGAR, PALAKKAD-678 007.

R4&5 BY ADV. SRI.THOMAS ANTONY
R1 & R2 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER
FOR FOREST

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 1971 OF 2015

Dated this the 15th day of September, 2015

JUDGMENT

Shaffique, J.

The petitioner in W.P.(C) No. 32583 of 2014 is the appellant who challenges the judgment dated 07.01.2015 by which the learned Single Judge has dismissed the writ petition.

2. The writ petition has been filed seeking for a direction to respondents 2 and 3 namely the District Forest Officer and Forest Range Officer not to obstruct the cutting and removal of trees by petitioner for widening the National Highway in terms of Ext.P2 agreement on the stretch between Walayar Deer Park to Vattappara and for a further direction to respondents 1, 4 and 5 to provide all facilities for easy cutting and removal of trees. The 1st respondent being State of Kerala and 4th and 5th respondents are National Highway Authority of India and Project Director of National Highway Authority, who gave sanction for cutting and removal of trees from the aforesaid area.

3. The facts involved in the writ petition is that the petitioner has been permitted to cut and remove trees and salvage in the form of timber and firewood from the aforesaid stretch for the purpose of widening of National Highway 47 as per Ext.P2 agreement dated 02.11.2011. Petitioner further submits that cutting and removal of specified number of trees, which have been numbered and has been permitted by the Forest Department in terms of Ext.P4 dated 08.02.2010. However, on the guise that Reserve Forest area has to be demarcated, the Forest Department prevented the petitioner from cutting and removing the marked trees. Thus the petitioner approached this Court seeking the aforesaid reliefs.

4. A statement has been filed by the 2nd respondent stating that the Reserve Forest's boundary has to be verified and refixed prior to cutting of trees on the road side which adjoins the reserve area.

5. When the writ petition came up for hearing, the learned counsel appearing on behalf of National Highway

Authority of India submitted that all the identified 1648 trees have already been cut and removed and that the road has already been widened/developed, nothing further remains to be considered in the writ petition. Taking on record the aforesaid submission, the learned Single Judge dismissed the writ petition.

6. Petitioner preferred a Review Petition as R.P. No.276 of 2015 *inter alia* contending that the submission of learned counsel for the National Highway Authorities of India was not correct. Petitioner has produced Annexures A1 to A4 which indicate that as per the records maintained by the Forest Department the Survey duty has not been completed and that trees mentioned in certain serial numbers are not cut and removed. The learned Single Judge has dismissed the Review Petition having found that there is no reason for the Court to interfere to resolve the disputed question of fact and that there is no error apparent on the face of record.

7. Learned counsel for the petitioner/appellant submits that the issue projected by the petitioner was with

regard to the restriction imposed by the Forest Department. The Forest Range Officer, Walayar informed that all the specified trees had not been cut and removed and the statement made on behalf of National Highway Authorities was basically incorrect. This aspect of the matter ought to have been verified by the learned Single Judge before proceeding with the case.

8. We heard learned counsel appearing on both the sides. The claim of the petitioner is that he may be permitted to cut and remove the trees as per the agreement for the purpose of widening of National Highway. The statement made before this Court was that all the trees which are required to be cut and removed had already been cut and removed and that the National Highway Authority of India had developed/widened the Highway. Hence there is no reason for this Court to interfere with the contractual aspects between the petitioner and National Highway Authority of India.

9. Learned counsel for the appellant however submits that he was not permitted to cut and remove the entire trees in terms of the agreement between the parties. Even if that contention is true, we do not find that a direction as sought need be passed in this matter, especially on account of the fact that National Highway Authorities does not want any further trees to be cut and removed. Whether the specified number of trees as per the agreement were cut and removed is a question of fact which need to be considered only in appropriate proceedings in which the petitioner may have a claim against the National Highway Authority of India.

10. As matters stand now when National Highway Authority of India has made a submission that they do not want to cut and remove any more trees, there is no reason for this Court to adjudicate the issue between the petitioner and National Highway Authorities. Under such circumstances, we do not find any error in the judgment of learned Single Judge and we do not find any reason to interfere. Hence the Writ

WA No. 1971 of 2015

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Appeal is dismissed reserving liberty to the petitioner to proceed further in accordance with law.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

tth/19/09