

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WA.No. 1994 of 2015 () IN WP(C).10163/2015

AGAINST THE JUDGMENT IN WP(C) 10163/2015 of HIGH COURT OF KERALA
DATED 21-08-2015

APPELLANTS/RESPONDENTS 1 TO 3 IN THE W.P.(C):

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF FOREST
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIVISIONAL FOREST OFFICER
KERALA FOREST DEPARTMENT, KOTHAMANGALAM.
3. THE RANGE OFFICER
KERALA FOREST DEPARTMENT, KOTHAMANGALAM.

BY SPECIAL GOVERNMENT PLEADER SRI. M.P. MADHAVANKUTTY

RESPONDENTS/PETITIONER AND RESPONDENTS 4 TO 6 IN THE W.P.(C):

1. RAVI C.A.
S/O.AZHAKAN, CHIRAMBATTU HOUSE, THATTEKKADU
KEERAMPARA PO, KEERAMPARA VILLAGE
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT 686 691.
2. THE SUPERINTENDING ENGINEER
KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE
PERUMBAVOOR 683 542.
3. THE ASSISTANT EXECUTIVE ENGINEER
KSEB, ELECTRICAL SUB DIVISION, KOTHAMANGALAM 686 691.
4. THE ASSISTANT ENGINEER
KSEB, ELECTRICAL SECTION, KEERAMPARA. 686 691.

R1 BY ADV. SRI.K.J.KURIACHAN
R3-R4 BY ADV. SMT.P.K.RADHIKA-KSEB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18.09.2015, THE COURT
ON 22.09.2015 DELIVERED THE FOLLOWING:

smv

C.R.

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

W.A. No.1994 of 2015

Dated this the 22nd day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

This writ appeal is filed by Respondents 1 to 3 against the judgment of the learned Single Judge in W.P.(C) No.10163 of 2015 dated 21.08.2015, by which the learned Single Judge quashed Ext.P10 order passed by the 2nd appellant, refusing to draw electric line through the area in question and the Respondents were directed to provide electricity connection well ahead of 30.09.2015 and the exercise was directed to be completed before 15.09.2015.

2. Brief facts for the disposal of the appeal are as follows:

1st Respondent herein is residing within the Thattekkad Forest Section of Kothamangalam Forest Division for the last more than 65 years. 1st Respondent is a Scheduled Caste belonging to Pulaya community and his wife belongs to a Scheduled Tribe. They are residing within the aforesaid area

1½ kms. away from the public road. The Grama Sabha of Ward No.1 of Keerampara Grama Panchayath in its meeting held on 10.08.2014 had decided to request the Kerala State Electricity Board (for short, "the K.S.E.B") to provide electric connection to the house of the 1st Respondent. In accordance with the said decision, 1st Respondent carried out the wiring works in the house. The possession of the property of the 1st Respondent is evidenced by Ext.P2 and his caste certificate is evidenced from Ext.P3. Anyhow, the said basic facts are not in dispute.

3. The Government of India have launched a project by name Rajeev Gandhi Grameen Vidhyuti Karan Yojana (shortly called R.G.G.V.Y) and hereinafter called the "Scheme", fully financed by the Government of India to provide electric connection to Scheduled Castes and Scheduled Tribes. Accordingly, 1st Respondent applied for electric connection under the said scheme, which is evidenced by Ext.P4 and along with the same, Ext.P4(a) was also submitted which is an application under Form-A, seeking prior approval under Sec. 2 of the Forest (Conservation) Act, 1980 ('the Act' for short). Other attendant documents that were required under the

scheme were also produced by the 1st Respondent along with the application submitted under the scheme. As required under the scheme, Ext.P5 bond was also executed.

4. Accordingly, K.S.E.B sanctioned and agreed to draw the line to the residential house of the 1st Respondent under the scheme and the 3rd Respondent has executed the required undertaking in stamp paper before the Forest Department agreeing to pay the Net Present Value and Additional Net Present Value of the land required towards laying of 1.70 k.m. L.T. Line through forest area in connection with electrification of Koottikkal area, Thattekkad in favour of the 1st Respondent. 4th Respondent had also issued a certificate to the effect that no tree cutting is required for drawing the line and that only the cutting of branches of trees are required. Even though necessary steps were taken by K.S.E.B., the 2nd appellant on the basis of the report of the 3rd appellant refused to accord sanction to draw the line vide an order dated 23.01.2015 and this was conveyed to the 1st Respondent by the K.S.E.B by a letter dated 25.02.2015. It is thus impugning Ext.P10 order dated 23.01.2015, the writ petition was filed.

5. The 2nd appellant herein has filed a counter affidavit refuting the allegations made by the 1st Respondent and contended that the distance of 1.70 k.m. required for drawing the line is occupied by three Teak Plantations situated in the 'Thattekkad Reserve Forest' and therefore the line passing through the Plantations will be a hindrance for felling/harvesting the crop and regeneration. It was further contended that drawing electric line through the Reserve Forest is a non-forestry activity which requires prior approval of the Government of India under Sec.2(2) of the Forest (Conservation) Act, 1980 and therefore without obtaining the prior approval, the drawing of line could not be effected to the house of the 1st Respondent by the K.S.E.B. Apart from the same, the contention raised by the 1st Respondent that even though within the same forest area several persons were provided with electric connection including the Thattekkad Bird Sanctuary, was denied by the appellants.

6. Apart from this, other contentions are raised stating that the attempt of drawing electric line through the forest area will cause destruction to large extent of forest area for the benefit of a single family. It was also contended by the

appellants that the attempt is to provide electricity connection to a Resort situated in the said area. Therefore, appellants have justified Ext.P10 order passed by the 2nd appellant. On the other hand, K.S.E.B. has filed a counter affidavit stating that they were attempting only to implement the scheme launched by the Central Government and the expenses for drawing the entire length of line, estimated at Rs.4,55,871-75 was being met by the Central Government.

7. Learned counsel for the 1st Respondent has contended that Sec.2(2) of the Forest (Conservation) Act, 1980 deals with restriction on the de-reservation of forests or use of forest land for non-forest purpose and therefore the said provision has no application for drawing of electric line. Learned counsel has specifically invited our attention to the said provision and the *Explanation* thereto and contended that the "non-forest purpose" mentioned thereunder is nothing but breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants and any purpose other than reafforestation, but it does not include any work relating or ancillary to conservation, development and

management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes. Learned counsel has also invited our attention to the relevant provisions of the Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006, which is a Central Act extending to the whole of India, except the State of Jammu and Kashmir and specifically invited our attention to Sec.3. Sec.3 deals with forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers, which includes right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of forest dwelling Scheduled Tribe or other traditional forest dwellers. Apart from other rights, sub-sec.(2) reads as follows:

"(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:--

- (a) *schools;*
- (b) *dispensary or hospital;*
- (c) *anganwadis;*
- (d) *fair price shops;*
- (e) *electric and telecommunication lines;*
- (f) *tanks and other minor water bodies;*
- (g) *drinking water supply and water pipelines;*
- (h) *water or rain water harvesting structures;*
- (i) *minor irrigation canals;*
- (j) *non-conventional source of energy;*
- (k) *skill upgradation or vocational training centres;*
- (l) *roads; and*
- (m) *community centres:*

Provided that such diversion of forest land shall be allowed only if,--

(i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and

(ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Grama Sabha."

On a reading of sub-section (2), it is clear that electric and telecommunication lines is one of the facilities extended to members of the Scheduled Tribes and other traditional forest dwellers.

8. The Board has also contended that no manner of deforestation will happen consequent on the drawing of line and that only lopping of branches of trees alone was required. It was emphatically stated by the K.S.E.B that no cutting of Teak woods are required for drawing the electric line. It was also contended that in accordance with the terms of the scheme, Board has taken every step to provide electric connection to the 1st Respondent and there are no laches or lapses on the part of the K.S.E.B for doing the same.

9. The learned Single Judge in order to evaluate the situation, appointed an Advocate Commission and the Commission submitted a report explaining the factual situation prevailing in the area through which the line is proposed to be drawn and stated that there are other electric connections situated in the forest area, from which the connections were provided to few houses and Home Stays inside the area which comes under the Bird Sanctuary. Apart from the same, the Advocate Commissioner has pointed out that in other areas of the Forest Division also electric connections were provided. It was specifically reported by the Advocate Commissioner that the proposed length of the electrification work is 1.7 Kms. and

it is to be carried out through a road having width of 3.6 metres and on either side of the road, there are teak plantation. It was also reported that the forest road is the only route, to access the house of the 1st Respondent. The Commissioner has also prepared a sketch, appended along with the report. Objections were filed by the appellants to the Commission Report.

10. After evaluating the factual situations and the objections raised by the appellants, learned Single Judge found that public right through the road from which the line was proposed to be drawn has been admitted in view of Ext.R2 (a) notification which is dated 31.03.1917. It was further held that such public right should also enable the 1st Respondent or the K.S.E.B to draw electric supply line without causing prejudice to the traffic along the road. The learned Single Judge also found that in view of the scheme launched by the Central Government, the permission of the Central Government should be deemed to be implicit. In that view of the matter, learned Single Judge allowed the writ petition, quashing Ext.P10 order passed by the 2nd appellant and issued directions to the K.S.E.B to provide electric connection to the

1st Respondent. It is challenging the said order, this writ appeal is filed by the appellants.

11. Heard the learned Special Government Pleader for Forests, Sri. M.P. Madhavankutty, Sri.K.J. Kuriachan, Advocate on behalf of the 1st Respondent and Smt. P.K. Radhika, learned Standing Counsel for K.S.E.B.

12. So far as the entitlement of the 1st Respondent to avail the benefit of the scheme, and other factual situations are not disputed by the appellants. But, according to the appellants, without prior approval under Sec.2(2) of the Forest (Conservation) Act, 1980, no activity could be carried out in the forest area. Even though the Board has preferred Ext.P4 (a) seeking prior approval and the 1st Respondent has submitted Ext.P4 along with the said sanction request, no permission has been granted by the Central Government. Therefore, the 2nd appellant cannot grant permission to draw the line through the forest area. Apart from other contentions, learned Special Government Pleader contended that if the line is allowed to be drawn in the area in question, it will affect the Teak plantations as well as the animals and birds in the forest area. Learned Special Government Pleader reiterated the

contention that the attempt of the 1st Respondent and the Board is only with the intention of securing electric connection to a Resort owner. On the other hand, learned counsel for the 1st Respondent contended that it was purely based on the scheme launched by the Central Government, the application of the 1st Respondent was processed by the Board and no manner of difficulties will be caused due to the drawing of line and it will not affect the Teak plantations or other plantations in any manner. It was also contended that the entire line was proposed to be drawn through the road which is the public road in view of the recital contained in Ext.R2(a) and he has invited our attention to clause-B of Part-II of the Government Order dated 31.03.1917, by which it was stated that this road is admitted mainly to give access to survey number 493/1, and 494/1 and to the path leading to 'Chanthirathil Chal'. Learned counsel further contended that admittedly, the Board has proposed to draw the line through the said road and therefore no manner of prejudice will be caused to the appellants. The Board has also supported the arguments advanced by the learned counsel for the 1st Respondent and contended that the Board is prepared to carry out the directions issued by the

learned Single Judge and they have already collected necessary materials at the site in accordance with the directions of the learned Single Judge.

13. The contention raised by the Special Government Pleader that the electric connection is sought for by the 1st Respondent in order to help a nearby Resort owner cannot be sustained at all, in view of the fact that even though an Advocate Commission was taken out by the 1st Respondent and at the time of inspection, Advocate Commissioner was accompanied by the Government officials and the K.S.E.B officials, the appellants have not made any attempt to establish that there was such a Resort situated in the forest area.

14. Having considered the rival submissions, we have come across Ext.R2(a) by which an access road having the width of 12 feet is provided by the Government for access to the public. The provision for the said road was mentioned in Ext.R2(a) under Part-II under the heading public rights now admitted. The appellants have not disputed that it is through the said road mentioned in Ext.R2(a) that the K.S.E.B proposes to draw electric line to the residence of the 1st

Respondent. The next aspect is whether Sec.2(2) of the Forest (Conservation) Act, 1980 applies to the fact situation. According to us, for two reasons the same will not apply: (1) on a reading Sec.2, it is explicit and clear that the intention of seeking prior approval is for the purpose of carrying out the de-reservation of Reserved Forests or the non-forest purpose, leasing out etc. etc. The drawing of electric line through an access road provided by the State Government cannot be said to be an activity of non-forest purpose because Explanation to sec.(2) as stated above, clearly specifies the nature of non-forest purposes and therefore we have no hesitation in holding that in the fact situation drawing of electric line through the access road can be permitted without securing prior approval of the Central Government. Secondly, the scheme specified above is launched by the Central Government with the intention of providing electricity connection to the members of Scheduled Tribes and Scheduled Castes and therefore one cannot be heard to say that the Central Government has not taken into account the necessity of providing electricity connection to a tribe residing in a tribal area within the forest area, especially when it is common knowledge that the tribal

people mostly reside within the forest areas.

15. So also, at the time of hearing, a copy of the Scheme was provided to us and as per the said Scheme, among other activities, electrifying all villages and habitations as per new definition is one of the aims. Further, paragraph 5 of the Scheme takes care of '**Rural Household Electrification of Below Poverty Line Households**' and under the said heading, the following three types of activities are undertaken:

(i) BPL households will be provided free electricity connections. The rate of reimbursement for providing free connections to BPL households would be Rs.2200 per household.

(ii) Households above poverty line are to pay for their connections at prescribed connection charges and no subsidy would be available for this purpose.

(iii) Wherever SC/ST population exists amongst BPL households and subject to being eligible otherwise, they will be provided connection free of cost and a separate record will be kept for such connection.

Therefore, as provided under 5(iii), the persons who belong to SC/ST are entitled to get connection free of cost if they are below poverty line, irrespective of the area of their existence. On an evaluation of the entire scheme also, it can

be seen that the intention of the Central Government is to provide electric connection to each and every villager on special terms and conditions provided under the Scheme.

16. That apart, we find force in the contention of the learned counsel for the 1st Respondent that in view of the Scheduled Tribe and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006, providing electric connection to the members of the tribe is taken care of. Admittedly, the wife of the 1st Respondent is the member of a Scheduled Tribe and that apart, the 1st Respondent is a member of the Scheduled Caste and a traditional forest dweller, which fact is not disputed by anyone. Therefore, the 1st Respondent is entitled to get benefit of the said provision also. The learned Special Government Pleader has also brought our attention to Sec.22 of the Kerala Forest Act and contended that no person will acquire any right in the Reserved Forest except under limited circumstances like grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under Sec.19 was published or by succession from such

person. But, according to us, Ext.R2(a) Government Order provides a 12 feet wide road through the property in question and therefore even going by Sec.22 of the Act, there is a grant provided to the public. Therefore, viewed in any circumstances, one cannot reach a finding that the 1st Respondent is not entitled to secure the connection extended under the scheme. The learned Single Judge has considered the entire legal and factual aspects and arrived at a conclusion that the 1st Respondent was entitled to get electric connection under the scheme and that the prior approval if any is implicit under the scheme in view of the same launched by the Central Government. The learned Single Judge has relied on the judgment of the Bombay High Court in '**Goa Foundation and another v. The Konkan Railway Corporation**' [AIR 1992 Bombay 471) to arrive at such a conclusion. Learned counsel for the 1st Respondent has invited our attention to paragraph 7 of the said judgment which read thus:

"7. x x x x x x x
 x x x x x x x

There is no merit in the submission because the project has been approved by the Central Government and the Railway Ministry which is carrying out the exercise is a part of the Central Government. The use

of the forest land for providing railway line is not going to affect or damage the existence of forests and the complaint of the petitioners on this count is devoid of any merit.

x x x x x x x x
 x x x x x x x x".

We are also agreeable to the proposition so followed by the learned Single Judge in view of the said judgment and in the nature of facts situations which have arisen in this case.

17. On the other hand, learned Special Government Pleader has invited our attention to another Division Bench judgment of the Bombay High Court in '**Vilas Shankar Donode v. State of Maharashtra and Others**' [2008 KHC 7467] and contended that no manner of activity inside the forest area can be carried out without prior approval of the Central Government. But, according to us, the fact situations narrated in paragraph 3 of the said judgment establishes that the same is entirely different from the fact situations in the case at hand because there, the attempt was to construct a road by a member of the Legislative Assembly belonging to the ruling front and that too, by cutting and removing several trees, forest produce and that too by misusing his official position. Therefore, the facts of the said case have no

application to this case.

18. In our view, by launching the scheme, the Central Government has the avowed object of providing electricity connection to the members of Scheduled Castes and Scheduled Tribes and therefore it cannot be heard to say that the Central Government did not take into account the provisions of the Forest (Conservation) Act, 1980. We do not find any illegality or other legal infirmities warranting our interference in the judgment of the learned Single Judge in the appeal.

19. The learned Single Judge has directed the K.S.E.B to provide electric connection latest by 15.09.2015 and since that period is over, we direct Respondents 2 to 4 to provide electricity connection to the 1st Respondent on or before 25.09.2015 since the last date fixed for the scheme is on 30.09.2015. The appellants are directed to cooperate with the K.S.E.B in order to draw the line as per the stipulations contained above, in view of the Scheme getting exhausted on 30.09.2015.

Resultantly, appeal fails and accordingly the same is dismissed, subject to the modification in the above direction.

Sd/-

**K. SURENDRA MOHAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-

22.09.2015