

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WA. No.2474 of 2015 () IN WP(C).No.29483/2009

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AGAINST THE JUDGMENT IN WP(C) NO.29483/2009 OF HIGH COURT
OF KERALA DATED 10-08-2015**

APPELLANT(S)/APPELLANT:

**PADMANABHA NAIK, AGED 44 YEARS,
S/O.CHIKKAPPA NAIK, NARODI HOUSE, PANDI P.O.,
MULLERIA, KASARGOD.**

**BY ADVS.SRI.A.S.RAJENDRAN NAIR
SMT.REENA MATHEW**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF FOREST AND WILDLIFE, SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE CHIEF CONSERVATOR,
NORTHERN CIRCLE, KOZHIKKODE, PIN-673001.**
- 3. THE FOREST CONSERVATOR,
NORTHERN CIRCLE, KOZHIKKODE, PIN-673001.**
- 4. THE DIVISIONAL FOREST OFFICER, KANNUR, PIN-670012.**
- 5. THE FOREST RANGE OFFICER, KASARAGOD, PIN-671123.**
- 6. UNION OF INDIA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF ENVIRONMENT AND FOREST, PIN-110001.**

WA. No.2474 of 2015 ()

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**R6 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WA. No.2474 of 2015 ()

APPENDIX

APPELLANT'S ANNEXURES:-

ANNEX.I:- TRUE COPY OF RECEIPT DATED 6.11.2015 OF THE DIVISIONAL FOREST OFFICER.

ANNEX.II:- TRUE COPY OF THE REPORT OF RENEWAL OF PROPOSALS FORM NO.B.

RESPONDENTS' ANNEXURES:- NIL

KRJ

//true copy// P.A to Judge

ASHOK BHUSHAN, C.J

&

K.RAMAKRISHNAN, J.

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W.A No.2474 of 2015

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Dated this the 16th day of December, 2015

JUDGMENT

Ashok Bhushan, CJ

This writ appeal has been filed against judgment dated 10.8.2015 in W.P(C) No.29483 of 2009.

2. The petitioner had filed the writ petition challenging the order of State Government by which, the State Government by Ext.P1 order dated 24.9.2009 has refused renewal of lease of 7 acres of forest land. Petitioner's grandfather was leased out 7 acres of forest land in Kasaragod range under the Kannur division under order dated 26.2.1949. A lease for 50 years w.e.f. 1.3.1949 was also executed for raising various agricultural crops. Original lessee died and thereafter the leased land was partitioned and registered in the name of one Chikapa Naik. After the death of Chikapa Naik, the property has been managed by the writ petitioner.

3. Petitioner had filed the writ petition being W.P(C) No.33939 of 2000 which was disposed of on 8.1.2009 directing the State Government to take a decision. In consequence to the order of the Court, the State Government considered all aspects and decided to

refuse renewal of the lease. The order passed by the State Government was challenged in the writ petition by the petitioner. Learned Single Judge upheld the order of the State Government. Learned Single Judge referred to three judgments of this court where it was held that lessee has no vested light to seek renewal of lease. Challenging the judgment of the learned Single Judge, this writ appeal has been filed.

4. Learned counsel for the appellant in support of the writ appeal contended that original lessee had died long back i.e. in the year 1974 and the respondents permitted the leased land to be occupied by the heirs of original lessee and even after enforcement of the Forest Conservation Act, 1980, no action was taken, which means that the State has permitted the use of land for non-forest activity and on such ground, the lease could not have been refused to be renewed.

5. It is submitted that there was a legitimate expectation in the writ petitioner that lease shall be renewed. It is further submitted that the ground given by the State Government that after the death of petitioner's grandfather in 1974, lease became void, which reason is not correct. It is submitted that prior approval of the Central Government was not obtained under the Forest

Conservation Act, 1980, hence, the renewal could not have been refused. It is further submitted that the petitioner was entitled for Kumki rights in the trees which were planted by the petitioner in the leased land.

6. We have considered the submissions of learned counsel for the appellant and have perused the records.

7. Insofar as the question for the decision of the Government refusing renewal, it is well settled that there is no vested right in the lessee to claim renewal. At the time of renewal, the State has to take into consideration the various factors for permitting renewal of the lease. In the order itself, it has been stated that the department waited for period of lease to come to an end to resume the land. The learned Single Judge has rightly referred to the judgment of this Court where it was held that the lessee cannot claim any vested right to seek renewal of the lease.

8. The submission pressed by learned counsel for the appellant that after the death of the petitioner's grandfather, petitioner and other predecessor-in-interest were allowed to continue with the land and no action was taken for violation of the terms of lease, hence, it will be presumed that non-forest use of the land was impliedly permitted. The mere fact that the State did not take any action for

resumption of land on violation of the terms and condition before the period of 50 years came to an end, cannot be said to be an action on the part of the State for condoning breach of the condition of the lease. Nor the State can be presumed to have given the permission for use of the land for non-forest activity. In fact, the State has no power to permit use of forest land for non-forest activity except without approval of the Central Government under Section 2 of the Forest Conservation Act, 1980. There is categorical finding that terms of lease were violated in the impugned order. Paragraphs (3) and 10(iii) contain the said finding:

“3. The partition of the leased property on the death of the original lessee is illegal and is in violation of Section 10 of the agreement condition as no sanction from the assigning authority is seen obtained for transfer of lease right. The legal heirs of the deceased lessee would have returned the leased land to Government on the death of the original lessee.

10. Government have examined the matter in detail and found that the application of the petitioner is not acceptable due to the following reasons:

- i) xxxxxx
- ii) xxxxxx
- iii) He has violated the terms of lease / assignment by raising cash crops and pucca constructions. Such violations would render the lease liable to be terminated.

Averment that the Forest Department didn't formally terminate the lease, is of no consequence because with the original assignee's death the lease ceased to exist and hence became, void and non-actionable."

9. For non-renewal of the lease, the violation of terms and condition of the lease is a relevant factor which has been rightly relied. Learned counsel for the appellant referring to paragraph (5) of the order contended that the petitioner shall have the Kumki right over the trees which were planted on leased land. In paragraph (5) of the order of the State Government, following was stated:

"5. It is clearly stated in condition No.22 of the order granting lease that the grantee shall, as soon as the period of the grant expires or on its earlier termination, as the case may be, deliver to the Government the land together with all crops, trees, buildings, roads which shall then be standing thereon. As per condition No.23, if the grantee violated any of the condition of the grant, the Government shall be at liberty to resume the land and to re-enter into any part of the land. Consequent upon such resumption, the grantee shall not be entitled to any compensation whatsoever."

10. It is submitted that compensation cannot be claimed only where the lease is resumed before expiry of the term. But since the lessee had completed 50 years, the right over trees cannot be refused. In paragraph (5) as quoted above, it is stated that

Condition No.22 itself contemplate that as soon as the period of grant expires, lessee has to deliver to the Government the land, together with all crops, trees, buildings, roads which shall then be standing thereon. The aforesaid condition clearly indicate that after expiry of the term, the leased land has to be surrendered as it is. It clearly mean that no right can be claimed over the trees as submitted before us.

We do not find any error in the judgment of learned Single Judge. Therefore, the appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
K.RAMAKRISHNAN
JUDGE