

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 898 of 2015 (J)

PETITIONER:

**TOMY.V.M. AGED 44 YEARS
S/O. MATHAI, VEMBELICKAL HOUSE, EDAMARUKU KARA
MALAYINCHI P.O., UDUMBANNOOR VILLAGE
THODUPUZHA TALUK.**

BY ADV. SMT.SHAMEENA SALAHUDHEEN

RESPONDENT(S):

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
FOREST DEPARTMENT,
THIRUVANANTHAPURAM-695 001.**
- 2. FOREST RANGE OFFICER,
THODUPUZHA FOREST RANGE, MUTTOM.P.O.
THODUPUZHA-685 587.**
- 3. DEPUTY RANGE FOREST OFFICER,
VELOOR FOREST STATION, KOTTAKAVALA, UDUMBANNOOR
THODUPUZHA-685 595.**
- 4. THE DISTRICT COLLECTOR,
PAINAVU, IDUKKI-685 603.**

**BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT
BY SRI.M.P.MADHAVANKUTTY, SPECIAL GOVERNMENT PLEADER FOR
FOREST DEPARTMENT.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 898 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: TRUE COPY OF RESIDENCE CERTIFICATE ISSUED FROM THE UDUMBANNOOR VILLAGE OFFICE DATED 12-9-2014.

EXT.P2: TRUE COPY OF THE PROPERTY TAX RECEIPT.

EXT.P3: TRUE COPY OF THE F.I.R DATED 1-12-2014.

EXT.P4: TRUE COPY OF THE PAPER REPORT PUBLISHED IN KOTTAYAM EDITION OF JANMABHOOMI DAILY DATED 1-12-2014.

EXT.P5: TRUE COPY OF THE COMMISSION REPORT.

EXT.P6: TRUE COPY OF THE NOTICE DATED 31-12-2014 ISSUED BY THE 3RD RESPONDENT.

EXT.P7: TRUE COPY OF THE PHOTOGRAPH OF THE RESIDENTIAL BUILDING AND THE NEARBY PLANTATION.

EXT.P8: TRUE COPY OF THE REPLY DATED 4-1-2015.

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 898 of 2015

Dated this the 9th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"I. To issue a writ of certiorari or any other appropriate writ, order or direction and quash Ext.P6.

ii. To issue a writ of mandamus or any other appropriate writ order or direction, directing the respondents to refrain from any action of demolition of the residential building of the petitioner.

iii. Declare that the petitioner's residential building is not situated in the forest land."

2. The learned counsel for the petitioner submits that, totally wild allegations have been levelled against the petitioner who has put up a building in the concerned property, which in fact is exclusively belonging to the petitioner. The learned counsel also points out that, no encroachment has been effected by the petitioner and no part of the building belonging to the petitioner is situated in any portion of the Government land, particularly, the Forest Department. Despite this, without giving adequate opportunity to explain the position, Ext.P6 notice/order

has been issued, directing the petitioner to demolish the construction, which according to the respondent is stated as effected in the property belonging to the Government.

3. Heard the learned Special Government Pleader as well.

4. Going by the contents of Ext.P6 notice dated 31.12.2014, this Court finds that, even though the same is styled as a notice, it is as good as an order, as the petitioner is required to demolish the disputed construction effected therein. This Court finds that, no effective opportunity of hearing was given to the petitioner and hence there is violation of the fundamental principal of '*audi alteram partem*'.

5. In the said circumstance, the writ petition is disposed of, directing the 3rd respondent to treat Ext.P6 as a notice, give the petitioner an opportunity to submit explanation, if any, and to finalize the proceedings after affording an opportunity of hearing as well. It is stated that, the petitioner has already preferred Ext.P8 before the said respondent. It is open for the petitioner to supplement the same by producing necessary materials, if any. The 3rd respondent/competent authority shall consider the same

and appropriate orders shall be passed after affording an opportunity of hearing to the petitioner. The proceedings as above shall be finalized at the earliest, at any rate, within 'six weeks' from the date of receipt of a copy of this judgment. Coercive proceedings shall be kept in abeyance till such time.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

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

kp/-