

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 2079 of 2015 (H)

PETITIONER :

**BINDU S., AGED 42 YEARS, W/O.K.SANTHAKUMAR,
KACHERIPADAM KALAM, VITHANASSERY
NENMARA P.O., PALAKKAD DISTRICT - 678 508.**

**BY ADVS.SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM
SRI.THOMAS GEORGE**

RESPONDENTS :

**1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
FOREST & WILD LIFE (C) DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.**

**2. THE FOREST RANGE OFFICER,
NELLIAMPATHY FOREST RANGE OFFICER, NENMARA P.O.,
PALAKKAD DISTRICT - 673 501.**

R1 & R2 BY SPL. GOVERNMENT PLEADER SRI. M.P.MADHAVANKUTTY (FOREST)

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE JUDGMENT DATED 03/12/2012 IN WPC.NO. 16411 OF 2012 OF THIS HON'BLE COURT.
- EXT.P2: TRUE COPY OF THE JUDGMENT DATED 29/01/2013 IN WA.NO. 112/13 OF THIS HON'BLE COURT.
- EXT.P3: TRUE COPY OF THE NOTICE DATED 28/03/2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.P4: TRUE COPY OF THE GOVERNMENT ORDER DATED 25/03/2013 OF FOREST WILD LIFE (C) DEPARTMENT.
- EXT.P5: COPY OF JUDGMENT DATED 10/01/2013 IN WPC.NO. 9372/2013 OF THIS HON'BLE COURT.
- EXT.P6: TRUE COPY OF THE PRELIMINARY OBJECTION DATED 24/06/2014.
- EXT.P7: TRUE COPY OF COVERING : LETTER DATED 17/07/2014 TO THE PETITIONER.
- EXT.P8: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 11/07/2014 TO THE PETITIONER.
- EXT.P9: COPY OF OBJECTION DATED 30/07/2014 FROM THE PETITIONER.
- EXT.P10: COPY OF THE LETTER DATED 08/08/2014 TO THE ADDITIONAL CHIEF SECRETARY.
- EXT.P11: TRUE COPY OF THE COVERING LETTER DATED 14/08/2014 FORWARDING THE STATEMENT OF FACTS.
- EXT.P12: TRUE COPY OF THE STATEMENT OF FACTS DATED 14/08/2014 FILED BEFORE THE GOVERNMENT.
- EXT.P13: TRUE COPY OF THE NOTICE DATED 21/08/2014 RECEIVED BY THE PETITIONER.
- EXT.P14: TRUE COPY OF THE NOTICE DATED 21/08/2014 ADDRESSED TO THE LAND REVENUE COMMISSIONER, TRIVANDRUM.
- EXT.P15: TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 27/08/2014 FILED BEFORE THE ADDL. CHIEF SECRETARY TO GOVERNMENT.
- EXT.P16: TRUE COPY OF THE PRELIMINARY OBJECTION DATED 16/09/2014 FILED BY THE PETITIONER.
- EXT.P17: COPY OF THE LETTER DATED 15/03/2014 FROM THE REVENUE DIVISIONAL OFFICER, PALAKKAD.

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- EXT.P18:** COPY OF BASIC TAX REGISTER ISSUED BY THE VILLAGE OFFICER, VALLANGHY GROUP.
- EXT.P19:** TRUE COPY OF THE LETTER DATED 22/09/2014 BY THE PETITIONER.
- EXT.P20:** TRUE COPY OF THE OBJECTION DATED 23/10/2014 FROM THE PETITIONER TO THE ADDL. CHIEF SECRETARY.
- EXT.21:** TRUE COPY OF THE INSPECTION REPORT WITH PLAN PREPARED BY TALUK SURVEYOR.
- EXT.22:** TRUE COPY OF THE REPLY DATED 21/11/2014 FROM THE PETITIONER.
- EXT.23:** TRUE COPY OF THE ORDER DATED 08/01/2015 ISSUED BY THE GOVERNMENT.
- EXT.24:** TRUE COPY OF THE ORDER FOR ASSIGNMENT OF THE DISPUTED PROPERTIES.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 2079 of 2015

Dated this the 22nd day of January, 2015

JUDGMENT

Grievance of the petitioner is mainly with regard to the direction contained in Ext.P23 order passed by the first respondent/Government whereby the concerned District Collector has been directed to consider the matter as to the exact nature of the property involved and also as to whether there is violation of 'Patta' conditions in terms of Clause 14 of Ext.P24 so as to suggest that the course of action to be pursued by the District Collector would stand curtailed, giving an impression that the property has to be treated as 'Reserve Forest', prohibiting the petitioner from doing quarrying operation in the concerned property, which is stated as a private land.

2. The case has got a long history. It is stated that the predecessor-in-interest of the petitioner was assigned land as per various 'Pattas' (like the one produced as Ext.P24) for effecting rubber cultivation. Dispute arose with regard to the quarrying exercise being pursued by the petitioner, when the petitioner

found that rubber cultivation was not possible in the concerned land. The scope of the dispute was mainly with reference to the two different items of property, one comprised in Sy. No.89 which is part of Forest Land and the other one in Sy. No.103/1 and 103/2, which is a private land. When the issue came up for consideration before this Court with reference to the interception made from the part of the Forest Department, also referring to the property covered by Sy.No.103/1 and 103/2, Ext.P1 judgment was passed in W.P.(C) No.16411 of 2012, wherein it has been observed that, if at all any violation of Patta condition was there, it was not for the Forest Department to have it considered, but by the Revenue Department.

3. This order was sought to be challenged by the State/Department by way of appeal and Ext.P2 judgment was passed by this Court therein. Appropriate directions were given to the State/Department to resolve the issue, however, clarifying that, one Department cannot intrude into the affairs of the other Department, as made clear in paragraph '5' of the judgment. Pursuant to the above verdict, notice was issued and thereafter, Ext.P4 order was passed by the Principal Secretary to the Forest Department on 25.03.2013, which according to the petitioner,

was detrimental to the rights and interests of the petitioner and hence was sought to be challenged by filing W.P.(C). No. 9372/13. The said writ petition was disposed of, making specific observation as contained in paragraph '10', directing to finalize the proceedings in the manner as specified therein. Subsequently, the petitioner was served with Ext.P8 show-cause notice by the Forest Department with reference to Survey No.89, which is a forest land. The petitioner has submitted reply as well. It is asserted by the petitioner that the petitioner does not have any dispute for the time being, in so far as the said property in Sy.No. 89 is concerned and further that the licence of the petitioner to conduct the quarrying operation in the said land stands expired in January, 2014. Surviving issue is only with regard to the rights and liberties of the petitioner with reference to the property comprised in Sy.Nos. 103/1 and 103/2.

4. The factual position in the above regard has been explained as given in Ext.P20 preferred by the petitioner before the 1st respondent. It was after considering the same that Ext.P23 order was passed by the 1st respondent, whereby, direction has been given to the District Collector, Palakkad to pursue and finalize the matter in the manner as specified therein,

which has turned to be detrimental to the rights and interests of the petitioner and hence the challenge.

5. Heard the learned Senior Counsel for the petitioner as well as the learned Special Government Pleader for the Department/Forest.

6. The learned Senior Counsel points out that the objectionable part is with reference to the land comprised in Sy.Nos. 103/1 and 103/2 and the direction issued to the District Collector to take immediate action to stop illegal quarrying, observing that the legal status of the above lands remains to be 'reserve forest'. The learned counsel also points out that, it is per se contrary to the direction given by this Court as per Exts.P1 and P2 judgments and it was no more open for the authorities of the Forest Department to have issued any direction for not giving quarrying licence operation in the private land comprised in Sy.Nos.103/1 and 103/2. It is also added that there is no objection for the petitioner with regard to the observation and direction as contained in paragraph 14 of Ext.P23, in so far as the same is pertaining to the land comprised in Sy.No.89 (with regard to which the licence has already expired).

7. The learned Special Government Pleader submits that

the direction contained in Ext.P23 cannot be read in isolation and the entire order has to be read as a whole, also in the light of the observation made by this Court in paragraph '10' of Ext.P5 judgment. Reference is also made to the contents of Ext.P23, particularly, the opening paragraph therein and as to the sequence/flow of the events making a reference to paragraph '5', wherein an observation has been made that, the property originally belonged to the Forest Department and only a portion of the property was handed over to the Revenue Department for report and such other details.

8. This Court does not propose to go into such details or as to the disputed rights and liberties, as such issues are to be considered by the concerned District Collector pursuant to Ext.P23. The only point to be considered is whether the quarrying operation being continued in the private land comprised in Sy.Nos. 103/1 and 103/2 could be intercepted by the District Collector, based on the observation in paragraph 13 of Ext.P23. This Court finds that a decision has to be taken by the District Collector independently with proper application of mind, particularly, with regard to the infringement of the condition incorporated in the 'Patta', i.e., with reference to

clauses 4, 10 and 14 of Ext.P24 and such other relevant clauses, if any. This shall be done after affording an opportunity of hearing not only to the two Departments (Forest and Revenue) but also to the petitioner as well. It is open for the District Collector to finalize the proceedings after hearing all concerned, in accordance with law, untrammelled by the observations made by the 1st respondent in the latter part of paragraph '13'. The said exercise shall be finalized at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment. 'Status quo' as on date will continue till such time.

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

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