

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 2271 of 2015 (H)

PETITIONER(S):

**HASEENA BEEVI, AGED 42 YEARS,
W/O.LATE NAZEEM, NAZEEM MANZIL, VELLANCHIRA,
PANAVOOR P.O., NEDUMANGAD, THIRUVANANTHAPURAM-695 568.**

**BY ADVS.SRI.THAMPAN THOMAS
SRI.B.V.JOY SANKER
SHAFFIE THOMAS
SMT.JANCY ALEX
SRI.SANEESH KUNJUKUNJU
SRI.JACOB CHACKO
SRI.THARUN THANKACHEN PERUMAL**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
FOREST & WILDLIFE DEPARTMENT,
THIRUVANANTHAPURAM-695 001.**
- 2. CHIEF CONSERVATOR OF FORESTS,
(SPECIAL AFFORESTATION) & NODAL OFFICER, CONVENER,
STATE LEVEL COMMITTEE, KERALA, FOREST HEAD QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.**
- 3. DIVISIONAL FOREST OFFICER,
DIVISIONAL FOREST OFFICE, THIRUVANANTHAPURAM-695 560.**
- 4. RANGE FOREST OFFICER,
PALODE DIVISION, THIRUVANANTHAPURAM, PIN-695 562.**

BY SPECIAL GOVERNMENT PLEADER SRI.THOMAS KUTTY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE OF THE D & O LICENSE FOR THE YEAR 2014-15
DATED 05.04.2014.
- EXT.P2 TRUE COPY OF THE CONSENT TO OPERATE OBTAINED FROM THE POLLUTION
CONTROL BOARD DATED 06.03.2014.
- EXT.P3 TRUE COPY OF THE NOC ISSUED BY THE 3RD RESPONDENT DATED 23.1.96.
- EXT.P4 TRUE COPY OF THE LICENSE FOR THE PERIOD 25.5.2013 TO 24.05.2016,
ISSUED BY THE 3RD RESPONDENT DTED 25.05.2013 .
- EXT.P5 TRUE COPY OF THE PROFORMA APPLICATION FILED BY THE PETITIONER
DATED 29.08.2013.
- EXT.P6 TRUE COPY OF THE GUIDELINE ISSUED BY THE 2ND RESPONDENT
DATED 17.01.2006 REGARDING SHIFTING OF SAWMILLS.
- EXT.P7 TRUE COPY OF THE REPORT SUBMITTED BY THE 4TH RESPONDENT
DATED 21.01.2013.
- EXT.P8 TRUE COPY OF THE STOP MEMO ISSUED BY THE 4TH RESPONDENT
DATED 11.02.2014.
- EXT.P9 TRUE COPY OF THE JUDGMENT IN WP(C) NO. 9254 OF 2014 DATED 31.03.2014.
- EXT.P10 TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT
DATED 30.05.2014.
- EXT.P11 TRUE COPY OF ORDER PASSED BY THE 2ND RESPONDENT DATED 6.08.2014.
- EXT.P12 TRUE COPY OF THE REPORT DATED 14.03.2013 Y THE 4TH RESPONDENT.
- EXT.P13 TRUE COPY OF THE REPORTS DATED 28.02.2013 BY THE 4TH RESPONDENT.
- EXT.P14 TRUE COPY OF THE INFORMATION RECEIVED BY B.SREEKUMARAN NAIR
DATED 11.04.2014.
- EXT.P15 TRUE COPY OF THE INFORMATION RECEIVED BY B.SREEKUMARAN NAIR
DATED 16.06.2014.
- EXT.P16 TRUE COPY OF THE INFORMATION RECEIVED BY THE PETITIONER
DATED 06.01.2015.
- EXT.P17: TRUE COPY OF THE LETTER TO THE DIVISIONAL FOREST OFFICER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.2271 of 2015

Dated this the 5th day of October, 2015

JUDGMENT

The petitioner is the owner of a timber based industrial unit, a small saw mill at Panavoor Panchayath, Thiruvananthapuram District. The unit was originally started in the year 1996. The present dispute pertains to shifting of the saw mill to another place. As per Rule 4(2) of the Kerala Forest (Regulation of Sawmills and Other Wood based Industrial units) Rules, 2012(for short, the “Rules”), the only Saw Mills which were in existence prior to 30th October, 2002 located within a radius distance of five kilometres from the boundary of any forest owned by the Government alone are permitted to operate with the renewed licence. All saw mills and wood based industry after 30th October, 2002 would have to relocate beyond five kilometres radius distance from the forest. The petitioner submits that since the industry was established in the year 1996, the petitioner is also entitled for renewal in terms of Rule 4 of the Rules. It is to be noted that the petitioner’s case is

not for renewal of licence at the same place where it was existed in the year, 1996. The petitioner wants to locate the saw mill to a new place.

2. Therefore, the petitioner's application has to be considered under Rule 13 of the Rules. Rule 13 of the Rules has to be understood with reference to the rigour placed under Rule 4 of the Rules which only enables the saw mill which was in existence before 2002 for renewal of licence. When the saw mill is shifted to new place, the petitioner is bound to follow the distance rule as contemplated under Rule 4 of the Rules. Therefore, the petitioner's shifting has to be in conformity with Rule 4 of the Rules. The Authority is of the view, the petitioner's new place is less than five kilometres, the petitioner cannot be permitted to shift to the new place.

3. The petitioner points out that the Authority has taken aerial route and not radius distance. It is not discernible how the distance has been reckoned in this matter. Therefore, this Court is of

the view, the third respondent shall measure the distance by the radius measurement and not by aerial measurements and find out whether the proposed place is located within five kilometres or not. If it is located outside five kilometres, necessarily, renewal shall be granted in accordance with law.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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