

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 15944 of 2004 (W)

PETITIONER(S):

**POKER, AGED 50 YEARS, S/O. SYED ALAVI,
AND RESIDING AT KARAKULAM HOUSE, PARNAPPADY,
NOOLPUZHA VILLAGE, SULTHAN BATHERY TALUK
WYNAD DISTRICT, KERALA STATE.**

BY ADV. SRI.K.JAGADISACHANDRAN NAIR

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. FOREST RANGE OFFICER CUM ASSISTANT
WILD LIFE WARDEN, SULTAN BATHERY RANGE, WAYANAD.**
- 3. WILD LIFE WARDEN OFFICE, SULTHAN BATHERY
WAYANAD.**

BY SPECIAL GOVERNMENT PLEADER SRI.MADHAVAN KUTTY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE JUDGMENT DTD.26TH MARCH 1986 IN OP.864/1986 OF THE HONOURABLE HIGH COURT OF KERALA.

EXT.P1(a): TRUE COPY OF PAGE NOS.26 AND 27 OF THE PROJECT REPORT PURSUANT TO EXT.P1.

EXT.P2: TRUE COPY OF PHOTOGRAPH SHOWING THE LOCATION OF THE HOUSE AND ITS PROXIMITY TO THE NATIONAL HIGHWAY.

EXT.P2(a): TRUE COPY OF PHOTOGRAPH SHOWING THE LOCATION OF THE HOUSE AND ITS PROXIMITY TO THE NATIONAL HIGHWAY.

EXT.P3: TRUE COPY OF THE RELEVANT ENTRY IN THE PANCHAYATH BUILDING TAX ASSESSMENT REGISTER 92-93 TO 96-97 OF HOUSE NO.1 IN THE WARD NO.VI OF THE NOOLPUZHA PANCHAYAT.

EXT.P4: TRUE COPY OF THE RELEVANT ENTRY IN THE PANCHAYATH BUILDING TAX ASSESSMENT REGISTER 97-98 TO 2001, 2002 OF THE HOUSE NO.10 IN WARD NO.V OF THE NOOLPUZHA PANCHAYAT.

EXT.P5: TRUE COPY OF THE ELECTORAL CARD DTD.12.9.1992 SHOWING THE PETITIONER AND WIFE AS THE VOTERS RESIDING IN HOUSE NO.1 IN WARD NO.6.

EXT.P6: TRUE COPY OF THE PROVISIONAL INVOICE CARD ISSUED BY KSEB TO THE PETITIONER AS CONSUMER NO.660 SULTHAN BATHERY WITH EFFECT FROM MAY 1999.

EXT.P7: TRUE COPY OF ONE TELEPHONE BILL TELEPHONE NO.270816) ISSUED TO THE PETITIONER DTD.15TH MAY, 1999.

EXT.P8: TRUE COPY OF THE NOTICE DTD.12.3.2004 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P9: TRUE COPY OF THE NOTICE DTD.26.3.2004 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P10: TRUE COPY OF THE JUDGMENT DTD.29.11.2011 IN CC 692/2009 OF JFCM-I, SULTHAN BATHERY.

EXT.P11: TRUE COPY OF THE REPRESENTATION TO THE GOVERNMENT DTD.13.7.2015.

EXT.P12: TRUE COPY OF THE LETTER DTD.25.7.2015.

EXT.P13: TRUE COPY OF THE CERTIFICATE ISSUED BY ASASUL ISLAM SANGAM KALLOOR DTD.28.10.2004.

Msv/

WP(C).No. 15944 of 2004 (W)

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF MAHAZAR DTD.10.3.2004 IN ORR 3/2004.

EXT.R2(b): TRUE COPY OF MAHAZAR DTD.6.3.2004 IN OR.2/2004.

EXT.R2(c): TRUE COPY OF NOTIFICATION NO.494 DTD.23.6.1939.

EXT.R2(d): TRUE COPY OF G.O.(P) NO.230/77/AD/THIRUVANANTHAPURAM DT.27.7.77.

**EXT.R2(e): TRUE COPY OF STATEMENT SUBMITTED BY THE PETITIONER TO THE
2ND RESPONDENT DTD.19.3.2004.**

**EXT.R2(f): TRUE COPY OF THE GOVERNMENT NOTIFICATION NO. GO(MS) 182/73/AD
DTD.30.5.1973.**

//TRUE COPY//

P.S.TO JUDGE

Ms^v/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 15944 of 2004

Dated this the 23rd day of September, 2015

J U D G M E N T

The petitioner alleges that he is in possession of 60 cents of garden land from 1975, wherein he has put up a residential building. He has cultivated the said land with coconut trees and other garden plants. According to the petitioner, he is continuously residing in the said property and occupying the house and has electric and telephone connections and there has been no recent trespass into the government land. The committee constituted as per Ext.P1 judgment to enquire and prepare the rehabilitations scheme has listed the occupants of the Waynad forest land. The petitioner's land is not included in the said project and therefore, the said land does not form part of the forest land or it has been omitted to be included in the reallocation project by mistake; it is alleged. The petitioner further alleges that there are a few hundreds of similarly placed persons, who are not

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included in the said project report. Therefore, according to him, he cannot be singled out and evicted except in accordance with the relocation project or as per the due process of law. He further alleges that he has no other land or homestead of his own. Hence, this writ petition.

2. A detailed counter affidavit has been filed by respondents 2 & 3, wherein it is contended that the claim of the petitioner that he is in possession of 60 cents of land comprised in Sy.No.42/8 (renumbered as Sy.No.354) of Noolpuzha Village of Sulthan Bathery Taluk is illegal and untenable. It is further contended that a forest offence is registered as OR No.3/2004 on 10.03.2004 against the petitioner for encroachment and illegal construction of residential building in the said land as per Ext.R2(a). Another forest offence was registered against the petitioner for destruction of one permanent forest boundary cairn as OR No.02/2004 on 06.03.2004 as per Ext.R2(b). According to them, the entire land under Sy.No.42/8 of Noolpuzha Village, except for an extent of

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2 acres, is a reserve forest as per Ext.R2(c) government notification and the 2 acres of land was de-reserved for allotment to Kallur Assassul Islam Sanghom as burial ground as per Ext.R2(d) government notification. It is further contended that the encroached land of the petitioner is outside the de-reserved land and, hence, is a part of reserve forest. According to them, it is a part of the forest lease No.51 in Alathur reserve forest in the name of one P.Kumaran. It is pointed out that the petitioner himself in Ext.R2(e) statement submitted before the Asst. Wildlife Warden on 19.03.2004, had admitted the said fact. They further contended that the petitioner owns some land in Sulthan Bathery and also some land in the name of his wife, for which he is remitting tax. They have admitted that the Government have ordered constitution of committees for relocation of willing families from interiors of Wayanad Wildlife Sanctuary and consequent to that, a draft project proposal was submitted for further follow-up action.

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According to them, the inclusion or exclusion of anybody in the relocation draft proposal is not at all any criteria for deciding and believing that land possessed by them is a forest or non-forestland and the relocation plan is in respect of the people settled in Sanctuary and not for the encroachers of forestland. They pointed out that the settlers in the sanctuary are categorized into three types, viz., revenue landholders, forest lease landholders and customary right holders. According to them, the petitioner does not fall under any of them, but, is an encroacher of forestland. It is further pointed out that the leaseholder did not have any right to assign or transfer the land to third parties and any assignment of forest land is null and void. It is further stated that in response to the notice dated 12.03.2004 of the Asst. Wildlife Warden Sulthan Bathery, the petitioner appeared on 19.03.2004 and made a written submission, wherein he himself acknowledges the fact that the land in question is a part of the forest lease in the name of

Sri.P.Kumaran, i.e., forest lease permit No.51, which, according to the respondents, is a portion of Alathur Reserve Forest. They have further contended that another notice dated 26.03.2004 issued to the petitioner to vacate the encroached land within 14 days was not obeyed by the petitioner. Hence, according to them, they were forced to evict the petitioner forcibly in accordance with Section 66 of the Kerala Forest Act.

3. Arguments have been heard.

4. The learned counsel for the petitioner, inviting my attention to Exts.P10 to P13 produced along with IA No.13126/2015, submitted that as per Ext.P10 judgment in CC No.692/2009 on the files of the Judicial First Class Magistrate Court, Sulthan Bathery, the petitioner was acquitted finding that he is not a trespasser and that he is in possession and he has not demolished any 'junda' as alleged. It is further submitted that the petitioner submitted Ext.P11 application requesting the Government to include him in the resettlement plan.

5. In answer to the said submission, the learned Special Government Pleader submitted that the application is pending before the Chief Minister and the authority concerned to consider the request of the petitioner is the 3rd respondent.

In the light of what has been stated above and also considering the facts and circumstances of the case, the writ petition is disposed of permitting the petitioner to approach the 3rd respondent with a petition as above within a period of one month from the date of receipt of a copy of this judgment; and in the event of filing such a petition, the same shall be considered and disposed of by the 3rd respondent within a period of three months thereafter, after affording the petitioner an opportunity of being heard. Till that exercise is completed, the present state of affairs shall continue.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-