

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 14474 of 2005 (W)

PETITIONER:

**S. JAYASREE,
PADINJATTIDATHU HOUSE,
PANNIVIZHA, ADOOR.**

**BY SRI.KURIAN GEORGE KANNANTHANAM (SENIOR ADVOCATE)
ADV.SRI.TONY GEORGE KANNANTHANAM**

RESPONDENT(S):

- 1. THE REVENUE DIVISIONAL OFFICER,
ADOOR.**
- 2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**

BY SENIOR GOVERNMENT PLEADER SRI. K.K.SAIDALAVI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : COPY OF PATTA DATED 14.10.1966 ISSUED IN FAVOUR OF THE PETITIONER'S FATHER.
- EXT. P2 : COPY OF AUCTION NOTIFICATION NO.B4-6770/91 DATED 10.3.2005 ISSUED BY THE 1ST RESPONDENT.
- EXT. P3 : COPY OF REPRESENTATION DATED 9.5.2005 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXT. P4 : COPY OF LETTER DATED 3.2.2010 BY THE D.F.O.
- EXT. P5 : COPY OF REQUEST DATED 28.7.2010 MADE BY THE PETITIONER.
- EXT. P6 : COPY OF REQUEST DATED 2.9.2011 FROM THE PETITIONER.
- EXT. P7 : COPY OF REPLY DATED 16.9.2011 TO THE PETITIONER.
- EXT. P8 : TRUE COPY OF THE APPLICATION DATED 25.6.2015 BY THE PETITIONER.
- EXT. P9 : TRUE COPY OF THE REPLY DATED 7.7.2015 ISSUED TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 14474 of 2005

Dated this the 29th day of October, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P2 notice issued by the 1st respondent RDO to auction the right to cut and take two trees, which, according to the Government, are rosewood trees in the revenue land comprised in Sy.No.750/1A/15 of Adoor Village assigned to the petitioner's father in 1966. According to the petitioner, the impugned notice was issued under the wrong impression that those are rosewood trees. It is pointed out that before the filing of this writ petition, a site inspection was conducted by the DFO, who certified that they are not rosewood trees.

2. In the counter affidavit filed by the State, the respondents would contend that in 1991, the petitioner and her father attempted to cut and remove the branches of those trees; and accordingly, the said trees were

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valued by the DFO in 2005 as per Ext.P4 for selling them. According to them, since the market value of timber so valued exceeded ₹10,000/-, the 1st respondent is the authority to conduct sale by auction. Hence, they justified Ext.P2 auction notice.

3. I have heard the learned counsel for the petitioner and the learned Government Pleader in the matter.

4. The learned counsel for the petitioner would submit that once the land has been assigned, as per the first condition in the 'patta', the Government has right only over four trees included in the Schedule to Appendix II of the Land Assignment Rules. It is pointed out that those trees are being 'Ebony', 'Sandalwood', 'Teak' and 'Blackwood', 'Rosewood' is not included in the Schedule. According to the learned counsel for the petitioner, the petitioner and her father are the absolute owners of the land and they have paid the 'patta' fee also. As per Ext.P1, an extent of 71 cents of revenue land was

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assigned to the petitioner's father in 1966 by the Government. In 1991, a portion of the said land (22 cents) was assigned to the petitioner by her father by way of settlement and the petitioner and her family are residing in the said land and doing rubber cultivation. The learned counsel for the petitioner points out that in the light of the stand taken by the State in the counter affidavit, the petitioner made Ext.P5 request before the Taluk Officer under the RTI Act for the report from Forest Department regarding the wood and the value fixed for it. Then, she received Ext.P4 site inspection report and Ext.P9 from the DFO stating that the trees found are velleetti, which are neither rosewood nor blackwood.

5. As velleetti and rosewood do not come under the list of reserved trees in Appendix III Part A and B of the Land Assignment Rules, the respondents cannot claim any right over those trees. Moreover, the respondents have not objected to Exts.P4 or P9. The definite case of the petitioner is that if the said trees are cut and

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removed, the same would damage the rubber cultivation. It is also pointed out that the respondents admit the assignment of land on payment of land value and tree value payable in respect of assigned land. In para 6 of the counter affidavit also, they admit that the petitioner is the absolute owner of the assigned property. As it is evident from Exts.P4 & P9 that the trees sought to be cut and removed are only velleetti, Ext.P2 auction notice cannot be sustained in the eye of law. It is also relevant to note that Ext.P2 was issued without hearing the petitioner. Therefore, on a consideration of the entire materials now placed on board, this Court is of the view that Ext.P2 has to go.

In the result, the writ petition is allowed and Ext.P2 is quashed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-