

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 4460 of 2014 (F)

PETITIONER(S):

**MATHEW THOMAS, PROPRIETOR,
PARUTHUMAPARA, KUZNIMATTOM P.O.,
KOTTAYAM DISTRICT - 686 016.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S):

- 1. THE KERALA STATE POLLUTION CONTROL BOARD,
THIRUVANANTHAPURAM - 695 004,
REPRESENTED BY ITS MEMBER SECRETARY.**
- 2. THE ENVIRONMENTAL ENGINEER,
THE KERALA STATE POLLUTION CONTROL
BOARD, DISTRICT OFFICE, ST.ANTONY'S COMPLEX,
NAGAMPADAM, KOTTAUYAM - 686 001.**
- 3. K.A.JOHN, S/O.ABRAHAM, PADASSERIL HOUSE, KUIZHIMATTOM P.O.,
KOTTAYAM DISTRICT - 686 016.**

**R1 & R2 BY ADV. SRI. M.AJAY, SC
R3 BY ADVS. SRI.P.VINODKUMAR
SRI.T.KAJITH KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-07-2015, ALONG WITH WPC. 7799/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE PHOTOCOPY OF SALE DEED NO.494/2010 DATED 10.03.2010 OF S.R.O. PUTHUPPALLY.

EXHIBIT P2 : TRUE PHOTOCOPY OF THE LICENCE ISSUED TO THE PETITIONER BY THE SECRETARY PANACHIKKAD GRAMA PANCHAYATH.

EXHIBIT P2(A) : TRUE PHOTOCOPY OF LICENCE DATED 06.05.2013 ISSUED BY THE SECRETARY, PANACHIKKAD GRAMA PANCHAYATH.

EXHIBIT P3 : TRUE PHOTOCOPY OF THE CONSENT TO OPERATE BEARING NO.PCB/KTM/ICO/1092/2011 DATED 03.09.2011 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P4 : TRUE PHOTOCOPY OF LICENCE BEARING NO.DFO/KTM/IIA/2015 DATED 06.04.2013.

EXHIBIT P5 : TRUE PHOTOCOPY OF THE NOTICE BEARING NO.PCB/KTM/CO/130/2009 DATED 03.04.2013.

EXHIBIT P5(A) : TRUE PHOTOCOPY OF THE LETTER DATED 02.05.2013 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P6 : TRUE PHOTOCOPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 21.06.2013.

EXHIBIT P6(A) : TRUE PHOTOCOPY OF THE LETTER DATED 26.06.2013 BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P7 : TRUE PHOTOCOPY OF THE NOTICE BEARING NO PCB/KTM/CO/130/2009 DATED 06.07.2013 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8 : TRUE PHOTOCOPY OF THE NOTICE PCB/KTM/CO/130/2009 DATED 28.11.2013 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8(A) : TRUE PHOTOCOPY OF THE LETTER DATED 17.12.2013 BY THE PETITIONER.

EXHIBIT P9 : A TRUE PHOTOCOPY OF THE CONSENT WITHDRAWAL INTENTION NOTICE DATED 25.01.2014.

EXHIBIT P10 : A TRUE PHOTOCOPY OF THE JUDGMENT IN O.P.NO.27582/2000 DATED 03.04.2001.

EXHIBIT P11 : A TRUE PHOTOCOPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER.

Msv/

WP(C).No. 4460 of 2014 (F)

EXHIBIT P12 : A TRUE PHOTOCOPY OF REQUEST DATED 05.02.2014 SUBMITTED BY THE PETITIONER.

EXHIBIT P13 : TRUE COPY OF THE APPLICATION DTD.16.6.2014.

EXHIBIT P14 : TRUE COPY OF THE RELEASE CONSENT TO OPERATE DTD.7.8.2014.

EXHIBIT P15 : TRUE COPY OF THE ORDER BEARING NO.PCB/KTM/CO/130/2009 DTD.20.9.2014.

EXHIBIT P16 : TRUE COPY OF THE ORDER BEARING NO.PCB/KTM/CO/130/2009 DTD.5.3.2015.

EXHIBIT P17 : TRUE COPY OF THE REQUEST DTD.20.3.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P18 : TRUE COPY OF THE COMMUNICATION BEARING NO.PCB/KTM/CO/130/2009 DTD.25.3.2015.

EXHIBIT P19 : TRUE COPY OF THE ORDER DTD.27.3.2015 IN CO(C) NO.1331/2014.

EXHIBIT P20 : TRUE COPY OF THE ORDER BEARING NO.PCB/KTM/CO/130/2009 DTD.30.3.2015.

EXHIBIT P21 : TRUE COPY OF THE LETTER DTD.2.6.2015 SUBMITTED BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

ANNEXURE R2(a): TRUE COPY OF THE MINUTES OF THE MEETING CONVENED BY THE CHAIRMAN ON 25.1.2011 WITH THE LETTER DTD.9.2.2011.

ANNEXURE R2(b): TRUE COPY OF THE CONSENT TO OPERATE ISSUED TO THE UNIT.

ANNEXURE R2(c): TRUE COPY OF THE CONSENT WITHDRAWAL INTENTION NOTICE ISSUED TO THE UNIT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P(C). Nos.4460 of 2014 & 7799 of 2015

Dated this the 01st day of July, 2015.

JUDGMENT

Both the writ petitions are disposed of together, since both raise the question of justification of conducting a sawmill in Survey No.502/4,5,6 & 7 of Panachikkad Village, Kottayam District.

2. The petitioner in WP(C) No. 4460 of 2014 is the owner of the sawmill, who challenges Ext.P9 order of the Environmental Engineer, Pollution Control Board, which cancelled the 'Consent to Operate' granted to the sawmill. WP(C)7799 of 2015 is a writ petition filed by the residents of the locality, challenging the conduct of the sawmill on the ground that the licence issued by the Forest Department, produced at Ext.P2 in that writ petition, is illegal. The said certificate is produced as Ext.P4 in WP(C) No.4460 of 2014, and is the basis on which the owners of the

sawmill applied for Consent to Operate with the Pollution Control Board.

3. For convenience, WP(C) No.4460 of 2014 is dealt with first. The petitioners/owners admittedly purchased 27 cents of property by Ext.P1 deed dated 10.03.2010. A furniture industry was being conducted in the said property by the sawmill-owner's vendor. The sawmill-owner purchased the property along with the buildings and machinery of the said unit. Subsequently, a property having an extent of 8 cents lying adjacent to the said property was also purchased. The sawmill-owner obtained a licence for running a sawmill from the Local Self Government Institution, evidenced at Ext.P2, which is seen to be valid from 31.03.2010. An application for Consent to Operate was filed before the Pollution Control Board, which was issued as per Ext.P3, with validity period 03.09.2011-30.06.2014. Though the Consent to Operate as extended by the Pollution Control Board, expired on 31.03.2015, the petitioner had been continuing the operation, on the basis of the interim orders issued by this Court in the writ petition. Such interim orders were issued since there

were disputes with respect to the renewal; on the objections raised by the residents of the locality. The interim order was issued on the basis that Ext.P4 licence for sawmill, issued by the Divisional Forest Officer, Kottayam was valid till 05.04.2016. The consent to operate was withdrawn by the Pollution Control Board only since the residents of the locality objected to the operation of the sawmill; on the ground that as per judgment in OP No.27582 of 2000, no sawmill could be carried on in the said property.

4. The learned counsel for the sawmill-owner, would submit that notices were frequently issued on the complaint of the 3rd respondent, which according to him, was ill-motivated. The notices are evidenced at Exts.P6,P7 and P8; the petitioner, is said to have made rectifications as directed by the Environmental Engineer of the Board and had also issued replies evidenced at Exts.P5(a), P6(a) and P8(a). By Ext.P9, the consent granted earlier was sought to be withdrawn for reason that no sawmill could be operated in the aforecited survey numbers, as has been held in O.P. No.27582 of 2000, the judgment of which is

produced at Ext.P10. Despite the interim order issued in the case, the Environmental Engineer of the Pollution Control Board had been recalcitrant in so far as withdrawing the consent, and not considering the renewal application, inspite of orders issued from this Court, goes the argument.

5. Ext.P10 is the judgment passed in the writ petition filed by the residents of the locality, against the predecessor-in-interest of the sawmill-owner. The said person, who was conducting a furniture unit, was impleaded as the 3rd respondent in the aforesaid case. The petitioners therein were aggrieved by the steps taken by the respondents 3 and 4 to set up a factory and workshop, including the conduct of a sawmill in the property. The petitioners therein had also filed a civil suit, in which an injunction was obtained, restraining the respondents from constructing any building for the purpose of running of the factory, unless permitted by the Pollution Control Board. The predecessor-in-interest, in fact, obtained consent from the Pollution Control Board dated 16.05.2000.

6. It was the earlier owners' contention, in the said writ

petition that though there was no requirement for a consent to operate a furniture unit, they had applied for the same only in view of the objections raised by the residents of the locality. The consent issued by the Pollution Control Board also was on special conditions imposed to control the pollution anticipated. The said special conditions were all complied with and it was the specific plea of the respondents 3 and 4 in their Counter Affidavit that, *"The unit is a small scale industrial unit for making furniture, which is a non-pollutable and unobjectionable industrial unit"*. The Pollution Control Board also, in the said case, submitted before Court, that there was in fact no need to issue a consent with respect to a furniture based industry. But, however, the premises were examined and the consent issued only by reason of the objections raised by the residents of the locality. Considering the rival contentions, this Court, in the operative portion of the judgment, said so in paragraph 10:

"10. The 1st and 2nd respondents will also ensure that the 3rd respondent is conducting only a furniture unit in Sy. No.502/4,5,6 & 7 of Panachikkadu Village, Kottayam District and that the 3rd respondent does not conduct any sawmill as alleged by the petitioners."

7. The Pollution Control Board as also the residents of the locality would contend that the absolute interdiction is in so far as prohibition from conducting a sawmill, in the property. It cannot be taken away by a subsequent conveyance , is the argument.

8. This Court is unable to countenance such contention, since the prohibition, as was indicated in the operative portion of the judgment, was against the earlier-owner of the property. The prohibition also was only on the basis of the specific contentions raised therein. The earlier-owners had only an intention to carry on, a furniture manufacturing unit. It was their specific contention that the same was an SSI unit and that there were no activities carried on akin to a sawmill, which alone would require consent from the Pollution Control Board. It was in such circumstance, that the Court directed the Pollution Control Board to ensure that no sawmill is carried on by the earlier-owner. No subsequent purchaser can be interdicted from carrying on a sawmill in the said property, if such purchaser has the necessary licences from the competent authorities. The objections of the respondents would be relevant for consideration, before the

Pollution Control Board, even then; but there can be no blanket prohibition of such operations being carried on in the property; by virtue of the earlier judgment. It is also significant that at the earlier point of time the Pollution Control Board had not examined the feasibility of carrying sawmill operations, in the property. The Pollution Control Board as also the Court, at the earlier instance, proceeded on the undertaking of the then owners that they do not intend to conduct a sawmill. Hence the prohibition made in the judgment.

9. The sawmill however would require a consent from the Pollution Control Board. Since the 'Consent to Operate' as of now is not in existence, the above finding could have normally resolved the issue and it could have been directed that the Pollution Control Board re-examine the matter after hearing the objectors too. However this Court's hands are tied, as of now by reason of the challenge made in WP(C) No.7799 of 2015 against the licence issued by the Divisional Forest Officer, Kottayam, produced as Ext.P2 in the said writ petition.

10. WP(C) No.7799 of 2015 challenges Ext.P2 on the

ground that the licence so issued in Form No.II A under Rule 7(2) of the Kerala Forest [Regulation of Sawmills and other wood-based Industrial Units] Rules, 2012 [for brevity, the Rules of 2012] could not have been issued in such Form, for reason only of the same being applicable only to those sawmills or other wood-based industrial units, which were in existence as on 30.10.2002. The learned counsel for the petitioners in the said writ petition would take this Court to **Godavarman Thirumalpad v. Union of India and others [2002 (9) Scale 81]** to emphasise the significance of the date: 30.10.2002, to be the date on which the said judgment was passed. The learned counsel would also invite this Court to paragraph 43 of the said judgment, which is extracted hereunder:

"43. No State or Union Territory shall permit any unlicensed saw-mills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee."

11. On the basis of the aforesaid judgment, the Rules of 2012 were framed by the State, invoking the powers under Sections 39 and 76 of the Kerala Forest Act, 1961. Rule 3 deals with restriction on establishment of sawmills and other wood-based industrial units. By sub-rule (i) of Rule 3, a specific provision was brought in, restricting such operations without obtaining a licence from the Authorised Officer. By sub-rule (iii) of Rule 3, every person owning or running a sawmill or any other wood-based industrial unit, existing on or before 30.10.2002, had to apply for licence under the Rules within a period of six months from the date of commencement of the Rules. By sub-rule (vi) of Rule 3, it was provided that all sawmills or wood-based industrial units, which had been functioning on the date of commencement of the Rules, under the licence issued by the Local Self Government Institutions, would be allowed to be operate till a decision is taken by the Authorised Officer. Rule 6 provided the procedure for obtaining a licence from the Authorised Officer. Separate forms were prescribed for applications from the units having a licence from the Local Self Government Institutions,

prior to 30.10.2002 and the new sawmills or other wood-based industrial units; which are Form No.I A and Form No.I B respectively.

12. The grant of license for the existing units was in Form IIA and the new ones in Form IIB, as provided in sub-rule(2) of Rule 7. The specific contention raised on the basis of the provision of the Rules and the Forms prescribed, is that Ext.P2 licence now issued to the sawmill-owner, for carrying on a sawmill, is in Form IIA, issued for existing units. The sawmill-owner could not have been issued license under Form No.II A, since there was no sawmill carried on in the premises earlier to 30.10.2002, for which reliance is placed on the judgment dated 03.04.2001 in O.P. No.27582 of 2000 produced as Exts.P10 and P1 in the respective writ petitions. The said judgment specifically prohibited the predecessor-in-interest of the sawmill-owner from carrying on a sawmill on the property. The earlier owner had never intended to operate a sawmill in the property and the title stood conveyed to the subsequent owner, being the one running the sawmill only in the year 2010, by Ext.P1.

13. The learned Special Government Pleader (Forest) submits that the licences were issued in Form II A only since the petitioner had produced certificate issued by the Local Self Government Institution, certifying that there was a licence issued prior to 30.10.2002. That would not suffice since the wood-based industry, to be continued, has not only to be commenced prior to 31.10.2002, but continued till the Rules of 2014, came into force.

14. Looking into the operative portion of Ext.P1 judgment, as has been extracted hereinabove, the predecessor-in-interest of the present owner of the property was interdicted from carrying on any sawmill in the property. The present owner asserts that the earlier-owner had been continuing a wood-based industry, after the judgment in 2001, till the sale to the present owner. The same is disputed by the residents of the locality on the ground that the said wood-based industry also stood closed in the year 2005. That however is a disputed question of fact, which this Court would not go into, at this point of time. The same would have to be established before the appropriate authority, if the present owner is seeking only continuation of a wood-based

industry.

15. If the present owner only seeks to carry on the furniture unit alone, which was carried on by the earlier-owner, he should be able to establish that, the same was carried on by the earlier-owner continuously from 2001 till the sale and thereafter, by the present owner till the framing of the Rules. Even then the present owner will have to establish that after his purchase in 2010 and the promulgation of the Rules of 2012, he had obtained a license within six months from the date of introduction of the Rules, being 19.04.2012. Ext.P2 indicates that the licence has been issued only on 06.04.2013. The present owner obviously cannot have a sustainable contention that even a wood-based industry was operated in the property continuously prior to 31.10.2002 and till the sale to him and thereafter till the promulgation of the Rules.

16. In such circumstances, Ext.P2 licence would have to be set aside as one issued, not in accordance with the Rules of 2012. The petitioner in WP(C) NO.4460 of 2014 would be entitled to approach the Authorised Officer under the Rules of 2012 for

setting up of a new sawmill and if such licence is granted, the petitioner would have to also approach the Pollution Control Board for Consent to Operate, as also the Local Self Government Institution. In the event of the sawmill-owner obtaining all statutory licences for running a sawmill, in the property, then the interdiction in Ext.P10 judgment would not operate against him, on the finding that it would have operated only against the vendor of the property and not the vendee. This Court does not find any substance in the contention raised by the petitioners in WP(C) No.7799 of 2015 that, the effect of interdiction in Ext.P10 would be akin to a charge on the property, or even a negative covenant on the property. WP(C) No.4460 of 2014 is disposed of with the above observations. WP(C) No.7799 of 2015 is allowed.

17. Ext.P9 is of no consequences as of now, since the petitioner would have to apply for a consent to operate and also in the circumstances of the petitioner having been relegated to the statutory authority issuing licences under the Rules of 2012. The petitioner definitely cannot operate the sawmill until all statutory licences are obtained. This Court also would not speak

on the conduct of the Environmental Engineer of the Pollution Control Board, urged by the learned counsel for the sawmill-owner, since the said issue could be appropriately dealt with in a contempt case. Parties left to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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