

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937**

**WP(C).No. 4478 of 2015 (I)**  
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**PETITIONER(S):**  
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**N.K.SIVARAMAN AGED 64 YEARS  
S/O. KRISHNANKUTTY, NOKKARA HOUSE, VELLAPARAKUNNU  
KAVASSERY P.O - 678 543, ALATHUR TALUK, PALAKKAD.**

**BY ADV. SRI.P.BABU KUMAR**

**RESPONDENT(S):**  
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- 1. STATE OF KERALA  
REP. BY SECRETARY TO FOREST & WILD LIFE, SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.**
- 2. CUSTODIAN ECOLOGICALLY FRAGILE LAND & CHIEF FOREST  
CONSERVATOR BIO DIVERSITY OFFICE  
THIRUVANANTHAPURAM - 695 014.**
- 3. CHIEF FOREST CONSERVATOR  
OFFICE OF THE CONSERVATOR, EASTERN CIRCLE, OLAVAKKODU  
PALAKKD - 678 002.**
- 4. DIVISIONAL FOREST OFFICER  
NENMARA, PALAKKAD - 678 508.**

**BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FORESTS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C).No. 4478 of 2015 (I)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**P1 - TRUE PHOTOCOPY OF THE INSPECTION REPORT PREPARED BY THE  
ECOLOGICALLY FRAGILE LAND COMMITTEE DT. 19.6.07.**

**P2 - TRUE PHOTOCOPY OF THE RECOMMENDATION OBTAINED BY THE PETITIONER  
UNDER RTI ACT.**

**P3 - TRUE PHOTOCOPY OF THE LETTER ISSUED BY 2ND RESPONDENT TO THE 3RD  
RESPONDENT DT. 13.5.08.**

**P4 - TRUE COPY OF THE PROPOSAL ISSUED BY THE CONSERVATOR OF FORESTS  
DT. 21.1.09.**

**P5 - TRUE PHOTOCOPY OF THE LETTER ISSUED BY 2ND RESPONDENT DT. 03.11.08.**

**RESPONDENT(S)' EXHIBITS NIL**  
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**//TRUE COPY//**

**PS TO JUDGE**

**Rp**

**ASHOK BHUSHAN, CJ**

**&**

**A.M. SHAFFIQUE, J.**

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W.P (C) No. 4478 of 2015

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Dated this, the 16<sup>th</sup> day of July, 2015

## **J U D G M E N T**

### **Ashok Bhushan, CJ**

Petitioner is the owner of 4.07 acres of rubber plantation in Re-sy.No.236/3, Block No.30 of Kavassery I Village, Alathur Taluk and his property has been notified under Section 3 of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, (hereinafter referred to as 'Act 2003'), as per notification dated 25<sup>th</sup> July, 2006 which was published in the Gazette on 22<sup>nd</sup> August, 2006. Petitioner challenged the above notification before the Kerala Forest Tribunal by filing OA No.45/2008. The above OA was partially allowed by the EFL Tribunal, Palakkad as per order dated 18/12/2009. The said order is under challenge before this Court in MFA No.46/2010 filed by the petitioner and MFA No.54/2010 filed by the State. Both the MFAs are pending.

2. Petitioner in this writ petition has prayed for the

following reliefs;

- “i) Issue a writ of mandamus or any other appropriate writ order or direction directing the respondents to complete the proceedings initiated as per Exts.P1, P2 & P3 within a time frame after affording an opportunity of hearing to the petitioner.*
- ii) Issue any other appropriate order or direction which this Hon'ble Court deems fit and proper in the nature and circumstances of the case”.*

3. Petitioner's case is that proceedings had been initiated by Exts.P1, P2 and P3, which may be directed to be completed within a time frame. Ext.P1 is the report of Ecologically Fragile Land Committee on the land involved in OA No.114/1994. The said Committee inspected the land involved on 19<sup>th</sup> June, 2007. The land was earlier notified under Kerala Private Forest (Vesting and Assignment) Act, 1971 by notification dated 20<sup>th</sup> May, 1985 against which OA No.114/1994 was filed for getting exemption of the land from vesting, which was dismissed on 18<sup>th</sup> July, 1995. MFA No.1155/1995 was allowed in favour of the applicant as per judgment of the High Court dated 9/10/2002 with direction to the Forest Tribunal to dispose of the matter, which OA was allowed on

8<sup>th</sup> April, 2003. The State filed MFA 83/2005 which was dismissed. The land involved in OA No.114/1994 was subsequently notified by notification published on 22<sup>nd</sup> August, 2006 as noted above. In the above connection, Ext.P1 report is on record. The Committee has also made recommendation. Ext.P3 is a letter dated 13<sup>th</sup> May, 2008 from Custodian to the Conservator of Forests. The Custodian stated that there is a proposal for notifying the land under Section 4. Hence, Conservator of Forests may submit proposal in the prescribed proforma.

4. Learned counsel for the petitioner submits that the Custodian is liable to decide the proceeding which are referable to Section 19 of Act, 2003. An inspection having been conducted, the Custodian has to finalise the proceeding. He submits that by this writ petition, only a mandamus is sought for directing the Custodian to decide the matter.

5. Section 19 of sub section (3) of Act 2003 relates to validation and transitory provisions. Section 19(3) on which reliance is placed is as follows;

*"19(3) Notwithstanding anything contained*

*in the said Ordinance or in any judgment decree or order of any Court-*

*(a) no land other than the ecologically fragile land as defined in this Act, whether notified under sub-section (3) of Section 3 of the said Ordinance or not, shall be deemed to have vested or ever to have been vested in Government; and*

*(b) every notification issued in respect of any land under sub-section (3) of Section 3 of the said Ordinance shall be scrutinised by the custodian suo motu or on an application made by the owner or any person having the right of possession or enjoyment of such land and if necessary, such notification shall be revised and issued in accordance with the provisions of this Act”.*

6. Reading of Section 19(3) (b) clearly indicates that *suo motu* power of the Custodian to scrutinize the notification or on an application of an applicant is with respect to a land notified under sub section (3) of Section 3 of the Ordinance, i.e., Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001, which Ordinance has been referred to in sub section (1) of Section 19. The power under Section 19(3) (b) was given to Custodian since the provisions of Act 2003 has enacted certain measures with regard to definition clause as given in the

Ordinance, 2001. Due to the said reason, the legislature provided that a *suo motu* scrutiny or scrutiny on an application be made, so that, if any land which was notified under Ordinance does not satisfy the conditions under the Act, the said land can be de-notified. The object and purpose of Section 19 (3) (b) was only to the effect of scrutinising the land which was notified under Ordinance in reference to the provisions of Act, 2003. The land of the petitioner, which has been notified by notification dated 25<sup>th</sup> July, 2006 as published in the Kerala Gazette on 22<sup>nd</sup> August, 2006, has been clearly mentioned in para 4 of the statement filed on behalf of the 4<sup>th</sup> respondent. It is useful to refer to para 4 of the statement of the 4<sup>th</sup> respondent, which is to the following effect;

*"4. It is submitted that the property which is the subject matter of the above writ petition was notified as Ecologically Fragile Land under Section 3 of the Kerala Forest (Vesting & Management of Ecologically Fragile Lands) Act, 2003 as per Notification No.EFL.6-121/06 dt.25.7.2006 of the Custodian of Ecologically Fragile Lands and published in the Kerala Gazette dt 22.8.2006. The petitioner challenged the above notification before the Hon'ble Court of the Kerala Forest (Vesting &*

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*Management of Ecologically Fragile Lands) Tribunal, Palakkad by filing OA No.45/2008. The above OA was partly allowed by the Hon'ble EFL Tribunal, Palakkad as per Order dated 18.12.2009. A true copy of the above order dt 18.12.2009 of the Hon'ble EFL Tribunal, Palakkad in OA No.45/2008 is produced herewith and marked as Annexure-R4 (a)".*

7. Petitioner's land having been notified under Act 2003, there is no question of applicability of Section 19 (3) (b) of Act 2003 nor any direction can be issued to the Custodian to take any proceeding. In fact, as noted above, against the above notification, petitioner has already filed OA No.45/2008 challenging the notification which was partly allowed and the matter is now pending in High Court. Exts.P1 and P2, on which petitioner has placed reliance for issuing direction, were reports of Ecological Fragile Land Committee with regard to OA No.114/1994. Exts.P1 and P2 do not indicate that Custodian has initiated any proceeding under Section 19(3)(b) either *suo motu* or on the application of the petitioner. Ext.P3 as noted above was only a letter for submitting a proposal for notification under the

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EFL Act, 2003, which notification was actually issued with regard to the petitioner's land. Thus, Ext. P3 is wholly irrelevant for the relief which is sought for.

8. In the present case, there being no material to indicate that any proceedings were initiated under Section 19(3)(b) of the Act, we do not see any ground for issuing a direction to conclude the proceeding by the Custodian. Hence, the prayers made in the writ petition are misconceived.

Writ petition is therefore dismissed.

Sd/-  
**ASHOK BHUSHAN, CHIEF JUSTICE**

Sd/-  
**A.M. SHAFFIQUE, JUDGE**

Rp

//True Copy//

PS to Judge