

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 10314 of 2009 (H)

PETITIONER(S):

**PHILIP THOMAS, S/O. ITTY THOMAS,
GEERAKATHINAL HOUSE, VADASSERIKARA P.O.,
PATHANAMTHITTA.**

**BY ADVS.SRI.M.K. DAMODARAN (SR.)
SRI.O.V. MANIPRASAD**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT, FOREST DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE DIVISIONAL FOREST OFFICER,
KOTHAMANGALAM FOREST DIVISION, KOTHAMANGALAM
ERNAKULAM DISTRICT.**
- 3. THE FOREST RANGE OFFICER,
THODUPUZHA FOREST RANGE, THODUPUZHA.**

R BY SPL. GOVERNMENT PLEADER (FOREST) SRI.M.P.MADHAVANKUTTY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

STK

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: TRUE COPY OF THE LETTER OF DFO DATED 31.01.2008.
- EXT. P2: TRUE COPY OF THE LETTER OF DFO RANNI DATED 06.02.2008.
- EXT. P3: NO OBJECTION CERTIFICATE DATED 28.05.2008.
- EXT. P4: ELECTRICITY BILL DATED 16.03.2009.
- EXT. P5: CONSENT LETTERS ISSUED BY THE NEIGHBOURING PERSONS.
- EXT. P6: SHOW CAUSE NOTICE DATED 8.7.2008.
- EXT. P7: EXPLANATION SUBMITTED BY THE PETRITONER TO EXT. P6.
- EXT. P8: TRUE COPY OF THE ORDER DATED 6.8.2008 OF 2ND RESPONDENT.
- EXT. P8: TRUE COPY OF THE ORDER DATED 20.1.2009 OF 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:

- EXT. R3(a): TRUE COPY OF G.O.(P) No.93/99/FOREST DT.15.11.99.
- EXT. R3(b): TRUE COPY OF CONSENT LETTER DATED 28.05.2008 WRITTEN BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT. R3(c): TRUE COPY OF LETTER DATED 24.07.2008 ADDRESSED BY THE PETITIONER TO 2ND RESPONDENT.
- EXT. R3(d): TRUE COPY OF OFFICE NOTE NO.E1.186/08 DATED 12.11.2008 OF THE 2ND RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

STK

P.D. RAJAN, J.

W.P.(C)10314 of 2009

Dated this the 14th of October, 2015

JUDGMENT

This Writ Petition (Civil) is filed under Article 226 of the Constitution of India seeking the following directions.

- i. Issue a writ of certiorari quashing Exts.P6, P8 and P9 and all further proceedings thereon.
- ii. Issue a writ of mandamus or direction, directing the respondents not to interfere with the functioning of the sawmill of the petitioner situated in survey No.1586/1-2 of Karikode Village in Thodupuzha Municipality.
- iii. Such other relief as this Honourable Court may deem fit and proper in the facts and circumstances of the case.

2. The writ petitioner is conducting a sawmill in Survey No.1586/1-2 of Karikode Village in Thodupuzha Municipality. He obtained "No Objection Certificate" from the second respondent for functioning the mill in the year 1999-2000. Earlier he

was conducting a saw mill at Uthimoodu in Pathanamthitta (District), subsequently he shifted it to the present premises in Thodupuzha Municipality for better business prospects. As per Ext.P1, the Divisional, DFO, Ranni, issued Ext.P2 order. He also obtained Ext.P3 No Objection Certificate. Subsequently, respondent issued notice to the petitioner stating several complaints received from the neighbours residing near the saw mill and received Ext.P6 show cause notice. He submitted Ext.P7 explanation. Another reason stated by the second respondent was that, the saw mill situates within 5 kms of the forest area and 'No Objection Certificate' is to be cancelled.

3. The learned counsel appearing for the petitioner contended that, there is a mistake in reporting the distance. There are several saw mills functioning in and around the municipality. The reasons stated for the cancellation of NOC is without any application of mind. In the circumstance, he

approached this court seeking the above relief. He also submitted that after preferring this petition, new rules for installing the saw mill are framed by the Government and a committee is constituted and he seeks a direction to dispose the petition as per Kerala Forest (Regulation of Saw Mills and Other Wood-based Industrial Units) Rules, 2012.

4. The Special Government Pleader, Forest submitted that the map prepared by Geo Informatic Centre shows that the distance between the Edavetty Reserve Forest and the saw mill is less than 5 km and a new committee is constituted as per the new rules.

It is true that the petitioner submitted an application on 19.12.2012 before the Divisional Forest Officer, Kothamangalam. After the commencement of the new Rules, the authorised officer is the competent person to examine the matter, since there is a dispute with regard to the distance. While exercising the powers conferred by Sections 39 and 76 of the Kerala Forest Act 1961, the

authorized officer appointed, have ample power to decide the dispute. In the circumstance, 2nd respondent is directed to consider and dispose the application as per the Kerala Forest (Regulation of Saw Mills and Other Wood-based Industrial Units) Rules, 2012 within two months from the date of receipt of a copy of this judgment.

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//TRUE COPY//

P.A. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE