

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WP(C).No. 7760 of 2014 (T)

PETITIONER(S):

1. SULEIKHA,
W/O.MOHAMMED, MELETHIL HOUSE, CHEMBAKASSERI EAST P.O.,
ERNAD TALUK, MALAPPURAM DISTRICT, PIN-679327.
2. UMMUSALMA,
D/O.MOHAMMED, MELETHIL HOUSE, CHEMBAKASSERI EAST P.O.,
ERNAD TALUK, MALAPPURAM DISTRICT, PIN-679327.
3. ABIDA,
D/O.AHAMMED, MELETHIL HOUSE, CHEMBAKASSERI EAST P.O.
ERNAD TALUK, MALAPPURAM DISTRICT, PIN-679327.
4. ASMABI,
W/O.ITTEPADAM MUSTHAFFA, VALLAYOOR P.O.
NILAMBUR TALUK, MALAPPURAM DISTRICT.
5. MOHAMMED IBRAHIM,
S/O.MOHAMMED, MELETHIL HOUSE, CHEMBAKASSERI EAST P.O.,
ERNAD TALUK, MALAPPURAM DISTRICT, PIN-679327.
6. SHABNA,
W/O.MOHAMMED IBRAHIM, MELETHIL HOUSE,
CHEMBAKASSERI EAST P.O., ERNAD TALUK,
MALAPPURAM DISTRICT, PIN-679327.
7. JAMEELA,
W/O.HYDRU, THEKKETHIL HOUSE, THUVVOOR DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.
8. MOHAMMED JUNAD T.,
S/O.HYDRU, THEKKETHIL HOUSE, THUVVOOR DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.
9. MOHAMMED MUFTHI T.
S/O.HYDRU, THEKKETHIL HOUSE, THUVVOOR DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.M.C.JOHN

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WP(C).No. 7760 of 2014 (T)

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY,
FOREST AND WILD LIFE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-696001.
2. THE CHIEF CONSERVATOR OF FORESTS,
(CUSTODIAN OF VESTED FOREST), EASTERN CIRCLE,
OLAVAKKODE, PALAKKAD-678002.
3. THE CHIEF CONSERVATOR OF FORESTS,
NORTHERN REGION, P.O.ARAKINAR, MATHOTTAM,
KOZHIKODE.
4. THE DIVISIONAL FOREST OFFICER,
PALAKKAD DIVISION, PALAKKAD-678009.
5. FOREST SURVEYOR,
FOREST MINI SURVEY OFFICE, PALAKKAD-678009.

BY SRI.THOMASKUTTY, SPECIAL GOVERNMENT PLEADER FOR FOREST

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE ORDER DT.14-5-1976 IN OA 965/74 OF THE FOREST TRIBUNAL, PALAKKAD.
- EXHIBIT P2 : TRUE COPY OF THE JUDGMENT DT.19-9-1980 IN MFA 286/77 OF THE HIGH COURT.
- EXHIBIT P3 : TRUE COPY OF THE ORDER NO.VFC/74/23(190) DT.10-11-75 ISSUED BY THE CUSTODIAN OF VESTED FORESTS.
- EXHIBIT P3A : TRUE COPY OF THE RECTIFICATION ORDER NO.VF 15527/77, DT.19-12-77 ISSUED BY THE CUSTODIAN.
- EXHIBIT P4 : TRUE COPY OF THE REGISTERED ASSIGNMENT DEED NO.2970/81 DT.16-11-1981 IN FAVOUR OF ACHUTHAN NAIR.
- EXHIBIT P5 : TRUE COPY OF THE ASSIGNMENT DEED NO.230/12 DT.11-1-2012 IN FAVOUR OF THE 1ST PETITIONER.
- EXHIBIT P6 : TRUE COPY OF THE REGISTERED SALE DEED NO.235/12 DT.11-1-2012 SRO CHERPULASSERY IN FAVOUR OF 7TH PETITIONER.
- EXHIBIT P7 : TRUE COPY OF THE LETTER NO.09/2014 DT.7-1-2014 ADDRESSED TO R4 BY THE VILLAGE OFFICER.
- EXHIBIT P8 : TRUE COPY OF THE LETTER DT.3-3-2014 ADDRESSED TO R4.
- EXHIBIT P9: TRUE COPY OF THE PERIPHERY SKETCH PREPARED BY THE R5
- EXHIBIT P10: TRUE COPY OF THE NEWS PAPER REPORT IN MALAYALA MANORAMA DAILY
- EXHIBIT P11: TRUE COPY OF THE DOCUMENT RECEIVED UNDER THE RIGHT TO INFORMATION ACT
- EXHIBIT P12: TRUE COPY OF THE ORIGINAL OF EXT.P3(A) ALONG WITH LEGIBLE TYPED COPY
- EXHIBIT P13: TRUE COPY OF THE LETTER NO.T.216/96 ATED 24/6/15 OF THE R3
- EXHIBIT P14: TRUE COPY OF JUDGMENT DATED 5/9/89 OF THE HON'BLE SUPREME COURT IN CIVIL APPEAL NOS.1694-95/1989.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(A): TRUE COPY OF THE VESTED FOREST NOTIFICATION NO.1383/77 DT.10/10/79.

/ TRUE COPY /

A.MUHAMED MUSTAQUE, J.

W.P(C).No.7760 of 2014

Dated this the 16th October, 2015

JUDGMENT

The issue in the Writ Petition is with regard to restoration of land to the petitioner pursuant to the directions in O.A.No.965/74 on the file of the Forest Tribunal and as confirmed by the Division Bench of this Court in M.F.A.No.286 of 1977.

2. This Court on 9.7.2014 passed the following interim order:

“The 4th respondent has filed a statement inter alia stating that in respect of the properties covered by Exts.P1 and P3 involved in O.A.965/74, the respondents are ready to restore the available land to the rightful claimants after completing all procedures. The periphery sketch of the property has already been sent to the assistant Director of Forest Mini Survey, Kozhikode, for scrutiny and approval and on receipt of the approved sketch, the property will be restored to the rightful claimants.

Having regard to this statement, there will be an interim direction to the 5th respondent to complete the procedure as mentioned in paragraph 11 of the statement, within one month from the date of receipt of a copy of this order.”

3. Pursuant to the above, counter affidavit has been filed by the fourth respondent. In paragraph 3 of the counter affidavit it has been stated as follows:

“3. It is submitted that as part of the restoration process, the property was surveyed by the Forest Mini survey team, Kozhikkode and prepared and approved the sketch. As per the OA schedule, the Tribunal ordered to restore 17.6 acres in Sy.No.226/1, 218/4 218/6 and 216/6 in Chalavara Village, Ottapalam Taluk. However, as per the Vested Forest Notification and the periphery sketch, the sy.No.216/6 was not vested in the government and it is not with the Forest Department. Thus, the land in sy.No.216/6 cannot be restored because it is not available with the Forest department for restoration as the same was never vested with the State. Hence the second respondent requested the petitioners to accept the rest of the area in the remaining survey numbers 226/1, 218/4 and 218/6 ie; 14.83 acres, which was vested with the Government.”

4. According to the Special Government Pleader appearing for the Forest Department, the landed property in Sy.No.216/6 cannot be restored, as it is not vested in the Forest Department. It is stated that other lands can be restored to the petitioner.

5. The submission of the learned Special Government Pleader and the averments in the counter affidavit as quoted above that the property in Sy.No.216/6 is not vested with the Forest Department is recorded.

6. It is submitted that the Revenue officials cannot refuse to receive the basic tax for the property in Sy.No.216/6 stating that it is a forest land. However, it is open for the respondents to find out whether it is a Government land, in accordance with law. The remaining land shall be restored to the petitioner without any condition within two months from the date of receipt of a copy of this judgment.

7. The revenue officials shall consider the petitioner's request for accepting basic tax in respect of the landed property comprised in Sy.No.226/1 of Chalavara Village having an extent of 12 acres 81 cents, which was exempted from vesting under Section 3(3) of the Kerala Private Forests (Vesting and Assignment) Act, 1971. Necessary action shall be taken by the revenue officials

after adverting to Exhibits P3 and P3(a). Needful shall be done in this regard within two months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above.

**A.MUHAMED MUSTAQUE
JUDGE**

vgs19/10/15