

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 17719 of 2006 (H)

PETITIONER:

K.K.SREEDHARAN, AGED 52 YEARS
S/O. KESAVAN, KARIPPUKATTIL HOUSE
PINAVERKUDY, URULANTHANNI P.O.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS:

1. THE DIVISIONAL FOREST OFFICER,
MUNNAR.
2. THE FOREST RANGE OFFICER,
NERYAMANGALAM.

R1 & R2 BY SRI.M.P.MADHAVANKUTTY, SPL. G.P.FOR FOREST

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE ORDER NO.76/05 DTD. 2.9.2005 OF R2.
- EXT.P2: COPY OF THE CHALAN RECEIPT NO.837 DTD. 6.9.2005.
- EXT.P3: COPY OF THE ORDER NO.76/05 DTD. 7.9.2005 OF R2.
- EXT.P4: COPY OF THE REPRESENTATION DTD. 3.7.2006 SUBMITTED TO R2.
- EXT.P5: COPY OF LETTER NO.M7.3603/2005 DTD. 28.9.2006 OF R1.
- EXT.P6: COPY OF LETTER NO.30/06 DTD. 19.10.2006 OF R2.

RESPONDENTS' EXHIBITS:

- EXT.R1(a): COPY OF LETTER NO.76/05 DTD. 11.5.2005 OF THE FOREST RANGE OFFICER, NERIYAMANGALAM.
- EXT.R1(b): COPY OF VALUATION STATEMENT.
- EXT.R1(c): COPY OF ORDER NO.B8-26007/05 DTD. 18.1.2006 OF THE CHIEF CONSERVATOR OF FORESTS (ADMINISTRATION).
- EXT.R1(d): COPY OF LETTER NO,30/06 DTD. 23.1.2006 OF THE FOREST RANGE OFFICER, NERIYAMANGALAM.
- EXT.R1(e): COPY OF LETTER NO.M7-3603/05 DTD. 2.8.2006 OF THE DIVISIONAL FOREST OFFICER, MUNNAR.
- EXT.R1(f): COPY OF RECEIPT OF THE LETTER ACKNOWLEDGED BY THE PETITIONER ON 8.8.2006.

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// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

W.P.(C).No.17719 Of 2006.

Dated this the 10th day of April, 2015.

J U D G M E N T

It is the case of the petitioner that an aged and diseased 'Anjili tree' was standing near his house, in the property in which he is having patta, in a precarious condition and it is likely to fall and cause danger to life and property of the petitioner and his family members. Accordingly, he submitted an application before the 2nd respondent, Forest Range Officer, Neryamangalam, pointing out that the tree was likely to fall down and cause danger to the life and property of the petitioner and that he needed the said tree for construction of his house and that he may be permitted to appropriate the same after remitting the tree value. As the patta in respect of the property contained specific condition that trees therein could be cut and removed by the petitioner only after due permission and on payment of requisite fee to the Forest Department, the petitioner was prepared to appropriate the tree by paying the requisite amount in that regard to the Forest Department. The 2nd respondent, Forest Range Officer, after enquiry submitted report

W.P.(C).No.17719 Of 2006

to the 1st respondent, Divisional Forest Officer, and thereupon the 1st respondent passed proceedings dated 20.6.2005 permitting the 2nd respondent to fell the tree and to hand over the same to the petitioner on his remitting Rs.44,619/-, being the tree value. The 2nd respondent issued Ext.P-1 chalan for Rs.52,706/- including tree value, VAT and Forest Development Tax to the petitioner and accordingly, the petitioner remitted the said amount of Rs.52,706/- in the Sub Treasury, Kothamangalam as per Ext.P-2 chalan dated 6.9.2005. It is averred that on the basis of Exts.P-1 & P-2, the 2nd respondent, Forest Range Officer, issued Ext.P-3 order dated 7.9.2005 permitting the petitioner to fell the tree in the presence of the Valara Forest Station staff as per Ext.P-3. The petitioner had to saw the tree so as to use the same for the construction of his house and therefore he had to take the tree that was cut down to nearest saw mill at Kothamangalam. Accordingly, he submitted application dated 28.9.2005 to the 2nd respondent requesting him to grant necessary permission in that regard. Ext.P-4 dated 3.7.2006 was the latest reminder sent by the petitioner at that time, on which no action was taken. It is in this background, the petitioner had filed the above Writ Petition on 6.7.2006 with the prayer for a writ of mandamus to direct the 2nd respondent, Forest Range Officer,

W.P.(C).No.17719 Of 2006

Neryamangalam to issue necessary permission to the petitioner to transport the timber obtained by him from the anjiliy tree pursuant to Ext.P-1 to the nearest saw mill so as to use the same for the construction of his residential house. This Court as per interim order dated 19.7.2006 admitted the Writ Petition and passed the following order:

“Admit. Government Pleader takes notice on behalf of the respondents. Government Pleader submits that although in Ext.P1 the value of the tree has been fixed as Rs.52,706/-, the same is not the correct value of the timber in question and on suspicion of misconduct on the part of the Range Officer, who heard Ext.P1, he has been suspended. According to the learned Government Pleader, a further sum of Rs.50,179/- is due as value of the tree on payment of which the timber can be released to the petitioner. In the above circumstances, I direct the respondents to release the timber to the petitioner on the petitioner furnishing bank guarantee for an amount of Rs.50,179/- as soon as the petitioner furnishes the bank guarantee. The Government Pleader is directed to file a counter affidavit.”

It is stated that the petitioner had duly furnished bank guarantee for the said amount of Rs.50,179/- for the value of the tree as directed by this Court on 19.7.2006. But that still, the respondents did not issue written permit for transporting the timber to the saw mill. Thereupon, the petitioner again moved this Court for further interim order in this Writ Petition and this Court as per order dated 7.12.2006 passed the following order:

W.P.(C).No.17719 Of 2006

“If petitioner has furnished bank guarantee in terms of interim order of this Court dated 19.7.2006, there will be direction to 2nd respondent to issue pass to petitioner to transport the timber immediately on production of this order.”

It is submitted that the petitioner availed the benefit of the interim order dated 7.12.2006 and had taken the timber to the saw mill and had appropriated the timber for his purpose.

2. The respondents have filed a counter affidavit dated 29.8.2008 stating that the original valuation of the tree done by the 2nd respondent, Forest Range Officer, pursuant to Ext.R-1(b) was erroneous and wrong and it did not reflect the actual quantity of the timber and actual value of the timber and that there was some allegations against the said officer, who was holding the post of 2nd respondent, Forest Officer Neryamangalam, which resulted in Ext.R-1(c) in which it is alleged that in various instances as well as one in respect of Ext.R-1(b) valuation, the said officer had committed irregularities and that enquiry against him was in progress. It is further submitted in the counter affidavit that correct quantification of the volume of the timber is done by the Department as per Ext.R-1(d) as per which the total quantity is 6.633 m³ instead of earlier 3.423 m³ in Ext.R-1(b) order and that additional value to be paid by the petitioner for the timber is

W.P.(C).No.17719 Of 2006

Rs.50,179/- which has been mentioned in the interim order dated 19.7.2006, after furnishing the requisite bank guarantee.

3. It is submitted by both sides that the petitioner availed the benefit of the interim orders of this Court. Learned Special Government Pleader appearing for the respondents further submitted that the petitioner has also renewed the validity of the bank guarantee for Rs.50,179/- till 19.9.2015. The only controversy to be resolved is as to whether the quantification of the volume of the timber is in terms of Ext.R-1(b) or is to be done on the basis of Ext.R-1(d). If it is on the basis of the former, then the petitioner has no liability to pay any further amount. On the other hand, if the quantification and valuation is actually to be done on the basis of Ext.R-1(d), the petitioner is to pay Rs.50,179/- to the respondent, Forest Department. As this is essentially a question of fact, it is a matter to be resolved at the departmental level. Accordingly, it is ordered that the petitioner may submit his objections against Ext.R-1(d) before the 1st respondent within a period of three weeks from the issuance of a certified copy of this judgment. The petitioner will also produce a copy of this judgment along with such objections. The 1st respondent will give a reasonable opportunity of hearing to the petitioner and to substantiate his claims and contentions

W.P.(C).No.17719 Of 2006

regarding the assessment of the quantity and value of the cut timber. The 1st respondent will consider the submissions of the petitioner in this regard and take a decision on the same and communicate the same to the petitioner. A decision in this regard may be taken by the 1st respondent well before 31.7.2015, keeping in view of the fact that validity of the bank guarantee is till 19.9.2015. Based on the decision so taken, it is for the parties to proceed further with the matter. If the petitioner has any further grievance in the matter he is given liberty to pursue appropriate remedy in that regard.

With these observations and directions this Writ Petition stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-