

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H

WP(C).No. 10163 of 2015 (U)

PETITIONER:

RAVI.C.A., AGED 33 YEARS, S/O.AZHAKAN,
CHIRAMBATTU HOUSE, THATTEAKKADU,
KEERAMPARA P.O, KEERAMPARA VILLAGE,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.K.J.KURIACHAN

RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY
ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIVISIONAL FOREST OFFICER,
KERALA FOREST DEPARTMENT,
KOTHAMANGALAM.
3. THE RANGE OFFICER, KERALA FOREST
DEPARTMENT, KOTHAMANGALAM.
4. THE SUPERINTENDING ENGINEER
KERALA STATE ELECTRICITY BOARD
ELECTRICAL CIRCLE, PERUMBAVOOR
5. THE ASSISTANT EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL SUB DIVISION, KOTHAMANGALAM.
6. THE ASSISTANT ENGINEER
KERALA STATE ELECTRICITY BOARD,
ELECTRICAL SECTION, KEERAMPARA.

BY ADV. SMT.P.KRADHIKA-KSEB
BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST
BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	TRUE COPY OF CERTIFICATE DATED 17-09-2014 ISSUED BY MEMBER OF KEERAMPARA PANCHAYATH
EXT.P2	TRUE COPY OF CERTIFICATE DATED 02-07-2014 ISSUED BY SECRETARY OF KEERAMPARA GRAMA PANCHAYATH
EXT.P3	TRUE COPY OF CASTE CERTIFICATE DATED 04-07-2014 ISSUED BY TAHASILDAR,KOTHAMANGALAM
EXT.P4	TRUE COPY OF APPLICATION DATED 09-07-2014 SUBMITTED BY THE PETITIONER
EXT.P4(A)	TRUE COPY OF FORM A PREPARED BY THE ASSISTANT EXECUTIVE ENGINEER
EXT.P4(B)	TRUE COPY OF ELECTRICAL DIAGRAM PREPARED BY THE ASSISTANT EXECUTIVE ENGINEER
EXT.P4(C)	TRUE COPY OF EXTIMATE PREPARED BY THE ASSISTANT EXECUTIVE ENGINEER
EXT.P5	TRUE COPY OF BOND DATED 18-07-2014 SUBMITTED BY THE ASSISTANT EXECUTIVE ENGINEER
EXT.P6	TRUE COPY OF UNDERTAKING DATED 17-09-2014 SUBMITTED BY THE ASSISTANT EXECUTIVE ENGINEER
EXT.P7	TRUE COPY OF CERTIFICATE ISSUED BY THE ASSISTANT ENGINEER
EXT.P8	TRUE COPY OF RESOLUTION N O XII(C) DATED 25-09-2009 PASSED BY KEERMAPARA GRAMA PANCHAYATH
EXT.P9	TRUE COPY OF LETTER DATED 25-02-2015 ISSUED BY THE ASSISTANT ENGINEER TO THE PETITIONER
EXT.P10	TRUE COPY OF LETTER DATED 23-01-2015 ISSUED BY THE DIVISIONAL FOREST OFFICER KOTHAMANGALAM
EXT.P11	TRUE COPY OF REPORT DATED 06-01-2015 ISSUED BY THE RANGE OFFICER KOTHAMANGALAM
EXT.P12	TRUE COPY OF INFORMATION DATED 10-03-2015 FURNISHED BY THE ASISSTANT ENGINEER KEERAMPARA
EXT.P13	TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONEER BEFORE THE HONOURABLE CHIEF MINSITER

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EXT.P14	PHOTOGRAPH OF ELECTRIC LINE DRAWN INSIDE THE THATTEKKAD BIRD SANCTUARY
EXT.P16	PHOTOGRAPH OF ELECTRIC LINE DRAWN INSIDE THE THATTEKKAD MANJIUM PLANTATION
EXT.P17	PHOTOGRAPH OF ELECTIC LINE DRAWN INSIDE THE THATTEKKAD MANJIUM PLANTATION
EXT.P18	PHOTOGRAPH OF ELECTRIC LINE DRAWN INSIDE THE THATTEKKAD MANJIUM PLANTATION
EXT. P19	PHOTOGRAPH OF ELECTRIC LINE DRAWN THROUGH PUNNEKKAD-KURIKULAM ROAD
EXT.P20	PHOTOGRAPH OF ELECTRIC LINE DRAWN THROUGH KALAPARA FOREST AREA
EXT.P21	PHOTOGRAPH OF ELECTRIC LINE DRAWN THROUGH KALAPARA FOREST AREA

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(a) TRUE COPY OF THE RESERVED FOREST NOTIFICATION DATED 31.03.1917.

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

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Dated this the 21st day of August, 2015

JUDGMENT

The petitioner is a tribal whose building constructed on the puramboke land possessed by his predecessors for long has been numbered and assessed by the grama panchayat evidenced by Ext.P2 residential certificate. The petitioner belongs to the Pulaya community recognized as a scheduled caste under the Constitution (Scheduled Caste) Order, 1950 evidenced by Ext.P3 caste certificate. The petitioner put in Ext.P4 application for electricity connection under the Rajeev Gandhi Grameen Vydhuti Karan Yojana fully funded by the Central Government. The Kerala State Electricity Board was convinced of the entitlement of the petitioner to the benefit of the scheme aforesaid and forwarded the same to the Forest Department. This was done since the electricity line has to be drawn along a road flowing in between two teak plantations owned by the government and managed by the Forest Department.

2. Ext.P4 application was however returned by Ext.P9

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letter on the basis of Ext.P10 order of the Divisional Forest Officer who objected to the drawing of the electricity supply line along the road in question. The Divisional Forest Officer on the basis of Ext.P11 report of the Forest Range Officer took a stand that permission should be obtained from the Central Government. Such permission was allegedly necessary under Section 2 of the Forest (Conservation) Act, 1980 ('the Act' for short) since the same was for non-forest purpose. The petitioner asserted that several others in the area are enjoying the electricity connection for long and that he cannot be discriminated against in the matter. The petitioner relied on Ext.P12 reply to the query under the Right to Information Act, 2005 which reflected that several electricity connections have been given in the recent past. It is under these circumstances has the present been filed seeking to quash Ext.P10 order and to direct the respondents to grant electricity connection to the petitioner.

3. I heard Mr. K.J. Kuriachan, Advocate on behalf of the petitioner, Mr. M.P. Madhavankutty, Senior Government Pleader

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as well as Mrs. P.K. Radhika, Standing Counsel for the Kerala State Electricity Board.

4. An Advocate Commissioner was deputed by this court who filed a detailed report to the effect that several new connections have been given in the area in the years 2012, 2013 and 2014. There is no case for the respondents that such connections were given after obtaining permission under the Act which came into force on 25.10.1980 or that the petitioner stands on a different pedestal. The curious stand of the Divisional Forest Officer in the objection to the report of the Commissioner is that such connections were given from existing lines and not drawing new lines. I fail to understand as to how such a distinction could be made when electricity connections have been given to home stays even as per Ext.P12 reply. The petitioner has already done the wiring and the electricity connection has to be given well before 30.09.2015 on which date the scheme expires under which the expenses will be met by the government. It is precisely to help the people like the petitioner in the lower strata of the society has the scheme been brought

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about by the Central Government to provide electricity to their houses fully funded by them.

5. The sketch produced along with the report of the Commissioner shows that the route along which the electricity line is to be drawn is a pucca road in between two teak plantations. Ext.R2(a) notification produced by the Divisional Forest Officer shows that the 'road is admitted mainly to give access to Sy. Nos. 493/1, 494/1 and to the path leading to Chanthirathil Chal'. The house of the petitioner is in Chanthirathil Chal and there is no way to enter the property of the petitioner from the main road on the south other than the road in question. Thus public right have been admitted over the said road which is perhaps in tune with Section 22 of the Kerala Forest Act, 1961 enacted after Ext.R2(a) notification. It is reasonable to think that such public right should also enable the petitioner or the Kerala State Electricity Board to draw electricity supply line ofcourse without impeding the traffic along the road.

6. The Kerala State Electricity Board have in their

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counter affidavit conceded that no cutting or felling of trees are required for drawing the electricity supply line except lopping of a few branches of some plants. On either sides of the road are only teak plantations and it is extremely doubtful as to whether a plantation could be treated as a forest in the strict sense. Moreover wireless communications and pipe lines can be drawn through the forest area even without permission of the Central Government under Explanation (b) to Section 2 of the Act. The drawing of electricity supply line should be similarly treated especially when the same is drawn only for the purpose of giving connection to the house of the petitioner beyond and not for any industrial activity.

7. The Bombay High Court in **Goa Foundation and another Vs. The Konkan Railway Corporation (AIR 1992 Bombay 471]** has held that no explicit order is necessary under Section 2 of the Act. This is because such permission of the Central Government should be deemed to be implicit when a railway line is being laid through the forest area in Konkan region. The contention of the petitioner that such permission

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should be deemed to be implicit when availing the benefit of the scheme brought about by the Central Government cannot be brushed aside. At any rate one cannot expect a tribal to move the Central Government and obtain permission to draw electricity supply line for energising his house built on a land possessed by him for years. I find the stand of the Forest Department extremely unreasonable especially when the Kerala State Electricity Board is ready to provide electricity connection to the petitioner under the scheme.

8. Ext.P10 order refusing electricity connection to the house of the petitioner is hereby quashed. The scheme aforesaid expires on 30.09.2015. The respondents are directed to provide electricity connection well ahead. The exercise shall be completed before 15.09.2015. The house of the petitioner shall be energised without delay.

The Writ Petition is allowed. No costs.

**V. CHITAMBARESH
JUDGE**

ncd