

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 11878 of 2015 (H)

PETITIONER(S):

SAROJINI R., W/O.THE LATE E.M.KARUNAN,
KARUNA WOOD INDUSTRIES, ANANTHAPURI,
KOLLAM, P.O. KOYILANDY, PIN-673 307,
KOZHIKODE DISTRICT.

BY ADVS.SRI.P.T.MOHANKUMAR,
SRI.S.K.SAJU.

RESPONDENT(S):

1. THE DIVISIONAL FOREST OFFICER,
OFFICE OF THE DIVISIONAL FOREST OFFICER,
CIVIL STATION, KOZHIKODE, PIN-673 020.
 2. THE ADDITIONAL CHIEF FOREST CONSERVATOR,
(SPECIAL AFFORESTATION) & NODAL OFFICER,
FOREST HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 014.
 3. THE ASSISTANT ENGINEER,
KERALA STATE ELECTRICITY BOARD,
KOYILANDY NORTH ELECTRICAL SECTION,
KOYILANDY-673 385.
- * ADDL. R4 & R5 IMPEADED
4. PRASEETHA K.S., AGED 47 YEARS,
D/O.E.M. KARUNAN (LATE) AND SARADA (LATE),
W/O.VIJAYAN, RESIDING AT RAMAPURI,
NADUVATHUR, KOYILANDY, KOZHIKODE DISTRICT.
 5. PRASANNA K.S., AGED 44 YEARS,
D/O.E.M. KARUNAN (LATE) AND SARADA (LATE),
W/O.BABURAJ, KUTTAMBATH HOUSE, KADALLOOR,
KOYILANDY, KOZHIKODE DISTRICT.

*ARE IMPEADED AS ADDL. R4 & R5 AS PER ORDER
DATED 23/07/2015 IN I.A. NO.7237/2015.

R1 & R2 BY SPL. GOVT. PLEADER (FOREST) SRI.M.A. THOMASKUTTY.
R3 BY ADV. SRI.SAJEEVKUMAR K.GOPAL, SC.
ADDL. R4 & R5 BY ADV. SRI.MILLU DANDAPANI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P-1: TRUE PHOTOSTAT COPY OF THE APPLICATION SUBMITTED BY THE LATE HUSBAND OF THE PETITIONER TO THE 2ND RESPONDENT DATED 30-01-2009.
- EXHIBIT P-2: TRUE PHOTOSTAT COPY OF THE ACKNOWLEDGMENT ISSUED BY THE 2ND RESPONDENT TO THE ABOVE.
- EXHIBIT P-3: TRUE PHOTOSTAT COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO DECEASED KARUNAN, DATED 12-05-2009.
- EXHIBIT P-4: TRUE PHOTOSTAT COPY OF THE VERIFICATION REPORT, DATED 26-05-2009.
- EXHIBIT P-5 : TRUE PHOTOSTAT COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE SAID KARUNAN, DATED 16-02-2010.
- EXHIBIT P-6 : TRUE PHOTOSTAT COPY OF THE REGISTERED WILL EXECUTED BY THE SAID KARUNAN, DATED 14-10-2014.
- EXHIBIT P-7: TRUE PHOTOSTAT COPY OF THE MINUTES OF THE STATE LEVEL ADVISORY COMMITTEE, DATED 30-12-2014.
- EXHIBIT P-8: TRUE PHOTOSTAT COPY OF THE STOPPAGE ORDER ISSUED BY THE 1ST RESPONDENT, DATED 09-03-2015.
- EXHIBIT P-9: TRUE PHOTOSTAT COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT FOR CHANGE OF OWNERSHIP, DATED 04-04-2015.
- EXHIBIT P-10: REPRESENTATION FROM THE WORKERS OF THE ESTABLISHMENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS:-

- EXT.R4A COPY OF THE ORDER INJUNCTION GRANTED BY THE SUB COURT KOYILANDY DATED 30/01/2015 IN I.A.81/2015 IN O.S. NO.5/2015.
- EXT.R4B COPY OF THE GAZETTE NOTIFICATION DATED 21/04/2015 PUBLISHED BY THE COMMISSIONERATE OF LAND REVENUE.
- EXT.R4C COPY OF THE REPLY DATED 20/05/2015 FURNISHED BY THE OFFICE OF THE ADDITIONAL FACTORY INSPECTORATE STATING THAT THE LICENSE OF KARUNA WOOD INDUSTRIES HAS NOT BEEN RENEWED FRO THE YEAR 2015.
- EXT.R4D COPY OF THE REPLY DATED 11/05/2015 BY THE ASSISTANT LABOUR OFFICER, KOYILANDY OBTAINED UNDER RTI ACT.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J

W.P(C) No.11878 of 2015

Dated this the 23rd day of July, 2015

J U D G M E N T

The petitioner claims to be the wife of one E.M Karunan and is also said to be in possession of a sawmill, the operation of which and the premise in which it is situated was bequeathed to the petitioner by Ext.P6. The petitioner in the above writ petition challenges Ext.P8 dated 09.03.2008 issued by the 1st respondent. The petitioner is also aggrieved with the fact that the 3rd respondent on the basis of Ext.P8 order disconnected the power connection to the sawmill of the petitioner for reason of there being no licence for carrying on the sawmill.

2. In the present writ petition, the additional respondents 4 and 5 got themselves impleaded, who are the children of the first wife of the deceased Karunan. Admittedly, a suit is filed by the additional respondents for partition, which is pending as O.S No.5/2015 before Sub Court, Koilandi. The

additional respondents are also said to have been granted an ex-parte injunction as per Ext.R4(a), which the petitioner claims is as against any alienation or waste committed in the property. The controversy in the suit is only with respect to the alienation and transfer of the subject properties, and the suit admittedly is for partition.

3. Since, a civil suit is pending between the petitioner and the additional respondents it may not be proper for this Court to enter into any finding on the rival claims of each, over the properties. The present writ petition can be deemed to be only one against Ext.P8 order of the 2nd respondent directing stoppage of sawmill constructed by the petitioner. Admittedly, there is no licence obtained by the petitioner as of now. Petitioner is said to have moved an application for transfer of the licence, produced at Ext.P9. The owner of the sawmill, the deceased husband of the petitioner has bequeathed the sawmill and the property in which it is situated, solely to the petitioner.

Transfer of the licence is sought in her name, based on Ext.P6 Will dated 14.10.2014.

4. The 2nd respondent is refusing to consider the said application, since, there is no legal heirship certificate produced or No Objection Certificate from the other legal heirs. The reliance is specifically on Rule 15(6) of the Kerala Forest (Regulation of Sawmills and other Wood-based Industrial Units) Rules 2012. The specific sub-rule pointed out by the Special Government Pleader (Forest) refers to inheritance and not to devolution of interest by way of a specific bequest. In the present case, though the deceased sawmill owner has other legal heirs, specifically the transfer is sought for, on the basis of the Will produced at Ext.P6. As of now, there is no interdiction from the Civil Court also, as to the operation of the Will. In such circumstance, it is only proper that the transfer application be considered by the Authorised Officer under the Rules of 2012, if the officer is satisfied about the genuineness of the Will. This Court would not make any

observation on the eligibility for getting such transfer which has to be decided on the terms of the Rules of 2012.

5. As of now, the petitioner cannot carry on the sawmill since, admittedly, there is no valid licence issued even to the deceased sawmill owner, during his life time. It has also not been substantiated as to whether the deceased owner had obtained a licence after the framing of the Rules of 2012, within the time stipulated therein. These are all matters to be considered by the Authorized Officer under the Rules of 2012. Ext.P8, for the present, cannot be disturbed; since no operation of sawmill is permitted by this Court and the petitioner has been relegated to the Authorised Officer who is the licence issuing authority. Necessarily there can be no setting aside of the order passed by the KSEB also. That would depend upon the licence obtained by the petitioner.

In such circumstance the writ petition would stand dismissed however, leaving open the remedy of the petitioner to

make a proper application before the 1st respondent authorised officer under the Rules of 2012 producing Ext.P6 Will, which shall be considered in accordance with what has been directed above. The respective rights of the rival parties shall be left to be decided in the Civil Suit. This Court has also not expressed anything on the validity of the Will which is left to be decided by the Civil forum, in the event of a challenge. No costs.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge