

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 16738 of 2008 (P)

PETITIONER(S):

**SUBBAMMAL @ SUPPATHA,
W/O RENGASWAMY, HOUSE NO.III/187,
ANAKKATTY P.O., ATTAPPADY,
MANNARGHAT TALUK, PALAKKAD DISTRICT**

**(FORMERLY RESIDING AT VECHAPPATHY
MELKKAD, SHOLAYAR VILLAGE,
MANNARGHAT TALUK, PALAKKAD DISTRICT)**

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT(S):

- 1. THE TAHSILDAR,
MANNARGHAT TALUK, PALAKKAD DISTRICT**
- 2. THE DISTRICT COLLECTOR, PALAKKAD**
- 3. THE CHIEF CONSERVATOR OF FORESTS,
THIRUVANANTHAPURAM**
- 4. THE DIVISIONAL FOREST OFFICER, PALAKKAD**
- 5. THE SHOLAYAR GRAMA PANCHAYAT,
PALAKKAD DISTRICT, REP. BY ITS SECRETARY**
- 6. STATE OF KERALA,
REP. BY THE SECRETARY, REVENUE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM**

R1-R4 & R6 BY SRI.T.J.MICHEAL,SPL.GP FOR FOREST

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

WP(C) NO.16738/2008

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE JUDGMENT DATED 01.11.2006 IN WPC NO.20030/2003 OF THIS HONOURABLE COURT.**
- P2 : COPY OF THE ORDER DATED 05.05.2007 ISSUED BY THE 2ND RESPONDENT**
- P3 : COPY OF THE REPRESENTATION DATED 19.06.2008 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.16738 of 2008

Dated this the 7th day of July, 2015

JUDGMENT

The petitioner, who is stated to be a member of Scheduled Tribe 'Erulan' community has filed this writ petition seeking a writ of certiorari to quash Ext.P2 order passed by the 2nd respondent dated 05.05.2007 and seeking a writ of mandamus commanding respondents 1, 2 and 4 to take immediate steps for assigning 5 acres of land in Survey No.1913/2&3 of Sholayar Village in her name and for other consequential reliefs.

2. Going by the averments in the writ petition, an extent of 5 acres of land comprised in Survey No.1913/2&3 of Sholayar Village had been in the possession and enjoyment of her father late Raman and on his death, she inherited the said land. She had constructed a house therein and was residing with her family. On 30.04.1998, the officials from the Divisional Forest Office, Palakkad came to the aforesaid land and forcefully evicted the petitioner and her family from that property, after destroying her house and also the agricultural crops standing thereon.

3. Nearly 5 years after the date of eviction, the petitioner moved this Court in W.P.(C). No.20030/2003, which was disposed of

by Ext.P1 judgment, noticing the stand taken in the counter affidavit filed on behalf of the Tahsildar, Mannarghat Taluk that the request made by the petitioner for assignment of land will be considered when lands are assigned to landless Scheduled Tribes and that, the survey is being finalised. This Court in Ext.P1 judgment directed the 2nd respondent, the District Collector, Palakkad to take appropriate action in the matter of assignment of land to the petitioner, within a period of four months from the date of receipt of a copy of that judgment. It was also made clear that the petitioner shall not be dispossessed from the property till such time.

4. Pursuant to Ext.P1 judgment, the 2nd respondent considered the request made by the petitioner for assignment of the land in question and the said request was rejected by Ext.P2 order dated 05.05.2007 stating that, 5 acres of land in respect of which the petitioner has made a request for assignment is vested forest and the same cannot be assigned. It is aggrieved by Ext.P2 order passed by the 2nd respondent, the petitioner is before this Court in this writ petition.

5. The 2nd respondent has filed counter affidavit stating that, pursuant to Ext.P1 judgment of this Court, the petitioner was personally heard by the 2nd respondent on 04.05.2007 and

thereafter Ext.P2 order was passed rejecting her claim for assignment. The 2nd respondent has categorically stated that, the property in question is a notified vested forest and in such circumstances, the claim of the petitioner for assignment of the aforesaid land cannot be accepted and it was in such circumstances, the request made by the petitioner was turned down in Ext.P2. The 2nd respondent would contend that, in view of Section 2 of the Forest (Conservation) Act, 1980, prior permission of the Central Government is required to use forest land for any non-forest purpose. The 2nd respondent has also pointed out that, the Government has not taken any policy decision to assign any forest land in the said area to any of the occupants.

6. A statement has also been filed on behalf of the 4th respondent stating that, the property in question is situated in VFC item No.98 & 100 which is under the possession of the Forest Department. The said land is an excluded tract of Varadimala Melthottam area, which is an un-surveyed notified forest land in Agali Range of Mannarkkad Forest Division. The said excluded tract was left un-surveyed as there was dispute about inter-state boundary with State of Tamilnadu. The excluded tract was notified by the Custodian of Vested Forest, Olavakode by erratum

notification No. A1-4122/2001 dated 05.05.2001. But the area was kept as Vested Forest since 10.05.1971. Pursuant to Ext.P1 judgment of this Court, the then District Collector, on verification found that the property in question is a notified vested forest which could not be assigned to the petitioner and it was in such circumstances, Ext.P2 order was passed.

7. I heard the arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondents.

8. It is seeking assignment of an extent of 5 acres of land comprised in Survey No.1913/2&3 of Sholayar Village, the petitioner has approached this Court in WP(C) No.20030/2003. The pleadings and documents on record make it explicit that, the petitioner was dispossessed from the land in question on 30.04.1998. Pursuant to Ext.P1 judgment of this Court in W.P.(C). No.20030/2003, the 1st respondent conducted a personal hearing on 04.05.2007 and thereafter issued Ext.P2 order rejecting the claim for assignment of land made by the petitioner, for the reason that, the land in question is a forest land. Going by the specific stand taken by the respondents, it is a vested forest which cannot be used for any non-forest purpose. If that be so, the reasoning of the 2nd

respondent in Ext.P2 cannot be termed either arbitrary or illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

9. The petitioner has not produced even a scrap of paper to show that the land in question is not a vested forest or that, she was in possession of the aforesaid land at an earlier point of time. The only documents produced alongwith this writ petition are Ext.P1 judgment of this Court in W.P.(C).No.20030/2003 and Ext.P2 order passed by the 2nd respondent pursuant to the direction in Ext.P1 judgment. There is total dearth of reliable materials even to make out a prima facie case that the reasoning of the 2nd respondent in Ext.P2 is factually incorrect. In that view of the matter, no interference of this Court in this writ petition is called for, and the challenge against Ext.P2 order passed by the 2nd respondent is rejected.

10. The learned counsel for the petitioner would submit that, the petitioner has already submitted a representation dated 02.08.2008, produced as Ext.P3 alongwith I.A.No.10078/2008, praying for assignment of a suitable land and the 2nd respondent may be directed to consider the same and pass appropriate orders thereon. The learned Senior Government Pleader would submit

that, if any such representation is pending consideration before the 2nd respondent, the said respondent shall consider and pass appropriate orders thereon, in accordance with law, within a time limit that may be fixed by this Court.

In such circumstances, this writ petition is disposed of directing the 2nd respondent to consider Ext.P3 representation submitted by the petitioner if the same is still pending consideration, and dispose of the same, strictly in accordance with law, within a period of three months from the date of receipt of a certified copy of this judgment, with notice to the petitioner.

It is made clear that this Court has not expressed any opinion on the merit of the claim made by the petitioner in Ext.P3 representation for assignment of land and that, any decision taken by the 2nd respondent on Ext.P3 should be strictly in accordance with law.

JV

SD/-
ANIL K. NARENDRA,
JUDGE