

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

WP(C).No. 18257 of 2014 (F)

PETITIONER(S):

1. BENNY THOMAS,
S/O.THOMAS CHACKO, KOCHUMUTTATH HOUSE,
PULLIPPADAM P.O., PIN - 676 542, MALAPPURAM DISTRICT.
2. RAMACHANDRAN,
S/O.KUNJAN, KOLKKADAN HOUSE, PULLIPPADAM P.O.,
PIN - 676 542, MALAPPURAM DISTRICT.
3. RAMAN,
S/O.KELAN, THAYAMANGATTU, PULLIPPADAM P.O.,
PIN - 676 542, MALAPPURAM DISTRICT.

**BY ADVS.SRI.M.A.ABDUL HAKHIM
SRI.JOSEPH GEORGE (KANNAMPUZHA)**

RESPONDENT(S):

1. DIVISIONAL FOREST OFFICER,
NILAMBUR NORTH DIVISION, NILAMBUR,
MALAPPURAM DISTRICT, PIN - 676 506.
2. FOREST RANGE OFFICER,
EDAVANNA RANGE, NILAMBUR,
MALAPPURAM DISTRICT - 676 506.
3. DEPUTY RANGE FOREST OFFICER,
EDAKKODU FOREST STATION, VIA.NILAMBUR,
MALAPPURAM DISTRICT - 676 506.
4. VILLAGE OFFICER,
PULLIPPADAM VILLAGE, PULLIPPADAM P.O.,
MALAPPURAM DISTRICT - 673 542.

BY SPECIAL GOVERNMENT PLEADER SRI.M.P.MADHAVANKUTTY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-11-2015,
ALONG WITH WPC. 20009/2014 AND CONNECTED CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - A PHTOTOSTAT COPY OF THE SALE DEED NO. 3227/2011 OF SRO, NILAMBUR IN FAVOUR OF THE 1ST PETITIONER.
- P2 - A PHTOTOSTAT COPY OF THE SALE DEED NO. 3228/2011 OF SRO, NILAMBUR IN FAVOUR OF THE 1ST PETITIONER.
- P3 - A PHTOTOSTAT COPY OF THE PURCHASE CERTIFICATE OF 497/1977 ISSUED BY THE LAND TRIBUNAL - I, NILAMBUR.
- P4 - A PHTOTOSTAT COPY OF THE LAND TAX RECEIPT OF THE 1ST PETITIONER ISSUED BY THE 4TH RESPONDENT.
- P5 - A PHTOTOSTAT COPY OF THE POSSESSION CERTIFICATE OF THE 1ST PETITIONER ISSUED BY THE 4TH RESPONDENT.
- P6 - A PHTOTOSTAT COPY OF THE SALE DEED NO. 6644/2008 OF SRO, NILAMBUR IN FAVOUR OF THE 2ND PETITIONER.
- P7 - A PHTOTOSTAT COPY OF THE PURCHASE CERTIFICATE NO. 500/1997 ISSUED BY THE LAND TRIBUNAL - I, NILAMBUR.
- P8 - A PHTOTOSTAT COPY OF THE POSSESSION CERTIFICATE OF THE 2ND PETITIONER ISSUED BY THE 4TH RESPONDENT.
- P9 - A PHTOTOSTAT COPY OF THE LAND TAX RECEIPT OF THE 3RD PETITIONER ISSUED BY THE 4TH RESPONDENT.
- P10 - A PHTOTOSTAT COPY OF THE POSSESSION CERTIFICATE OF THE 3RD PETITIONER ISSUED BY THE 4TH RESPONDENT.
- P11 - A PHTOTOSTAT COPY OF THE MAHAZAR FIRST REPORT IN OR NO. 1/2013 OF THE 3RD RESPONDENT.
- P12- A PHTOTOSTAT COPY OF THE REPLY ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- P13 - A PHTOTOSTAT COPY OF THE MAHAZAR FIRST REPORT IN OR NO. 8/2014 OF THE 3RD RESPONDENT.
- P14 - A PHTOTOSTAT COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONERS AND OTHERS.
- P15- A PHOTOCOPY OF THE LETTER ISSUED BY THE STATE PUBLIC INFORMATION OFFICER IN THE OFFICE OF THE LAND REVENUE COMMISSIONER THIRUVANANTHAPURAM

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- P16- A PHOTOCOPY OF THE LETTER ISSUED BY THE ASSISTANT PUBLIC INFORMATION OFFICER IN THE OFFICE OF THE TAXES DEPARTMENT OF THE GOVERNMENT OF KERALA
- P17- A PHOTOCOPY OF THE LETTER ISSUED BY THE STATE PUBLIC INFORMATION OFFICER IN THE OFFICE OF THE REGISTRATION INSPECTOR GENERAL OF THE GOVERNMENT OF KERALA
- P18- A PHOTOCOPY OF THE LETTER ISSUED BY THE DISTRICT REGISTRAR KOZHIKKODE
- P19- A PHOTOCOPY OF THE LETTER ISSUED BY THE STATE PUBLIC INFORMATION OFFICER IN THE OFFICE OF THE COLLECTORATE, MALAPPURAM
- P20- A PHOTOSTAT COPY OF THE LETTER ISSUED BY DISTRICT REGISTRAR MALAPPURAM
- P21- A PHOTOSTAT COPY OF THE LETTER ISSUED BY THE R1 TO THE R4
- P22- A PHOTOSTAT COPY OF THE REPLY GIVEN BY THE R1 UNDER THE RIGHT TO INFORMATION ACT
- P23- A PHOTOSTAT COPY OF THE LAND TAX RECEIPT ISSUED BY THE R4
- P24- A PHOTOSTAT COPY OF THE LAND TAX RECEIPT ISSUED BY THE R4
- P25- A PHOTOSTAT COPY OF THE NOTICE ISSUED BY THE R4 TO THE 1ST PETITIONER
- P26- A PHOTOSTAT COPY OF THE LETTER ISSUED BY THE R1 TO THE 1ST PETITIONER

RESPONDENT(S)' EXHIBITS

- R1(A)- TRUE COPY OF THE RELEVANT PAGES OF NOTIFICATION NO.82055/FS2-1/76.AD DATED 11/1/977
- R1(B): TRUE COPY OF THE FORM I REPORT IN OR 1/2013
- R1(C): TRUE COPY OF THE FORM I REPORT IN OR 8/2014
- R1(D): TRUE COPY OF REPORT SUBMITTED BY THE DEPUTY RANGER, EDAKODE FOREST STATION
- R1(E): TRUE COPY OF LOCATIONB MAP OF THE ENCROACHMENT BY NON TRIBES HAS BEEN PREPARED BY THE SURVEYORS
- R1(F): TRUE COPY OF RELEVANT PAGES OF THE VESTED FOREST COMMITTEE REPORT

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R1(G): TRUE COPY OF GOVERNMENT ORDER NO GO(MS)326/78/AD DATED 14/12/78

**R1(H): TRUE COPY OF LOCATION MAP OF THE CONCERNED FOREST AREA
SHOWING THE EVICTED PORTIONS OF ENCROACHMENTS**

**R1(I): TRUE COPY OF REPORT DATED 20/11/13 OF THE VILLAGE OFFICER
PULLIPPADAM**

R1(J): TRUE COPY OF MAHAZAR DT.12/8/14 OF THE JOINT VERIFICATION

**R1(K): TRUE COPY OF THE LETTER DT.22/8/14 OF THE R1 ADDRESSED TO THE
VILLAGE OFFICER, PULLIPPADAM**

**R1(L): TRUE COPY OF THE REPLY DT.22/8/14 OF THE VILLAGE OFFICER,
PULLIPPADAM**

R1(M): TRUE COPY OF G.O.136/07/RD DT.24/7/2007

**R1(N): TRUE COPY OF LETTER NO.BA.13595/14 DATED 4/12/14 OF THE R4 TO THE
FRO, EDAVANNA**

**R1(O): TRUE COPY OF LETTER NO C1-5120/14 DT.7/11/14 OF THE DIVISIONAL
FOREST OFFICER, NILAMBUR NORTH TO THE PROJECT OFFICER ITDP TO
THE DIBISIONAL FOREST OFFICER, NILAMBUR NORTH**

**R1(P): TRUE COPY OF LETTER NOG-8411/2014 DT.12/11/14 OF THE PROJECT
OFFICER, ITDP TO THE DIVISIONAL FOREST OFFICER, NILAMBUR NORTH**

**R1(Q): TRUE COPY OF LETTER NO.C1-5120/2014 DATED 19/11/14 OF THE R1 TO THE
INSPECTOR GENERAL (REGISTRATION), THIRUVANANTHAPURAM**

R1(R): TRUE COPY OF LETTER NOB3/8487/1997(1) DT.10/12/14

R1(S): TRUE COPY OF NOTIFICATION O.EFL.10-358/2014 DT.11/11/14

**R1(T): TRUE COPY OF PATTAYAM ISSUED UNDER RULE 23 OF THE KERALA PRIVATE
FORESTS (VESTING & ASSIGNMENT) RULES 1974**

**R1(U): TRUE COPY OF DOCUMENT REGISTERED IN FAVOUR OF THE 1ST
PETITIONER BEFORE THE SUB REGISTRAR OFFICE, NILAMBUR**

**R1(V): TRUE COPY OF RLEVANT PAGES OF APPROVED WORKING PLAN FOR THE
PERIOD 2001-02 TO 2011-12.**

/ TRUE COPY /

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.18257/2014, 20009/2014, 21128/2014  
21604/2014**  
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Dated this the 21st Day of November, 2015

J U D G M E N T

These writ petitions are filed challenging the action of the forest officials interfering with the possession and enjoyment of the property claimed by the petitioners and referable to the *patta* issued by the Land Tribunal, Nilambur.

2. The dispute in these writ petitions is arising out of the context of claim of forest officials under the provisions of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short, the "Act"). The above Act came into force on 10/05/1971. Thereafter, the vested land was notified and any person aggrieved by the notification, normally, would have to approach the Forest Tribunal in terms of Rule 3 of the Kerala Private Forests (Tribunal) Rules, 1972 to adjudicate the dispute relating to the claim that the land is not a private forest or that the private forest is not vested in the Government under Section 8 of the Act referred as above. However, the petitioners have rushed to this Court under a peculiar circumstance stating that their remedy has been shut out before the

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Tribunal on account of the period of limitation. Therefore, this Court shall invoke the jurisdiction under Article 226 of the Constitution. The petitioners also have a case that the land in question does not form part of the notification under Section 3 of the Act.

3. However, the case of the Forest Department is that this land is forming part of the notification issued under Section 3 of the Act as well as the notification issued under Rule 2A of the Kerala Private Forest (Vesting and Assignment) Rules 1974 (for short, the “Assignment Rules”).

4. The petitioners or their predecessors-in-interest have been granted *patta* issued by the Land Tribunal, Nilambur. The petitioners, therefore, are taking the stand that this is a revenue land. Further, it is the case of the petitioners that even if this land would form part of the Kerala Forest Act, the land is principally cultivated with Cardamom and Cashew and other crops as referred under Section 2(1)(b) of the Act.

5. Normally, the power under Article 226 of the Constitution cannot be exercised when there is an efficacious alternative remedy, if such remedy was barred by limitation, that would not justify this Court to invoke its power under Article 226 of the Constitution of India. Therefore, the Court has to exercise its power with circumspectly and cautiously.

6. The question of disputed facts emanates from this case as follows:

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- i. Whether this land is forming part of the notification.
- ii. Whether the land in question is liable to be excluded under Section 2(1)(b) of the Act, if the notification covers the land claimed by the petitioners as above.

7. Before proceeding further, I would refer to the provision of limitation as contemplated under the Tribunal Rules. The Tribunal has power to settle a dispute referable under Section 8 of the Act. Section 8 clearly indicates that the Tribunal has a power to decide whether any land is a private forest or not. Therefore, even in respect of a land, which is claimed by the forest officials as a private forest, and disputed by the holders of the land stating that it is not a private forest, that question can also be decided by the Tribunal. Thus, both the questions raised by the petitioners will have to be adjudicated by the Tribunal. Therefore, this Court need not invoke its power under Article 226 of the Constitution.

8. However, a related question of limitation for entertaining the application at the instance of the petitioners would arise. Normally, the question of limitation has to be decided by the Tribunal itself. However, both the parties have addressed at length with pleadings and documents. Therefore, this Court propose to address the question of limitation, as otherwise, the Tribunal is unlikely to even entertain the application which could be laid by the petitioners.

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9. Rule 3 of the Tribunal Rules provides that an application under Section 8 of the Act shall be presented to the Tribunal within 60 days. This 60 days is reckonable either with reference to 6/8/1981 or from the date of publication of notification under Sub rule (2) of Rule 2A of the Assignment Rules. In this case, this Court is of the view that the question of limitation has to be decided with reference to the interpretation of second limb which postulates a cause of action based on the publication of the notification under Sub-rule 2 of Rule 2A of the Assignment Rules.

10. The notification has been published in terms of Rule 2A on 1101/1977. Rule 2A is, in fact, an exercise of demarcation of private forest. Section 3 of the Act provides a deemed vesting of private forest as on the appointed day. On that day, all the land notified under Section 3 would be a private forest. Thus, all private forest which stood in the name of individual ownership and possession, stood transferred and vested with the Government. The exercise of notification would be complete only when actual demarcation is done by the custodian under Section 6 of the Act. This demarcation is actually to separate boundaries of the private forests vested with the State from other areas. Section 6 read with Rule 2A of the Rules, demarcation must be in physical form by erecting cairns along the boundaries. Thus, law contemplates two types of cause of action to an aggrieved to approach the Tribunal either based on cause of action

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referable under Section 3 of the Act or with reference to cause of action based on the demarcation of the boundaries.

11. As already adverted, the question of limitation has to be adverted in accordance with the demarcation of boundaries. Though, it is stated in the counter affidavit that survey was completed in the year 1974-76, there is nothing to show that cairns were erected along the boundaries in the year 1977 before the notification. Identification of the boundaries and actual erection of the boundaries are two different aspects for the limited purpose of determining the cause of action. It is to be noted that the revenue officials did not find out whether the property held by the petitioners are private forest or not. They granted *pattayam* believing that the land covered by *pattayam* do not form part of private forest. It is also admitted in the counter affidavit that a joint litigation of the disputed property was conducted by the officials of the revenue and forest departments only on 12/08/2014 and it was confirmed that the land in question was a vested private forest. The notification under Rule 2A would have an impact only when actual demarcation is done by erecting cairns along the boundaries. The effect of notification is only when physical demarcation is done in the land by erecting cairns. It is seen from the communication issued by the Divisional Forest Officer to the Inspector General (Registration) that the cairns were erected after 28/6/2014 as

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evident from Ext.R1(q) produced in W.P.(C).No. 18257/2014 pursuant to registration of a case as O.R.No.09/14 EFS. The notification under Rule 2A presupposes actual erecting of cairns alongside the boundaries. In such circumstances, cause of action is only referable to the actual date of erecting cairns and not otherwise. The petitioners have all approached this Court immediately based on the same cause of action. Therefore, this Court is of the view that the petitioners are entitled to work out their remedy before the Forest Tribunal and their applications cannot be rejected on the question of limitation.

12. This Court has already ordered status quo. Petitioners submit that they are not allowed to do agricultural activities in the land. In the facts and circumstances, the following directions are issued:

i. If the petitioners approach the Tribunal of the competent jurisdiction within 60 days from the date of receipt of a copy of this judgment, the Tribunal shall entertain the applications and decide the dispute under Section 8 of the Act.

ii. Till the disposal of the applications, the petitioners shall be permitted to do agricultural activities in the land.

iii Petitioners shall not cut and remove any trees from the land in question.

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iv. If they propose to do any other activities in the land, that can be done only after obtaining necessary orders from the Tribunal.

v. If any of the petitioners fail to move the Tribunal within the time indicated by this Court, the Forest Officials are free to evict the petitioners in accordance with law.

The writ petitions are disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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