

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

W.P.(C).No.18794 of 2015 (Y)

PETITIONER(S):-

ABRAHAM V.C., AGED 44 YEARS, S/O.P.V.CHERIAN,
VALIYAPARAMBIL, PANDAMKODE,
KORENCHIRA P.O., KIZHAKKENCHERRY, ALATHUR TALUK,
PALAKKAD DISTRICT,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER - JOSEPH VARGHESE

BY ADVS.SRI.K.ABDUL JAWAD
SRI.U.MUHAMMED MUSTHAFA
SMT.V.K.ANJU
SMT.MINISHA K DAS.

RESPONDENT(S):-

1. THE RANGE FOREST OFFICER,
ALATHUR, PALAKKAD DISTRICT 678 541.

2. THE VILLAGE OFFICER,
KIZHAKKENCHERRY II VILLAGE, ALATHUR TALUK
PALAKKAD DISTRICT - 678 541.

R1 & R2 BY SPECIAL GOVERNMENT PLEADER (FORESTS) SRI.M.A.THOMASKUTTY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1: TRUE COPY OF THE FORM OF DECLARATION FOR TRANSPORTING
TIMBER OF SPECIFIED TREES FROM OUTSIDE NOTIFIED AREAS AS
ACKNOWLEDGED BY THE AUTHORISED OFFICER, ALONG WITH LIST
OF TREES.
- EXT.P2: TRUE COPY OF THE ORDER NO.A1.416/2015 DATED 10/3/2015 ISSUED
BY RANGE FOREST OFFICER, ALATHUR.
- EXT.P3: TRUE COPY OF THE JUDGMENT DTD. 8/5/2015 IN WPC 13949/15,
PASSED BY THIS HON'BLE COURT.
- EXT.P4: TRUE COPY OF THE OBJECTION DTD. 23/5/2015 SUBMITTED BY THE
PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P5: TRUE COPY OF THE ORDER DATED 15/6/2015, PASSED BY THE
1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS/ANNEXURES:-

- ANNEXURE R1(a) TRUE COPY OF LETTER NO.29/15 DATED 10.03.2015 OF THE
2ND RESPONDENT.
- ANNEXURE R1(b) TRUE COPY OF LETTER NO.A1.416/2015 DATED 16.3.2015
OF THE 1ST RESPONDENT.
- ANNEXURE R1(c) TRUE COPY OF LETTER NO.F1-3531/15 DATED 20.03.2015
OF THE ADDITIONAL TAHSILDAR, ALATHUR.
- ANNEXURE R1(d) TRUE COPY OF REPLY DATED 30.05.2015 OF THE VILLAGE
OFFICER, KISHAKKANCHERRY.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.18794 of 2015-Y

Dated this the 09th day of July, 2015

JUDGMENT

The petitioner is aggrieved with the cancellation of a permission granted under the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005 [for brevity “the Act of 2005”].

2. The petitioner is said to be in possession of 4.0671 hectares of land in Block No.39, Re-survey No.361/pt [Old Survey No.1/1A] of Kizhakkencherry II Village in Alathur Taluk in Palakkad District. The petitioner applied for permission to transport timber of specified trees from outside 'notified areas' under Section 6 of the Act of 2005, in Form I, as is indicated at Exhibit P1. The petitioner was granted permission, by endorsement in Exhibit P1 by the Authorised Officer. Subsequently, the petitioner's permission was withdrawn by Exhibit P2, which was without notice; and successfully challenged before this Court.

3. This Court, by Exhibit P3 directed that Exhibit P2 be treated as a provisional order and the petitioner was permitted to raise his objections. The petitioner filed Exhibit P4 objections. The 1st respondent considered the objections and passed Exhibit P5 order, which is impugned herein.

4. In Annexure R1(a) and Exhibit P5, reference is made to the order of the Taluk Land Board, Alathur dated 30.12.2010 in C.C.785/73, as informed by the Village Officer. The said lands, according to the Village Officer, are comprised in Old Survey No.1/1A of one U.T.T. Company who had an extent of 2313.55 acres, which was over the ceiling limit as provided under the Kerala Land Reforms Act, 1963 [for brevity "KLR Act"]. Proceedings are said to be pending against the land and, hence, the Village Officer objected to the transport of the trees, which resulted in the cancellation of the earlier permission.

5. Even when this Court directed the Authorised Officer to consider the issue afresh, the Authorised Officer sought for a report from the Village Officer. As is indicated, the Village Officer did not give a clear reply. The learned Special Government Pleader [Forests], in fact, contends that the property of the entity

who is involved in the ceiling proceedings has not been identified and that is why the Village Officer has made a reservation. The learned Government Pleader specifically refers to Annexures R1 (a) and R1(d) communications of the Village Officer, which specifically interdicts the petitioner and other similarly placed land owners from alienating the properties.

6. It is to be noticed that the claim of the Government is not that the property vests with the Government or that the trees existing therein and sought to be removed now, are reserved under Section 6 of the Act of 2005. In fact, even Exhibit P5 order would indicate that the property is a non-forest land and is in a non-notified area and there is no reservation to the Government as per the proviso to Section 6. The cancellation of the transportation permit was only on account of the ceiling proceedings said to have culminated before the Land Tribunal and the pendency of the finalisation of identification of lands to be taken over by the Government under the KLR Act. The petitioner's title is not in dispute and the ceiling proceedings are also not with respect to the petitioner. The petitioner's vendor is not an entity which is the party before the Taluk Land Board in the ceiling proceedings.

Definitely, the petitioner's title would depend upon the eventual culmination of the identification of the properties as ordered by the Taluk Land Board. However, there is absolutely no reason why the petitioner should not be allowed to remove the trees, especially since the petitioner is not interdicted by the provisions of the Act of 2005.

7. In the above circumstances, Exhibit P5 would stand set aside. The 1st respondent shall inspect the property and value the timber cut and placed in the property and the petitioner shall execute a simple bond for the value so arrived at, without any sureties. On the petitioner executing such bond, the petitioner shall be permitted to remove the trees cut and placed in the property as per Exhibit P1.

Writ petition stands allowed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

/ true copy /