

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 22632 of 2015 (D)

PETITIONER :

**M/S. TRAVANCORE TIMBERS, MONGAM P.O., MALAPPURAM,
REPRESENTED BY ITS MANAGING PARTNER, F. HUSSAIN.**

**BY ADVS.SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN**

RESPONDENTS :

- 1. THE DIVISIONAL FOREST OFFICER,
TIMBER STALES DIVISION,
THIRUVANANTHAPURAM - 695001.**
- 2. THE ADDITIONAL PRINCIPAL CHIEF FOREST CONSERVATOR,
(PROTECTION), FOREST HEADQUARTERS, VYTHAVCAUD,
THIRUVANANTHAPURAM - 695001**
- 3. STATE OF KERALA, REPRESENTED BY SECRETARY TO
GOVERNMENT FOREST AND WILDLIFE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695001**

**R1 & R3 BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR
R2 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1 : COPY OF THE BILL NO. 01 DT 14/8/2014 ISSUED BY THE DEPORT OFFICER, ACHENKOVIL.**
- P2: COPY F THE BILL NO. 176 DT 14/8/2014 ISSUED by the DEPOT OFFICER, ACHENKOVIL.**
- P3: COPY OF THE BILL NO. 02 DT 26/8/2014 ISSUED BY THE DEPOT OFFICER, ACHENKOVIL.**
- P4: COPY OF THE BILL NO. 10 DT 11/9/2014 ISSUED BY THE DEPOT OFFICER, ACHENKOVIL.**
- P5: COPY OF THE BILL NO. 02 DT 11/9/2014 ISSUED BY THE DEPOT OFFICER, ACHENKOVIL.**
- P6: COPY OF THE BILL NO. 26/14-15 ISSUED BY THE DEPORT OFFICER, ARYANKAVU.**
- P7: COPY OF THE PROCEEDINGS ISSUED BY THE R2 DT 26/2/2015.**
- P8: COPY OF THE GOVT. ORDER NO. 198/2015/FOREST DT 16/5/2015.**
- P9: COPY OF THE GOVT. ORDER NO. 292/2015 FOREST DT 30/6/2015.**
- P10: COPY OF THE LETTER NO. PRO(5)-8909/2015 DT 21/7/2015 ISSUED BY THE R2.**

RESPONDENT'S ANNEXURES :

- ANNEXURE R1(a): COPY OF SALE CONDITION PUBLISHED IN KERALA GAZETTE NO. 49 DT 10/12/2013.**
- ANNEXURE R1(b): COPY OF THE ORDER DT 27/2/2015 OF THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FORESTS (PROTECTION).**
- ANNEXURE R1(c): COPY OF G.O.(MS) NO. 198/2015/FOREST DT 16/5/2015.**
- ANNEXURE R1(d): COPY OF NOTICE DT 23/2/2015 ISSUED BY THE DEPOT OFFICER, ARYANKAVU BY REGISTERED POST.**
- ANNEXURE R1(e): COPY OF NOTICE DT 4/5/2015 ISSUED BY THE DEPOT OFFICER, ARYANKAVU BY REGISTERED POST.**
- ANNEXURE R1(f): COPIES OF NOTICES ISSUED BY THE ACHENKOVIL DEPOT OFFICER.**
- ANNEXURE R1(g): COPY OF LETTER NO. A2-315/15 DT 24/6/2015 OF THE R1.**
- ANNEXURE R1(h): COPY OF G.O.(MS) NO. 292/2015/FOREST DT 30/6/2015.**

//TRUE COPY//

P.A. TO JUDGE

K. VINOD CHANDRAN, J.

W.P.(C) No. 22632 of 2015 (D)

Dated this the 6th day of August, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P10 order wherein the Department had imposed ground rent and penalty for not complying with the tender conditions.

2. The facts to the noticed are that Exts.P1 to P6 invoices were issued pursuant to an auction proceeding initiated as per Annexure R1(a). The terms of Annexure R1 (a) is very specific and any person who has bid successfully in the auction would have to pay 35% of the total amount demanded within 7 days from the date of auction as per clause 5(a). A grace period of 40 days is permitted under clause 5(c) to remit the balance amount. Further periods are also provided under sub clause (e), however, with liability to pay interest @ 18% within 30 days thereafter; 24% interest and 2.5% surcharge again within 30 days therefrom; and a further period of 30 days, with the liability of 36% interest and 5% surcharge. Hence, the total period

available, taking the periods in subclauses (c) and (e) together, would be 130 days.

3. The expiry of the said 130 days with respect to Exts.P1 to P6, respective invoices are stated in paragraph 5 of the statement. The said dates are 01.03.2015, 07.03.2015, 04.03.2015, 04.04.2015, 18.03.2015 and 05.03.2015 respectively for Exts.P1 to P6. The petitioner not being able to pay the amount within the period provided, approached the departmental authorities who permitted a further period of 45 days as per Ext.P7, however, with liability of 48% interest. The said period expired between 15.4.2015 and 18.5.2015. The petitioner did not pay the amounts even within such extended period.

4. The petitioner then filed a further extension application before the Government, as indicated at Ext.P8. In Ext.P8 dated 16.5.2015 the petitioner was granted a further period of 45 days. The petitioner's contention revolves around the presumption that such 45 days has to be calculated from the date of Ext.P8 and not the respective

dates of the invoices. The petitioner also relies on Ext.P9 clarification issued by the Government.

5. The petitioner having not paid the amounts even within the time stipulated by Ext.P8, calculated from the date of expiry of 175 days as per Annexure R1(a) and Ext.P7; 23 lots were put up for auction on 22.5.2015 and 5.6.2015. The petitioner contends that it could not have been done since 45 days had not expired from 16.5.2015, the date in Ext.P8.

6. A reading of Ext.P8 indicates that it did not indicate the 45 days granted was from the date 16.5.2015. The specific words employed is 'additional 45 days' (45 ദിവസം കൂടി കാലാവധി ദീർഘിപ്പിച്ചു നൽകി ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു). Since the words employed specifically indicated an additional 45 days, that has to be calculated from the date on which the period as per Annexure R1(a) and Ext.P7 expired.

7. The petitioner also has a contention that for one of the lots, even as per the statement of the respondent, the extended time ends only on 16.6.2015 (Ext.P5). However, it is to be noticed that even now, the learned Government Pleader submits that out of total 83 lots, covered by Exts. P1 to P6, only 23 lots have been sold in re-auction. Hence, substantial lots still remain with the Department.

8. The petitioner could have availed of further extension granted as per Ext.P8 before 16.6.2015. But even that was not availed of. The petitioner's reliance in Ext.P9 also cannot be countenanced since, the same is dated 30.06.2015, when the period granted as per Ext.P8 also had expired. The re-auction conducted on 22.05.2015 and 05.06.2015 also had been confirmed with respect to 23 lots to other persons. In such circumstance, this Court does not find any infirmity in Ext.P10.

9. The petitioner would have to definitely bear the penalty and ground rent for the 23 lots which have been sold in re-auction.

10. However, if the petitioner remits the entire amounts due with interest at the rate of 48% and surcharge at the rate of 5% within a period of 10 days from the date of this judgment, the balance 60 lots shall be allowed to be lifted by the petitioner. No penalty or ground rent shall then be imposed on the petitioner with respect to the said 60 lots. If the petitioner does not remit the said amounts within 10 days from the date of this judgment as directed herein, the petitioner would be liable for penalty and ground rent for the said lots also, which the respondent would be entitled to re-auction, at the risk and cost of the petitioner.

Writ Petition is disposed of. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE