

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 27855 of 2012 (F)  
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PETITIONER:  
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JIMMY G. DOMINIC, AGED 40 YEARS  
S/O.MATHEW R/A.RAJAGIRI HOUSE, NO.9/33  
VIDHYA NAGAR COLONY, M.M.PARAMBA P.O  
KOZHIKODE DISTRICT.

BY ADVS.SRI.SIJI ANTONY  
SRI.GIMMY GEORGE (THIRUVAMPADY)

RESPONDENT(S) :  
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1. STATE OF KERALA  
REP.BY THE CHIEF SECRETARY, SECRETARIAT  
THIRUVANANTHAPURAM-695001.

2. THE DIVISIONAL FOREST OFFICER  
NILAMBUR NORTH DIVISION, NILAMBUR-679329.

3. THE PRINCIPAL CHIEF FOREST CONSERVATOR &  
CHIEF WILD LIFE WARDEN,  
TRIVANDRUM-695001.

4. THE PRINCIPAL SECRETARY TO FOREST,  
SECRETARIAT, THIRUVANANTHAPURAM-695001.

5. UNION OF INDIA  
REP.BY THE PRINCIPAL SECRETARY  
MINISTRY OF ENVIRONMENT AND FORESTS  
NEW DELHI-110001

Addl.R6. KERALA FOREST RESEARCH INSTITUTE (K.F.R.I)  
PEECHI, PIN - 680653  
REPRESENTED BY ITS DIRECTOR.

(Addl.R4 is impleaded as per order dt.25.2.2015  
in I.A.2825/2015)

R1-R4 BY SPECIAL GOVERNMENT PLEADER (FOREST) SRI T.J.MICHAEL  
R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL  
R BY SRI.P.PARAMESWARAN NAIR, ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE APPLICATION UNDER THE RULE SUBMITTED BY THE PETITIONER DATED 05.03.2009.

EXT.P2: TRUE COPY OF THE LETTER NO.A3-2233/09, DT.7.4.2009.

EXT.P3: TRUE COPY OF THE LETTER DATED 4.5.2009.

EXT.P4: TRUE COPY OF THE LETTER DT.23.05.2012 BY ALL JOINT CULTIVATORS.

EXT.P5: TRUE COPY OF THE LETTER W.L (8)-7698/2011 DT.21.05.2012.

EXT.P6: TRUE COPY OF THE NEWS ITEM REPORTED IN MALAYALA MANORAMA DAILY.

EXT.P7: TRUE COPY OF THE COMMUNICATION ISSUED BY R2 ON 13.09.2012.

EXT.P8: TRUE COPY OF PURCHASE CERTIFICATE.

EXT.P9: TRUE COPY OF COMMUNICATION NO.65606/d/2012/F, DATED 25.08.2012.

EXT.P10: TRUE COPY OF LETTER DT.11.09.2012 TO THE 1ST PETITIONER.

EXT.P11: TRUE COPY OF THE COMMUNICATION DT.18.02.2013 BY THE 2ND RESPONDENT.

EXT.P12: TRUE COPY OF ORDER NO.A-3 9765/2012 DT.7.3.2013.

EXT.P13: TRUE COPY OF THE ORDER IN HRMP NO.4396/2011 DT.28.05.2012 BY KERALA STATE HUMAN RIGHTS COMMISSION.

RESPONDENTS' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

**P.V.ASHA, J.**

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W.P(c) No.27855 of 2012-F  
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Dated this the 11<sup>th</sup> day of August, 2015

**JUDGMENT**

The petitioner is aggrieved by denial of compensation towards damages caused to his properties on account of the attack by elephants which entered his property in Agambadam Village, Nilamboor Taluk in Malappuram District, crossing Kuruvanpuzha. Property of the petitioner lies adjacent to forest under Edvanna range, Nilamboor. The petitioner submits that he has been cultivating various types of crops in the said property. From 2009 onwards, the cultivations in his property are being destroyed by the attack of wild animals. The petitioner had submitted Ext.P1 application for compensation under the Kerala Rules for Payment of Compensation to Victims of Attack by Wild Animals, 1980 (hereinafter referred to as the 'Rules' for short). According to him, similarly situated cultivators had also submitted similar representations.

2. The petitioner says that on account of personal animosity of the Forest Officer, the damage caused to the

cultivation in his property was not properly reported. Even though the petitioner submitted Ext.P3 representation with copy to the 2<sup>nd</sup> respondent on 4.5.2009, no fruitful action was taken.

3. The respondents in the counter affidavit submitted that the petitioner is an encroacher and hence he is not entitled to compensation under the Rules.

4. According to the petitioner, it is for the Government and Forest Department to see that the elephants and other wild animals do not cross the forest area and cause destruction to the life and property of human beings.

5. On the other hand, it is the contention of the learned Government Pleader that being a citizen, the petitioner is also responsible to protect the forest wealth. It is the case of the respondents that the petitioner should be more responsible when he has chosen to run a resort in the property near the forest. According to the learned Government Pleader, the State as well as the petitioner are having responsibility to avert such incidents while giving weightage for protection of forest wealth and wild animals.

6. The petitioner says that the Rules fixes a ceiling in respect of the compensation and therefore even when huge loss

is caused to the cultivation, the maximum that is payable under the Rules is only a sum of Rs.50,000/-, which is recently enhanced to Rs.75,000/-. According to the petitioner, proper studies have not been made in order to ensure the protection of the person and properties of persons residing near the forests and the provisions contained in the Rules are inadequate.

7. One of the prayers in the Writ Petition is for a direction to the Government to appoint a high power committee to conduct study in order to explore the scope and ambit of the impact of threat of wild animal attack of life and property of citizen during the period 2009-2012 and to frame proper rules for the State of Kerala.

8. From the Rules it is seen that amendments are being carried out from time to time in respect of the quantum of compensation under various provisions. However, the petitioner appears to be dissatisfied with the enhancement in quantum of compensation, saying that the ceiling fixed prevents one from claiming compensation above the prescribed limit. The counter affidavit filed by the 2<sup>nd</sup> respondent reveals that several steps have been initiated in order to protect the properties lying near the property of the petitioner. In the counter affidavit, it has

been stated that the State cannot be made liable for natural calamities including wild life attacks. It is submitted that Check dams were built in Nilamboor North Division in 2011-2012 and such constructions are going on for the purpose of protecting the cultivations near the forest area. The counter affidavit also says that the petitioner, who is engaged in farm tourism, is duty bound to take up protection measures on his own. It is also stated that the Forest Department is taking steps and in this view of the matter they have constructed trenches and walls around most of the tribal colonies and near dense habitation. It is also stated by the learned Government Pleader that revision of the Rules is being carried from time to time.

9. However, it is found that as far as the writ petitioner is concerned, there is a finding of encroachment on his part and as per the Rules, a person involved in such an offence is not entitled to any compensation, or a relief under Article 226 of the Constitution of India.

10. Anyway, request of the petitioner to conduct a study for exploring the scope and ambit of the impact of threat of wild animal attack on the life and property of citizen and damage to properties caused by them appear to be necessary, in view of the

fact that Rules were made as early as in 1950. The learned Government Pleader submits that studies are being conducted at regular intervals and the measures suggested by the petitioner are having heavy financial implications and therefore such measures can be taken on the basis of such study reports.

11. This Court is also of the view that the Government have to take appropriate steps to conduct a scientific study in the matter, and to take appropriate measures to protect the person and property of the inhabitants near the forest areas simultaneously protecting the forest wealth as well as the wild life without causing harm to either, with due co-operation of the inhabitants. The Government shall do the needful at the earliest.

With the above observations, this Writ Petition is disposed of.

rtr/

sd/-  
**(P.V.ASHA, JUDGE)**