

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 26309 of 2014 (K)

PETITIONER :

**SMT. SATGUNA DEVI,
W/O. RAMARVEL @ RAMANATHAN, PALLIKUNNU KARA,
SANTHANPARA, UDUMBANCHOLA TALUK, IDUKKI.**

BY ADV. SRI.M.C.JOHN

RESPONDENT(S):

- 1. THE DIVISIONAL FOREST OFFICER,
MUNNAR DIVISION, DEVIKULAM-685 561.**
- 2. THE FOREST RANGE OFFICER,
DEVIKULAM-685 561.**
- 3. THE SECTION FORESTER,
PONMUDI SECTION, PONMUDI, DEVIKULAM-685 564.**
- 4. THE SUB COLLECTOR, DEVIKULAM-685 561.**
- 5. THE TAHSILDAR,
UDUMBANCHOLA, DEVIKULAM-685 552.**
- 6. THE VILLAGE OFFICER,
SANTHANPARA, DEVIKULAM-685 552.**

**BY SPL. GOVERNMENT PLEADER (REVENUE) SMT. SUSHEELA BHAT
BY SPL. GOVT. PLEADER SRI.M.P.MADHAVANKUTTY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-11-2014, THE COURT ON 12-01-2015 DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THANDAPER ACCOUNT ISSUED BY THE 6TH RESPONDENT ON 4.7.2014.
- P2 : COPY OF APPLICATION DTD. 23.6.2014 SUBMITTED BY PETITIONER TO THE 5TH RESPONDENT.
- P3 : COPY OF REPORT DTD. 4.7.2014 FROM THE 6TH RESPONDENT.
- P4 : COPY OF REPORT NO.G4-12399/14 DTD. 14.7.2014 OF THE 5TH RESPONDENT TO THE 4TH RESPONDENT.
- P5 : COPY OF LETTER NO.B5-2361/14/L.DIS DTD. 16.7.2014 FROM THE 4TH RESPONDENT TO 2ND RESPONDENT.
- P6 : COPY OF APPLICATION DTD. 16.7.2014 SUBMITTED TO THE 2ND RESPONDENT.
- P7 : COPY OF REPORT DTD. 18.7.2014 FROM THE 3RD RESPONDENT TO THE 2ND RESPONDENT.
- P8 : COPY OF LETTER NO.M-7/4030/2014 DTD. 22-07-2014 ISSUED BY THE 1ST RESPONDENT.
- P9 : COPY OF LETTER NO.388/14 DTD. 22.7.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C)No.26309 of 2014

Dated this the 12th day of January, 2015

JUDGMENT

The petitioner submitted an application for permission to cut and remove the trees referred in Ext.P7, produced along with the writ petition from her Cardamom Plantation having an extent of 10.72 acres. The Deputy Collector forwarded the application to the Divisional Forest Officer. By Ext.P8 order, the first respondent granted permission. However, while granting permission, it is observed that the entire wood logs had to be appropriated by the Government. Challenging that direction, the writ petition is filed.

2. The case of the petitioner is that the trees are not vested with the Government. It is further submitted that these are all planted trees by the petitioner and the assignment was under the Cardamom Rules. It is pointed out by the learned

counsel for the petitioner that there is no vesting of the trees with the Government under the Cardamom Rules as available to the Government under the Land Assignment Rules. Accordingly, the petitioner submits that the direction that the trees are to be appropriated by the Government is liable to be set aside.

3. In this matter, a detailed counter statement has been filed by the second respondent. It is submitted that the trees are liable to be cut subject to Rule 28, 30 and 31 of the Cardamom Rules 1935 read with Section 3 & 4 of the Kerala Grants and Leases (Modification and Rights) Act, 1980 (for short, the 'Act 1980'). It is further stated that the Act, 1980 makes it obligatory on the part of the grantees and lessees to pay the seigniorage on the trees cut from the lands earlier assigned.

4. The learned Special Government Pleader placed before me the above Act and also relied on the judgment of the

Hon'ble Supreme Court in **Divisional Forest Officer and Others v. Tata Finlay Ltd. and Another** [(2001) 5 SCC 684].

5. The Act, 1980 was brought into force to regulate the land under lease or under grant as it has been experienced that the only nominal amounts as royalty for cutting teak, ebony etc. are paid by lessees and grantees and they earn huge profits. Thus in order to circumvent such undue advantage, this Act was brought into force by modifying the rights under the grants and leases by obliging the lessees and grantees to pay seigniorage, at the rates prescribed time to time. The Hon'ble Supreme Court in Tata Finlay Ltd.'s case (*supra*) held that the term seigniorage in Section 4 of the above Act is to highlight the prerogative of the State in relation to the property(timber) belonging to lessee or grantee but standing on the State owned land and every grantee and every lessee is made liable to pay the Government the seigniorage at the rates in force for the time being for the timber cut and removed from any land held

by him under the grant or lease. Though the petitioner has no obligation under the Cardamom Rules to pay any value of the timber cut and removed, nor there were any provisions to appropriate cut and removed trees by the Government, nevertheless in the light of Act 1980 the petitioners are liable to pay seigniorage to the State. However, the direction in the impugned order that timber can be appropriated by the Government is therefore, unsustainable. Thus, the petitioner shall be permitted to appropriate cut and removed trees based on the seigniorage payable at the rate fixed by the first respondent. Needful shall be done by the first respondent within a period of two months to fix the seigniorage rate and intimate the petitioner. In view of the above, Ext.P8 order is set aside to the extent as above.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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