

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 29534 of 2015 (N)

PETITIONER(S):

**MUNNAR TEA GARDEN RESIDENCY,
PALLIVASAL P.O.,
HAVING ITS REGISTERED OFFICE AT: BUILDING NO.VIII/259,
KATHANARUTHOTTATHIL, MEKKADAMBU P.O., RACKAD,
ERNAKULAM DISTRICT, PIN-682 316,
REPRESENTED BY ITS MANAGING PARTNER, P.T.ELDHO,
S/O. P.U.THOMAS, AGED 50 YEARS.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI**

RESPONDENT(S):

- 1. THE RANGE OFFICER/AUTHORISED OFFICER,
KERALA FOREST DEPARTMENT,
KERALA FOREST OFFICE, RANGE FOREST OFFICE,
DEVIKULAM P.O., IDUKKI-685 613.**
- 2. THE TAHSILDAR,
DEVIKULAM, DEVIKULAM P.O., IDUKKI-685 613.**

BY SMT.SUSHEELA BHAT, SPECIAL. GOVT. PLEADER,

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 :** COPY OF THE SALE DEED DTD.6.5.2015 EXECUTED BY SRI.STEPHAN JOSEPH IN FAVOUR OF THE PETITIONER FIRM IN RESPECT OF 25 CENTS OF LAND IN RS NO.49/1-1, BLOCK NO.14 OF PALLIVASAL VILLAGE.
- P2 :** COPY OF THE TAX RECEIPT DTD.12.5.2015 ISSUED TO THE PETITIONER BY THE VILLAGE OFFICER, PALLIVASAL.
- P3 :** COPY OF THE LETTER NO.C2-5891/15/L. DIS. DTD.20.5.2015 ISSUED ON BEHALF OF THE 2ND RESPONDENT.
- P4 :** COPY OF THE NOC DTD.24.1.2007 ISSUED TO PREVIOUS OWNER, SRI.STEPHAN JOSEPH, BY THE PALLIVASAL GRAMA PANCHAYAT.
- P5 :** COPY OF THE PROCEEDINGS NO.B3-8104/2014 DTD.3.9.2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.
- P6 :** COPY OF THE OR NO.30/2015 DTD.17.9.2015 REGISTERED BY THE 1ST RESPONDENT AGAINST THE PETITIONER UNDER SECTION 5(2) AND 9 OF THE KERALA PRESERVATION OF TREES ACT, 1986.
- P7 :** COPY OF THE MAHAZAR DTD.17.9.2015 PREPARED BY THE 1ST RESPONDENT IN RESPECT OF SEIZURE OF TREE BRANCHES CUT BY THE WORKERS OF THE PETITIONER.
- P8:** COPY OF SRO NO.797/2006 DATED 14/11/2006 ISSUED BY THE GOVERNMENT

RESPONDENT(S)' EXHIBITS

- R1(A):** COPY OF THE NOTIFIED VILLAGE IN KERALA UNDER KERALA PRESERVATION TREES ACT (1986), UNDER SRO NO.1241/90
- R1(B):** COPY OF THE NOTIFIED VILLAGE IN KERALA UNDER SRO NO.713/2006 UNDER KERALA PROMOTION OF TREE GROWTH IN NON-FOREST AREAS ACT 2005
- R1(C):** COPY OF RECOMMENDATION LETTER NO.700/2015 DATED 26/9/15 ISSUED BY RANGE FOREST OFFICER, DEVIKULAM.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.29534/2015**  
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Dated this the 26th Day of October, 2015

J U D G M E N T

The writ petitioner is a partnership firm, having 25 cents of land in Resurvey No.49/1-1, Block No.14 of Pallivasal Village. The aforesaid property is covered by a *pattayam* issued under L.A.No.18/94. They approached the second respondent Tahsildar to cut and remove nine Eucalyptus trees from the above property and permission was granted as per Ext.P5.

2. The petitioner has been booked for an offence under Section 5 (2) of the Kerala Preservation of Trees Act, 1986 as per Ext.P6 by the first respondent-Range Officer for cutting and removing the branches of the Eucalyptus trees.

3. The learned Senior Counsel Shri K.Jaju Babu appearing for the petitioner urges that the petitioner is entitled to cut and remove the Eucalyptus trees based on Ext.P5 order of the Tahsildar and that the area is not a reserved forest but an unreserved area. The Counsel also refers to the Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007 and submits that as per the above Act, Eucalyptus is exempted from the rigour of prohibition.

4. The learned Special Government Pleader submits that the provisions under the Kerala Preservation of Trees Act would apply in this case as there is a prohibition of cutting trees in the notified areas and it can be allowed only based on the conditions mentioned in Section 5 of the above Act. It is further submitted that the Forest Range Officer is the competent authority to take a decision and not the Revenue Authority, therefore, the petitioner cannot cut and remove the trees based on the order of the Tahsildar. The learned counsel relied on Section 3 of the Kerala Preservation of Trees Act which shows that the Government may, by notification in a Gazette appoint such Officers not below the rank of a Ranger as an Authorised Officer under the Act. Further, the land in question is a notified area and permission has to be obtained from the Range Officer. The permission granted by the Tahsildar is not in terms of Section 5. It is apposite to quote Section 5 of the Kerala Preservation of Trees Act, which reads as follows:

5. *Prohibition of cutting of tree in notified areas.*-(1)
Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by

notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted, burnt or otherwise destroyed except on the ground that--

- (a) the tree constitutes a danger to life or property; or
- (b) the tree is dead, diseased or windfallen:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(2) No person shall, without the previous permission in writing of the authorized officer, cut, uproot, burn or otherwise destroy or cause to be cut, uprooted, burnt or otherwise destroyed any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation I.--For the purposes of this section, the term "tree" shall include any species of tree.

Explanation II.--For the purposes of sub-section (1), the expression "private forest" means any land which immediately before the 10th day of May, 1971, was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971."

5. Section 5(2) of the Act clearly indicates that no person shall cut and remove the trees without the previous permission in writing of the authorized officer.

6. It is doubtful whether Eucalyptus would fall within the trees

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referred in the Kerala Preservation of Trees Act since it is an exempted tree under the Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007. The Kerala Preservation of Trees Act defines 'trees' which do not include Eucalyptus, see Section 2(e) of the Act. The Kerala Promotion of Tree Growth in Non-Forest Areas (Amendment) Act, 2007 defines trees, under Section 2(g) as "tree" means any woody plant, whether fruit bearing or not, and includes bamboos. Anyway, I am not entering upon this question in the light of the proposed direction in the writ petition. The petitioner is the holder of only 25 cents of land. They proposes to cut and remove the trees from their land for preserving it for the purpose of utilising the same for tourism related activities. The petitioner based on Ext.P5 order of the Tahsildar, cut and removed branches of the Eucalyptus trees. It appears, it was a *bona fide* act of the petitioner. Therefore, the petitioner may be permitted to cut and remove nine planted Eucalyptus trees without prejudice to recover the value of trees from the petitioner.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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