

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 35501 of 2009 (S)

PETITIONER :

**ONE EARTH ONE LIFE, (REG.NO.S.246/1988),
THRISSUR REPRESENTED BY MR.TONY THOMAS,
AGED 50 YEARS, S/O.THOMAS, KIZHAKKEKARA HOUSE
IRUMBAKACHOLA, KANJIRAPUZHA P.O., PALAKKAD DIST.**

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENTS :

- 1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 3. THE SECRETARY TO GOVERNMENT, SC & ST
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**
- 4. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF FOREST AND WILD LIFE
THIRUVANANTHAPURAM.**
- 5. THE PRINCIPAL CHIEF CONSERVATOR OF
FORESTS, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM.**
- 6. THE DIVISIONAL FOREST OFFICER,
MANNARKKAD.**
- 7. THE DIVISIONAL FOREST OFFICER,
PALAKKAD.**
- 8. THE DISTRICT COLLECTOR, PALAKKAD.**

**BY SPL. GOVERNMENT PLEADER SRI. M.P. MADHAVANKUTTY
BY SRI.M.P.PRAKASH,SPL.GP FOR FOREST**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE NEWS REPORT PUBLISHED IN THE INDIAN EXPRESS DAILY ON 30.9.2009
- P2: COPY OF THE JOINT VERIFICATION LIST IN RESPECT OF VETILACHOLA COLONY.
- P3: COPY OF THE LETTER DT 27/9/2008, ISSUED BY THE CHIEF CONSERVATOR OF FORESTS (PROTECTION)
- P4: COPY OF THE MINUTES OF THE MEETING OF MINISTERS FOR FOREST, TRIBAL WELFARE AND REVENUE, HELD ON 23-09-2009 ALONG WITH TRANSLATION.
- P5: COPY OF THE REPORT DT 11/11/2009 SUBMITTED BY THE DIVISIONAL FOREST OFFICER TO THE DISTRICT COLLECTOR.
- P6: COPY OF THE REPORT DT 30/11/2009 SUBMITTED BY THE DIVISIONAL FOREST OFFICER TO THE DISTRICT COLLECTOR.
- P7: COPY OF THE REPORT DT 17/11/2009, SUBMITTED BY THE RANGE OFFICER, WALAYAR BEFORE THE DIVISIONAL FOREST OFFICER, PALAKKAD WITH ITS TRANSLATION.
- P8: COPY OF THE LETTER DT 25/11/2009 ALONG WITH TRANSLATION.
- P9: COPY OF THE LETTER VIDE NO. E2-5352/2009 DT 28/11/2009.
- P10: COPY OF THE REPORT SUBMITTED BY THE DIVISIONAL FOREST OFFICER, MANNARKKAD TO THE CONSERVATOR OF FOREST, ON 11/11/2009.
- P11: COPY OF THE LETTER DT 24/11/2009 WITH ITS TRANSLATION

RESPONDENT'S EXHIBITS :

- EXT.R4(a): COPIES OR 9/07, OR 2/08 AND OR 6/08
- EXT.R4(b): COPY OF THE LIST OF TRIBALS OF NADUPPATHY COLONY
- EXT.R4(c): COPY OF THE JOINT VERIFICATION LIST
- EXT.R4(d): COPY OF THE LIST OF CLAIMANTS WHOSE CLAIMS WERE APPROVED BY THE DISTRICT LEVEL COMMITTEE, MANNARKKAD.
- EXT.R4(e): COPY OF THE OFFENCE BOOKED IN THE WALAYAR FOREST RANGE AS OR 23/09.
- EXT.R4(f): COPY OF THE LETTER OF RANGE OFFICER WALAYAR TO THE DIVISIONAL FOREST OFFICER, PALAKKAD.
- EXT.R4(g): COPY OF THE LETTER NO. E2/5352/09 DT 11/11/2009.
- EXT.R4(h): COPY OF THE LETTER NO. E2/5352/09 DT 3/12/2009.

//TRUE COPY//

P.S.TO JUDGE

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.P (C) No. 35501 of 2009

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Dated this, the 14th day of July, 2015

J U D G M E N T

Shaffique, J

This writ petition is filed in the form of a Public Interest Litigation *inter alia* seeking for the following reliefs;

(i) *Issue a writ of mandamus directing respondents 1 to 5 not to assign Forest lands to the Scheduled Tribes and Other Traditional Forest Dwellers which is not in their actual possession as on 13.12.2005 and not more than the actual extent possessed by them.*

(ii) *Issue a writ of certiorari, calling for the records relating to Exhibit P4 and quash the portion of Exhibit-P4 by which it was decided to return the application for claims of right by the Scheduled Tribes and Other Traditional Forest Dwellers, if the area claimed is below one acre and to get revised claims from such applicants so that at least one acre can be assigned to each claimant.*

(iii) *Issue a writ of mandamus directing respondents No.8 to cancel all the pattas issued on 7.12.2009 to the Scheduled Tribes and Other Traditional Forest Dwellers in respect of unoccupied forest lands coming under Mannarkkad and*

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Palakkad Forest Divisions, Immediately.

(iv) Issue a writ of mandamus directing respondents 1 to 5 to issue record of rights to the Scheduled Tribes and Other Traditional Forest Dwellers only after a joint verification by the Forest and Revenue Departments in respect of the claims.

(v) Issue a writ of mandamus directing respondents 2 and 4 to fix the boundaries by putting jundas between the lands for which records of rights are issued to the Scheduled Tribes and Other Traditional Forest Dwellers and the adjacent forest lands and to protect the neighboring forest lands from being further encroached”.

2. The facts involved in the writ petition disclose that the petitioner, being a voluntary organization, on being aggrieved by the destruction of various forest land by Revenue and Tribal departments, has approached this Court contending that the forest lands are being assigned illegally under the guise of implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2005 (hereinafter referred to as 'the Act') and the Rules framed thereunder.

3. It is stated that in respect of lands coming within the forest range of Mannarkkad forest division of Palakkad, large scale encroachments have been made with respect of 82 acres of

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virgin forest land thereby destroying the undergrowth. Such an incident has been reported in newspapers as evidenced from Ext.P1 dated 30/9/2009. It is submitted by the petitioner that in implementation of the provisions of the Act, a joint verification was conducted by the Revenue and Forest Department in Mannarkkad Taluk in 2006. All lands under the possession and cultivation of the dwellers have been surveyed, demarcated and the joint verification list has been prepared in respect of Vettilachola colony, which is produced as Ext.P2. GPS survey was also conducted in the forest areas and all the tribal settlements have been marked by the forest department. However, in a joint meeting of the Ministers for Forest, Tribal Welfare and Revenue, a decision was taken to take back the application for claims of the rights claimed by tribals below 1 acre and they were asked to submit revised claims so that atleast one acre land can be assigned to them. Ext.P4 is the said minutes.

4. Petitioner points out that the aforesaid decision in the minutes is in total violation of the statutory provisions under the Act. Further, it is pointed out that the authorities proceeded to assign lands to ineligible persons and larger extent of forest land

is proposed to be assigned in violation of the provisions of the Act and the Rules, which according to the petitioner, will denude the forest and hence the writ petition is filed seeking the reliefs aforesaid.

5. Counter affidavit has been filed by the 4th respondent virtually admitting the factual statements in the writ petition and stating that though a decision had been taken by virtue of Ext.P4 minutes, the intention to provide one acre of land to tribals, no such Government Order had been issued in that regard. Further, a perusal of the counter affidavit clearly indicates that necessary GPS survey of tribal settlements based on the decision in the State Level Monitoring Committee and as per the instructions of the Chief Conservator of Forests (Protection) had been completed in all the forest settlements in the State and maps have been prepared.

6. It is also admitted that there had been encroachment over 82 acres of virgin forest land in Vettilachola Tribal Settlement, which took place in 2007-2008 and 2009. However, it is stated that no title have been issued in Vettilachola Tribal Settlements under the provisions of the Act since the correct legal

position was brought to the notice of the Sub Divisional Level Committee and District Level Committee by the forest officials. However, in para 33, it is stated as under:

"33. The allegation raised in Ground (D) it is submitted that the forest officials have not been duly intimated about the survey of land for which claims have been preferred and received by the Grama Sabha which would lead to assignment of virgin forest land in contravention of the provisions of the Forest Rights Act. This would also lead to recognizing fake claims on forest lands. In this connection it has been reported by the Divisional Forest Officer, Mannarkkad that as on 25/02/2010, 93 out of 268 records of rights issued are for land under forest vegetation. These 93 records of rights include 3 records of rights in Pazhayur settlement of Attappadi Range, 10 records of rights in Vakkodan Settlement of Mannarkkad Range and 80 records of rights in Agaly Range. The 80 records of rights given in Agaly range are to tribals residing outside forest".

7. Having regard to the above factual situation, there is no dispute about the fact that the tribals are entitled for assignment of land only under the provisions of Act. Section 4(3) of the Act is relevant, which reads as under;

"4(3) *The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes*

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and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005”.

8. There cannot be any dispute regarding the fact that the recognition and vesting of forest rights under the Act to the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers can only be in respect of forest land. The very concept of the aforesaid statutory provision indicates that forest land can be assigned only with reference to the property in possession of the forest dweller or the tribal, as the case may be. It cannot be extended to any other area of forest. In other words, it is not open for the Government to assign any extent of land to the forest dwellers other than the land in their actual possession. When this legal position is clear, we do not think that the Government will have any right to issue any assignment orders or issue pattas based on the minutes of discussion as stated in Ext.P4.

9. It is for the Government and its authorities especially the Forest Department to ensure that the forest land is not misutilized by issuing assignment orders/pattas to persons who

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are not eligible for the same. If there is any encroachment on the forest land, it is for the concerned officers to ensure that encroachment is removed at the earliest.

10. Therefore, having regard to the limited scope of the above writ petition, we direct the respondent authorities to ensure that no land shall be assigned other than in accordance with the provisions of the Act and the Rules framed thereunder. It is made clear that para 5 of the minutes of the meeting (Ext.P4) shall not enable any person to claim 1 acre of land from the forest area, other than the land in their possession. The forest department shall also verify whether appropriate demarcation can be made to the aforesaid habitats depending upon the ground reality involved in the matter.

Writ petition is closed as above.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//
PS to Judge