

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 32148 of 2014 (P)

PETITIONER:

**A. SABIRA,
D/O.MOIDU, ARAKKA HOUSE, VELLAMUNDA
KATTAYAD P O, MANANTHAVADY TALUK,
WAYANAD DIST-670731.**

BY ADV. SRI.M.C.JOHN

RESPONDENTS:

**1. VILLAGE OFFICER,
PADIJARATHARA VILLAGE, VYTHIRI TALUK, WAYANAD
PIN-670570.**

**2. THE TAHSILADER
VYTHIRI TALUK OFFICE, VYTHIRI, WAYANAD
PIN-670570.**

**3. THE DIVISIONAL FOREST OFFICER
SOUTH WAYANAD DIVISION, KALPETTA,
WAYANAD-670570.**

**R1 & 2 BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT
R3 BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE REGISTERED SALE DEED NO 1011/1/13 DTD 11/4/2013**
- P2:- TRUE COPY OF PURCHASE CERTIFICATE NO 7/1986 DTD 1/1/1986 ISSUED BY THE LAND TRIBUNAL, KALPETTA**
- P3: TRUE COPY OF ENCUMBRANCE CERTIFICATE NO 2843/12 DTD 12/12/2012 ISSUED BY THE SUB REGISTRAR VELLAMUNDA**
- P4:- TRUE COPY OF BASIC TAX RECEIPT DTD 9/4/2013 ISSUED BY THE IST RESPONDENT**
- P5:- TRUE COPY OF BASIC TAX RECEIPT DTD 24/9/2013 ISSUED BY THE IST RESPONDENT TO PETITIONER AND OTHER**
- P6:- TRUE COPY OF BASIC TAX REGISTER ISSUED BY THE IST RESPONDENT ON 18/3/2013**
- P7:- TRUE COPY OF THE REPLY LETER NO 227/14 DTD 29/5/2014 ISSUED BY THE IST RESPONDENT**

RESPONDENT(S)' ANNEXURE

ANNEXURE R2(A): A COPY OF THE NOTIFICATION NO.EFL10-311/2013 DATED 26/10/13

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON J.

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Dated, this the 31st day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"(i) call for the records relating to Ext.P7 and issue a writ of certiorari quashing the same.

(ii) issue a writ of mandamus directing the respondent 1 and 2 to continue to accept basic tax for the properties covered by Ext. P1.

(iii) issue an appropriate writ order or direction restraining the 3rd respondent and his subordinates from interfering in any manner with the petitioners properties covered by Ext. P1

(iv) issue such other writ, order or direction including interim orders as that are necessary in the circumstances of the case.

And

(v) allow this W.P.(C) with costs. "

2. The grievance of the petitioner as projected in the writ petition is that, the petitioner along with two others purchased property having an extent of 2.4025 hectares comprised in Re. Sy No.

1/3/2 of Padinjarathara village, as per Ext. P1 sale deed from the Land Tribunal, Kalpetta. It is stated that the petitioner was remitting land tax in respect of the property concerned till 2013 - '14, as evident from Ext. P5. But, when the petitioner sought to remit land tax in respect of the year 2014 - '15, the same was refused to be accepted stating that the petitioner's land was notified as ecologically fragile land. According to the petitioner, the property concerned is not included in the aforesaid notification. Hence the writ petition.

3. Heard the learned Government Pleader as well, who submits, with reference to the statement filed, that, the petitioner's property is included in the notification bearing No. EFL-10-311/2013 dated 26.10.2013 issued under Section 3(1) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. Paragraph 1 of the said statement is relevant, which reads as follows :

"1. It is submitted that, the petitioner Smt. Sabira and two other purchased an extent of 2.4055 Hectares of land comprised in Re.Sy. No. 1/3 in Block No. 2 of Padinjarathara Village as per document No. 1011/13 dated 11.04.2013 of SRO Vellamunda. The basic tax was accepted for the above land during

2013-14. Meanwhile, a notice was issued to the village officer Padinjarathara by the Divisional Forest Officer South Wayana under Sec. 3 (2) of Kerala Forest (vesting and management of ecological fragile land) Act 2003 stating that about 12 Hectares of land comprised in Re. Sy. Nos. 286 pt, 1/3 pt, $\frac{1}{4}$ pt, 2/1 pt, 2/2 pt in Block 2 of Pandinjarathara village has been notified as ecologically fragile land as per Notification No. EFL - 10 - 311/2013 dated 26.10.2013 under Section 3 (1) of the Act and the land is vested in Government. A copy of the above notification is produced herein and marked as **Annexure R2(a)**. The Survey Nos. shown in serial number 45 of Annexure R2 (a) relates to the petitioner.

4. After hearing both the sides, this Court finds that in view of the law declared by this Court as per the judgment dated 17.11.2014 in W.P.(C) No. 26691 of 2010 and connected cases, the petitioner, if aggrieved of Ext. R1(a), is having effective alternative remedy before the Custodian. The relevant portion [as contained in paragraph 163 (iv)] of the judgment is as follows :

"(iv) Petitioners who have challenged the Notifications issued under Sec. 3 of the Act are also allowed one month's time to submit an application under Sec. 10(1) and 10A as the case may go to the Tribunal which may be considered and decided by the

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: 4 :

Tribunal in accordance with law expeditiously within a period of six months from the date of submitting the applications.

In the said circumstances, the writ petition is disposed of , in terms of the judgment dated 17.11.2014 in W.P.(C) Nos. 26691 of 2010 and connected cases, without prejudice to the rights and liberties of the petitioner to pursue other appropriate remedy.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd