

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 35620 of 2015 (B)

PETITIONER:

**C.S.NAZAR, AGED 50 YEARS,
S/O.SAIDU KUNJU, CHOORAVELIL HOUSE,
ADIMALY.P.O., IDUKKI-685 561.**

**BY SRI.K.JAJU BABU,SENIOR ADVOCATE
ADV. SMT.M.U.VIJAYALAKSHMI**

RESPONDENTS:

- 1. THE PRINCIPAL CHIEF FORES CONSERVATOR
(WILD LIFE) & CHIEF WILD LIFE WARDEN,
WILD LIFE OFFICE, FOREST HEADQUARTERS,
THIRUVANANTHAPURAM-695 001.**
 - 2. THE WILD LIFE WARDEN,
MUNNAR DIVISION, MUNNAR, IDUKKI DISTRICT,
PIN-685 612.**
 - 3. THE SUB COLLECTOR,
DEVIKULAM, IDUKKI, PIN-685 613.**
 - 4. STATE OF KERALA,
RERPESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- BY SPL.GOV'T PLEADER (REVENUE) SMT. SUSHEELA R. BHAT
BY SPL. GOV'T. PLEADER (FOREST) SRI.M.P.MADHAVANKUTTY**
- THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 35620 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 COPY OF THE PERMISSION DATED 13.1.2012 ISSUED BY THE 1ST
RESPONDENT VIDE NO.WL 10-3887/2011 FOR CUTTING AND REMOVAL OF
EUCALYPTUS.
- P2 COPY OF THE RESOLUTION OF THE EDC PASSED IN ITS MEETING HELD ON
15.10.2013
- P3 COPY OF THE RESOLUTION OF THE EDC PASSED IN ITS MEETING HELD ON
1.11.2013
- P4 COPY OF THE BANK RECEIPT DATED 5.11.2013 FOR THE DEPOSIT OF RS.2
LAKHS MADE BY THE PETITIONER TOWARDS EMD
- P5 COPY OF THE AGREEMENT DATED 5.11.2013 EXECUTED BY THE PETITIONER
AND EDC FOR CUTTING AND REMOVAL OF EUCALYPTUS
- P6 COPY OF THE COMMUNICATION DATED 7.3.2015 ISSUED BY THE 3RD
RESPONDENT VIDE NO.A2 -821/15
- P7 COPY OF THE REPRESENTATION DATED 31.8.2015 SUBMITTED BY THE
PETITIONER TO THE 2ND RESPONDENT.
- P8 COPY OF THE GO(MS) NO.69/2015/RD DATED 16/12/2015 MENTIONED IN
EXT.P6
- P9 COPY OF THE JUDGMENT DATED 10/9/2015 OF THIS HON'BLE COUR IN
WP(C).NO.27354/2015
- P10 COPY OF THE COMMUNICATION NO.R.2477/09 DATED 19/10/2015 ISSUED BY
THE 2ND RESPONDENT TO THE PETITIONER'S COUNSEL.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.35620 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

The petitioner has purchased the right to cut and remove Eucalyptus Grandis trees planted by the Tribals in Ollavayal in Keezhanthoor Village, Devikulam Taluk, as per Exts.P2 to P5 with the permission of the 1st respondent as per Ext.P1. It is submitted that when more than two-third of the work was completed, it was stopped by the 3rd respondent by issuing Ext.P6. Aggrieved by the same, the petitioner submitted Ext.P7 representation, before the second respondent. Ext.P7 representation was considered pursuant to the directions of this Court in W.P.(C) No.27354/2015. However, the petitioner's representation has been rejected by the second respondent stating that in the light of G.O.(Ms) No.69/2015/RD dated 16.2.2015, the petitioner cannot be allowed to remove the Eucalyptus Grandis trees unless the Government

Order is varied by another order. This order is produced as Ext.P10. The petitioner challenges Ext.P10.

2. The Government Order referred in the impugned order is produced as Ext.P8. Learned counsel for the petitioner submits that there is no impediment as per the above Government Order to cut and remove the trees planted by the Tribals.

3. On the other hand, the learned Special Government Pleader, Smt. Susheela R. Bhat would submit that the Government Order clearly bans cutting and removing such trees.

4. It is appropriate to refer the Government Order for the purpose of deciding the issue in this writ petition. In paragraph 6 of the Government Order, it is stipulated as follows:

“Over the last 5 years or so, Government have lost crores of rupees as Eucalyptus Grandis harvested from public lands have been cut and removed and returns taken by private parties. The Grandis belonging to Government in Kurinjimala Sanctuary had been cut and removed with active connivance or tacit concurrence of

Revenue and Forest officials. The Government is serious about solving the matter and therefore, all harvesting of Grandis from Anchunadu area stands stayed until the verification process mentioned in para 2 (4) above is completed.”

5. The ban, therefore, it appears that the Government is loosing huge revenue on account of illegal cutting and removing of Grandis harvested in the public land. The private appropriation of the public money has been dealt in the Government Order. The Government Order also deals with an issue relating to the protection of natural beauty in this ecologically sensitive area. It appears that the Government is planning to develop regulatory tourism and environmental friendly tourism. The Government with the above object of sustaining the picturesque beauty of the area appears to have taken certain measures.

6. No doubt, the objects of Ext.P8 Government Order has to be sustained. However, the question is whether as per the

Government Order, any prohibition has been effected cutting and removing Grandis trees and if so what extent. The Government Order as above would clearly indicate that on account of loss to the exchequer, the Government has prohibited cutting and removing trees. The Government has not interdicted any cutting and removing of any trees by the Tribals or private persons in their own land. The objective of the Government Order to preserve the biodiversity or the natural beauty of the area can be preserved only there is any statutory provisions or executive decision to prevent cutting and removing the land in the private land as well if the same is intend to apply such land. Merely because the Government is taking measures for promotion of environmental friendly tourism that does not mean the owner of the private property shall be prevented from cutting and removing trees, unless it is referable as a prohibitive measures under the statute governing the same.

In the above circumstances, Ext.P10 has to be set aside. There shall be a direction to the second respondent to reconsider the matter afresh. If it is found that the land in question belongs to the private persons and the trees are planted by private persons or Tribals and there is no other impediment under any statutory provisions, the permission shall be granted to the petitioner. Needful shall be done within three weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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