

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 30TH DAY OF JANUARY 2019 / 10TH MAGHA, 1940

WP(C) .No. 22585 of 2018

PETITIONERS:

- 1 ADIVASI KANIKKAR SAMYUKTHA SANGHAM (AKSS) ,
 REG. NO. TVM/TC/14/2013, KRISHNAPRIPA, KOPPAM,
 VIDHURA P.O, THIRUVANANTHAPURAM, REPRESENTED BY
 SECRETARY.
- 2 BHASKARAN,
 AGED 68, S/O. NARAYANAN KANI, SANAL BHAVAN,
 NALAMKALLU, VINOBHA NIKETHAN P.O, VIA AYRANAD,
 THIRUVANANTHAPURAM 695 542.
- 3 V. HARILAL,
 AGED 46, S/O. VELAYUDHAN KANI, SRAVANAM,
 ALUMMOODU, PACHA PALVALLY P.O,
 THIRUVANANTHAPURAM 695 562.

BY ADVS.
SRI.K.S.MADHUSOODANAN
SMT.C.C.BINDHYA
SMT.S.JESSIN
SRI.K.S.MIZVER
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR

RESPONDENTS:

- 1 UNION OF INDIA
 TO BE REPRESENTED BY SECRETARY,
 MINISTRY OF TRIBAL AFFAIRS, GOVERNMENT OF INDIA,
 NEW DELHI 110 001.
- 2 STATE OF KERALA
 TO BE REPRESENTED BY CHIEF SECRETARY,
 GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695 001.
- 3 SECRETARY
 SCHEDULED CASTE AND SCHEDULED TRIBE DEVELOPMENT
 DEPARTMENT, GOVERNMENT OF KERALA,
 THIRUVANANTHAPURAM 691 001.

- 4 ADDL. CHIEF SECRETARY,
REVENUE DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM 695 001
 - 5 ADDITIONAL CHEIF SECRETARY,
ADDITIONAL CHIEF SECRETARY,
FOREST AND WILD LIFE (D) DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM 695 001.
 - 6 DISTRICT COLLECTOR,
CHAIRMAN DISTRICT LEVEL COMMITTEE,
THIRUVANANTHAPURAM 695 001.
- BY ADVS.
ASSISTANT SOLICITOR GENERAL
SRI.SANDESH RAJA.K., SPL. G.P. (FOREST)
KUM.S.KRISHNA
ASSISTANT SOLICITOR GENERAL

OTHER PRESENT:

SPL.GP SANDESH RAJA.K

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed seeking the following reliefs:

"i) call for records connecting Exts.P1 to P10 and P12 to P20 from the respondents.

ii) call for Ext.P8 from 5th respondent and issue writ of certiorari to quash that part of the order limiting jack fruit tree and anjili and read down the same by allowing the cutting and removal of all trees, subject to re-plantation.

iii) declare that the holder of Ann-II title for forest land under occupation is the owner of the property and entitled to deal with the same equal to the title holders of forest dwellers prior to 1977, except to alienation to non tribes.

iv) issue writ of mandamus directing the respondents to treat the land owned and occupied under Ann-II title for all purposes, except alienation to non tribes.

v) issue writ of mandamus directing the respondents not to interfere with drawing of electric line to the respective house in the settlement areas.

vi) issue writ of mandamus directing the respondents to confer the title with the concerned Grama Sabha to Community Forest Rights under Ann-III and Community Forest Resources under Ann-IV of Rules 2007.

vii) issue a writ of mandamus directing the respondents to notify the Forest Village as Revenue Village and register the same in the Records of Revenue.

viii) issue writ of mandamus directing the

respondents not to interfere with the collection of minor forest produce by the forest dwelling tribes and not to insist transit permit from them for transporting the same and limiting the transit permit issued by Grama Sabha to non forest dwellers.

ix)issue writ of mandamus directing the respondents to form Community Forest Right Committee from the Grama Sabha under Sec.2 (g) for managing the same and not to entrust with to out side agency.

x)issue writ of mandamus directing the 6th respondent to issue title for Forest Land under occupation in Ann-II under Rule 8 (h) of Rule 2007 to all eligible forest dwelling tribes.

xi)issue writ of mandamus directing the respondents to disburse the remaining vested forest land out of 19000 acres released as per order of Supreme Court for the distribution of landless tribes."

2. It is submitted by the learned counsel for the petitioners that the petitioners are traditional forest dwellers. They had planted trees in the property which is in their possession. In the case of the 2nd petitioner Ext.P2 Patta is the issued to him. It is stated that a request had been made for cutting and removing certain trees by the petitioners. The request of the petitioners had been rejected, against which the petitioners have approached this Court.

3. The learned counsel for the petitioners would submit that the 2nd petitioner is in occupation of the land in terms of Ext.P2 Patta. It is stated that the trees had been planted by the petitioner and that the 2nd petitioner is entitled to cut and remove the trees planted, as part of self cultivation. It is submitted that this Court in the decision reported in **Pramod K.P. and Others V. State of Kerala and Others [2018 (1) KHC 481]** has held that if the forest/tribal dwellers are issued with certificates of ownership, they are entitled to cut and remove the trees which were planted by them, but not the trees which were standing in the land. It is further held that if any tree causes danger to the life or property of the dwellers, that can also be permitted to be cut and removed. It is stated that the Government cannot claim any right over the trees planted and cultivated by the dwellers and as such, the applications for cutting and removing of the trees are liable to be reconsidered.

4. A statement has been filed by the Divisional Forest Officer, Thiruvananthapuram, wherein it is stated that the 2nd petitioner has no right to fell and use Acacia timber and that the request made by the petitioners could not be allowed in terms of the Scheduled Tribes and Other Tribal Forest Dwellers (Recognition of Forest Rights) Rules 2007. Reliance is also placed on the decision of this Court in **Kerala State Electricity Board, Tvm. V. Kerala High Tension & Extra High Tension Industrial Electricity Consumer's Association and Others [2016 (5) KHC 634]** as well as the decision of the Division Bench of this Court in **Self Financing Arts and Science College Management Welfare Association V. MG University, Ktym [2016 (4) KHC 293]** to contend that since no collective right of the forest dwellers have been infringed, the writ petition is not maintainable at the instance of the 1st petitioner.

5. Having considered the contentions advanced and having perused the judgment in **Pramod K.P.'s case**

(supra), I am of the opinion that the respondents are duty bound to reconsider the application preferred by individual patta holders for cutting and removing of the trees in question. It is to be ascertained whether the trees are those planted by them on property to which they hold patta. In case there is no dispute as to the fact that the trees had been planted by the occupants, then the respondents had to permit the cutting and removal of such trees, since the trees were apparently planted as a part of self cultivation.

6. The writ petition is therefore disposed of directing the Chief Conservator of Forests to consider the claim of the 2nd petitioner with regard to the cutting and removal of the trees in question. In case applications are preferred by the 2nd petitioner, the same shall be considered and if the trees are planted by him as part of self cultivation, appropriate decision shall be taken by the respondents on the applications to be preferred for cutting and removing of such trees. Other

reliefs sought for in the writ petition are left open to be agitated in appropriate proceedings.

Sd/-

ANU SIVARAMAN

JUDGE

YKB

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	PHOTOCOPY OF THE REPORT PUBLISHED IN MATHRUBHUMI DAILY DATED 1-7-2012.
EXHIBIT P2	PHOTOCOPY OF THE ANN-II-TITLE FOR FOREST LAND UNDER OCCUPATION ALONG WITH SURVEY MAP.
EXHIBIT P3	PHOTOCOPY OF THE APPLICATION DATED 19-4-2017
EXHIBIT P4	PHOTOCOPY OF THE ORDER OF DIVISION FOREST OFFICER DATED 6-5-17
EXHIBIT P5	PHOTOCOPY OF THE ORDER BEARING NO. GO (MS) 23/93/FOREST DATED 15-3-93
EXHIBIT P6	PHOTOCOPY OF THE ORDER BEARING NO.GO (MS) 103/2015/FOREST DATED 15-12-2015.
EXHIBIT P7	PHOTOCOPY OF THE ORDER BEARING G.O (MS) NO. 42/2015/FOREST DATED 6-6-2015.
EXHIBIT P8	PHOTOCOPY OF THE ORDER DATED 27-5-2017 BEARING G.O (MS) 28/2017/ FOREST.
EXHIBIT P9	PHOTOCOPY OF THE APPLICATION DATED 30-05-15.
EXHIBIT P10	PHOTOCOPY OF THE REPLY DATED 12-6-15 BEARING NO. TA 3004/15.
EXHIBIT P11	PHOTOCOPY OF THE JUDGMENT REPORTED IN 2015(4) KLJ 205 OF THE HON'BLE DIVISION BENCH.
EXHIBIT P12	PHOTOCOPY OF THE REPLY DATED 16-4-2012 BEARING NO. L-2269/12.
EXHIBIT P13	PHOTOCOPY OF THE DEMY OFFICIAL LETTER DATED 7-2-13 OF DIRECTOR OF TRIBAL DEVELOPMENT DEPARTMENT
EXHIBIT P14	PHOTOCOPY OF THE GO (MS) 2023/2017/REVENUE

DATED 27-4-2017.

EXHIBIT P15	PHOTOCOPY OF THE LETTER BEARING NO.TDRM/C/1193/2017 DATED 9.1.2018 OF TRIBAL REHABILITATION DEVELOPMENT MISSION
EXHIBIT P16	PHOTOCOPY OF THE REPORT DATED 5.3.2018 PUBLISHED IN MATHRUBHUMI DAILY
EXHIBIT P17	PHOTOCOPY OF THE REPRESENTATION OF THE 1ST PETITIONER TO THE CHIEF MINISTER DATED 30.08.2017
EXHIBIT P18	PHOTOCOPY OF THE REPRESENTATION DATED 24.02.2018 SUBMITTED TO THE CHIEF SECRETARY BY THE CO-ORDINATION COMMITTEE FOR THE IMPLEMENTATION OF FRA
EXHIBIT P19	PHOTOCOPY OF THE INTIMATION FROM THE FINANCE MINISTER DATED 24.02.2018 BEARING REFERENCE NO.2282793/2018/MIN (SCDD)
EXHIBIT P20	PHOTOCOPY OF THE REPLY DATED 31.05.2018 FROM FINANCE DEPARTMENT

RESPONDENT'S/S EXHIBITS:

ANNEXURE R2(A)	TRUE COPY OF THE CONFESSION STATEMENT OF 2ND PETITIONER AND REPORT OF THE RANGE FOREST OFFICER, WITHFORM II REPORT
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//TRUE COPY//

PA TO JUDGE

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