

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944

WP(C) NO. 28522 OF 2021

PETITIONER:

UNNIKRISHNAN
AGED 41 YEARS
S/O RAMAKRISHNAN NAIR,
KOTTAVIYIL HOUSE, PULAKODE P. O.,
THRISSUR DISTRICT,
PIN - 680 586.

BY ADVS.
PEEYUS A.KOTTAM
HRITHWIK D. NAMBOOTHIRI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY,
REVENUE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 DIVISIONAL FOREST OFFICER
OFFICE OF THE DIVISIONAL FOREST OFFICE,
THRISSUR DIVISION,
KALYAN NAGAR, AYYANTHOLE,
THRISSUR - 680 003.
- 3 RANGE FOREST OFFICER
MACHAD RANGE, ENKAKAD P. O.,
PIN - 680 582.
- 4 DISTRICT COLLECTOR
DISTRICT COLLECTORATE,
KALYAN NAGAR, AYYANTHOL,
THRISSUR DISTRICT - 680 003.

W.P.(C) No.28522/2021

: 2 :

5 TAHSILDAR
 THALAPPILLY,
 THALAPPILLY TALUK OFFICE,
 WADAKANCHERY - 680 623.

BY SRI.T.P.SAJAN, SPL.GP (FOREST)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.04.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

[CR]

N. NAGARESH, J.

.....
W.P.(C) No.28522 of 2021
.....

Dated this the 5th day of April, 2022

J U D G M E N T

~ ~ ~ ~ ~

Petitioner, who is owner of 62.10 Ares of property in Re-survey Nos.245/8, 245/7, 245/21 (old Survey No.567) of Pulankode Village, Thalappilly Taluk, has filed this writ petition seeking to quash Exts.P12 to P14 and to direct the 2nd and 3rd respondents to give permission for cutting and removing the trees referred in Ext.P9 order which is planted and situated in the petitioner's property, without any further delay and within a stipulated time as fixed by this Court. The petitioner has also sought certain other incidental reliefs.

2. The petitioner states that the properties were originally assigned to one Anthinkutty, Aysha and Kurumba as per a Patta issued under Rule 31(9) of the Kerala Land Reforms (Ceiling) Rules, 1970. The assignees paid the purchase price. In view of Section 52(1) of the Kerala Land Reforms Act, 1963, all timber trees planted by the cultivating tenant or predecessor-in-interest or spontaneous sprouting and growing in the holding after the commencement of the tenancy shall belong to the cultivating tenants. The trees now standing in the petitioner's property are planted and maintained by the petitioner himself.

3. The petitioner wanted to cut and remove 20 teak trees and 100 teak logs which are planted and cultivated by the petitioner and his predecessors after the issuance of purchase certificate. A formal permission is necessary from the authorised officer to cut and remove the trees under the provisions of the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005. Hence, the petitioner submitted an application to the 4th respondent. As per Ext.P9, the 4th

respondent sent the application to superior officers for clarification.

4. The petitioner states that the Forest officials were deliberately protracting the consideration of his application. The petitioner filed W.P.(C) No.11829 of 2021 before this Court seeking to direct the 2nd and 3rd respondents to grant permission to the petitioner to cut and remove the trees referred in Ext.P9 order. This Court by Ext.P11 judgment directed the 5th respondent to submit a report within three weeks and the 3rd respondent was directed to pass orders in the light of the provisions contained in the Kerala Land Reforms Act. The 5th respondent-Tahsildar thereupon sent Ext.P13 communication to the Range Forest Officer and the Additional Chief Secretary gave Ext.P14 clarification. The 3rd respondent issued Ext.P12 letter to the petitioner informing that the trees sought to be cut and removed are vested in the Government and hence the petitioner cannot be granted permission .

5. The counsel for the petitioner argued that as per Section 52(1) of the Kerala Land Reforms Act, 1963, all timber trees planted by the cultivating tenant or his predecessor-in-interest or spontaneously sprouting and growing in the holding after the commencement of the tenancy in favour of the cultivating tenant or his predecessor-in-interest, shall belong to the cultivating tenant. Therefore, there is no doubt about the entitlement of the petitioner to cut and remove the trees.

6. The Additional Tahsildar has also stated that the tree planted by the holder belongs to him and he has every right to cut and remove the same. Section 52(2) has no application as far as the tree standing in the petitioner's property is concerned. These trees were not in existence at the commencement of the tenancy or at the time of issuing purchase certificate. Exts.P 12 to P14 have been issued in an arbitrary manner and ignoring the provisions contained in the Kerala Land Reforms Act, 1963 and the Land Reforms (Ceiling) Rules, 1970. Exts.P12 to P14 are therefore liable to

be quashed, contended the learned counsel for the petitioner.

7. The Special Government Pleader (Forests) contested the writ petition on behalf of the 3rd respondent. The land owned by the petitioner originally belonged to the Government as per Section 86 or Section 87 of the Kerala Land Reforms Act, 1963. The Act, 1963 does not speak anything about the ownership of trees on the assigned land after the payment of purchase price. Since the land was Government land and was later assigned as Michabhoomi Patta, the land will come under the purview of Section 82 of the Kerala Forest Act, 1961 and the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995.

8. As per Section 82 of the Kerala Forest Act, 1961, all trees and timber found in any land at the disposal of the Government which may be granted for permanent cultivation under such rules in force shall be held to be the property of the Government. The learned Special Government Pleader

urged that the argument of the petitioner based on the provisions of the Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005 is untenable because the land was assigned to the petitioner as Michabhoomi Patta. The issue will therefore be governed by the Kerala Forest act, 1961 and the Kerala Forest (Preservation, Reproduction and Disposal of Trees and Timber Belonging to Government but Grown on Lands in the Occupation of Private Persons) Rules, 1975. The provisions of the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995 will also apply. The writ petition is therefore without any merit and is liable to be dismissed, contended the learned Special Government Pleader (Forests).

9. I have heard the learned counsel for the petitioner and the learned Special Government Pleader (Forests) representing the respondents.

10. Exts.P6 and P7 Patta relating to the land in question would indicate that the assignment of the land was

made under the Kerala Land Reforms (Ceiling) Rules, 1970. The Ceiling Rules, 1970 are made in exercise of the powers of the Government under Section 129 of the Kerala Land Reforms Act, 1963. Section 96 of the Kerala Land Reforms Act, 1963 provides that the Land Board shall assign on registry, the lands vested in the Government to the Kudikidappukars, landless agricultural labourers and smallholders and other landlords who are not entitled to resume any land. Section 97 provides that the purchase price of the land assigned under Section 96 shall be payable either in lump or in 16 equal annual instalments and the assignment shall be made on payment of the purchase price. Sub-section (3) of Section 97 states that all amounts due from an assignee shall be first charge on the land assigned. In respect of the land owned by the petitioner, it is an admitted position that the purchase price has been paid.

11. Rule 29 of the Kerala Land Reforms (Ceiling) Rules, 1970 is as follows:

29. Conditions and restrictions regarding assignment -

(1) Lands assigned under Section 96 shall be heritable but shall not, subject to the provisions of sub-rules (2) to (5), be alienable for a period of 20 years from the date of assignment or for the period during which the charge created under sub-section (3) of Section 97 subsists, whichever is later:

Provided that the Government shall have power to waive the condition regarding alienation, for the reasons to be recorded in writing, in deserving cases.

(2) The assignee or his successor-in-interest, as the case may be, may mortgage such lands to the Government or a co-operative society or the Coffee Board or the Rubber Board or any other financing institution recognised by the Government in this behalf as security for obtaining loans for agricultural or land improvement purposes or, where a house is required for the occupation of the assignee or his family or the successor-in-interest of such assignee, for construction of such house under any of the Housing Schemes sponsored by the Government or for payment of the purchase price payable under Section 97.

(3) The Government, the co-operative society, the Coffee Board, the Rubber Board or other financing institution referred to in sub-rule (2) may alienate lands mortgaged to them or it as security for loans in satisfaction of the terms and conditions of the loan:

Provided that no alienation shall be made under this sub-rule except with the written permission of the Government.

(4) An assignee belonging to a Scheduled Caste or Scheduled Tribe the sanction of the Collector of the district in which the land assigned to him is situate may alienate the whole or any portion of the land to a member belonging to such caste or tribe, as the case may be.

(5) The assignee or a member of his family or, as the case may be, his successor in-interest shall for the period during which the alienation is prohibited under sub-rule (1) reside in the land if such land is used for purposes of residence or personally cultivate the same if such land is used for agricultural purposes, provided that the Collector of the District in which such land is situate may by order in writing exempt any person subject to such restrictions and conditions he may impose from the operation of this sub-rule.

(6) No coconut or arecanut tree or pepper plant or other trees or valuable improvements on the land shall, so long as the charge under sub-section (3) of Section 97 subsists on such land, be cut, removed or wilfully damaged or destroyed by the assignee or any member of his family or any of his successors-in-interest or any person claiming under such assignee, member or successor-in-interest.

(7) Any assignee who alienates any land assigned to him under Section 96 in contravention of the provisions of sub-rule (1) shall not thereafter be eligible to get any other land on assignment under that section or under any other law for the time being in force relating to assignment of lands belonging to Government.

(7A) Where the land to be assigned to the different assignees is a large extent of land and due to the peculiar nature or condition of the land, agricultural operations therein cannot in the opinion of the District Collector, be carried out separately by each assignee but can be carried out only after bunding, dewatering or pumbing operations, etc., which require co-operative effort, the assignees shall form themselves into one or more joint farming co-operative society or societies and cultivates the land or become members of any joint farming co-operative society which cultivates the land within one month of the receipt of the deed of assignment, and shall not voluntarily withdraw from the membership of such co-operative society.

(7B) Where the land to be assigned are compact blocks of not less than 25 acres in extent, planted with cashew, tea, coffee, cocoa, rubber, cardamom or cinnamon, and such land can, in the opinion of the District Collector, be profitably managed only through co-operative effort, the assignees shall form themselves into one or more joint farming co-operative society or societies and maintain, manage and develop such lands or become members of any joint farming co-operative society which manages the lands within one month of the receipt of the deed of assignment, and shall not voluntarily withdraw from the membership of such co-operative society.

(8) The assignment of any land under Section 96 shall be liable to be cancelled for contravention of any of the conditions or restrictions laid down in this rule and the land assigned shall be liable to be resumed by or at the instance of the authority which assigned the land as if such land is a land belonging to Government and in the unauthorised occupation of the person then in possession or occupation, provided that no such cancellation shall be done without giving the party affected thereby a reasonable opportunity of being heard.

12. Sub-rule (6) of Rule 29 states that no coconut or arecanut tree or pepper plant or other trees or valuable improvements on the land shall, so long as the charge under sub-section (3) of Section 97 subsists on such land, be cut, removed or wilfully damaged or destroyed by the assignee or any member of his family or any of his successors-in-interest

or any person claiming under such assignee, member or successor-in-interest. As the charge under Section 97(3) of the Land Reforms Act does not exist in the case of the petitioner's land, the prohibition contained in Rule 29(6) of the KLR (Ceiling) Rules, 1970 would not apply.

13. In such circumstances, there is no prohibition or restriction restraining an assignee or successors-in-interest from cutting or appropriating any trees standing on the assigned land, either under the Kerala Land Reforms Act, 1963 or under the KLR (Ceiling) Rules, 1970. The argument of the learned Special Government Pleader (Forests) is that since it was a government land which was later assigned as Michabhoomi Patta, the said land will come under the purview of Section 82 of the Kerala Forest Act, 1961 and the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995.

14. The Kerala Forest Act, 1961 is an Act intended to unify and amend the law relating to the protection and management of forests in the State of Kerala. Section 82 of

the Act, 1961 provides that all trees and timber found in any land at the disposal of the Government which may be granted for permanent cultivation under such rules as may be in force at the time shall be held to be property of the Government; such trees shall, on application of the grantee be removed by the Forest Department within 18 months from the date of receipt of such application; if not so removed such trees and timber shall become the property of the landowner on payment by him of the seigniorage value fixed by the Government from time to time. The contention is that the petitioner can be granted permission to remove the trees only on payment of seigniorage.

15. The argument is not appealing. Firstly, the Kerala Forest Act, 1961 has been enacted to unify and amend the law relating to the protection and management of forests in the State of Kerala. The land held by the petitioner is not forest land. Ext.P1 would show that the property is garden land. The Kerala Forest Act, 1961 which has been enacted for the protection and management of forests, cannot apply

to non-forest lands. The land in question was not assigned for permanent cultivation. Section 82 will govern only trees and timber found in any forest land which is subject to any grant for permanent cultivation. Non-forest land assigned under “Michabhoomi Patta” will not come under the purview of Section 82 of the Kerala Forest Act, 1961.

16. The argument of the respondents relating to the applicability of the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995 is also unacceptable. Rule 3 of the said Rules, 1995 provides that all trees standing on lands temporarily or permanently assigned, the right of Government over which has been expressly reserved in the deed of grant or order of assignment of such land, shall be the absolute property of the Government. The Rules, 1995 also are intended to apply to trees standing in forest lands. Furthermore, Exts.P3 to P5 assignment deeds do not expressly reserve the right of Government over trees standing in the land. Hence, the Kerala Forest (Prohibition of

Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995 will not apply to the trees in issue in this writ petition.

17. In view of the above findings, the petitioner is entitled to succeed in this writ petition. Exts.P12 to P14 are quashed. Respondents 2 and 3 are directed to reconsider the application submitted by the petitioner for permission to cut and remove the trees and pass orders thereon within a period of one month.

Writ petition is disposed of as above.

Sd/-

N. NAGARESH, JUDGE

aks/04.04.2022

APPENDIX OF WP(C) 28522/2021

PETITIONER'S EXHIBITS

Exhibit P1	THE TRUE COPY OF THE TAX RECEIPT SHOWING PAYMENT OF PROPERTY TAX IN THE NAME OF PETITIONER FOR THE AFORESAID PROPERTY IN THANDAPER NO.1413 OF PULAKODE VILLAGE.
Exhibit P2	THE TRUE COPY OF THE SALE BEARING NO.2681/1999 OF CHELAKARA SRO.
Exhibit P3	THE TRUE TYPED COPY OF DEED OF ASSIGNMENT EXECUTED BETWEEN PETITIONER'S PREDECESSOR IN INTEREST ANTHENKUTTY DATED 20.06.1978 WITH ASSIGNOR.
Exhibit P4	TRUE COPY OF DEED OF ASSIGNMENT EXECUTED BY AYSHA WITH GOVERNMENT OF KERALA DATED 20.06.1978.
Exhibit P5	TRUE COPY OF THE ASSIGNMENT DEED EXECUTED BETWEEN KURUMBA AND GOVERNMENT OF KERALA DATED 17.05.1983.
Exhibit P6	THE TRUE COPY OF THE PATTA BEARING NO.B37497/76 HAVING SERIAL NO.680 ISSUED TO ANTHENKUTTY DATED 22.01.1979.
Exhibit P7	THE TRUE COPY OF THE PATTA BEARING NO.B37497/76 HAVING SERIAL NO.679 ISSUED TO AYSHA DATED 22.01.1979.
Exhibit P8	THE TRUE COPY OF THE PATTA BEARING NO.B37497/76 HAVING SERIAL NO.684 ISSUED TO KURUMBA DATED 16.09.1983.
Exhibit P9	THE TRUE COPY OF THE COMMUNICATION FORWARDED BY THE 4TH RESPONDENT RANGE FOREST OFFICER TO 6TH RESPONDENT TAHASILDAR DATED 15.04.2021.
Exhibit P10	THE TRUE COPY OF THE OBTAINED ANSWER BY THE PETITIONER UNDER RTI FROM THE OFFICE OF TALUK OFFICE, THALAPALLI DATED 18.03.2020.
Exhibit P11	TRUE COPY OF THE JUDGMENT DATED 14.07.2021 IN WP(C) NO.11829/2021.

Exhibit P12 TRUE COPY OF THE ORDER ISSUED BY THE
 3RD RESPONDENT RANGE FOREST OFFICER
 DATED 23.10.2021 TO THE PETITIONER.

Exhibit P13 THE TRUE COPY OF THE COMMUNICATION
 DATED 11.10.2021 SENT BY TAHSILDAR TO
 THE RANGE FOREST OFFICER IN PURSUANT
 TO THE JUDGMENT IN WP(C) 11829/2021
 DATED 14.07.2021.

Exhibit P14 THE TRUE COPY OF THE CLARIFICATION
 ISSUED BY THE ADDITIONAL CHIEF
 SECRETARY TO THE SECRETARY, LAND BOARD
 TRIVANDRUM DATED 25.09.2021.

RESPONDENT'S EXT:

R3(a) COPY OF LETTER DT 11.10.2021.