

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 834 OF 2020

(AGAINST THE JUDGMENT IN WP(C) NO.14254/2015 DATED 20.03.2020)

APPELLANTS/RESPONDENTS IN W.P.(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
KERALA, THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM - 695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O.)
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA - 673 121.
- 3 THE CHIEF CONSERVATOR OF FOREST, NORTHERN CIRCLE, KANNUR - 670012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE,
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM- 695 001,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYNAD DISTRICT - 673 121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN W.P.(C):

E. MOIDEEN KOYA,
AGED 66 YEARS, S/O.E.BEERANKUTTY, EDATHIL HOUSE,
FLORICAN HILL ROAD, KARAPARAMBA, CALICUT - 10.

BY ADVS. MR. K.M.FIROZ
MRS. M.SHAJNA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 848 OF 2020

(AGAINST THE JUDGMENT IN WP(C) NO.14611/2015 DATED 20.03.2020)

APPELLANTS/RESPONDENTS IN WP(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
KERALA, THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM-695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O),
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE, KANNUR-670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695 001,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYNAD DISTRICT-673 121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN WP(C):

P.P.SAINABI, AGED 62 YEARS,
D/O. P.HUSSAIN HAJI, PUTHIYA PURAYIL HOUSE,
FLORICAN HILL ROAD, KARAPARAMBA, CALICUT-10.

BY ADVS. MR. K.M.FIROZ
MRS. M.SHAJNA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.834/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 851 OF 2020

(AGAINST THE JUDGMENT IN W.P.(C) NO.14733/2015 DATED 20.03.2020)

APPELLANTS/RESPONDENTS IN WP(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
KERALA, THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM-695014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O),
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE, KANNUR-670012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695001,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYANAD DISTRICT-673121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENTS/PETITIONER IN WP(C):

MANGALATH HARIDAS, AGED 50 YEARS,
S/O. PONNAPPAN NAIR, P.O.PUTHOOR VAYIL, VYTHIRI TALUK,
KALPETTA AMSOM DESOM, WAYANAD-673121.

BY ADVS. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 854 OF 2020

(AGAINST THE JUDGMENT IN WP(C) NO.14633/2015 DATED 20.03.2020)

APPELLANTS/RESPONDENTS IN WP(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
KERALA, THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM-695014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O),
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR-670012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695001, REPRESENTED BY THE
PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER, MEPADI, WAYANAD DISTRICT-673121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENTS/PETITIONERS IN WP(C):

- 1 SANTHILAL JADAVJI PATALIA, AGED 72 YEARS
S/O. JADAVJI PATALIA, 501/A, BHAVANI COMPLEX,
BHAVANI SHANKER ROAD, DADAR WEST, MUMBAI-400028.

2 JINESH SHANTILAL PATALIA, AGED 39 YEARS,
S/O. SHANTILAL J. PATALIA, 501/A, BHAVANI COMPLEX,
BHAVANI SHANKER ROAD, DADAR WEST, MUMBAI-400028.

BY ADVS. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 862 OF 2020

(AGAINST THE JUDGMENT IN WP(C) NO.14627/2015 DATED 20.03.2020)

APPELLANTS/RESPONDENTS IN WP(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
KERALA, THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM - 695014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O.)
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA - 673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR - 670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHACAUD, THIRUVANANTHAPURAM - 695001,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYANAD DISTRICT - 673121.
- 6 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM - 695001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN WP(C):

E. REJEESH, AGED 44 YEARS, S/O. E. MOIDEEN KOYA, EDATHIL HOUSE,
FLORICAN HILL ROAD, KARAPARAMBA, CALICUT -10.

BY ADVS. MR. K. M. FIROZ,
MRS. M. SHAJNA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 874 OF 2020

[AGAINST THE JUDGMENT IN WP(C) NO.13992/2015 DATED 20.03.2020]

APPELLANTS/RESPONDENTS IN W.P.(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS,
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O.),
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR-670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE,
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695 001.
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER, MEPADI, WAYANAD DISTRICT-673 121.
- 6 THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF FOREST, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN W.P.(C):

FATHIMA PONMANCHI, AGED 44 YEARS
D/O. T.M.HUSSAIN, BEEBIS, M.M.ROAD, THALASSERY,
KANNUR DISTRICT-670 101.

BY ADVS. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 890 OF 2020

[AGAINST THE JUDGMENT IN WP(C) NO. 9366/2015 DATED 20.03.2020]

APPELLANTS/RESPONDENTS IN WP(C):

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF FOREST, SECRETARIAT, TRIVANDRUM-695 001.
- 2 THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
(CUSTODIAN-BIO DIVERSITY ECOLOGICALLY FRAGILE LANDS),
FOREST HEAD QUARTERS, VAZHUTHAKKAD, TRIVANDRUM, PIN-695 014.
- 3 THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
KALPETTA, WAYANAD, PIN-673 121.
- 4 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR P.O., PIN-670 012.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN W.P(C):

JASMITHA,
W/O. THOUSIF MUHAMMED, FAJAR, ATHANIKKAL,
WEST HILL P.O., KOZHIKODE, PIN-673 005.

BY ADVS. SRI. B. KRISHNAN
SRI. R. PARTHASARATHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 917 OF 2020

[AGAINST THE JUDGMENT IN WP(C) NO.14734/2015 DATED 20.03.2020]

APPELLANTS/RESPONDENTS IN W.P.(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
KERALA THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FORE HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM 695 014.
- 2 THE DIVISIONAL FOREST OFFICER,
(D.F.O.), SOUTH WAYANAD DIVISION, PINANAGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA 673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS,
NORTHERN CIRCLE, KANNUR 670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA
VAZHUTHAKKAD, THIRUVANANTHAPURAM 695 001, REPRESENTED BY THE
PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI,
WAYANAD DISTRICT-673 121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN W.P.(C):

K.RAJAN, S/O. KRISHNA PILLAI, AGED 48 YEARS,
MANGALATH HOUSE. P.O. PUTHOOR VAYIL, VYTHIRI TALUK,
KALPETTA AMSOM DESOM, WAYANAD DISTRICT 673 121.

WA.834/2020 & contd. Appeals

-10-

BY ADVS. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 1038 OF 2020

[AGAINST THE JUDGMENT DATED 20.03.2020 IN W.P.(C) NO.17536/2015]

APPELLANTS/RESPONDENTS IN W.P.(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN (EFL) OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM-695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O),
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR-670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695 001,
REP; BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYANAD DISTRICT-673 121.
- 6 THE STATE OF KERALA,
REP; BY ITS SECRETARY, DEPARTMENT OF FOREST, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENTS/PETITIONER IN THE WP(C):

SUHAIB MOTTEMMAL, AGED 37 YEARS,
S/O. YUSAF, PALLUR CHOKLI P.O., PIN-670 672.

BY ADV. SRI. E.NARAYANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 1039 OF 2020

[AGAINST THE JUDGMENT IN WP(C) NO.17533/2015 DATED 20.03.2020]

APPELLANTS/RESPONDENTS IN WP(C):

- 1 THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN (EFL) OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM - 695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O)
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA - 673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR - 670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM - 695 001,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYANAD DISTRICT - 673 121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN WP(C):

MARSHIDA M., W/O. SAMEER MOTTAMMEL,
PALLUR, CHOKLI P. O., PIN - 670 672.

BY ADV. SRI.E.NARAYANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 1040 OF 2020

[AGAINST THE JUDGMENT IN WP(C) NO.16869/2015 DATED 20.03.2020]

APPELLANTS/RESPONDENTS IN WP(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS), CUSTODIAN OFFICE,
FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM-695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O)
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS, NORTHERN CIRCLE,
KANNUR-670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSLA COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695 001,
REP; BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI,
WAYANAD DISTRICT-673 121.
- 6 THE STATE OF KERALA,
REP; BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENTS/PETITIONERS IN WP(C):

- 1 SUHAIB MOTTEMMAL, AGED 37 YEARS,
S/O. YUSAF, PALLUR, CHOKLI P.O., PIN-670 672.

- 2 SIYAD MOTTEMMAL, AGED 36 YEARS,
S/O. MOHAMMED PALLUR, CHOKLI P.O., PIN-670 672.
- 3 ASHKAR T.M., AGED 34 YEARS,
S/O. ASSU KOLLANTAVIDA, PALLUR,
CHOKLI P.O., PIN-670 672.

BY ADV. SRI. E.NARAYANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 1041 OF 2020

[AGAINST THE JUDGMENT IN WP(C) NO.17930/2015 DATED 20.03.2020]

APPELLANTS/RESPONDENTS IN WP(C):

- 1 PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN OFFICE, FOREST HEAD QUARTERS, VAZHUTHAKKAD,
THIRUVANANTHAPURAM - 695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O)
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA - 673 121.
- 3 THE CHIEF CONSERVATOR OF FRESTS NOTHERN CIRCLE,
KANNUR - 670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE,
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
VAZHUTHAKKAD, THIRUVANANTHAPURAM - 695 001,
REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER
MEPADI, WAYANAD DISTRICT - 673 121.
- 6 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FOREST,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENT/PETITIONER IN WP(C):

SAMEER MOTTEMMAL,
S/O. ASSU KOLLANTAVIDE, PALLUR,
CHOKLI P. O., PIN - 670 672.

BY ADV. SRI.E.NARAYANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 1ST DAY OF SEPTEMBER 2021 / 10TH BHADRA, 1943

WA NO. 1042 OF 2020

[AGAINST THE JUDGMENT DATED 20.03.2020 IN W.P.(C) NO.18110/2015]

APPELLANTS/RESPONDENTS IN W.P.(C):

- 1 THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA,
THE CUSTODIAN (ECOLOGICALLY FRAGILE LANDS),
CUSTODIAN (EFL) OFFICE, FOREST HEAD QUARTERS VAZHUTHAKKAD,
THIRUVANANTHAPURAM-695 014.
- 2 THE DIVISIONAL FOREST OFFICER (D.F.O),
SOUTH WAYANAD DIVISION, PINANGOD ROAD,
DIVISIONAL FOREST OFFICE, KALPETTA-673 121.
- 3 THE CHIEF CONSERVATOR OF FORESTS NORTHERN CIRCLE,
KANNUR-670 012.
- 4 THE ECOLOGICALLY FRAGILE LAND CLAIM DISPUTE REDRESSAL COMMITTEE
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS, KERALA
VAZHUTHAKKAD, THIRUVANANTHAPURAM-695 001,
REP; BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS.
- 5 THE RANGE FOREST OFFICER MEPADI, WAYANAD DISTRICT-673 121.
- 6 THE STATE OF KERALA,
REP; BY ITS SECRETARY, DEPARTMENT OF FOREST, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER FOR FORESTS MR. SANDESH RAJA

RESPONDENTS/PETITIONER IN THE WP(C):

ASHKAR T.M., AGED 34,
S/O. ASSU KOLLANTAVIDA, PALLUR CHOKLI P.O., PIN-670 672.

BY ADV. SRI. E.NARAYANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.09.2021, ALONG WITH
WA. NO.848/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

“C.R”

J U D G M E N T

Dated this the 1st day of September, 2021

[W.A. Nos. 834, 848, 851, 854, 874, 862, 890, 917, 1038,
1039, 1040, 1041 & 1042 of 2020]

S. Manikumar, CJ

Instant writ appeals are filed by the respondents against the common judgment in W.P. (C) No. 17930 of 2015 and connected cases dated 20.03.2020, by which, a learned Single Judge of this Court held as under:-

“11. Having considered the contentions advanced, I notice that Section 10A is a new right granted to small holders to raise a dispute that the property covered by any notification is not Ecologically Fragile Land. The intention of introduction of provision is apparently to give small holders of properties a speedier remedy than the one available under Section 10. The said remedy is available to small holders as on the appointed day, that is, 20.6.2000. In the instant cases, the petitioners are subsequent purchasers of property. However, in many of the cases, the purchases are from owners of land, who themselves were small owners as on the appointed day. If that be so, the contention of the respondents to the effect that the petitioners themselves have to be in possession of the property on the appointed day to avail the benefit under Section 10A cannot be accepted. A Division Bench of this Court has considered the issue under the Private Forests (Vesting and Assignment) Act, 1971 and held that the subsequent purchaser of the property, who steps into the shoes of the original owner are entitled to claim the reliefs that

the original owner would have been entitled to under that Act. In the above view of the matter, in those cases where the petitioners had purchased property having an extent of 2 Hectares or less from holders of property who themselves had only that extent of land as on the appointed day, the petitioners would be entitled to claim that their applications under Section 10A are liable to be considered.

12. The further question which arises for consideration is with regard to whether small holders are liable to make the applications within six months from the date of the notification. In the instant cases, it is the specific case of the petitioners that they were unaware of the notification and that they had preferred their applications within six months from the date on which they received the individual notices under Section 3(2). In the facts and circumstances of the cases and taking note of the fact that Section 10A provides a remedy in favour of small holders and since Section 3(2) is couched in mandatory terms, I am of the opinion that the contention that the applications have to be filed within six months from the date of notification cannot be accepted. The petitioners having filed the applications within six months from the date on which the individual notices were served on them, would be entitled to the consideration of the dispute raised by them under Section 10A.

In the above view of the matter, W. P. (C). Nos. 17930, 16869, 9366, 17533, 17536, 18110, 14633, 14627, 14611, 14254, 13992, 14733, 14734 of 2015 and 34701 of 2010 are allowed. The impugned orders are set aside. There will be a direction to the respondents to consider the applications preferred by the petitioners under Section 10A of the EFL Act. The petitioners shall produce the documents on the basis of which they claim title before the appropriate authority. Status quo, as

on today, with regard to the lands in question will be maintained for a period of three months to enable the custodian to take an appropriate decision with regard to the interim arrangement to be maintained till the dispute is appropriately resolved.”

2. The reliefs sought for by the respondents/writ petitioners in W.P.

(C) Nos. 14254, 14611, 14733, 14633, 14627, 13992 & 14734 of 2015 are extracted below:

- (i) To call for the records leading to and pursuant to the notice bearing No.3967/00 dated 20.11.2014 (Exhibit P1) issued by the Divisional Forest Officer (D.F.O), South Wayanad Division, Kalpetta (respondent No.2); Exhibit-P2 statutory application dated 8.1.2015 submitted by the petitioner before the Principal of Chief Conservator of Forests, Kerala (respondent No.1); and communication No. EFL-13-1368/15 dated 24.02.2015 issued by the Custodian to the writ petitioners, (Exhibit-P3), and to set aside Exhibit-P3 communication dated 24.02.2015 leading to that as against the petitioners, by issuing a writ of certiorari or any other appropriate writ, direction or order.
- (ii) To declare that there is no proper notification, intimation and placing before Advisory Committee, as contemplated under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, declaring the petitioners' lands in RS Nos. 411/Pt, 412/Pt, 414/Pt of Chundale Village as per Document Nos. 1191/2007, 1192/2007, 1241/2007, 1664/2007, 887/2008, 1564/2008, & 1665/2009 of Vythiri Sub Registrar Office as the lands vested in the Government under the said Act;

- (iii) To direct the Principal Chief Conservator of Forests, Kerala, respondent No.1, to forward Exhibit P2 application submitted by the petitioners to the Ecologically Fragile Land Claim Dispute Redressal Committee, Office of the Principal Chief Conservator of Forests, Kerala, Thiruvananthapuram, (respondent No.4), and to direct the 4th respondent, to dispose of the said application expeditiously, by issuing a writ of mandamus or any other appropriate writ, direction or order;
- (iv) Alternatively to declare that if the date of gazette notification is reckoned as starting point of period of limitation under Section 10A(7) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, the same will be unreasonable, arbitrary and unconstitutional;
- (v) To direct respondents 1 to 3, to permit the petitioners to do the periodical treatment / maintenance necessary for the agricultural crops and to take yield from the plantations situated in the properties belonging to them, covered by the notice bearing No. B 3967/00 dated 20.11.2014 issued by the Divisional Forest Officer (D.F.O) Kalpetta, (Exhibit P1) pending disposal of the challenge against Exhibit P1, by issuing a writ of mandamus or any other appropriate writ, direction or order.”

3. The reliefs sought for by the petitioners in W.P.(C) Nos. 17536, 17533, 16869, 17930 & 18110 of 2015 are as under:

- (i) To call for the recordings leading to and pursuant to Exhibit P1 to P5 and set aside the notice bearing No. EFL 13-1368/15 issued by the Principal Chief Conservator of Forests, Kerala, Thiruvananthapuram (respondent No.1) dated 18.02.2015 and

the proceedings leading to that as against the petitioners, by issuing a writ of certiorari or any other appropriate writ, direction or order.

- (ii) To declare that the issuance of notice to the de facto owners under Section 3(2) of the Act 32 of 2009 is not an empty formality.
- (iii) To declare that the issuance of notice to the de facto owners under Section 3(2) of Act 32 of 2009 should be issued simultaneously with the gazette notification under Section 3(2) of the Act 32 of 2009 so that the parties concerned can prefer their remedies under Section 10A(7) of the Act 21 of 2005 within time.
- (iv) To declare that there is no proper notification, intimation and placing before Advisory Committee, as contemplated under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, declaring the petitioners' 1.1129 hectares of land in in RS No. 410/Pt of Chundale Village as per Document No. 194/2012 of Vythiri Sub Registrar Office as the land vested in the Government under the said Act;
- (v) To direct the 1st respondent to forward the application submitted by the petitioners under Section 10A of the Act 21 of 2005 to the 4th respondent Committee, to dispose of the said application expeditiously, by issuing a writ of mandamus or any appropriate writ, direction or order;
- (vi) Alternatively to declare that if the date of Gazette Notification is reckoned as starting point of period of limitation under Section 10A(7) of the Kerala Forest (Vesting and Management

of Ecologically Fragile Lands) Act, 2003, the same will be unreasonable, arbitrary and unconstitutional;

- (vii) To direct respondents 1 to 3, to permit the petitioners to do the periodical treatment / maintenance necessary for the agricultural crops and to take yield from the plantations situated in the properties belonging to them, covered by Exhibits P1 & P2 documents pending disposal of the challenge against the notification No. EFL-10-311-2013 dated 26.10.2013, by issuing a writ of mandamus or any other appropriate writ, direction or order.”

4. Apart from the above, the petitioner in W.P.(C) No.9366 of 2015 has sought for the following reliefs:

- (i) Issue a writ of Certiorari or any other appropriate order, writ or direction quashing Exhibit-P10 notice dated 18.02.2015 issued by the Principal Chief Conservator of Forests, Trivandrum (respondent No.2);
- (ii) Issue a writ of Mandamus or any other appropriate writ, order or direction, directing the 2nd respondent to admit Exhibit-P8 application dated 9.1.2015 submitted by the petitioner under Section 10A of Act 21 of 2005 before the 2nd respondent into file and to dispose of it in accordance with law after affording an opportunity of being heard to the petitioner;
- (iii) Issue an order of stay of all further proceedings pursuant to Exhibit P7 Gazette No.48 dated 03.12.2013, till the disposal of Exhibit P8 application.”

5. Facts germane for consideration in the appeals are as under.

5.1. Aggrieved by the rejection of the applications in Form No. A, by the Principal Chief Conservator of Forests, Kerala, who is the Custodian of Ecologically Fragile Lands, Thiruvananthapuram, vide orders dated 18.02.2015, 24.02.2015 and 2.3.2015 respectively on the ground that the applications are time barred, the petitioners have filed the writ petitions for the reliefs stated supra. Writ petitioners have also averred that the rejection orders are passed without affording them an opportunity of being heard. The extent of lands belonging to the writ petitioners/respondents herein, and their nature, are extracted hereunder:

	Extent	Re-survey Nos.	Document Numbers & Village Office	Nature of properties
Petitioner in W.P.(C) No. 9366 of 2015	0.6637 Hectares & 0.8094 Hectares	RS Block No.BL/25, 411/Pt of Vythiri Taluk and Chundal Village	Registered Sale deed No.885/2008 of SRO Vythiri	Agricultural properties and as on 2.6.2000, the properties were part of Thirumeni Nathan Estate, a well maintained cardamom and coffee plantation.
Petitioner in W.P.(C) No. 14254 of 2015	3 Acres 80 Cents (01.5378 Hectares)	412/Pt of Chundale Village	1664/2015 (Vythiri Sub Registrar Office)	Coffee, Cardamom and fruit bearing plantations.
Petitioner in W.P.(C) No. 14611 of 2015	1 Acres 20 Cents (0.4858 Hectares)	412/Pt of Chundale Village	1241/2007 & 1665/2009 (Vythiri Sub Registrar Office)	Coffee, Cardamom and fruit bearing plantations.

Petitioner in W.P.(C) No. 14733 of 2015	10 Cents (0.0405 Hectares)	411/Pt (Survey No.339/4 A1A1) of Chundale Village	1192/2007 of Vythiri Sub Registrar Office	Coffee, Cardamom and fruit bearing plantations.
Petitioners in W.P.(C) No. 14633 of 2015	2 Acres (0.8094 Hectares)	414/Pt (Survey No.339/4 A1A1) of Chundale Village	1564/2008	Coffee, Cardamom and fruit bearing plantations.
Petitioner in W.P.(C) No. 14627 of 2015	2 Acres 90 Cents (1.1738 Hectares)	412/Pt (Survey No.339/4 A1A1) of Chundale Village	1239/2007 & 1667/2009	Coffee, Cardamom and fruit bearing plantations.
	1 Acre 20 Cents (0.4856 Hectares)	-do-	1238/2007 of Vythiri Sub Registrar Office	-do-
Petitioner in W.P.(C) No. 13992 of 2015	3 Acres (1.2141 Hectares)	411/Pt of Chundala Village	887/2008 of Vythiri Sub Registrar Office	Coffee, Cardamom and fruit bearing plantations.
Petitioner in W.P.(C) No. 14734 of 2015	10 Cents (0.0405 Hectares)	411/Pt (Survey No.339/4 A1A1) of Chundala Village	1191/2007 of Vythiri Sub Registrar Office	Coffee, Cardamom and fruit bearing plantations.
Petitioner in W.P.(C) No. 17536 of 2015	0.8499 Hectares & 0.7689 Hectares	410/Pt of Chundala Village	451 of 2012 & 224 of 2012 of Vythiri SRO	Coffee, Cardamom and fruit bearing plantations.
Petitioner in W.P.(C) No. 17533 of 2015	0.9106 Hectares	410/Pt of Chundale Village	193 of 2012 of Vythiri SRO	Coffee, Cardamom and fruit bearing plantations.
Petitioners in W.P.(C) No. 16869 of 2015	1.1129 Hectares	410/Pt of Chundala Village	194 of 2012 of Vythiri SRO	Coffee, Cardamom and fruit bearing plantations.
Petitioner in W.P.(C) No.	0.8904 Hectares &	410/Pt of Chundala	961 of 2012 & 438 of 2012 of	Coffee, Cardamom and fruit bearing

17930 of 2015	0.8701 Hectares	Village	Vythiri SRO	plantations.
Petitioner in W.P.(C) No. 18110 of 2015	0.8499 Hectares & 0.8296 Hectares	410/Pt of Chundala Village	439 of 2012 & 440 of 2012 of Vythiri SRO	Coffee, Cardamom and fruit bearing plantations.

5.2. It is the case of the writ petitioners that their properties are pucca agricultural lands. While so, they were served with a notice in Form No.1 by the Divisional Forest Officer, South Wayanad, the Custodian of EFL, purportedly under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Land) Act, 2003 (Act 21 of 2005), wherein it was informed that about 100 Hectares of property, including a portion of the property in RS No.412/Pt have vested in the Government and the same was notified by the Custodian as per the Notification No. EFL-10-311/2013 dated 26.10.2003. But, according to the writ petitioners, the boundaries and other details of the above-mentioned properties have not been properly mentioned in the notice.

5.3. Writ petitioners have contended that the abovesaid notice is illegal because the provisions of Act 21 of 2005 are not attracted to the above-mentioned properties and that Section 3(1) of the EFL Act provides for vesting in Government ecologically fragile lands in the State of Kerala, for management of such lands. According to the writ petitioners, the Act is deemed to have come into force only with effect from 2.6.2000. As on

2.6.2000, the appointed day and decades prior to that the properties of the petitioners are well maintained with cardamon, coffee and other plantations. Hence, the respondents have filed applications under Section 10A of EFL Act, 2003, within six months of the receipt of the notice purportedly issued under Section 3(2) of Act 21 of 2005, before the Principal Chief Conservator of Forests, Kerala for settlement of the dispute as to whether, such lands are ecologically fragile lands or not.

5.4. Writ petitioners have further stated that Act 21 of 2005 was amended by Act 32 of 2009 [The Kerala Forest (Vesting And Management Of Ecologically Fragile Lands) Amendment Act, 2009] by adding two sections, viz., Sections 10A & 10B. As per Section 10A(7), no application for settlement of dispute under this section shall be filed after the expiry of six months, as the case may be, from the date of publication of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Amendment Act, 2009 or from the date of notification declaring such land as ecologically fragile land under Section 3.

5.5. On receipt of the above said application under Section 10A, the Principal Chief Conservator of Forests scrutinized the same and without issuing notice to the writ petitioners, or without affording an opportunity of hearing, dismissed the applications stating that they are time barred.

5.6. Writ petitioners have further contended that the appellants who are well aware of the importance and relevance of sending individual notices to the parties concerned, deliberately and purposefully delayed the issuance of individual notices as provided under Section 3(2) of the Act 32/2009, in order to see that the parties do not file their applications, within the time prescribed under Section 10A(7) of the amendment Act 32 of 2009. In such circumstances, the respondents have filed the writ petitions for the reliefs stated supra.

6. Refuting the averments in the writ petitions, the Divisional Forest Officer, South Wayanad Division, has filed a common counter affidavit before the writ court, contending as under:

- A. It is submitted that Government of Kerala has promulgated the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, to vest, protect and manage ecologically fragile lands in the State. Referring to Section 3(1) of the Act, 2003, he submitted that the writ petitions are not maintainable, either in law or on facts, and that the writ petitioners have no title or right over the notified ecologically fragile lands, and therefore, not entitled to seek the reliefs.
- B. It was further contended that an extent of 100 hectares of land were notified as Ecologically Fragile land in R.S. Nos.410/pt. 411/pt., 412/pt., 414/pt., & 421/pt., of Chundale Village of Vythiri Taluk at Mele Poonchola under Section 3(1) of Act, 2003

vide Notification No. EFL. 10-311/2013 dated 26.10.2003 published in Gazette No.48, Vol.II dated 03.12.2013, Sl. No.42. The disputed lands fall within the notified Ecologically Fragile lands and are being protected by the forest department from all encumbrances.

- C. Referring to Section 10A(7) of Act 32 of 2009, it was contended that writ petitioners have submitted their applications after the expiry of six months from the date of notification in the Gazette and, therefore, their applications cannot be considered for verification in accordance with the provisions of law.
- D. Referring to Section 2(c) of Act, 2003 which defines the word “Forest” to mean any land principally covered with naturally grown trees and undergrowth. It was contended that as a matter of fact the lands in dispute are covered with naturally grown trees and undergrowth constitute a forest, and answers the description of “ecologically fragile land” as defined under Section 2(b)(1) of the Act 21 of 2005 because of the fact that for the last several years, the lands were not subjected to any cultivation.
- E. It was further contended that the respondents have purchased the disputed property long after vesting of the land with the State. As the portion of the disputed lands is vested with the State, as on 02.06.2000, as ecologically fragile land, the documents executed after the vesting are invalid and have no relevance, insofar as ecologically fragile lands are concerned. Referring to Section 3(1) of the Act, it was contended that the ownership and possession of all ecologically fragile lands shall stand transferred to and vested in the Government free from all

encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from 2.6.2000. By the operation of law, from this date, the ecologically fragile land is under the absolute ownership of the Government.

- F. Appellants have further contended that the disputed lands are a part of dense forest, predominantly supporting natural vegetation and the boundaries are lying contiguous to large extent of forests. Therefore, all the three ingredients to constitute the lands as ecologically fragile lands are fully satisfied. Since the lands satisfy the definition of Section 2(b) (i), the lands are automatically vested with the State as on 2.6.2000. The lands were notified after following the procedures laid down under the Act 21 of 2005. The necessary precautions were taken during the notification to exclude cultivated area and improvement from the purview of ecologically fragile lands. Only the area having predominant natural vegetation contiguous to forest land and coming within the definition under Section 2(b)(i) of the EFL Act has been included in the notification. Exhibit-P2 notice has been sent informing the respondents about the notification. There are no agricultural crops or residential buildings in the notified ecologically fragile lands.
- G. Appellants have further contended before the writ court that there is no document to show that the lands were in possession of the writ petitioners as on 2.6.2000. As the disputed lands vested with the State as on 2.6.2000, the writ petitioners cannot trace out their title, right or enjoyment based on Exhibit-P1

notice dated 20.11.2014 issued by the Divisional Forest Officer. Writ petitioners have submitted their application under Section 10A(7) after the expiry of six months from the date of notification in the Gazette, and therefore, the applications cannot be considered by the Custodian (EFL), for verification.

- H. It was also contended that the area claimed by the writ petitioners is a part of a dense forest. The writ petitioners have not submitted any valid documents to prove their cultivation as on 2/6/2000. Further, they could not produce any documents to show that the disputed lands do not qualify all the three ingredients for an ecologically fragile land. The writ petitioners have a fundamental duty to protect the forest and wildlife of the country under Article 51A(g) of the Constitution of India, and therefore, they are not entitled to seek the discretionary remedy under Article 226 of the Constitution of India. Hence, the appellants contended that the grounds raised in the writ petitions are devoid of merit and prayed for dismissal of the writ petitions.

7. After considering the rival submissions, material on record, relevant statutory provisions, and the decisions of the Hon'ble Supreme Court in **Raja Bahadur Giriwar Prasad Narain Singh v. Dukhu Lal Das and Ors.** (AIR 1968 SC 90), as well as this Court in **Parameswara Sastrigal K.S. v. State of Kerala and Ors.** [2008 (2) KLT 461], writ court allowed the writ petitions directing the appellants to consider the applications preferred by the writ petitioners/respondents under Section 10A of the EFL Act.

8. Assailing the correctness of the impugned judgment passed by the learned Single Judge, appellants have filed these intra court appeals, raising the following grounds:

- A. The judgment of learned Single Judge allowing the writ petitions filed by the respondents, setting aside the order passed by the Custodian of Ecologically Fragile Land, rejecting the application filed under Section 10A of the Act, 2003, finding that the application is not barred by limitation is a finding against Section 10A(7) of Act, 2003, is perverse, and without appreciation of evidence and document on records, and thus illegal.
- B. Section 10A(7) of the Act, 2003 bars filing of an application, after the expiry of six months from the date of notification, and the judgment of the learned Single Judge is contrary to the mandate of the statute and thus illegal and arbitrary.
- C. Learned Single Judge ought to have considered the fact that the Court cannot go beyond the explicit terms incorporated in the provisions of the Act, in the matter of entertaining an application, which is time barred.
- D. Learned Single Judge erred in allowing the writ petitions finding that the limitation of 6 months provided in Section 10A(7) of Act, 2003, starts only from the date of communication of the notice. According to the appellants it is against the provisions of the statute and the said provision in explicit terms states that no application shall be filed under Section 10A after expiry of six months from the date of

notification declaring such land as Ecologically Fragile Land under Section 3.

- E. Learned Single Judge ought to have considered the fact that the respondents are having an alternate remedy for filing an application before the Forest Tribunal and the remedy under Section 10A is an additional remedy provided for certain persons who satisfies the conditions stipulated in the Amended Act 32 of 2009 and the judgment of the learned Single Judge, without considering the above aspect, is illegal and against the principles of law.

9. Based on the above, Mr. Sandesh Raja, learned Special Government Pleader for Forest, made submissions.

10. Referring to Section 3(2) of Act, 2003, learned counsel for the writ petitioners/respondents herein submitted that the land vested in the Government shall be notified in the Gazette and that the owner shall be informed in writing. Learned counsel also submitted that the notification shall also be placed before the Advisory Committee.

11. Referring to Section 3(2) of Act, 2003, learned counsel for the respondents further submitted that if the notification is published in the Gazette alone and no individual notice is issued to the party, the party may not know that his land has already been vested in the Government. A reading of Section 3(1) of Act, 2003 makes it clear that the Legislature has

foreseen the possibility that the land could be in the possession of individuals. Declaring that a land as per Section 3 of the Act as Ecologically Fragile Land, while that land is in the *bona fide* possession of an individual, always attracts Article 300A of the Constitution of India. Depriving one's right to enjoy his property must be legally authorised. Public duty demands that it should be done in a more transparent manner.

12. Referring to Rule 8(1) and (3) of the EFL Rules, it is further submitted that a notification enables the affected party to present his grievances before the appropriate forums, with clarity, because the notification acts as a valid record as regards the extent, survey number, boundary of the property etc.

13. Referring to Sections 5 and 6 of the EFL Act, it is further submitted that the declaration under Section 3(1) of the Act that every EFL land vest in the Government is only a declaration under the law. By a mere declaration, vesting will not take place unless, some human agency would act behind it. The notification makes the identity of the property clear. Thereby, the department could protect such lands as Reserved Forest by providing permanent claims as per Sections 5 and 16 of the Act. If any private land is situated abutting such lands, the same could be differentiated from reserved forest, which could avoid unnecessary legal battle. In short, it was submitted

that the notification and subsequent individual notices are meant for more clarity with respect to the EFLs mentioned under Section 3(1) of the EFL Act.

14. It is further submitted that appellants are not laymen. They are qualified officials and are fully aware that the Gazette is something which the ordinary people do not commonly have access to. They notify lands behind their back, and purposefully delay the individual notices after the time prescribed under Section 10A(7) of the Act, 2009 and dismiss their applications under Section 10A, on the ground of delay which is unfair. The delay in issuing notice is suppressed in the writ appeals.

15. In this context, the chart submitted by Mr. E. Narayanan, learned counsel for the respondents/writ petitioners in W.A. No.1039/20, is extracted below, in order to identify the most crucial aspect in regard to the date of notifications and date of notices issued to the land owners, in some of the cases:

No. of WA/WP(C)	Date of Section 3 notification	Date on which Section 3 notification published in the Gazette	Date of Notice u/s. 3(2) to the party concerned	Section 10(A) appeal filed on	Extent of property as on 02-06-00	Order rejecting Section 10(A) appeal
WA 1038/20 WP 16869/15	P3 26-10-13	03-12-13	P2 20-11-14	05-01-15	1.1129 Hr.	P4- 18-02-15
WA 890/20 WP 9366/15	P7 03-12-13	03-12-13	P6 20-11-14	05-01-15	0.6637+ 0.8094 = 1.4731 Hr.	P10 18-02-15
WA 1039/20 WP 17533/15	P3 26-10-13	03-12-13	P4 20-11-14	05-01-15	0.9106 Hr.	P4 18-02-15

WA 1040/20 WP 17536/15	P4 26-10-13	03-12-13	P3 20-11-14	05-01-15	0.8499 Hr.	P5 18-02-15
WA 1041/20 WP 17930/15	P4 26-10-13	03-12-13	P3 20-11-14	05-01-15	0.8904 + 0.8701 = 1.7605 Hr.	P5 18-02-15
WA 1042/20 WP 18110/15	P4 26-10-13	03-12-13	P3 20-11-14	05-01-15	0.8499 + 0.8296 = 1.6795 Hr.	P5 18-02-15

16. Referring to Section 10A(7) of the Act, 2009, it was submitted by, learned Special Government Pleader that no application shall be filed after six months from the date of the notification.

17. Heard learned counsel for the respective parties and perused the material available on record.

18. Before advertng to the rival submissions, let us consider the relevant statutory provisions and the notice issued to the parties which are substantially common in nature.

19. Notice No. B-3967/00 dated 20.11.2014 in Form I under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, issued by the Divisional Forest Officer, Kalpetta, to the petitioners, is extracted hereunder:

“B-3967/00

Place: Kalpetta

Date: 20-11-2014

Notice to the Owner under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act – 2003.

On behalf of the Custodian of Ecologically Fragile Land, Thiruvananthapuram, it is informed that approximately 100

hectares of land in Chundale Village of Vythiri Taluk and listed below was notified as EFL under section 3(1) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act - 2003 vide notification No. EFL 10-311/2013 dated 26-10-2013 of the Custodian of Ecologically Fragile Land and published in Gazette No.48 Vol-II dated 03-12-2003 as serial no. 42 and it is in the absolute possession of Government and protected as Ecologically Fragile land.

Schedule

Taluk	Village	Block	Sy. Nos.
Vythiri	Chundale	25	410/Pt, 411/Pt, 412/Pt, 414/Pt, 421/Pt

Boundaries

North	East	South	West
Vested Forest (Re. Sy. No.407/11	Vested Forest (Re. Sy. No.407/11, 408) Private Land (Re-sur3vey No.407/14, 421/1)	Private Land (Resurvey No.418/Pt)	EFL (Resurvey No. 413/5Pt) Private Land (Resurvey No.421/1 Pt, 410/Pt, 412/Pt, 414/Pt)

You must not perform any operations in the land or to sell, mortgage, lease or to alienate the above said land.

Address of the individuals

Sammer Mottammal, Kollantavida, Palloor, Chokli P.O., Mahi	Ashkar T M, Kollantavide, Palloor, Chokli P.O., Mahi	Suhaib, Mottammal, Kollantavida, Palloor, Chokli P.O., Mahi
Siyad Mottammal & Marshitha, Kollantavida, Palloor, Chokli P.O., Mahi	Marshitha, W/o. Sammer, Mottammal, Cherukallai, Chokli P.O., Mahi	C. Rajendran, Thoothukudi P.O.,, Karapatta, Chidambanar District, Tamilnadu-682001.
M. Ravi, T.C. No.4/25, Ragam, Kavadiyar Village, Thiruvananthapuram- 695003.	T.R.Sreedevi, T.C. No.4/25, Ragam, Kavadiyar Village, Thiruvananthapuram -695003.	Mangalath Haridas, Mangalath House, Puthoor Vayal P.O., Wayanad District.

T.P.Vijayalakshmi, 314, Kelsigton Residency, Kelsigton Road, Bangalore-560042.	Shankar Govindan, Kelsigton Residency, Kelsigton Road, Bangalore-560042	K. Rajan, Mangalath House, Puthoor Vayal P.O., Wayanad District.
Fathima Ponmanichi, D/o. T. M. Hussain, M.M. Road, Thiruvangad, Thalassery P.O., Kannur District.	Javid Muhammed Ponmanichi, M.M. Road, Thiruvangad, Thalassery P.O., Kannur District.	A.P.M. Abdul Samad, Ponmanichi House, M.M. Road, Thalassery P.O., Kannur District.
E. Moideenkoya, Edathil House, Karaparambu P.O., Kozhikode-10	P.P.Sainaba, Puthiyapurayil, Karaparambu P.O., Kozhikode-10.	E. Raneesh, S/o. Moideenkoya, Edathil House, Karaparambu P.O., Kozhikode-10.
Dr. E. Rajeesh, Edathil House, Karaparambu P.O., Kozhikode-10	Harikrishnan, Kottarathil House, Irihalakkuda P.O., Thrissur.	T.R. Sreedevi, W/o. Ravi, Ragam, Kuruvakonam, Kavadiyar, Thiruvananthapuram- 695003.
R.S. Poornima Ragam, Kuruvakonam, Kavadiyar, Thiruvananthapuram - 695003	Saroja Thambi, Ragam, Kuruvakonam, Kavadiyar, Thiruvananthapuram- 695003.	M. Ravi, Ragam, Kuruvakonam, Kavadiyar Village, Thiruvananthapuram- 695003.
Asha S. Menon, Lakshmi House, Iringalakkuda P.O., Thrissur.	Santhilal Jadviji Patteeliya & Jinesh, Santhilal Petteliya, 501A Bhavani Complex, Mumbai	Satheesh Kumar P. Sha, 4/668, Sillal Colony, P.T.Usha Road, Kozhikode.
Heemanshu S. Sha 8/69, Neelpreethu, Corporation Office Road, Kozhikode.	Jithendrakumar P. Sha, 36, S. Vasanthakokilam, Jayathinagar, Housing Colony, P.T.Usha Road, Kozhikode.	Aswin S. Sha, 4/.668, Sillal Colony, P.T.Usha Road, Kozhikode.
E. Moideenkoya, Edathil House, Karaparambu P.O., Kozhikode-10	Sathvinder Cour, Kothi Number-5, Sector 10, Chandigad- 160011	Mahindra Singh Khyra C., 304, Ranga Paradise Appartment, 153, Veeler Road, Fraser Town, Bangalore- 560005.

V.J. Joseph, S/o. V.V. John, Vettukattil, Manimooli P.O., Malappuram District-679333	Ashokkumar, S/o. Gangadharan Nair, VI/C, Sreedhanya Kasil, Kavadiyar P.O., Thiruvananthapuram	Sha Sidhartha Naveendai, Sailam Apartment, 1 st Floor, Sathyanarayana Road, Bavnagar, Gujarath-364002.
Pritviraj Singh Parveen Singh Chudasama, S/o. Parveen Singh P., Chudasama, Darbargadh, Near Jain Temple, Dolera, Gujarat.	Smitha Mithesh Gandhi, 12, Nuthen Asha Society, Subanpura, Baroda-390023, Gujarat.	Rashmikanth, Bikken Bai Pattel, 33, Amdhavadi Paul, Levesheri, Ravpura, Baroda-390001- Gujarat.
Sabeena B., Anokkia W/o. Ahok Thirikothe, IIC, Infrosplender, Surabi Road, Edappalli P.O., 682021.	a) Amin Parul Chiman Bhai, B) Smt. Archana Parul Chiman Bhai, W/o. Amin Parul Chiman Bhai, c) Amil Adithi Parul, D/o. Amin Parul Chiman Bhai, Adithya Banglow, Opposite Harinagar Society, Gothri Road, Vadodara, Gujarat-390021.	

20. One of the letters, viz., Communication No. EFL-13-1368/15 dated 24.02.2015 sent by the Custodian (Ecologically Fragile Land), Thiruvananthapuram, to the respondent in W.A. No.834/2020, impugned in the writ petitions, is extracted below:

“No. EFL-13-1368/15

Dated: 24.02.2015

**Custodian (Ecologically Fragile Land)
Thiruvananthapuram.**

E. Moideen Koya, E Rajeesh-Edathil h-House
Floorikkal Hil Road, Karaparambu, Kozhikkode-10.
Satheesh Kumar P. Sha, Himanshu,
Jithendra Kumar P. Sha, Ashwan S. Sha

4/668. Zilla Colony, P.T.Usha Road, Kozhikode.

Shanthilal Jadge G. Pattaliya,
Jinesh Shanthila Pataliya
501/A, Bhavani Complex, Bhavani Shankar Road,
Dader West, Mumbai, Pin 400028.
P.P Saniabi, D/o. P. Hussain Haji,
Puthiyapuryil House, Floorikkal Hil Road
Karaparambu, Kozhikode-10.

Sir,

Sub:- EFL-Act- Application Under Section -10(A) - reg.

Ref:- Your Application dated 01/2015

Attention is invited to the reference an extent of 100 hectares of land in Chundale Village of Vythiri Taluk covered by the survey numbers including (339/4A1A1) Re. Sy. No.412/Pt, 414/Pt, stated in your application was notified as EFL under Gazette No.48 of 3-12-2013.

The application U/s 10(b) must be filed within 6 months from, the date of the enactment of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Amendment Act - 2009 or the date of notification published in published in Kerala Gazette U/s 3(1) of KF (Vesting & Management of Ecologically Fragile Land) Act, 2003.

It has been stipulated in the section that no application shall be filed for redressal of disputes after six months. For the above reasons, it appears that your application cannot be considered at present.

Hence it is submitted that you can seek other legal measures, such as approaching the Tribunal in this regard.

Yours faithfully

**Custodian (EFL) &
Principal Chief Conservator of Forest
(Working Plan & Research)**

**For Principal Chief Conservator of Forest &
Head of Forest Force”**

21. Notification No. EFL.10-311/2013 issued under Section 3(2) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act,

2003 by the Custodian (Ecologically Fragile Lands) & Additional Principal Chief Conservator of Forests (WP & R) dated 26.10.2013, is extracted below:

“PART III
Forest Department

OFFICE OF THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF
FORESTS (WORKING PLAN & RESEARCH) AND CUSTODIAN OF
ECOLOGICALLY FRAGILE LANDS, THIRUVANANTHAPURAM

NOTIFICATION

[Under Section 3(2) of the Kerala Forest (Vesting and Management of
Ecologically Fragile Lands) Act, 2003]

No.EFL.10-311/2013

26th October, 2013

It is hereby notified for the information of the public that as per Section 3(1) of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, the ownership and possession of the ecologically fragile lands described in the schedule hereto held by any person or any other form or right over them stood transferred to and vested in the Government of Kerala free from all encumbrances and the right, title and interest of the owner or any other person thereon stood extinguished from the date of commencement of the Act, ie., 2nd June 2000.

(Sd.)

Custodian (Ecologically Fragile Lands) &
Additional Principal Chief Conservator of Forests (WP & R)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
40	Wayanad	Vythiri	South Wayanad	Kalpetta	Lakkidy	Kunna thidav aka	425/pt, 426/pt, 427/pt, (Block 25)	4.500 (Approximate)	Forest (Mamd amala-EFL)	Private Land	Private Land	Forest (Mandamala EFL)
41	Wayanad	Vythiri	South Wayanad	Kalpetta	Lakkidy	Kunna thidav aka	197	2.116 (approximate)	Forest VFC 89	Private Land	Forest (VFC 28) Kozhikode Division and VFC	Forest (VFC 28) Kozhikode Division and VFC

											Division	(89)
42	Wayanad	Vythiri	South Wayanad	Meppady	Mele Poonchola	Chundale	R.S. 410/pt, 411/pt, 412/pt, 414/pt, 421/pt,	100.00	VF R.S. No.407/11	VF R.S. No.407/11 and 408 Private Land in R.S.407/14, 421/1	Private Land in R.S. No.418/pt.	EFL in RS 413/5 pt, Private Land in RS 421/1 pt, 410/pt, 412/pt, 414/pt
43	Wayanad	Vythiri	South Wayanad	Meppady	Attamalakundu	Vellari mala	R.S. No.317	3.7840	VF in R.S. 323	VF in RS 323 Private land in R.S. 318	Private Land in R.S. 316	VF in R.S. 323 Private Land in R.S.315
44	Wayanad	Vythiri	South Wayanad	Meppady	Attamala	Vellari mala	R.S. 321	6.700	Private Land in R.S. No.320	VF in R.S. 323 Private Land in R.S.322	VF in R.S. 323	Vfin R.S.323 Private Land in R.S.320
45	Wayanad	Vythiri	South Wayanad	Kalpetta	Naripara	Padinh arathara	R.S.286 pt, 1/3pt, 1/4pt, 2/1pt, 2/2pt, (Block No.11)	12.00	Mananthavady Taluk Boundary	Private Land	Vested Forest	Vested Forest
46	Wayanad	Vythiri	South Wayanad	Kalpetta	Koshani	Thariyode	686/pt, Block No.4	2 Ha (appro)	VFC item No.60, 12	VFC item No.60, 12	VFC item No.60, 12	KSEBR eservoir
47	Malappuram	Nilambur	Nilambur (North)	Edavanna	Vallakuzhi	Pullipadam	R.S. No.1	2.0630	Occupied Land and VF	Occupied Land	Vested Forest	Vested Forest
48	Malappuram	Nilambur	Nilambur (North)	Edavanna	Kunnakkankadu	Pullipadam	R.S. No.1	17.8929	Vested Forest	Occupied Land	Vested Forest	Vested Forest
49	Kannur	Thaliparamba	Kannur	Thaliparamba	Karamamthathu	Eruvessy	R.S. No.4	0.4045	VFC item No.58	Prakash Occupied Land	Thodu	VFC item No.58
50	Kasargod	Hosdurg	Kannur	Kanhangad	Popul ar Estate Vested Forest	Maloth	R.S. 124/1 B pt., 124/2, 125/2, 146/4, A3 pt.	172.46	Vested Forest	Vested Forest & Karna taka Forest	Vested Forest & Private Land	Vested Forest

51	Thiruvananthapuram	Nedumangadu	TVM	Palao de	Brimoor	Peringammala	3983-6/2 RS 209	1.1296	Brimoor Estate	Reserved Forest	RF & BE	Brimoor Estate
52	Thiruvananthapuram	Nedumangadu	TVM	Palao de	Brimoor	Peringammala	3983-6/3 RS 243	1.2032	Brimoor Estate	Reserved Forest	RF	Brimoor Estate

22. Kerala Forest (Vesting & Management of Ecologically Fragile Lands) Act, 2003, is an Act to provide for the vesting in the Government of ecologically fragile lands in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the biodiversity. Section 2(a) defines Custodian to mean, Principal Chief Conservator of Forests of the State or any other officer not below the rank of a Conservator of Forests appointed by the Government, by notification in the Gazette to exercise the powers and perform the functions of the Custodian under this Act.

23. Section 2(b) of the Act, 2003 defines ecologically fragile lands to mean, - (i) any forestland or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forestland owned by the Government and predominantly supporting natural vegetation; and (ii) any land declared to be an ecologically fragile land by the Government by notification in the Gazette under Section 4.

24. Section 2(c) of the Act, 2003 defines forest to mean any land principally covered with naturally grown trees and undergrowth and includes any forest statutorily recognized and declared as reserved forest,

protected forest or otherwise, but does not include any land which is used principally for the cultivation of crops of long duration such as tea, coffee, rubber, pepper, cardamom, coconut, arecanut or cashew or any other site of residential buildings and surroundings essential for the convenient use of such buildings.

25. Section 3 of the Act, 2003 speaks about Ecologically fragile lands to vest in Government and the same reads thus:

“3. Ecologically fragile land to vest in Government. - (1) Notwithstanding anything contained in any other law for the time being in force, or in any judgment, decree or order of any court or tribunal or in any custom, contract or other documents, with effect from the date of commencement of this Act, the ownership and possession of all Ecologically fragile land held by any person or any other form of right over them, shall stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other person thereon shall stand extinguished from the said date.

(2) The lands vested in the Government under sub-section (1) shall be notified in the Gazette and the owner shall be informed in writing by the custodian and the notification shall be placed before the advisory committee constituted under Section 15 for perusal.”

26. Section 10 of the Act, 2003 speaks about settlement of dispute by the Tribunal, which is relevant, in view of the argument advanced by the learned Special Government that the writ petitioners have a remedy to approach the Tribunal though the applications under Section 10A of Act are dismissed by the Principal Chief Conservator of Forests, and it reads thus:

“10. Settlement of disputes by the Tribunal. - (1) Where any dispute arises as to whether,-

- (a) any land is an ecologically fragile land or not; or
- (b) any ecologically fragile land or portion thereof has vested in the Government or not; or
- (c) the compensation determined under section 8 is insufficient or not.

The person who claims that the land is not an ecologically fragile land or that the ecologically fragile land has not vested in the Government or that the compensation is not sufficient, may, within five years from the date of commencement of this Act or within six months from the date of the notification under sub-section (1) of Section 4 declaring the land to be an ecologically fragile land or the date of communication of compensation under Section 8, as the case may be, or within such time as the Government may notify in this behalf apply to the Tribunal for settlement of the dispute.

(2) An application under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) If the Tribunal decides that any land is not an ecologically fragile land or that an Ecologically fragile land or portion thereof has not vested in the Government and, -

- (a) no appeal under Section 11 has been preferred against the decision of the Tribunal within the period specified therein; or
- (b) such appeal having been preferred under Section 11 has been dismissed by the High Court.

the custodian shall, as soon as may be, after the expiry of the period referred to in clause (a) or, as the case may be, after the date of the order of the High Court dismissing the appeal, restore possession of such land or portion as the case may be, to the owner of such land.

(4) If the Tribunal decides that the compensation determined under Section 8 is not adequate and revises the amount of compensation and,-

- (a) no appeal under Section 11 has been preferred against the decision of the tribunal within the period specified therein; or

(b) such appeal having been preferred under Section 11 has been dismissed by the High Court,

the custodian shall, as soon as may be after the expiry of the period referred to in clause (a) or, as the case may be after the date of the order of the High Court dismissing the appeal, pay such compensation to the owner of such land.”

27. The main question for consideration in these appeals is in relation to Section 10A of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, as amended in the year 2009 on and with effect from 20.08.2009 which reads thus:

“10A. Dispute Redressal in respect of lands having an extent of not more than two hectares.- (1) Notwithstanding anything contained in section 10, if any owner of the land which has been notified under Section 3 and having an extent of not more than two hectares as on 2nd day of June, 2000 has any dispute as to whether such land is an ecologically fragile land or not, may file an application before the Principal Chief Conservator of Forests for the settlement of such dispute:

Provided that no dispute in respect of any land which was already been decided by the Tribunal under section 10 shall be re-opened under sub-section (1).

(2) On receipt of an application under sub-section (1), the Principal Chief Conservator of Forests shall refer the dispute to the Ecologically Fragile Land Claim Dispute Redressal Committee constituted under Section 10B and shall if any proceedings pertaining to the land referred to in the said application is pending before any Tribunal, communicate the fact to the said Tribunal and on such communication further proceedings in respect of such land before the Tribunal shall stand suspended.

(3) On such reference under sub-section(2), the Ecologically Fragile Land Claim Dispute Redressal Committee shall after inspecting the land in dispute furnish a detailed report within six months from the date of receipt of the application to the Principal Chief Conservator of Forests regarding the nature of

the land, trees and other vegetation on the land.

(4) Immediately on receipt of the report under sub-section (3), the Principal Chief Conservator of Forests shall forward the same with his recommendations to Government and the decision of the Government thereon shall be final.

(5) If the decision under sub-section (4) is that any land or portion thereof is an ecologically fragile land, the Tribunal shall at the option exercised by the applicant, within such time as may be prescribed, continue the proceedings suspended temporarily under sub-section (2) in respect of such land.

(6) If the decision under sub-section (4) is that any land or portion thereof is not an ecologically fragile land, the custodian shall, as soon as may be, return the possession of such land or portion thereof, as the case may be, to the owner of such land and that the said land shall not be purported to have been vested in the Government at any time under the provisions of this Act, and in respect of the land which is returned, the Tribunal shall put an end to the proceedings which is pending before the Tribunal and suspended temporarily under sub-section (2) and pass orders thereon.

(7) No application for settlement of dispute under this section shall be filed after the expiry of six months, as the case may be, from the date of publication of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Amendment Act, 2009 or from the date of notification declaring such land as ecologically fragile land under Section 3.

(8) The form, the manner and fees for preferring an application under sub-section (1) shall be such as may be prescribed.”

28. On an analysis of Section 10A of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, introduced as per the Amendment Act, 2009, it is categoric and clear that the said provision is a special provision carved out from Section 10 of Act, 2003 dealing with settlement of dispute by the Tribunal. Section 10 specifies that where any

dispute arises as to whether, (a) any land is an ecologically fragile land or not; or (b) any ecologically fragile land or portion thereof has vested in the Government or not; or (c) the compensation determined under Section 8 is insufficient or not, the person who claims that the land is not an ecologically fragile land or the ecologically fragile land has not vested in the Government, or that the compensation is not sufficient, may within five years from the date of commencement of the Act, 2003 or within six months from the date of notification under sub-section (1) of Section 4 declaring the land to be an ecologically fragile land or the date of communication of compensation under Section 8, as the case may be, or, within such time as the Government may notify in this behalf, file an application to the Tribunal for the settlement of dispute. Therefore, it is clear that the Tribunal is vested with powers to entertain any application in regard to the vesting of land with the Government as provided under the Act, 2003. Apparently, in the year 2009, Government have brought the amendment having realised that several practical difficulties were faced by the nominal small scale farmers engaged in farming near the forest land in connection with the implementation of Act, 2003.

29. In the circumstances, several complaints were received by the Government regarding the delay in the settlement of disputes, especially

from small scale farmers of the lands declared as ecologically fragile, and therefore, it has become essential to provide for an alternate arrangement for deciding such complaints. It was in the aforesaid background that Section 10A dealing with dispute redressal in respect of lands having an extent of not more than 2 hectares and the constitution of the Ecologically Fragile Land Claim Dispute Redressal Committees has been introduced by amending the Act, 2003.

30. Therefore, the purpose of Section 10A is to help the marginal farmers by a less cumbersome procedure, than the proceedings before the Tribunal. In our opinion, the provisions of Sections 10A & 10B, of Act, 2003 when considered in that perspective, are definitely intended to ensure the benefit of the small time farmers, which was the basic and foundational intention of the Legislature, by introducing the amendment to Act, 2003.

31. The seminal question raised by Mr. Sandesh Raja, learned Special Government Pleader for Forests, is that in sub-section (7) of Section 10A, it is clarified that no application for settlement of dispute under Section 10A shall be filed after the expiry of six months, as the case may be, from the date of publication of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Amendment Act, 2009, or from the date of the notification declaring such land as ecologically fragile land under Section 3.

Therefore according to the learned Special Government pleader the applications ought to have been filed not later than six months from the date of the notification and not from the date of information in writing to the land owners.

32. In the instant case, what is to be taken into account is the date of notification declaring lands as ecologically fragile lands under Section 3, because the other limb contained under sub-section (7) of Section 10A of Act, 2003 would not lie. It is an admitted fact that the notifications were published by the State Government in the Gazette on different dates of the information in writing given by the Custodian of Forest to the owners of the properties. The contention advanced is that under sub-section (7) of Section 10A, the sole basic requirement for calculating six months period is the notification issued under Section 3 and not the information in writing by the Custodian to the owner.

33. Taking into account the contentions put forth by the learned Special Government Pleader and learned counsel for the writ petitioners, we are of the view that a reference to some of the decisions of the Hon'ble Supreme Court would enable us to arrive at a logical conclusion.

34. On the aspect of golden rule of interpretation, in **Gurudev datta VKSSS Maryadit v. State of Maharashtra** reported in (2001) 4 SCC 534, the

Hon'ble Supreme Court held as under:

“It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the Legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.”

35. In **National Insurance Co. Ltd. v. Laxmi Narain Dhut** reported in (2007) 3 SCC 700, the Hon'ble Supreme Court observed as under:

“14. A plea has been taken about the desirability of purposive construction. "Golden Rule" of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequence of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late gave place to 'rule of legislative intent'. The world over, the principle of interpretation according to the legislative intent is accepted to be more logical. When the law to be applied in a given case prescribes interpretation of statute, the Court has to ascertain the facts and then interpret the law to apply to such facts. Interpretation cannot be in a vacuum or in relation to hypothetical facts. It is the function of the legislature to say what shall be the law and it is only the Court to say what the law is.

18. In *Kehar Singh v. State (Delhi Admn.)* it was held:

“During the last several years, the 'golden rule' has been given a go-by. We now look for the 'intention' of the legislature or the 'purpose' of the statute. First we examine the words of the statute. If the words are precise and cover the situation on hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischief's which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

19. A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative

Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. [See *District Mining Officer and Ors. v. Tata Iron & Steel Co. and Anr.* (2001) 7 SCC 358].”

36. In **Karnataka State Financial Corporation. v. N. Narasimahaiah**

[(2008) 5 SCC 176], the Hon'ble Supreme Court held as under:

“42. Interpretation of a statute would not depend upon a contingency. It has to be interpreted on its own. It is a trite law that the court would ordinarily take recourse to the golden Rule of literal interpretation. It is not a case where we are dealing with a defect in the legislative drafting. We cannot presume any. In a case where a court has to weigh between a right of recovery and protection of a right, it would also lean in favour of the person who is going to be deprived therefrom. It would not be the other way round. Only because a speedy remedy is provided for that would itself (sic not) lead to the conclusion that the provisions of the Act have to be extended although the statute does not

say so. The object of the Act would be a relevant factor for interpretation only when the language is not clear and when two meanings are possible and not in a case where the plain language leads to only one conclusion.”

37. In **Prabhudas Damodar Kotecha and Ors. v. Manhabala Jeram Damodar and Ors.** [(2013) 15 SCC 358], at paragraphs 27 & 28, the Hon'ble Supreme Court observed as under:

“27. Golden-rule is that the words of a statute must be prima facie be given their ordinary meaning when the language or phraseology employed by the legislature is precise and plain. This, by itself proclaims the intention of the legislature in unequivocal terms, the same must be given effect to and it is unnecessary to fall upon the legislative history, statement of objects and reasons, frame work of the statute etc. Such an exercise need be carried out, only when the words are unintelligible, ambiguous or vague.

28. It is trite law that if the words of a Statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The above principles have been applied by this Court in several cases, the judgments of which are reported in Chief Justice of Andhra Pradesh and Ors. v. L.V.A. Dixitulu and Ors. [(1979) 2 SCC 34], Kehar Singh and Ors. v. State (Delhi Admn.) : (AIR 1988 SC 1883), District Mining Officer and Ors. v. Tata Iron and Steel Co. and Anr. [(2001) 7 SCC 358], Gurudevdatla VKSSS Maryadit and Ors. v. State of Maharashtra and Ors. (AIR 2001 SC 1980), State of H.P. v. Pawan Kumar [(2005) 4 SCC 350] and State of Rajasthan v. Babu Ram [(2007) 6 SCC 55].”

38. The significant question to be answered is, whether an owner of the property, entitled to secure the benefit of Section 10A of Act, 2003, as amended with effect from 20.08.2009, is not entitled to get the benefit of filing an application before the Chief Conservator of Forests for settlement

of the dispute, within six months from the date of receipt of the information in writing, as is contemplated under Section 3 (2) of Act, 2003.

39. Section 3 (1), as extracted supra, makes it clear that all ecologically fragile lands to vest in Government with effect from the date of commencement of the Act, 2003, irrespective of any other law for the time being in force or in any judgment, decree, or order of any court or tribunal or in any custom, contract or other documents and consequent to which the ownership and possession of all ecologically fragile lands held by any person or any other form of right over them shall transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person shall stand extinguished from the said date. Therefore, on a consideration of the said provision, it is categoric and unambiguous that all ecologically fragile land vested in the Government by statutory force. However, the condition contained under sub-section (2) thereto, is imperative in nature, which specifies that the land vested in the Government under sub-section (1) shall be notified in the Gazette and the owner shall be informed in writing by the Custodian and the notification shall be placed before the Advisory Committee constituted under Section 15 for perusal.

40. Analysing the significance of sub-section (2) of Section 3 of Act,

2003, one thing is clear, that the three limbs of sub-section (2) are concomitant and conjunctive in nature, due to which, one cannot be separated from the other for any purposes intended under Section 3. To put it otherwise, the lands vested in the Government under sub-section (1) of Section 3 of Act, 2003, (a) shall be notified, (b) the owner shall be informed in writing by the Custodian of EFL, and (c) the notification notified in the Gazette shall be placed before the Advisory Committee. Therefore, in our considered opinion, all actions specified thereunder are simultaneous in nature and the Government or the Custodian are not at liberty to depart from any one of the conditions prescribed thereunder.

41. Here is a case where information in writing has been given by the Custodian to the owners of the property much later than the notification in the Gazette. As we have pointed out above, the purpose and intention behind Section 10A of Act, 2003 are to help the marginal farmers and, therefore, no exercise to defeat the interest of the farmer can be permitted under Section 10A read along with Section 3(2) of Act, 2003. This we have said because, in the facts, circumstances, and the law, the word “notification” employed in sub-section (7) of Section 10A to calculate the expiry of six months' period has to be read down to mean the date of notification declaring such land as ecologically fragile land under Section 3

in the Gazette and the information in writing given by the Custodian to the owners of the property. There is no case for the appellants that there was any fetter for the Custodian of the forest to inform the owners of the property in writing, as the address and other particulars were available with the forest and revenue departments, as evident from the notices issued to the writ petitioners by the Custodian of the forest at a later point of time.

42. Consequent to the introduction of Section 10A to Act, 2003, the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Rules, 2007 has been amended on and with effect from 26.11.2009, by which, it is clear that the application is to be submitted before the Principal Chief Conservator of Forests specifying the details as mentioned under Rule 21A of the Rules, 2009. True, sub-rule (3) of Rule 21A enables the Chief Conservator of Forests to have a preliminary examination of the application, in order to identify whether the application is submitted in accordance with sub-section (1) of Section 10A. Once it is found that the application submitted is in accordance with sub-section (1) of Section 10A, then the obligation cast upon the Principal Chief Conservator of Forests is to refer the applications to Ecologically Fragile Land Claim Redressal Committee, constituted under Section 10B of Act, 2009, as provided under sub-section (2) of Section 10A of Act, 2003 and sub-rule 4 of Rule 21A of the Rules, 2009.

43. If the communication in writing as contemplated under Section 3 of Act, 2003 was not made immediately by the Custodian of the forests, on the basis of the notification issued by the Government, the benefit shall not be available to the owner of the property, and he would be deprived of his rights to enjoy the property, especially in view of the Constitutional right guaranteed under Article 300A of the Constitution of India. In the instant cases, since the information in writing is given to the owners of the properties, months and months after publication of the notification in the Gazette, and that too, after six months period from the publication in the Gazette, definitely the period of six months has to be calculated from the date of receipt of the information in writing to the owners of the properties. This we say because, the legislative intent is to be given the utmost importance, which would be more logical, relevant and meaningful, to protect the interests of the citizens. Also, it is trite and settled that the provisions of a statute shall be read harmoniously, so as to make it meaningful and commensurate with the intention of the legislature. This would also enable the provisions of a statute, to remain harmonious, purposeful, and relevant, rather than being obscure and irrelevant.

44. Taking into account the above said aspects, we are of the considered view that any other interpretation given to the phraseology

“notification” employed in sub-section (7) of Section 10A, other than the one discussed above would defeat the purpose of Sections 10A and 10B of the provisions of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. Even though, the learned Special Government Pleader for Forests submitted before us that when sub-section (7) of Section 10A is clear that six months' period is to be reckoned from the date of the notification, then the golden rule of interpretation would come into play, since the intention of the Legislature is intelligible, unambiguous, and clear, we are of the opinion that, under Section 10A of Act, 2003 what is taken care of is the entire provisions of Section 3. Section 3 has two provisions, viz., sub-section (1) and sub-section (2), which thus means, the entire provisions of Section 3 have to be read together, in order to ascribe any meaning to the provisions of Section 10A of Act, 2003.

45. If the provisions of Sections 3 and 10A of Act, 2003 are read together, which is the requirement of the law under Section 10A, it cannot be said that an application has to be mandatorily filed by an owner of the property, within a period of six months from the date of the notification published in the Gazette in regard to the vesting of the land.

46. That apart, since the issue involved in the appeals is deprivation of the rights of owners of the properties, definitely, when the property is taken

away, the owner of the property is entitled to get an intimation enabling him to respond to the action of the Government appropriately and, with the object of protecting his interest, which is the intention of the legislature in the case at hand, especially in view of the conjunctive expression- employed in Section 3 of Act, 2003. The Hon'ble Apex Court had an occasion to consider the issue on the basis of statutory provisions vis-a-vis Constitutional provision in **Government of NCT of Delhi v. Union of India (UOI) and Ors.** [(2018) 8 SCC 501], and held as under:

“394.....Yet, to our mind, in construing a constitutional provision, the considerations which weigh with the Court would not be constricted by the principles underlying the interpretation of the provisions of a statute. Ordinarily while construing a statute, the Court would be guided by the plain and grammatical meaning of the words used. The literal or golden Rule of interpretation gives way where its consequence would lead to an absurdity or perpetuate an evil which the legislature had intended to avoid. The Court, even while interpreting a statute, may adopt a purposive interpretation. An interpretation is purposive because it facilitates the object which the legislature intended to achieve by enacting the law. Even a purposive interpretation seeks to fulfill the aim and object of the legislature which enacted the law. While construing the provisions of the Constitution, the Court cannot be oblivious either to the nature of the document which it construes or to its task as an institution created by the Constitution to interpret its provisions. Ordinary law is susceptible to alteration by legislative majorities. Legislative amendments to statutory provisions are often a response to the predicaments of the moment. The object of elevating rights, duties and modes of governance into the protective terrain of a constitutional document is to precisely elevate them to a status of

stability and permanence which we attribute to a constitutional provision.”

47. Further, on the aspect of doctrine of reading in and reading down, the Hon'ble Apex Court in **Calcutta Gujarati Education Society v. Calcutta Municipal Corpn.**, [(2003) 10 SCC 533], held as under: (SCC p. 522, para 35)

"35. The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of 'reading down', however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfill its purposes.

48. To put it otherwise, by introducing Section 10A of Act, 2003, the Legislature never meant to defeat the relevance of Section 3 of Act, 2003, which thus means, it is only appropriate that the provisions of Section 3 and Section 10A are harmonized to gather an effective meaning, so as to protect the interest of the marginal farmers, whose properties are vested in the Government, by virtue of the statutory fiction contained under Section 3 of Act, 2003.

49. On the aspect of interpretation of statutes and harmonious construction, reference can be made to a few decisions as hereunder.

(i) In **Sultana Begum v. Prem Chand Jain**, [(1997) 1 SCC 373], the Hon'ble Supreme Court held as under:

"15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

(ii) In **Dwarka Prasad v. Dwarka Das Saraf** reported in AIR 1975 SC 1758, the Hon'ble Supreme Court held as under:

"While rulings and textbooks bearing on statutory construction have assigned many functions for provisos, we have to be selective, having regard to the text and context of a statute....

.... If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the

enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such a manner that they mutually throw light on each other and result in a harmonious construction.

"The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together, is to prevail."

(iii) In **Anwar Hasan Khan v. Mohd. Shafi** reported in (2001) 8 SCC 540, the Hon'ble Supreme Court, at paragraph 8, held as under:

"For interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" is not harmonious construction."

(iv) In **UOI v. State of Tripura** [AIR 2012 SC 3240], the Hon'ble Supreme Court held that any interpretation, which leads to injustices and absurdity, must be avoided and, in such situations, court may look into the purpose for

which, the statute has been brought and would try to give a meaning, which would adhere to the purpose of that statute. Relevant paragraph of the said decision is reproduced below:

"4. Before we embark upon an enquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal C.J. in *Sussex Peerage case*, (1844) 11 CI and F 85, still hold the field. The aforesaid Rule is to the effect:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver."

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson and Company Limited*, 1955 (2) All ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that "a provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of *Aswini Kumar Chose v. Arabinda Bose*, (1953 SCR 1) had held that it is not a sound principle of construction to brush aside words in a statute as

being in-apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway Light Heat and Power Company v. Vandray*, AIR 1920 PC 181, It has been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it would be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective...."

50. In the light of the above discussion and decisions, we have no hesitation to hold that the appellants have not made out a case for interference with the judgment of the learned Single Judge, since there is no error in exercising the discretion or other legal infirmities, established by the appellants, justifying us to do so. Appeals fail and accordingly, they are dismissed. However, the order of status quo granted by the learned Single Judge for consideration and disposal of the interim arrangement would stand extended by a period of two months from the date of receipt of a certified copy of this judgment, enabling the authority concerned to make appropriate interim arrangement till the disposal of the applications. In all

other respects, the directions contained in the judgment of the learned Single Judge dated 20.03.2020 would remain intact. No costs.

Sd/-

**S. MANIKUMAR
CHIEF JUSTICE**

Sd/-

**SHAJI P. CHALY
JUDGE**

krj

APPENDIX IN W.A. 1038/2020

APPELLANTS' ANNEXURES:- NIL

RESPONDENT'S ANNEXURES:

ANNEXURE A1:- COPY OF THE INTERIM ORDER DATED 5.6.2015 IN W.P(C) NO.16869/2015 AND TYPED COPY OF THE SAME.

APPENDIX IN W.A. 1041/2020

APPELLANTS' ANNEXURES:- NIL

RESPONDENT'S ANNEXURES:

ANNEXURE A1:- COPY OF THE INTERIM ORDER DATED 16.6.2015 IN W.P(C) NO.17930/2015.

ANNEXURE A2:- COPY OF THE INTERIM ORDER DATED 20.10.16 IN I.A. NO.15284/16 IN WP(C) NO.17930/15.

//TRUE COPY//

P.A. TO C.J.