



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 13TH DAY OF AUGUST 2024 / 22ND SRAVANA, 1946

WP(C) NO. 15044 OF 2024

PETITIONER:

MARY BABY, AGED 65 YEARS
W/O BABY K. C., KAPPUNKAL HOUSE, ASARIKKAD P.
O., THRISSUR DIST, PIN - 680751

BY ADVS. SNEHA RAJIV
P.F.ROSY
PHILIP.N.JOSEPH
IRENE ELZA SOJI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT
OF REVENUE, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 682031
- 2 DISTRICT COLLECTOR
COLLECTORATE, AYYANTHOLE, THRISSUR PIN:, PIN -
680003
- 3 FOREST RANGE OFFICER
FOREST RANGE OFFICE, OTEES ROAD, PATTIKAD, PIN
- 680652
- 4 TAHSILDAR
TOWN HALL, W PALACE RD, OPP. THRISSUR,
CHEMBUKKAV, THRISSUR, KERALA, PIN - 680020
- 5 VILLAGE OFFICER
VILLAGE OFFICE PANANCHERY, THRISSUR DIST., PIN
- 680652
- 6 DISTRICT SURVEY SUPERINTENDENT



OFFICE OF THE DISTRICT SURVEY SUPERINTENDENT,
COLLECTORATE, THRISSUR, PIN - 680003

T.P.Sajan, Spl. GP (Forest)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13.08.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**"CR"****JUDGMENT**

Ext.P12 order passed by the 4th respondent rejecting Ext.P4 application submitted by the petitioner to issue pass to cut, remove and transport teak trees planted by her in her property is under challenge in this writ petition.

2. The petitioner is the owner of 0.072 hectares of land comprised in Survey No.1397/146/1 situated in Peechi Village. She obtained the said property by way of assignment under the Kerala Government Land Assignment Act, 1960 (for short 'the Land Assignment Act') as per Ext.P1 patta. According to the petitioner, after she acquired the right over the property as per Ext.P1, she planted around 150 teak trees therein. Since a neighbour has been complaining that the trees are a threat to his house, she decided to cut and remove them, and she submitted Ext.P4 application before the 3rd respondent seeking permission to cut the trees and to issue a pass to transport the same. The 3rd respondent asked the petitioner to approach the revenue authorities. Accordingly, she submitted Ext.P6 application seeking permission to cut and remove the teak trees before the 4th respondent. The 4th



respondent rejected the Ext.P6 application as per the Ext.P12 order, which is impugned in this writ petition.

3. I have heard Smt. Sneha Rajiv, the learned counsel for the petitioner and Sri. T.P. Sajan, the learned Special Government Pleader.

4. Ext.P6 application submitted by the petitioner was rejected by the 4th respondent mainly holding that all the trees in the assigned land vest in the Government as per the Kerala Land Assignment Rules, 1964 (for short, 'the Land Assignment Rules'). Section 3 of the Land Assignment Act deals with the assignment of Government land. Sub-Section (1) of Section 3 says that assignment of Government land shall be subject to such restrictions, limitations and conditions as may be prescribed. Section 8 says that all the provisions, restrictions, conditions and limitations contained in any patta or other document evidencing the assignment of Government land or of any interest therein shall be valid and take effect according to their tenor notwithstanding any law for the time being in force or any custom or contract to the contrary. Thus, as per Sections 3 and 8 of the Land Assignment Act, the assignee of Government land is bound by the restrictions, limitations and conditions prescribed in the patta or other



document evidencing the assignment of Government land.

5. Ext.P1 is the patta issued to the petitioner under Rule 9(2) of the Land Assignment Rules in the Form in Appendix II. The 1st condition in Ext.P1 patta is that the full right over all the trees within the grant and specified in the schedule vests in the Government and the assignee is bound to take care of all the trees standing on the land at the time of assignment or that may come into existence subsequent to it. The teak trees are mentioned in the Schedule of Ext.P1. The learned counsel for the petitioner submitted that the restriction applies to the trees mentioned in the schedule and standing on the property at the time of assignment. I cannot subscribe to the said argument. On assignment of the Government land, the patta has to be issued to the assignee in the Form in Appendix II under Rule 9(2) of the Land Assignment Rules. Such a Form contains certain conditions. Condition Nos. (1) and (2) therein reads thus:

“1. The full right over all the trees within the grant and specified in the Schedule vests in the Government and the assignee is bound to take care of all such trees standing on the land at the time of assignment or that may come into existence subsequent to it.

2. The assignee is bound to afford all facilities to the officers of Government in the matter of inspecting the land periodically for checking the trees referred to in



condition (1)above and removing them, if necessary:

6. Ext.P1 patta also contains the above conditions. The purport of those conditions is that if the trees are one of the species mentioned in the Schedule, they would vest in the Government irrespective of the fact they were standing on the land at the time of the assignment or came into existence subsequent to the assignment, [See **Manoj A.N. v. State of Kerala and Others** (2013 (3) KHC 505) and **Jose v. State of Kerala and Others** (2020 (2) KHC 383)]. Therefore, the full right over all trees within the grant standing on the land at the time of the assignment or that may come into existence after the assignment belongs to the Government, and the assignee has no right over the same.

The Kerala Promotion of Tree Growth in Non-Forest Areas Act, 2005, regulates cutting and removing of trees standing on non-forest land. The object of the Act is to promote the cultivation of trees in non-forest areas of the State to increase the green cover, preserve biodiversity, arrest soil erosion and increase the availability of timber and bamboo for industry. Section 6(1) deals with the right of owners to cut and remove trees in non-notified areas in non-forest land. It says that every owner of non-forest land in a non-notified area shall have the right to cut and transport any tree, other than a



sandalwood tree, standing on his land. However, the proviso to the said section says that the provision of sub-section (1) shall not apply to trees, if any, reserved by the Government at the time of assignment of such land. That apart, the non-obstante clause in Section 6(1) does not exclude the terms of the patta issued by the Government under the Land Assignment Act or the Rules framed thereunder. Therefore, the conditions mentioned in patta are binding on the assignee. As stated already, the land has been assigned by the Government to the petitioner as per Ext.P1 patta with a specific condition that the trees specified in the Schedule which were either standing in the property at the time of the assignment or may come into existence at any time in future, would vest in the Government. Thus, the trees in question are vested in the Government as per Sections 3 and 8 of the Land Assignment Act and the petitioner cannot claim ownership over them. Hence, I find no reason to interfere with Ext.P12 order. Accordingly, the writ petition is dismissed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE



APPENDIX OF WP(C) 15044/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PATTa ISSUED TO THE PETITIONER DTD.07.02.1975, NUMBERED LAP 2616/PNY , BY THE 4TH RESPONDENT
- Exhibit P2 TRUE COPY OF THE EXTRACT FROM THE BASIC TAX REGISTER RELATING TO THE PROPERTY OF THE PETITIONER
- Exhibit P3 TRUE COPY OF THE TAX RECEIPT DTD. 19.05.2023 ISSUED TO THE PETITIONER
- Exhibit P4 TRUE COPY OF THE LETTER DTD. 30.01.2019 PREFERRED BY THE PETITIONER BEFORE THE 3RD RESPONDENT
- Exhibit P5 TRUE COPY OF THE LETTER DTD. 02.02.2019 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT
- Exhibit P6 TRUE COPY OF THE LETTER DTD. NIL PREFERRED BY THE PETITIONER BEFORE THE 4TH RESPONDENT
- Exhibit P7 TRUE COPY OF THE LETTER DTD.09.04.2019 BEARING NO. C6-10791/19 ISSUED BY THE 4TH RESPONDENT TO THE 5TH RESPONDENT
- Exhibit P8 TRUE COPY OF THE LETTER DTD.16.04.2019 BEARING NO. 92/19 ISSUED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT
- Exhibit P9 TRUE COPY OF THE LETTER DTD.30.07.2019 BEARING NO. LRC -14/2019 ISSUED BY THE 6TH RESPONDENT TO THE 4TH RESPONDENT
- Exhibit P10 TRUE COPY OF THE JUDGMENT DTD.29.07.2022 OF THIS HON'BLE COURT IN WP(C) NO.27491 OF 2019
- Exhibit P11 TRUE COPY OF THE LETTER DTD.16.11.2022 ISSUED BY THE 4TH RESPONDENT TO THE 2ND RESPONDENT



Exhibit P12

**TRUE COPY OF THE ORDER DTD.09.05.2023
AND NUMBERED TLKTSR/3106/2022-C6
ISSUED BY THE 4TH RESPONDENT**

Exhibit P13

**TRUE COPY OF THE LETTER DTD.
11.03.2024 BEARING NO.
KFDDO/13505/2024-DFOTSR/TA3 ISSUED BY
THE DIVISIONAL FOREST OFFICER,
THRISSUR DIVISION**