

(2016) 10 KL CK 0026

In the High Court Of Kerala

Case No : WP(C).No. 19735 of 2016.

Aboobacker T.K., Aged 73 Years, S/o. Kunhayamu Haji, Thazheth Kalladi, Karakurussi(Post), Mannarkkad, Palakkad District - Petitioner @HASH Forest Range Officer, Forest Range Office, Ottapalam, Kulappully (Post), Pin-679 122

Date of Decision : 18-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Preservation of Trees Act, 1986 — Section 5

Citation : (2016) 4 ILRKerala 654 : (2016) 4 KerLJ 510 : (2016) 4 KLT 458

Hon'ble Judges : Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. P.K. Mohanan(Palakkad), Advocate, for the Petitioner; Sri. K. Sandesh Raja, Spl. Govt. Pleader, for the Respondent/Forest

Final Decision : Allowed

Judgement

Mr. Shaji P. Chaly, J. - This writ petition is filed by the petitioner seeking to quash Ext.P7 order issued by the 3rd respondent dated 21.04.2016, whereby petitioner was declined permission to cut and remove the rubber trees slaughter tapped, resorting to Section 5 of Kerala Preservation of Trees Act, 1986, and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. An extent of 2 Acres of land comprised in Sy. No.57AIA of Karimpuzha II Village of Ottapalam Taluk involved in O.A.No.8 of 1976 of Forest Tribunal was exempted from the purview of Kerala Private Forest (Vesting and Assignment) Act, 1971 [hereinafter called, "Act, 1971"], as per the judgment dated 19.12.1978 of Forest Tribunal, Palakkad, under Section 3(2) of Act, 1971, in favour of the petitioner and his brothers, evident from Ext.P1.

3. Though possession was restored immediately, the official communication in this regard is delayed due to some discrepancy in the survey number and the survey number is now corrected as Sy.No.57A/1A1A of Karimpuzha II Village, evident from the order in I.A.No.80/11 in O.A.No.8 of 1976 dated 30.11.2012,

evident from Ext.P2. The area of land in question was under personal cultivation at the time of the alleged vesting. The above described land is now included under Section 5 of the Kerala Preservation of Trees Act, 1986 [hereinafter called, "Act, 1986"]. There are 320 numbers of rubber trees in the above said land. The above trees are aged and not yielding. Ext.P3 is the photograph of a portion of the area of the rubber plantation.

4. Petitioner, on behalf of himself and other co-owners in occupation, applied for permission of cutting the rubber trees along with the dead trees standing in the land, evident from Ext.P4 submitted before the 3rd respondent. Earlier, a similar application dated 04.08.2015 was also submitted and the said application was sent to the Divisional Forest Officer, Palakkad, who in turn, forwarded the same to the Forest Range Officer. The Forest Range Officer, Ottapalam with the help of Deputy Range Forest Officer, Thiruvazhiyode prepared an inventory of standing trees and submitted the same to the D.F.O., Palakkad for suitable action, evident from Ext.P5. After verifying and being satisfied of the same, the D.F.O has sent a copy of the list to 3rd respondent. A list of trees standing in the property in question dated 15.02.2016 was also forwarded to 3rd respondent, evident from Ext.P6.

5. However, 3rd respondent by Ext.P7 order dated 21.04.2016, rejected the prayer of the petitioner, according to the petitioner, without assigning any valid reason. It is in this background, challenging Ext.P7, this writ petition is filed.

6. Heard learned counsel for the petitioner and the learned Special Government Pleader, and perused the documents on record and the pleadings put forth by the respective parties.

7. The question to be considered is whether any interference is required to Ext.P7 order passed by the 3rd respondent. The issue with respect to Ext.P1 order passed by the Tribunal restoring the property to the petitioner, the restoration of the same to the petitioner, and the cultivation in the property by rubber trees, are not under serious dispute. Obviously, the application submitted by the petitioner is for cutting and removing the rubber trees standing in the aforesaid property along with a list of dead trees also standing thereon.

8. It is well accepted that rubber trees are grown for extracting latex, and the trees for the purpose of extracting latex have a tenure, and it is also an accepted principle, the trees can be tapped at the most for a period of 25 years. Thereafter, slaughter tapping is done and the trees are cut and removed and thereafter new saplings are planted. This is the procedure followed in rubber plantation. After the maximum period of drawing latex and the slaughter tapping is effected, the trees lose its value as an agricultural crop, and it can be termed as "dead" so far as its use is concerned. The Chambers Concise Dictionary defines "dead" as follows: "no longer alive; inanimate; out of play; out of use; obsolete; inactive; unproductive etc."

9. In that view of the matter, taking note of Ext.P1 order of the Tribunal, which

has become final, and that the petitioner intends to cut and remove the rubber trees standing in the property, and re-plant with new saplings, ought to have passed necessary orders taking into account these vital aspects. Merely because there is a prohibition created under Section 5 of Act, 1986, that does not mean that the trees cannot be cut and removed at all. Section 5(1) takes care of cutting and removing of trees on two grounds: (a) the trees constitute a danger to life or property; or (b) the tree is dead, diseased or wind-fallen.

10. Therefore, on a reading of the said provision, it is specific and distinct that there is no total prohibition of cutting and removing the trees. On the other hand, it is an enabling provision for cutting and removing trees under the specified circumstances mentioned thereunder. As discussed above, rubber trees, as an agricultural produce, have a maximum life. After the specified period of drawing latex, the trees become defunct and dead in all sense as an agricultural produce. Rubber trees are grown by farmers to secure latex and thereby earn livelihood out of the same. Therefore, when the trees become defunct and dead, livelihood is lost. Every farmer is entitled as of right to cut and remove the trees and plant the area with new saplings. This is the recognised practise so far as the State of Kerala is concerned. True, as provided under Explanation I to Section 5(2) of Act, 1986, the term "tree" is defined as any species of tree. However, as discussed above, when it has become dead vis-a-vis its utility, it is to be cut and removed.

11. On a reading of Ext.P7, I do not find any reason at all assigned by the 3rd respondent to decline permission to the petitioner to cut and remove the rubber trees and the other trees which are alleged to be dead.

12. The reason assigned by the 3rd respondent in Ext.P7 order is, even now the property is private forest and as per Act, 1986, the trees situate in the said property are to be preserved. That is not a reason at all, since it is clear the rubber trees have become defunct and dead, which can be permitted, to cut and remove, and plant with new saplings.

13. A Division Bench of this Court in *State of Kerala v. Antony Kannattu* [2013 (3) KLT 111] had occasion to consider a similar issue, having regard to the provisions of Act, 1971 and Act, 1986 and had permitted the petitioner therein to cut and remove the rubber trees, incorporating stern and strict stipulations. I think petitioner is also entitled to get benefit of the said judgment.

14. Taking into account the respective submissions made across the Bar and taking note of the law laid down by the Division Bench of this Court in the aforesaid judgment, Ext.P7 order passed by 3rd respondent is arbitrary and illegal and therefore it is quashed. Accordingly, petitioner is permitted to cut and remove the rubber trees standing in the property, under the supervision of any forest officials appointed by the competent D.F.O, and it should be ensured that the area is replanted with fresh saplings. The procedure so undertaken by the petitioner shall be scrutinised by the forest officials and sufficient records shall be

retained in order to ensure that the directions issued are complied with by the petitioner in its fullest sense.

15. So far as the other trees which were recommended to be cut and removed, as per Ext.P6 order of the 2nd respondent dated 15.02.2016, 3rd respondent shall re-consider the same after issuing sufficient notice to the petitioner, also taking note of the judgment of this Court referred to supra, and strictly following the procedures contemplated under the provisions of the Kerala Preservation of Trees Act, 1986.

16. The writ petition is allowed accordingly.