
(2023) 07 KL CK 0233

In the High Court Of Kerala

Case No : Writ Petition (C) No. 17034 Of 2023

Saratha.R

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Citation : (2023) 07 KL CK 0233

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : M.Dinesh, T.P.Sajan

Final Decision : Disposed Of

Judgement

Viju Abraham, J

1. The above writ petition is filed seeking a direction to the respondents 2 to 4 to permit the petitioners to transport building materials through the forest.

2. Petitioners are residents of the 5th respondent Nelliampathy Grama Panchayat. 1st petitioner has her own residence in Ward No.XI of the 5th respondent having building No.153. 1st petitioner has been paying property tax to the 5th respondent as is evident from Ext.P1 tax receipt. Ext.P2 is the ownership certificate issued by the 5th respondent in favour of the 1st petitioner. 2nd petitioner has a residence in Ward No.XI of 5th respondent having building No.154. Property tax for the said building has been paid as is evident from Ext.P3 receipt. Ext.P4 is the ownership certificate issued by the 5th respondent in favour of the 2nd petitioner. 3rd petitioner is a ration card holder in 5th respondent Panchayat and her husband Ganeshan has his own residence in Ward No.XI of 5th respondent and he has been paying property tax for the residential building as is evident from Ext.P5. Ext.P6 is the ownership certificate issued by the 5th respondent in favour of the 3rd petitioner's husband Ganeshan. Ext.P7 is the copy of the relevant page of the ration card of the 3rd petitioner bearing No.1947076717. The 5th respondent selected these petitioners in the scheme for

renovation and maintenance of residential building during 2022-2023. As per the said scheme the petitioners executed an agreement in favour of the Executive Officer of the 5th respondent which are produced as Exts.P8 to P10. As per the scheme, the beneficiaries will get grant for renovation and maintenance of the residential building and the said activity has to be completed within a period of three months from the date of the agreement and they cannot alienate the said residential buildings for a period of 12 years except to legal heirs. Petitioners wanted to purchase building materials from the nearest town and transport it through the forest under the control of respondents 1 to 4, in order to do maintenance and repair works of the residential buildings as per the agreement between them and the 5th respondent. Individual requests were made before the 3rd respondent for grant of permission to transport construction/building materials through the forest under the control of the 3rd respondent as per Exts.P11 to P13 requests. The 1st petitioner in the year 2017 made a similar request before the 3rd respondent in connection with the renovation of the roof of the residential building for which the 1st petitioner wanted to transport construction materials from the town through the forest under the control of the 3rd respondent. As per Ext.P14 necessary permission was granted to the 1st petitioner by the 3rd respondent. After receipt of the requests made by the petitioners and other beneficiaries of the scheme envisaged by the 5th respondent Panchayat the 3rd respondent forwarded these requests to the 5th respondent for enquiry and for a report in this regard as per Ext.P15 communication. Later on the 3rd respondent granted permission only to ten beneficiaries of the scheme envisaged by the 5th respondent to transport building materials through the forest as is evident from Ext.P16. 5th respondent has already granted funds to the 22 beneficiaries for the renovation and maintenance of the residential building and they have also entered into an agreement and as per the terms the agreement the beneficiaries shall complete the maintenance work within a period of three months. Petitioners submit that no permission has been granted to transport building materials through the forest by the 3rd respondent till date. It is aggrieved by the said situation that the petitioners have approached this Court.

3. A detailed statement has been filed by the 2nd respondent wherein it is admitted that in respect of certain beneficiaries permission has been granted for transportation of materials for maintenance of the existing building taking note of the fact that they have valid documents to substantiate their ownership over the land. In respect of the petitioners and few others, on verification it was found that the buildings were built on a leased out area of Nelliampathy reserve forest. It is submitted that 25 coffee estates having an area of 9.491 acres and 20 cents within the reserve forest were treated as enclosures and these enclosures are also having the status of reserve forest. Petitioners were directed to prove their right over the land on which they have buildings, but the petitioners have not produced any document for verification and that is the reason why no permission was granted for transporting the materials for the

maintenance of their residential buildings. The action of the 5th respondent in having allotted Government funds for maintenance of the buildings in Nelliampathy reserve forest without verifying the status of the land is not in accordance with law.

4. I have heard the learned counsel appearing for the petitioners as well as the Special Government Pleader for Forests.

5. It is admitted that the petitioners have been allotted the maintenance funds by the 5th respondent for the purpose of renovation and maintenance of existing residential buildings for the year 2022-2023. Exts.P1 to P7 documents would show that the petitioners (in case of 3rd petitioner, her husband) are in ownership of residential buildings for which building numbers have been assigned by the 5th respondent Panchayat. The request made by the petitioners is only seeking permission to transport building materials to undertake renovation and maintenance of their existing residential buildings before the monsoon season. The specific case of the petitioners is that the 1st petitioner was earlier given permission to transport construction materials from the town for renovation of the existing residential building by the 3rd respondent as per Ext.P14. Since a similar permission was granted earlier, the petitioners would contend that there is absolutely no reason for denying the same when a subsequent request was made by them. Petitioners also submit that in the case of ten beneficiaries similarly situated by Ext.P16 order permission has been granted to transport building materials through forest. Petitioners submit that their residential houses are in a dilapidated condition and necessary renovation work has to be done to make it suitable for residence during the monsoon season.

Since the only request made by the petitioners is for a permission to transport building materials through the forest so as to undertake the renovation and maintenance of their residential buildings, I am of the opinion that the said request made by the petitioners could be granted taking into consideration Exts.P1 to P7 documents produced along with the writ petition. Therefore the above writ petition is disposed of directing respondents 2 to 4 to grant permission to the petitioners as sought for in Exts.P11 to P13 requests allowing them to transport building materials through the forest for the purpose of renovation and maintenance of their residential buildings covered by Exts.P2, P4 and P6. It is made clear that the permission shall only be for transporting building materials for renovation of residential buildings of the petitioners. The permission granted by this Court is taking note of the submission made by the petitioners that the buildings are in a dilapidated condition and necessary renovation work has to be done to make it suitable for residence during the monsoon season. It is made clear that in view of the permission granted by this Court, no right will be accrued on the petitioner in respect of their residential houses covered by Exts.P2, P4 and P6.

With the abovesaid directions, the above writ petition is disposed of.