

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present

THE HONOURABLE MR. JUSTICE C. N. RAMACHANDRAN NAIR

And

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

Thursday, the 16th September 2010/25th Bhadra 1932

WA. No. 1505 OF 2010

AGAINST THE JUDGEMENT/ORDER IN WPC. 17448/2010 DATED 16-7-2010

Appellant(s): Respondents 1 & 2 in the WPC.

1. State of Kerala Rep. by Secretary,
Department of Forests,
Secretariat, Thiruvananthapuram.
2. The Forest Range Officer,
Kasaragod.

By Addl. Adv. General Sri Ranjith Thampan

Respondent(s): Petitioner and Respondents 3 and 4 in WPC

1. K. J. Varkey, S/o Joseph,
Proprietor, Good Wood Industries,
Padanakkad, Post Padnakkad,
Kasaragod District.
2. The Plantation Corporation of Kerala Ltd.,
Rep. by its Managing Director,
Kottayam.
3. The Manager, Plantation Corporation
of Kerala Ltd., Kasaragod Estate,
Muliyar, Kasaragod.

By Adv. Sri Kodoth Sreedharan

This writ appeal having come up for admission on 16-9-2010. The Court on the same day delivered the following:

C. N. RAMACHANDRAN NAIR

And

K. SURENDRA MOHAN, J. J.

W. A. No. 1505 of 2010

Dated this the 16th September, 2010

JUDGMENT

Ramachandran Nair, J.

This writ appeal is filed by the State against the judgment of the learned Single Judge holding that cutting of trees by the Kerala Plantation Corporation from their properties is not covered by Annexure-R2 (c) notification issued by the Government on 10-2-2010 regulating cutting of trees on lands at the disposal of the Government as an interim measure till the proposed amendment to the "Kerala (Promotion of Tree Growth in Non Forest Areas) Act" is passed and the Rules notified thereunder.

2. We have heard learned Additional Advocate General appearing for appellants and learned standing counsel appearing for the Plantation Corporation of Kerala Ltd., and the counsel appearing for the contractor to whom the Plantation Corporation sold the trees from the land involved i.e. in Kasargod district.

3. Appellants case is that being a public sector company under the control of the State Government, the Plantation Corporation ought to have obtained permission from the Committee constituted under the above notification before sale of the trees to the contractor. When the Forest Official declined permission for transport of the timber cut from the Plantation Corporation's property without obtaining permission, the contractor filed the writ petition contending that notification is not applicable to the Kerala Plantation Corporation. The Kerala Plantation Corporation seems to have supported the contention of the contractor before the learned Single Judge who allowed the writ petition holding that permission is required in terms of notification only if trees to be cut are from lands at the disposal of the Government which does not include the Corporations properties.

4. Learned Single Judge was of the view that land held by the Kerala Plantation Corporation is not a land at the disposal of the Government and so

much so no permission from the Committee constituted under the notification is required. However, the learned Additional Advocate General appearing for the appellants referred to the first part of the notification and contended that trees in lands under the control of public sector companies are also covered by the notification. What is stated in the first sentence of the Government Order is as follows:

“There are large number of trees growing on lands at the disposal of the Government, such as lands owned or occupied by public institutions under Government including government offices, educational institutions, medical institutions, research institutions, local self government institutions, public sector undertakings, quasi Government institutions, statutory bodies and the like.”

5. It is clear from the above that the Government understood lands at the disposal of the Government as “all lands occupied by public institutions, government offices etc., and other institutions and local self government institutions referred to therein specifically including public sector undertakings.”. Admittedly, the Plantation Corporation is a public sector undertaking that too under the control of the Government of Kerala. What is clear from the above words of notification is that Government did not confine the notification to the land belonging to the Government or under its direct control. On the other hand all such lands which are directly or indirectly under the control of the Government are covered by the notification. Majority of the shares in public sector companies are held by the Government which constitutes the Board of Directors of the Company. The shares of Plantation Corporation are fully held by the Kerala Government and its Director Board constituted by the Government is under its direct control. Therefore, Government orders on general matters bind the company and the corporation has no authority to question the wisdom of the Government in issuing the notification. There is nothing to indicate in the operative portion of the notification that the Government wanted to restrict the scope of notification to land directly under its control. On the other hand, notification applies to all kinds of lands broadly covered by the first sentence of the notification extracted above. So much so, we are unable to uphold the findings of the learned Single Judge on the interpretation placed on the scope of the notification.

6. Learned Single Judge also has considered the type of trees cut from the land belonging to the Plantation Corporation which is stated to be for planting the area with rubber. We do not think there is any scope for the Court considering this, because for cutting any tree permission of the Committee constituted under the notification is required. In fact, the notification does not

make any difference among the type of trees proposed to be cut. So long as the trees proposed to be cut are from the lands belonging to or under the control of any agency of the Government or its Departments referred to in the first sentence of the notification, permission from the committee is required.

7. Therefore, in our view, the findings by the learned Single Judge with regard to the trees to be preserved probably relevant under the Kerala Preservation of Trees Act and the conditions of pattayam issued have no relevance. In other words the freedom in the pattayam entitling the land holder to cut and remove the trees will stand superseded by the above Government Order if the lands covered by such pattayams are under the control of any of the authorities, departments or institutions under the control of the Government referred to in the first sentence of the notification.

8. We therefore vacate the findings of the learned Single Judge on the scope of the Government Order referred above. However, since the trees are already cut and it is done pursuant to Corporation's decision to plant the area with rubber, we allow the writ appeal in part by allowing the contractor to remove the trees in terms of the contract. We make it clear that the Plantation Corporation will take note of the judgment and future violations should be avoided. It is for the Government to circulate this judgment to all the Departments, local authorities and Government Corporations to avoid recurrence of violation and accordingly we direct the Principal Secretary (Forest) to circulate the Government Orders along with copy of this judgment to all covered by the first sentence of the notification extracted in the judgment.

(Sd.)

C. N. RAMACHANDRAN NAIR,
JUDGE

(Sd.)

K. SURENDRA MOHAN,
JUDGE