

K.V.Robert Vs. State of Kerala

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Court : Kerala

Decided On : Aug-02-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : K.V.Robert

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON FRIDAY, THE 2ND DAY OF AUGUST 2013 11TH SRAVANA, 1935 WP(C).No. 11057 of 2011 (F) ----- PETITIONER : ----- ROBERT K.V, AGED 4 YEARS, S/O.VARGHESE, KAPPIYIL HOUSE, KARIKKATTOOR PO MANIMALA, KOTTAYAM

544. BY ADV. SRI.P.U.ZIYAD RESPONDENT(S) : ----- 1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIATE, TRIVANDRUM-695 001.

2. THE CHIEF FOREST CONSERVATOR, SPECIAL AFFORESTATION AND NODAL OFFICER, CONVENOR STATE LEVEL COMMITTEE, FOREST HEAD QUARTERS VAZHUTHACAUD, THIRUVANANTHAPURAM-695 001.

3. THE DIVISIONALFOREST OFFICER, DIVISIONAL FOREST OFFICE, KOTTAYAM

566.

4. MANIMALA GRAMA PANCHAYATH REPRESENTED BY THE SECRETARY
KOTTAYAM

566.

5. T.J.

THOMAS, THAYYIL, ST. JOSEPH SAW MILL KARIKKATTOOR,
KANJIRAPPALLY TALUK KOTTAYAM DISTRICT

566. R1 TO R3 BY GOVT. PLEADER SMT. K.A. SANJEETHA BY SPL. GOVT.
PLEADER (FOREST) SRI. M.A. THOMAS KUTTY BY SPL. GOVT. PLEADER
(FOREST) SRI. M.P.PRAKASH R4 BY ADVS. SRI.BABU JOSEPH
KURUVATHAZHA SRI.K.I.SAGEER THIS WRIT PETITION (CIVIL) HAVING
BEEN FINALLY HEARD ON 02-08-2013, ALONG WITH WPC. 11243/2011, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/-
WP(C).No. 11057 of 2011 (F) APPENDIX PETITIONER'S EXHIBITS : EXT.P1 :
LETTER DATED 20 9.2010 TO THE D.F.O., KOTTAYAM. EXT.P2 REPLY
LETTER DATED 23 12-2010 FROM THE D.F.O., KOTTAYAM. EXT.P3
REQUEST LETTER DATED 1 2.2011 TO THE CHIEF FOREST
CONSERVATOR, THIRUVANANTHAPURAM. RESPONDENT'S EXHIBITS : NIL
//TRUE COPY// P.A. TO JUDGE Mn P.R.RAMACHANDRA MENON, J.

----- W.P.(c) Nos.11057 & 11243 OF 201.- -----
----- Dated this the 2nd day of August, 2013 JUDGMENT The case
of the petitioner in W.P.(C)No.11243/2011 is as follows : The petitioner is
aggrieved of Ext.P8 notice issued by the third respondent, whereby the petitioner
has been asked to close down the saw mill that is being run by the petitioner for
the alleged violation of distance rules, which according to the petitioner is not
applicable, as already held by the Division Bench of this Court vide Ext.P5
judgment. Similar notice issued earlier vide Ext.P4 was intercepted as per Ext.P6
judgment passed in the case of the petitioner.

2. The learned counsel for the petitioner submits that the petitioner's Saw mill is an 'SSI Unit' as borne by Ext.P1 Certificate of Registration and was granted valid licence as borne by Exts.P2 and P3. It was while so, that the petitioner was served with Ext.P4 notice on 26.11.1999 by the second respondent asking to close down the Unit, stating that the same was situated within a radius of 5 Kilometres from W.P.(C)No.11057/2011 &11243/2011 2 the nearby forest. Allegedly this was issued in view of the observation made by the Apex Court in T.N.Godavarman Thirumalpad v. Union of India & Others (2002 (

9) SCALE

91) . However, the legal position was examined and the same was clarified by a Division Bench of this Court vide Ext.P5 judgment, that the said stipulation, was not applicable to the Unit as it was an 'existing unit' on the date of passing the said judgment i.e. 30/10/2002. Placing reliance on the said verdict, the writ petition filed by the petitioner earlier i.e. O.P.No.29949/1999 was disposed of, intercepting Ext.P4, vide Ext.P6 judgment.

3. In the course of further proceedings in tune with the relevant norms formulated by the State, the petitioner filed Ext.P7 application for 'NOC' before the State Empowered Committee, for getting necessary clearance. Without any regard to the sequence of events and the intervention made by this Court setting aside Ext.P4 vide Ext.P6, the third respondent issued an exactly similar notice, as that of Ext.P4, on 19.3.2011, a copy of which has been produced as Ext.P8. Though the petitioner submitted Ext.P9 explanation, the same W.P.(C)No.11057/2011 &11243/2011 3 did not turn to be fruitful and hence the challenge in this writ petition.

4. The learned counsel for the petitioner in W.P.(C) No.11243/2011 submits that Ext.P7 application preferred by the petitioner was almost finalised and the 'NOC' was about to be issued. But it was not issued, referring to the pendency of another writ petition i.e. W.P.(C)No.11057/2011 preferred by a neighbour, who is not in good terms with the petitioner. The learned counsel for the petitioner in W.P.(C)No.11057/2011 submits that the only grievance of the petitioner is without regard to the operation of saw mill without obtaining proper NOC and that, if the

petitioner in W.P.(C) No.11243/2011 gets NOC from the competent authorities, there is no objection for the petitioner in W.P.(C)No. 11057/2011 in running the unit.

5. Heard the learned Special Government Pleader as well, who submits that, by virtue of the change in Rules, the competent authority to deal with Ext.P7 application is none other than the second respondent in W.P.(C)No.11243/2011. It is also stated that the W.P.(C)No.11057/2011 &11243/2011 4 proceedings will be caused to be considered and finalised within reasonable time.

6. After hearing both the sides, this Court finds that the matter requires to be finalised by the second respondent, passing appropriate orders on Ext.P7 . This shall be done in accordance with law, at the earliest, at any rate within 'two months' from the date of receipt of a copy of this judgment. Both the writ petitions are disposed of in the said circumstances. The interim order passed by this Court on 7/4/2011 will continue till such time. P.R.RAMACHANDRA MENON JUDGE sv. W.P.(C)No.11057/2011 &11243/2011 5

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