

K.Pradeepkumar Vs. State of Kerala

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Court : Kerala

Decided On : Aug-19-2013

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

Appellant : K.Pradeepkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON MONDAY,THE 19TH DAY OF AUGUST 2013 28TH SRAVANA, 1935 WP(C).No. 3391 of 2013 (Y) ----- PETITIONER : - ----- K.PRADEEPPKUMAR, AGED 4 YEARS, S/O.AMMINI AMMA, KRISHNA NIVAS, KANIYARAKKOD P.O., THIRUVILAWAMALA, THRISSUR DISTRICT. BY ADVS.SRI.K.MOHANAKANNAN SMT.A.R.PRAVITHA RESPONDENTS : - ----- 1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT, SECRETRIAT,THIRUVANANTHAPURAM-695 001.

2. THE SECRETARY TO GOVERNMENT, FOREST AND WILD LIFE DEPARTMENT, GOVERNMENT OF KERALA, SECRETRIAT,THIRUVANANTHAPURAM-695 001.

3. THE PRINCIPAL CHIEF CONSERVATOR OF FOREST, (CUSTODIAN OF ECOLOGICALLY FRAGILE LAND), THIRUVANANTHAPURAM-695 001.

4. THE CUSTODIAN OF VEST FORESTS, OLAVAKKODE, PALAKKAD-678 508.

5. THE FOREST RANGE OFFICER, VADAKKANCHERRY, THRISSUR DISTRICT. BY SRI. M.A. THOMASKUTTY, SPL. GOVT. PLEADER FOR FOREST THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-08-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 3391 of 2013 (Y) APPENDIX PETITIONER'S EXHIBITS : EXT P1 : TRUE COPY OF THE ORDER OF THE FOREST TRIBUNAL, PALAKKAD DATED 19 7.1982 IN OA. 118/1980. EXT P2 : TRUE COPY OF THE

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DATED 29 8.1989 IN MFA 174/1983. EXT P3 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3rd RESPONDENT ON NOV. 2008. EXT P4 : TRUE COPY OF THE COMMUNICATION DATED 1 12.2008 RECEIVED FROM THE 3rd RESPONDENT. EXT P5 : TRUE COPY OF THE GAZETTE NOTIFICATION DATED 26 11.2009. EXT P6 : TRUE COPY OF THE APPLICATION DATED 2 2.2010 SUBMITTED BY THE PETITIONER BEFORE THE 3rd RESPONDENT. EXT P7 : TRUE COPY OF THE COMMUNICATION DATED 31 8.2011 RECEIVED FROM THE 3rd RESPONDENT. EXT P8 : TRUE COPY OF THE APPLICATION DATED 30 6.2012 SUBMITTED BEFORE THE 3rd RESPONDENT BY THE PETITIONER. EXT P9 : TRUE COPY OF LEGAL HEIRSHIP CERTIFICATE DATED 20 6.12. EXT P10 : TRUE COPY OF THE ORDER NO. ELF/8/1638/08 DATED 25 6.2013. RESPONDENTS' EXHIBITS : NIL. // TRUE COPY // P.A. TO JUDGE DMR/- P.R. RAMACHANDRA MENON,J.

===== W.P.(C)No.3391 of 2013
===== Dated this the 19th day of August, 2013

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The property having an extent of 2.03 acres in Re-survey No.1502/1 of Thiruvilwamala village in Thrissur District which was actually owned, possessed

and enjoyed by the mother of the petitioner was exempted from the purview of the Kerala Private Forest (Vesting and Assignment Act), 1971 as borne by Ext.P1 order passed by the competent authority. This was confirmed as per Ext.P2 judgment passed by the Division Bench of this Court in M.F.A.No.174 of 1983. Subsequently, the property was stated to be as notified as 'Ecologically Fragile Land' under the Kerala (Vesting and Management of Ecologically Fragile Land) Act,2003, (for short 'the Act'), pursuant to which, the petitioner filed necessary application under Section 19 of the Act claiming exemption from the purview of the said Act as well. It is stated WPC 3391/2013 2 that the Act has been subsequently amended as per Ext.P5 and in tune with the relevant provisions of the amended Act, the petitioner has approached the concerned authority by filing Ext.P6 representation, which is pending before the third respondent. The prayer in this writ petition is to consider and dispose of Ext.P6 and to pass appropriate orders on the same within a reasonable time.

2. During the pendency of this writ petition, the petitioner pursued with further steps to collect necessary details as to the status of the property, when the petitioner was served with Ext.P10 Proceedings of the Principal Chief Forest Conservator dated 25.6.2013, whereby it has been categorically stated that the land in question has not been notified under Section 3(2) of the Act. This being the position, no further interference is possible and the petitioner might be permitted to enjoy the property without any intervention by any forest officials, submits the learned counsel. WPC 3391/201

3. Heard the learned Special Government Pleader for the respondents as well.

4. During the course of hearing, it is also brought to the notice of this Court by the learned counsel for the petitioner that, once the property has been exempted from the purview of the Kerala Private Forest (Vesting and Assignment Act), 1971, there is no question of any further inclusion under the provisions of Kerala (Vesting and Management of Ecologically Fragile Land) Act,2003, by virtue of the law declared by a Division Bench of this Court in State of Kerala v. Kumari Varma [2011(1)KLT 1008..

5. It is brought to the notice of this Court that an SLP has been preferred against the said verdict and it is pending before the Apex Court with an interim order to maintain the 'status quo'. In view of the categorical declaration by way of Ext.P10 that the property is not notified under Section 3(2) of the Act and since the matter is pending consideration, there will be a direction to the 3rd respondent to consider Ext.P5 in the light of WPC 3391/2013 & the law declared by this court in State of Kerala v. Kumari Varma (supra) after giving an opportunity of being heard. This shall be done at the earliest, at any rate, within two months from the date of receipt of a copy of this judgment. 'Status quo' shall be maintained till such time. Writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the 3rd respondent for further steps. Sd/- P.R.RAMACHANDRA MENON, JUDGE ks. True copy P.S.to Judge

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