

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 11TH DAY OF DECEMBER 2014/20TH AGRAHAYANA, 1936

WP(C).No. 26582 of 2013 (W)



PETITIONER(S):

LIYAKATH ALI HAJI,  
S/O.SRI.MOHAMMED YOUSUF, KOLLIMBADI HOUSE  
KARYAMBADI P.O., WAYANADU  
P.A.HOLDER OF DR.K.M.MEHABOOB AND MRS.HASEENA MEHABOOB  
PROPRIETOR, NATIONAL HOSPITAL, KOZHIKODE.

BY ADVS.SRI.T.M.SREEDHARAN (S.R.)  
SRI.V.P.NARAYANAN  
SMT.BOBY M.SEKHAR  
SRI.P.G.JAYASHANKAR  
SMT.DIVYA RAVINDRAN



RESPONDENT(S):

1. STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF FORESTS  
GOVERNMENT SECRETARIAT, TRIVANDRUM-695001.
2. THE DIVISIONAL FOREST OFFICER  
NORTH WAYANAD DIVISION, MANANTHAVADY, WAYANAD-670645.
3. THE FOREST RANGE OFFICER  
FOREST RANGE OFFICE, BEGUR RANGE, MANANTHAVADY  
WAYANAD-670645.

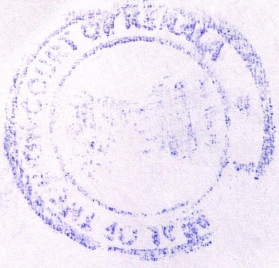
\* ADDL.R4 IMPEADED

4. WAYANAD PRAKRUTHI SAMRAKSHANA SAMITHI  
SULTAN'S BATTERY.P.O., WAYANAD, KERALA -673 592  
REPRESENTED BY PRESIDENT BADUSHA, AGED 63  
S/O.LATE KHANSA.N.  
ADDL. R4 IS IMPEADED AS PER ORDER DATED 03/01/2014 IN IA 122/2014.

R1-3 BY SPECIAL GOVT. PLEADER SRI.M.P.MADHAVANKUTTY, (FOREST)

R4 BY ADVS. SRI.NAGARAJ NARAYANAN  
SRI.SAIJO HASSAN  
SRI.PRATHAP PILLAI  
SRI.BENOJ C AUGUSTIN  
SRI.SEBIN THOMAS  
SRI.VIVEK V. KANNANKERI  
SMT.J.KASTHURI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 11-12-2014, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**A.MUHAMED MUSTAQUE, J.**

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W.P.(C) No.26582 of 2013

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Dated this the 11<sup>th</sup> day of December, 2014

**JUDGMENT**

This writ petition is filed feeling aggrieved by the order passed under the Kerala Promotion of Tree Growth in Non Forest Areas Act, 2005 (for short, 'Act 46 of 2005').

2. The petitioner has filed an application to cut and remove trees from a private Coffee Plantation. It is the case of the petitioner that the trees are old and based on the advice of the Coffee Board the trees are required to be cut and removed. The application was considered pursuant to the directions of this Court in Ext.P7 judgment by the Forest Range Officer, Begur Range. It was declined by Ext.P8 stating that it may result in soil erosion and landslide. It is also mentioned that it may cause threat to nearby tribal colony. The petitioner preferred an appeal against Ext.P8 order before the Divisional

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Forest Officer, Mananthavady. The Appellate Authority affirmed the order passed by the Forest Range Officer. It is challenging this order, the writ petition is filed.

3. Heard the learned senior counsel for the petitioner, learned Special Government Pleader for the Forest and Sri.Nagaraj Narayanan, the learned counsel appearing for the additional 4<sup>th</sup> respondent.

4. The learned senior counsel for the petitioner would submit that the authority did not advert to Ext.P5 proceedings of the Coffee Board while passing the order. It is submitted that in the light of Ext.P5 proceedings, the trees mentioned in Ext.P3 are liable to be cut and removed.

5. On the other hand, the learned Special Government Pleader submits that if the vegetational status of the property is altered, it will be a hazard to a number of birds and animals. It is also submitted that the property is situated on a

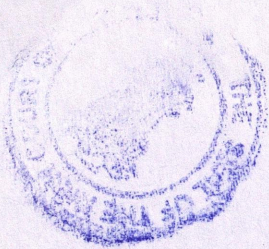


mountain slope which is approximately 950 metres above the mean sea level.

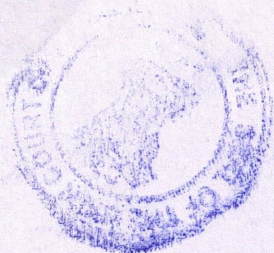
6. Sri.Nagaraj Narayanan, the learned counsel appearing for the additional 4<sup>th</sup> respondent also would submit that this is ecologically fragile area and any permission to cut and remove the trees against the public interest.

7. The application for cutting and removing trees in non-forest areas could be granted by the competent authority only in accordance with Section 6(3) of the Kerala Promotion of Tree Growth in Non Forest Areas (Amendment Act). The above section clearly indicates that no tree standing in any area of non-forest land specified in the notification shall be cut, uprooted, burnt or otherwise destroyed except on the ground that the tree constitutes a danger to life or property or is wind fallen. Therefore, merely because a favourable

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recommendation has been made by the Coffee Board is not a ground to grant permission to cut and remove the trees. The only exception is that the trees should be dead, fallen or standing dangerous to the life and the property. The authorities while passing impugned orders have given detailed reasoning for refusal. This Court cannot substitute those reasoning by invoking the power of judicial review. It is in order to preserve the environment cutting of the trees are regulated by the Act 46 of 2005. Therefore, the burden is on the petitioner to establish that finding in the impugned orders are unsustainable. When environmental degradation is pointed out, burden falls on the person claims for cutting of trees to establish otherwise. Therefore, I am of the view, impugned orders are in conformity within the scope of the above Act. However, it is made clear that if the petitioner is able to point out any of the trees, for which permission is



sought, are standing dangerous to the life and property of the petitioner, that application shall be considered and if it is satisfied that the trees are posed as danger to the life and the property, necessary permission shall be granted to the petitioner.

With the above observation, the writ petition is disposed of.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

In

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APPENDIX

PETITIONER(S)' EXHIBITS

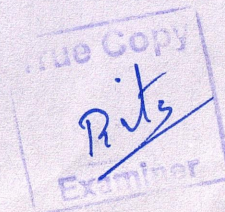
- EXHIBIT-P1: TRUE COPY OF THE LETTER NO.SLM/EXT.07/2008-09/679 DATED 11.12.2008 ISSUED BY THE COFFEE BOARD TO DR.K.M.MEHABOOB.
- EXHIBIT-P2: TRUE COPY OF THE LETTER NO.SLM/EXT.07/2008-09/680 DATED 11.12.2008 ISSUED BY THE COFFEE BOARD TO SMT.HASEENA MEHABOOB.
- EXHIBIT-P3: TRUE COPY OF THE ORDER NO.B2.2203/09 DATED 19.11.2009 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P4: TRUE COPY OF THE ORDER NO.B2.918/10 DATED 07.10.2010 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P5: TRUE COPY OF THE LETTER NO.SLM/EXT./2011-12/468 DATED 22.12.2011 ISSUED BY THE COFFEE BOARD.
- EXHIBIT-P6: TRUE COPY OF THE REPORT NO.A6.18271/08 DATED 10.12.2009 GIVEN BY THE TAHSILDAR TO THE 3RD RESPONDENT.
- EXHIBIT-P7: TRUE COPY OF THE JUDGMENT DATED 13.06.2013 IN W.P.(C) NO.13729 OF 2013 OF THIS HON'BLE COURT.
- EXHIBIT-P8: TRUE COPY OF THE ORDER NO.B2.1738/12 DATED 9.07.2013 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT-P9: TRUE COPY OF THE APPEAL DATED 18.07.2013 FILED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT.
- EXHIBIT-P10: TRUE COPY OF THE ORDER NO.L-4257/2013 DATED 14.08.2013 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT-P11: TRUE COPY OF THE LETTER NO.B2.755/12 DATED 19.08.2013 SENT BY THE 3RD RESPONDENT.
- EXHIBIT-P12: TRUE COPY OF THE PROCEEDINGS DATED 2.05.2013 OF THE DEPUTY FOREST RANGE OFFICER.
- EXHIBIT-P13: TRUE COPY OF THE REPORT SUBMITTED BY THE ASSISTANT CONSERVATOR OF FORESTS (RETD.) DATED 12.10.2013.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE





HIGH COURT OF KERALA  
AT ERNAKULAM

Year and Number of Suit or  
other Proceedings : WPC 26582 / 2013

Name of Applicant/Advocate : SRLNAGARAJ  
NARAYANAN

Application Number : A 1764/2015

Application Date : 09-01-2015

Date of Calling for Stamp : 23-01-2015

Date of Production of Stamp : 23-01-2015

Date When copy was Ready : 23-01-2015

Date Notified for appearance to  
receive the copy : 31-01-2015

Date when copy was delivered : 23/1/15

Examiner

*RJS*