44239/2015

High Court 100,000 16/411 26 9.2009 GPE

THE HIGH COURT OF KERALA

No.....

Ernakulam,
Dated 10.8.15

From

THE REGISTRAR OF THE HIGH COURT

To Chief Conservator of Forests
T. Jm

Sir,

I am to forward herewith a copy of Judgment in ~~W.P.(C) No.~~ O.P. 36087/2008
for information and necessary action.

Yours faithfully,

Section Officer
For Registrar.

Encls:

25/8/15 ACF (FMIS)

24/8/15

PTO

Encft: on PCA,-44239/2015 Dt: 9/2015

Original in with judgment copy forwarded to the APCP (Protection) for information and necessary action.

for APCP (CMS)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

OP.No. 36087 of 2000 (S)

PETITIONER(S):

NIYAMAVEDI, REPRESENTED BY ITS MEMBER ADV. NISHA R
D/O. RAJAPPAN, RESIDING AT LAKSHMI, AMBALAMEDU P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.A.X.VARGHESE

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM

2. UNION OF INDIA, REP. BY IT SECRETARY, MINISTRY OF ENVIRONMENTS & FORESTS, NEW DELHI.

3. CHIEF CONSERVATOR, (CENTRAL) MINISTRY OF ENVIRONMENTS & FORESTS, SOUTHERN REGIONAL OFFICE, BANGALORE.

ASHOK BHUSHAN, CJ &
P.R. RAMACHANDRA MENON, J.

.....

O.P.No.36087 OF 2000

.....

Dated this the 16th June, 2015

JUDGMENT

Ashok Bhushan, CJ:

Heard the learned Counsel for the petitioner Shri A.X. Varghese, the learned Spl.Government Pleader Shri M.P. Madhavankutty and the learned Counsel appearing for the Addl.8th respondent/Hindustan Newsprints Ltd.

pleaded that ***Kerala Forest Tree Project*** which has been initiated by the Forest Department is providing source for destruction activities. In the Original petition, series of orders were passed by this Court. Application was filed by the petitioner for appointment of Advocate Commissioners to inspect and submit a report. An affidavit was filed highlighting various issues and points which were required to be looked into by the Advocate Commissioners. This Court by order dated 11.04.2001 in C.M.P.No.9976 of 2001 appointed Advocate

allowed. By order dated 31.05.2001, although the 8th respondent/Hindustan Newsprint Limited was permitted to go on with the planting of Acacia in the area set apart to them, direction was issued to the Kerala Forest Research Institute (KFRI) to see whether the weeding operation done by the Additional 8th respondent is something which is more than what is required. Certain other directions were also issued in the aforesaid order. Subsequently a further order was passed on 30.10.2001 directing the 8th respondent to file an affidavit of a

ecology to be maintained. He submits that the Forest (Conservation) Act, 1980 itself contains provisions prohibiting the State Government and other agencies to carry out any non-forest activities without the permission of the Central Government. He further submits that environment impact assessment has also to be carried out prior to carrying out any activity in the natural forest. Further direction has been sought for, for fixing responsibility and to initiate action against the officers who are responsible for destruction of forests. Direction

the year 2000 and there after, the State has come up with an Ordinance, which was subsequently enacted in 2003 - Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003. He further submits that Forest Management Plans are approved for each division of the Forest with the approval of the Central Government and each forest will be managed according to the Forest Management Plans and all forest divisions including Idukki are being managed according to the forest plans as approved by the Central Government. He submits that the

he is not aware of the present status since no further instruction is received.

8. We have considered the submission of the learned Counsel. The original petition was filed in the year 200o with the reliefs as noted above.

9. The learned Counsel for the petitioner has referred to the Commissioners' report and has highlighted the report of the Commissioners, where the Commissioners have expressed the dissatisfaction regarding the manner of weeding. It is submitted that night weeding was resulting casualty of rosewood

approved by the 1st respondent and felling activities in forests are required to be carried out as per the prescriptions of working plan. The State Governments are required to get the approval of Central Government for the working plans of different Forest Divisions."

3. The Hon'ble Supreme Court vide order dated 12.12.1996 in W.P.No..202/95 directed that felling of trees in all the forests is to remain suspended except in accordance with the working plans of the State Government as approved by the Central Government. The Hon'ble Supreme Court has also prohibited felling of trees in

amendment to plan is necessitated, keeping in view the provisions of the Forest (Conservation)Act, 1980, guidelines issued thereunder and general instructions issued to the Central Government for the Scientific Management of forests. It is for the 7th respondent to clarify whether the areas referred to in the above Original Petition comes within any particular management plan. On such information the Central Government can ascertain whether that particular management plan has got approval from the Central Government . Only then it is

prepared. In the petition, the issue which was highlighted was, according to the petitioner, plundering of forest resources. *Night weeding* of the trees was highlighted even in the Commissioner's report. 8th respondent was carrying out the project under the permission of the State Government and it is not known whether such process is going on or not. Be as it may, as on date, all management of forests in all divisions including Idukki has to be done in accordance with the Forest Management Plans. As observed above, in the forest area, no non-forest activity is permissible without the prior approval of the Central

permitted in any of the forest without the approval of the Central Government . Kerala Forest (Vesting and Management of Ecologically Fragile Lands)Act, 2003. has already been brought about by the Legislature which takes care of the large Ecologically Fragile Lands of different forests. There is legislative regime for maintaining such ecological fragile lands. Forest Management plans are also contemplated under the Act and rules.

11. In view of the facts as noted above and subsequent events, we are of the view that th

pesticides/chemicals which were being used by the 8th respondent. This Court had already directed the Addl.8th respondent to file an affidavit of a qualified chemist in its employment describing the chemical composition of the pesticide-***Roban***, which according to the 8th respondent has already been brought on record. As noticed above, it is not known as to whether the 8th respondent is proceeding/continuing with its activities. However, we are of the view that even if in any forest area any pesticide/chemical is used by any person, the same should be done only with the approval and permission of

schedule in conducting other cases, that too, without accepting any remuneration. The efforts taken by them are highly appreciated and their reports can very well be used by the Forest Department for their inputs.

ASHOK BHUSHAN,
CHIEF JUSTICE.

ORDER ON CMP.NO.61511 OF 2000 IN O.P.No.36087 OF 2000

DISMISSED.

16.06.2015

SD/- ASHOK BHUSHAN, CHIEF JUSTICE
SD/- P.R.RAMACHANDRA MENON, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE MALAYALA MANORAMA DATED 8TH NOVEMBER, 2000
EXT.P1(a)	PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE MALAYALA MANORAMA DATED 26.03.2000
EXT.P1(b)	PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE MADHYAMAM DATED 8.12.1999
EXT.P1(c)	PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE MALAYALA MANORAMA DATED 20.01.2000
EXT.P1(d)	PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE MATHRUBHOOMI DATED 6.11.2000
EXT.P1(e)	PHOTOCOPY OF THE

EXT.P1(m) PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE HINDU DATED 10.11.2000

EXT.P1(n) PHOTOCOPY OF THE NEWS ITEM PUBLISHED BY THE NEW INDIAN EXPRESS DATED 2.12.2000

EXT.P2 PHOTOCOPY OF THE REPRESENTATION DATED 20.11.2000.

EXT.P3 ORIGINAL PHOTOGRAPHS OF THE DISTINCTION OF ENVIRONMENT IN NATURE THROUGHOUT THE HIGHRANGES IN IDUKKI DISTRICT WILL BE REVEALED

EXT.P4 PHOTOCOPY OF THE FORESTRY WORKS ABSTRACT.

EXT.P5 PHOTOCOPY OF THE CIRCLE WISE ABSTRACT OF TREATMENT AREAS 2000-2001

EX.P6 PHOTOCOPY OF THE REPORT OF LAKKWINDER SIGH IFS CONSERVATOR OF FORESTS, HIGH RANGE CIRCLE KOTTAYAM.

EXT.P7 PHOTOCOPY OF THE REPORT OF THE DIVISIONAL FOREST OFFICER, FLYING SQUAD DIVISION, KOTHAMANGALAM DATED 23.1.2001.

EXT.P8 PHOTOGRAPHS WHICH ARE TAKEN BY CERTAIN ENVIRONMENTAL ACTIVISTS IN IDUKKI WHICH SOW THE GREAT DISASTER CAUSED AT THE INSTANCE OF THE 8TH RESPONDENT

EXT.P9. TRUE COPY OF THE REPORT DATED

RESPONDENTS EXHIBITS:

ANNEXURE R7(a)	PHOTOCOPY OF CIRCULAR NO.21/97 DATED 15.12.1997 ISSUED BY THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (G)
EXT.R8(a)	TRUE COPY OF THE ORDER DATED 11.06.1993, G.O.(MS)NO. 42/93/F & WLD.
EXT.R8(b)	TRUE COPY OF THE ORDER DATED 21.07.2000 G.O.(MS)NO. 51/2000/F & WLD.
EXT.R8(c)	TRUE COPY OF THE WORK ORDER DT. 29.01.2001 NO.HNL/F/PLN/189 WORK ORDER NO. PLN/3/2001. PETITIONER TO V.K. SUDHEESH
EXT. R8 (d)	TRUE COPY OF THE WORK ORDER DT. 29.01.2001 NO. NO.HNL/F/PLN/190 WORK ORDER NO. PLN/4/2001. PETITIONER TO SUPRAN S.

(EXTS.R8(a) to R8 (d) ARE PRODUCED IN CMP NO. 14733 OF 2001)

EXT.R8(e)	COPY OF LETTER DATED 19.02.2001 ADDRESSED TO THE PRINCIPAL SECRETARY TO GOVT. OF KERALA , FOREST AND WILD LIFE DEPARTMENT.
EXT.R8(f)	COPY OF LETTER DATED 8.3.2001 FROM THE PRINCIPAL SECRETARY TO GOVERNMENT TO THE CHIEF CONSERVATOR OF OF FORESTS.