Expt R_2

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കേരള സർക്കാർ
2003

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KERALA GAZETTE
കേരള ഗസറ്റ്
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വിജ്ഞാപനം

സർക്കാർ ഉത്തരവ് (എം.എസ്.) നം.61/2003/വനം.

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എസ്. ആർ. ഒ. നമ്പർ 1110/2003.—1986-ലെ കേരള അവശ്യസാധന നിയന്ത്രണ ആക്ട് (1986-ലെ 13) 2-ാം വകുപ്പ് (എ) ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങളും വിനിയോഗിച്ച് 1993 ഫെബ്രുവരി 9-ാം തീയതിയിലെ 6-ാം നമ്പർ ഗസറ്റിൽ എസ്. ആർ. ഒ. നമ്പർ 243/93 ആയി പ്രസിദ്ധീകരിച്ച 1992 ജൂലായ് 23-ാം തീയതിയിലെ സർക്കാർ ഉത്തരവ് (എം.എസ്.) നമ്പർ 30/92/വനം പ്രകാരം പ്രഖ്യാപിച്ച അവശ്യസാധനങ്ങളുടെ പട്ടികയിൽനിന്നും റബ്ബറിനെ (ഹീവിയ ബ്രസീലിയൻസിസ്) ഒഴിവാക്കുന്നതായി പ്രഖ്യാപിക്കുന്നു.

ഗവർണ്ണറുടെ ഉത്തരവിൻപ്രകാരം,

സാജൻ പീറ്റർ,
ഗവൺമെൻറ് സെക്രട്ടറി (ഇൻ-ചാർജ്)

33/5308/2003/V.

വിശദീകരണക്കുറിപ്പ്

(ഇത് വിജ്ഞാപനത്തിന്റെ ഭാഗമല്ല. എന്നാൽ പ്രധാന ഉദ്ദേശം വെളിപ്പെടുത്തുന്നതിന് ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.)

റബ്ബറിന്റെ അഭൂതപൂർവ്വമായ വിലയിടിവിനെ തുടർന്ന് സംസ്ഥാനത്ത് റബ്ബർ കൃഷിക്കാർ റബ്ബർ മരങ്ങൾ ടാപ്പ് ചെയ്യുന്നത് നിർത്തിവയ്ക്കുന്ന പ്രവണതയും പകരം റബ്ബർ മുറിച്ച് വിൽക്കുന്നതും ഏറിവരുന്നു. ഇതിന്റെ ഫലമായി കമ്പോളത്തിൽ റബ്ബർ തടികളുടെ അധികമായി വന്നുചേരുന്നു. എന്നാൽ ആവശ്യസാധന നിയന്ത്രണ നിയമപ്രകാരം പ്രഖ്യാപിക്കപ്പെട്ടിട്ടുള്ള ഇനമായതിനാൽ റബ്ബർ തടി സംസ്ഥാനത്തിനു പുറത്തേക്ക് കടത്തുന്നതിന് നിയന്ത്രണം നിലവിലുണ്ട്. ഈ നിയന്ത്രണം നിലവിലുള്ളതുകാരണം റബ്ബർ കൃഷിക്കാർക്ക് അവർ മുറിച്ച് വിൽക്കുന്ന റബ്ബർ തടികൾക്ക് ന്യായമായ വില ലഭിക്കുന്നില്ല. ഈ സാഹചര്യത്തിൽ റബ്ബർ തടിക്ക് നിലവിലുള്ള നിയന്ത്രണം നീക്കം ചെയ്യേണ്ടതാണെന്ന് സർക്കാരിന് അഭിപ്രായമുണ്ട്. അത് നിറവേറ്റുന്നതിന് ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ് ഈ വിജ്ഞാപനം.

This is the true copy of document produced & marked in the above W.P.(C) as Exhibit P

Advocate.

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ANNEXURE - IV

K.A. ABDUL GAFOOR &

K.THANKAPPAN & K.HEMA, JJ.

W.P.(C).No.28313 of 2004-U

Dated this the 15th day of November, 2005.

JUDGMENT

Abdul Gafoor, J.

This case has come up before us on referance by a Division Bench. The Division Bench opined that a question identical to the one arising in this case concerning demand of seigniorage for the shade trees cut and removed had been directed by another Division Bench to be placed before a larger bench doubting the correctness of the decision in **State of Kerala v. Kannan Devan Hills Produce Co. Ltd.** {1998 (1) KLJ 78}={1998 (1) KLT 28}. But the issue was not decided therein. Therefore, the Division Bench felt that,

> "an authoritative pronouncement requires to be made in view of the above legal position that has been highlighted by the learned Special Government Pleader."

Accordingly the matter comes up before us.

2. The earlier reference referred to by the Division Bench was in Ext.R2(c). Therefore, in order to understand the question of law to be decided by us, we have to refer to Ext.R2(c). The question arose for consideration there, was "the interpretation of Section 4 of the Kerala Grants & Leases (Modification of Rights) Act, 1980". That Division Bench, referring to the decision in State of Kerala v. Kannan Devan Hills Produce Co. Ltd. [[1991] 2 SCC 272] found that the Apex Court has held that "the State Government could refuse to permit transportation of timber from the Concession Area" and that "Government being the owner had a right to impose kuttikanam on the removal of the trees out of the Concession Area." That Division Bench also opined that the contention that Kuttikanam could not be charged in respect of "such timber which was planted by the grantee in the Concession Area" was negatived by the Apex Court and that the said decision has been distinguished by yet another Bench of this court in State of Kerala v. Kannan Devan Hills Produce Co. Ltd. [1998 (1) KLT 28] holding that "if the Government had intended to claim ownership on the trees which are to be cultivated by the grantee, specific reference would have been made to such trees also in the documents" and that the Bench, therefore, concluded

that if the trees are planted by the grantee "the grantee is not liable to pay any seigniorage or kuttikanam in respect of timber of those shade trees". That Division Bench noticed that such a finding was arrived at without noticing the **Kerala Grants & Leases (Modification of Rights) Act, 1980**, Section 4 of which contains a non-obstante clause to the effect that notwithstanding anything contained in any law for the time being in force, or in any grant, lease deed, contract etc., the lessee is bound to pay seigniorage to Government. As "the impact of Section 4 was not considered by the earlier Division Bench in **State of Kerala v. Kannan Devan Hills Produce Co. Ltd. [1998 (1) KLT 28]**, in order to avoid conflict of views" that Division Bench opined that the matter had to be considered by a larger bench. But when that case came up for consideration before a Full Bench, it was not pressed, and the issue was not decided. That was why the present reference order has been passed as mentioned above by another Division Bench.

3. Thus, the question to be decided is whether, in the light of Section 4 of the said Act, seigniorage is liable to be paid for removal of the timber of the trees stated to be planted by the grantee from a property assigned by way of grant by Government.

4 Admittedly by the petitioner, he has "purchased 1000 (1000 only) number of Gravelia trees about 24 inches girth at 3 ft. height at an average price of Rs.2,500/- per tree" from Travancore Rubber and Tea Company Limited - hereinafter referred to as the company - as per Ext.P1 agreement dated 19.1.2004. Full text thereof is produced as Ext.R2(i). Admittedly by the petitioner, before felling the trees purchased by him, the company had obtained certificate from the Tahsildar, as per Exts.P3 and P4. Respondents 2 and 3 have also issued passes for transporting the said felled trees. He transported 700 trees until 30.9.2004. While the timber of 300 trees cut had to be removed, the second respondent Divisional Forest Officer demanded that for issuing further passes seigniorage had to be remitted. The petitioner contends that the respondents have no authority to demand seigniorage in respect of the timber of the trees planted by the company, as the property in question granted in favour of the company is not a leasehold property, but a free hold property, as is revealed by the order of grant Exts.R2(i). So he seeks, in this writ petition, a declaration that the respondents have no right to demand seigniorage for issuing passes to transport the trees covered by

to pay to the Government the seigniorage rates in force for the time being for the timber cut and removed from any land held by him under the grant or lease." (Emphasis supplied)

8. The contention of the petitioner is that the Act applies only to grants and leases which contain all or any of the terms and conditions specified in clauses (a) to (g) of Section 3. In other words, liability to pay seigniorage under Section 4 will be applicable only in respect of grants and leases as specified in Section 3 of the Act. None of the conditions contained in Clauses (a) to (g) of Section 3 is satisfied in this case. The timber in question is not teak, blackwood, ebony karumathai and sandalwood nor is there any condition in Ext.R2(a) grant to pay seigniorage in respect of other trees, to attract clause (a) of Section 3. No condition regarding fine is mentioned in the grant made to attract Clause (b). As per the order of grant Ext.R2(a), no timber rights are reserved by Government to attract Clause (c). The grant also does not attract Clauses (d) to (g) also. So, the Act is not applicable to the grant in respect of the land wherefrom the timber is collected based on

Exts.P3 and P4 certificates, and he seeks a further direction to issue necessary passes. The petitioner has to transport 300 more Gravella trees covered by Exts.P3 and P4.

5. Ext.P1 [R2(i)] agreement discloses that the petitioner had styled himself as the purchaser of the timber and that "the sale is only in respect of the logs (Trunks) of the Gravella trees" and that in Clause 9 thereof, he had agreed to remit to the estate the seigniorage applicable at the time of removal of the timber. He had also described himself in Ext.P1 [R2(i)] agreement as a "contractor" even.

6. Admittedly by the petitioner, the grant is in favour of the Company. It is from the company the petitioner has purchased the timber logs as per Ext.P1 [Ext.R2(i)].

7. Section 4 of the Act provides as follows:

> "Notwithstanding anything contained in any law for the time being in force, or in any grant, lease deed, contract or agreement, or in any judgment, decree or order of any court, with effect on and from the commencement of this Act every grantee and every lessee shall be bound

in respect of these trees, above 24" Girth it clearly understood that the purchaser is entitled only to the logs above 20" Girth and the purchaser is not entitled to the branches and fuel portion of the Grevella Trees and the branches which are below 20" Girth," meaning thereby, it is only sale of timber logs only. Moreover, the value of the agreement Ext.P1 (R2(i)) is over Rs.23 lakhs inclusive of sales tax. It is only an agreement as revealed by the document. If it is transfer of any right in immovable property there arises no question of payment of sales tax. If so, it also ought to have been registered going by Section 17(1)(c) of the Registration Act, read with Clause (v) of sub-section (2) thereof. Moreover, on any reading, Ext.R2(i) cannot be in respect of, at the best, anything other than the standing timber in the property covered by Ext.R2(a). Therefore, the petitioner cannot contend that whatever right he has obtained in terms of Ext.P1 (Ext.R2(i)) is a right in respect of an immovable property so that he can also come within the definition of grantee, being an assignee in respect of any right or interest in the land in question.

Ext.P1 [R2(i)] agreement. Consequently no seigniorage is liable to paid under Section 4 of the Act, he submits.

9. The liability to pay seigniorage under Section 4 is, thus, cast on "every grantee and every lessee" and this liability is in respect of "the timber cut and removed from any land held" by such grantee or lessee under the grant or lease, as the case may be, of course, subject to Section 3. Admittedly, the company is the grantee. The petitioner obtained the rights from the company in terms of Ext.P1 [R2(i)] agreement. He cannot be better placed than the grantee. If at all any one can dispute payment of seigniorage, it can only be the company. When faced with that situation, he contends that as per Section 2(c) of the Act, the grantee includes the heirs, successors and assigns of the person in whose favour the grant has been made. Therefore, in terms of the said agreement, he is an assignee of an interest or a right in the property granted and therefore, he is a grantee.

10. As disclosed by Clause one of Ext.R2(i) agreement "the sale is only in respect of the logs (Trunks) of the Grevella Trees above 24" Girth at 3Ft. height from Ground Level in Field Nos. shown in Table-1,

...ioner. The seigniorage payable under Section 4 is one to be paid by the grantee, if the timber cut is to be "from any land held by him under the grant".

13. Apart from that, Clause 9 of the agreement Ext.P1 [R2(i)] reads as follows:

> "The purchaser agrees to remit to the estate the seigniorage rate applicable at the time of removal of the timber which will not be refunded. The purchaser agrees to undertake to observe all the formalities required by the Forest Department and also for obtaining the necessary pass for transport."

This is a categoric undertaking by the petitioner, who described himself as the purchaser that he agrees to pay "seigniorage rate" as applicable at the time of removal of the timber. Payment shall have to be made "to the estate" meaning thereby the grantee. Therefore, the grantee had sold the right to extract timber to the petitioner in terms of Ext.R2(i) on the specified condition of the seigniorage being paid. When the petitioner had, thus, obtained such right on such conditions as contained in Clause 9 of Ext.R2(i)

11. He styled himself as contractor in Clauses 12 to 16, 18 to 21 and 23 to 27 of of Ext.R2(i). Clause 17 thereof refers to completion of work for which security is provided. Clause 22 refers to a personal contract. So he cannot, on any reason, claim to be an assignee under the original grantee to agitate the rights and liabilities of the original grantee.

12. The seigniorage under Section 4 is liable to be paid by the grantee or lessee, as the case may be. The contractor under the grantee or lessee or a purchaser of timber from a grantee or lessee based on an unregistered agreement like Ext.R2(i) {Ext.P1} will not be a successor in interest of the grantee as respects the rights in the land. Whether the grant contains any conditions as stipulated in Section 3 of the Act to make applicable the Act itself to the land in question is a matter to be considered in a lis between the grantee on the one part and the grantor or Government on the other; and not at the instance of a purchaser of some timber logs from the grantee, when seigniorage is demanded by the Forest Department in respect of the timber sought to be removed from the land held under the grant or lease. So the question posed is not one to be decided at the instance of the

as extracted above he cannot avoid payment of seigniorage contending that the Act is not applicable to the timber in question or that the grant in favour of his principal is not based on the conditions contained in Section 3 of the Act.

14. Apart from this, the Special Government Pleader has pointed out to us the departmental rules regarding the sale of waste land subject to which grant has been made as per Ext.R2(a), which categorically makes it clear that:

> "The other terms of the grant shall be the same as those that apply to waste lands granted under the Coffee Land Rules dated 7th July 1898."

The Rules for the sale of waste land on the Travancore Hills for Coffee or tea cultivation provides for reservation of trees to attract Clause (c) of Section 3 of the Act. She further submits that the grant in terms of Ext.R2(a) is not absolute. Notwithstanding the terms of the lease, the government can, as per Section 4, demand seigniorage from the grantee.

15. If at all anybody can dispute this, that can only be the grantee and not the petitioner. A court will not decide a question unless the party affected is urging the same.

16. Really, as contained in Clause 9 of the agreement Ext.R2(i) (Ext.P1), as extracted already, the party affected had made it clear in the agreement that the petitioner has to pay seigniorage at the rate applicable, from time time to the estate; obviously because going by Section 4 of the Act, it is from the grantee that seigniorage has to be levied for the timber cut and removed from the land held by him under the grant or lease, as the case may be. The grantee has made such protective clause while the sale was agreed to in Ext.R2(i) (Ext.P1) in favour of the petitioner. The petitioner cannot avoid payment of seigniorage, if he wants to remove the timber cut from the land in question. So he is not entitled to get passes for transportation of the timber without payment of seigniorage, either by himself or by the grantee.

Except the liability to pay seigniorage, nothing remains to be resolved in this writ petition. Necessarily, the aforesaid finding shall result in dismissal of the writ petition.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE.

Sd/-
(K.THANKAPPAN)
JUDGE.

Sd/-
(K.HEMA)
JUDGE

sk/-

True Copy

p.s to Judge

True Copy

Divisional Forest Officer.
Thenmala - 691308