

GOVERNMENT OF KERALA

Abstract

Forests – sale of tree growth from Kakki Reservoir area – coupes A XII D I and E V – Enforcement of penalty clauses – orders issued.

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Agriculture & Rural Development Department  
(Agriculture – Forest)

G.O.Rt.No.1801/66/Agri.

Dated 21-7/1-8-1966.

Read:- Letter No.C6-34617/65 dated 8-2-1966 from the Chief Conservator.

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O R D E R

It is seen that as per condition 5 of the agreement the period of contract is till 31-5-1965 or till submergence of the area whichever is later. But in the latter half of the condition, there is provision for penalty. The Chief Conservator of Forests is informed that there can be no gaineying the fact that clause 5 of the agreement is ambiguity in that while in the former part of it, it categorically mentions that the period of contract will be from the date of commencement to 31-5-1965 or till submergence of the area whichever is later, in the latter part of it the contractor is enjoined to clearfall all the growth within the coupe before 30-4-1965, failing which the Divl. Forest Officer is authorised to get the area clearfall the coupe of all growth to 30-4-1965 is patently repugnant to the former which fixes the outer period of the contract to 30-5-65 or till submergence of the area whichever is later. When different provisions of an agreement are inconsistent with each other and it is not possible to resolve the inconsistency, effect has always to be given to the earlier portion and not to the later. This has been upheld by the supreme court in 1959 Supreme Court Report 1309 in the following words:-

“If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well-established that it is the earlier clause that must over ride the later clauses and not vice versa”.

12. The Supreme Court in a still later decision reported in A.I.R. 1963 S.C.898 has reiterated the position. So the law is that if the provisions of an agreement are irreconcilable and one has the effect of nullifying the other, the latter one have to be disregarded. In the instant case, the two provisions clash with each other and it is impossible to give effect to both of them. So then, applying the rulings cited above, the only course upon will be to ignore the latter provision and give effect to the former.

2. Moreover, the law of construction is always soft and lenient towards the grantee under a contract executed for valuable consideration, while it is harsh and very strict against the grantor. So it has to be viewed that the agreement as it stands now has to be interpreted in favour of the contractor and against the Department. The Chief Conservator of Forests is therefore informed that legally it is not possible to imposed any penalty for not clearfelling the coupes within the time specified.

3. The agreements are returned to the Chief Conservator of Forests.

4. The responsibility for the ambiguous wording in the agreement in condition 5, capable of being interpreted to the advantage of the contractor has to be fixed and action taken against the officer concerned. The Chief Conservator of Forests is requested to forward a report in the nation.

(By order of the Governor)

Sd/- Assistant Secretary

To

The Chief Conservator of Forests.

Endt. on C6-34617/65 dated 3/8-8-66.

Copy communicated to the Conservator of Forests Development Circle, Trichur for information and attention. He is requested to submit a report as required by Government in para 4 of the Government order. The three agreements are returned herewith. Ref:No.H.1689/64.

Sd/- For Chief Conservator of Forests.

Endt. on H-1689/64 dated 10-8-66.

Copy to the Assistant Conservator of Forests, Hydrel for Information and attention. The Assistant Conservator of Forests is requesting submit the report called for by the Government in para 4 of the G.O. at once. His C4-3002/64.

For Conservator of Forests.

L.18.8.