IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 21ST DAY OF JUNE 2023 / 31ST JYAISHTA, 1945

O.P.(FT) NO. 6 OF 2016

AGAINST THE ORDER DATED 05.08.2016 IN I.A.NO.51 OF 2016 IN O.A.NOS.7 OF 2014 AND 8 OF 2014 BEFORE THE I ADDITIONAL DISTRICDT COURT, KOZHIKODE/TRIBUNAL UNDER THE KERALA FOREST (VESTING & MANAGEMENT OF ECOLOIGICALY FRAGILE LANDS) ACT, 2003

PETITIONERS:

1 **THE GOVERNMENT OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF KERALA, DEPARTMENT OF FORESTS AND WILDLIFE,THIRUVANANTHAPURAM.**

2 **THE CUSTODIAN OF ECOLOGICALLY FRAGILE LANDS VESTED IN GOVERNMENT (THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS), FOREST HEADQUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM.**

BY ADV SRI.NAGARAJ NARAYANAN, SPL. G.P. FOR FOREST

RESPONDENTS:

1 **P.K.HARIS (DIED) S/O. A.K.KADERKUTTY, HARRYLAND ESTATE, P.O.PERIA, NORTH WAYANAD.**

2 **K.C.KAMALUDHEEN MUSALIYAR S/O. THANL KOYA, HARRYLAND ESTATE, P.O.PERIA, NORTH WAYANAD.**

3 PUTHIYA KOTTEL JEMEELA
D/O. A.K.KADERKUTTY, HARRYLAND ESTATE,
P.O.PERIA, NORTH WAYANAD.

4* UMAIBAN HARRIS,
AGED 70 YEARS, W/O. LATE P.K.HARRIS, PALLICOON, BUNGALOW, CHETHANKUNNU, TELLICHERRY, PIN-670101. ADDL. R4 TO ADDL. R7 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED R1 AS PER THE ORDER DATED 19/1/2023 IN IA NO.1/2022 IN OP(FT) 6/2016.

5* P K JAMEELA,
AGED 80 YEARS, SISTER OF LATE P.K.HARRIS, "SITARA", 48 KEERTHI NAGAR, ASRAMOM, KOLLAM DISTRICT, PIN-691002.

6* P.K.HASHIM
AGED 77 YEARS, BROTHER OF LATE P.K.HARRIS, P.K.BUNGALOW, OLD POST OFFICE ROAD, KANNUR DISTRICT, PIN-670001.

7* P.K.RAFIA,
AGED 75 YEARS, W/O.KUNJA AHAMMED KOYA, BELLA VISTA, VAZ LANE, MANGALORE, PIN - 575002.

***ADDL. R4 TO ADDL. R7 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED R1 AS PER THE ORDER DATED 19/1/2023 IN IA NO.1/2022 IN OP(FT) 6/2016.**

BY ADVS.
N.JAMES KOSHY
T.SANJAY
MIDHUN R.

THIS OP (FOREST TRIBUNAL) HAVING COME UP FOR FINAL HEARING ON 21.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.G. Ajithkumar, J.

The respondents in O.A.Nos.7 of 2014, 8 of 2014, 5 of 2010 and 6 of 2010 on the file of the Tribunal under Kerala Forest (Vesting and Management of Ecologically Fragile Land) Act, 2003, Kozhikode (for short "the Tribunal") have filed this Original Petition under Article 227 of the Constitution of India. They challenge the order of the Tribunal dated 05.08.2016 in I.A.No.51 of 2016 in the aforesaid original applications. The petitioners sought to set aside the report of the Advocate Commissioner dated 22.04.2016 submitted in the aforesaid original applications for which I.A.No.51 of 2016 was filed. It was dismissed as per the impugned order.

2. On 07.10.2016, urgent notice on admission was directed to be served on the respondents. An interim order directing the parties to maintain status quo of the properties in dispute was ordered for a period of two weeks. The said interim order was extended from time to time.

3. During pendency of this Original Petition, the 1st respondent expired and his legal representatives were impleaded as additional respondents 4 to 7.

4. Heard the learned Special Government Pleader (Forests) for the petitioners and the learned counsel appearing for the respondents.

5. The Government issued notification No.EFL.10-1985/2010 dated 03.06.2010 notifying two parcels of property; the first having an extent of 84.60 hectares and the second having 24.50 hectares, as ecologically fragile lands and vesting it to the Government. An erratum notification was issued on 03.06.2014 correcting the extent of the properties as 90.1173 hectares and 26.6412 hectares respectively. The area of the said properties, if converted, is about 290 acres. An Advocate Commissioner, with the assistance of technical experts, was appointed initially to inspect the property in question and file a report. Sri.Sreekanth S.Nair was the Commissioner. Although he inspected the property and filed

an interim order, he could not complete the inspection and file a final report. In that circumstances, another Advocate, Sri.Sreenarayanan Unni P.T. was appointed for the inspection of the property and to file a report. The petitioners would contend that the said Advocate Commissioner did not conduct a proper inspection, did not avail assistance of experts although the court appointed, and without availing assistance of a Taluk Surveyor for measuring and demarcating the property, he has availed the services of a private surveyor. The petitioners further pointing out that the report submitted by the learned Advocate Commissioner was totally erroneous and against the true facts, sought to set aside the report. The learned Tribunal examined the Commissioner as CW1 and marked the report and plan as Exts.C1 and C2. After considering the matter in detail, the learned Tribunal dismissed I.A.No.51 of 2016, and thereby refused to set aside the report of the learned Advocate Commissioner.

6. When this matter came up for consideration on 01.06.2023, upon hearing the learned Special Government Pleader and the learned counsel appearing for the respondents, we have directed to call for from the learned Tribunal, Kozhikode, the order by which the Commissioner was appointed in O.A.Nos.5 & 6 of 2010 and 7 & 8 of 2014. The learned Tribunal submitted report dated 06.06.2023, which reads as follows:-

> "Referring to the above, I may submit that on perusal of the case records of OA Nos. 5/2010, 6/2010, 7/2014, 8/2014 and the proceeding paper of OA.5/2010 which is the leading case, it is discernible that an Advocate Commissioner was appointed suo motu by the Tribunal as per the proceedings dated 23.05.2015. Name of the Advocate Commissioner so appointed is not seen mentioned in the proceedings paper. But Adv.P.T.Sreenarayanan Unni submitted a commission report dated 19.05.2016 before the Tribunal on 25.05.2016. Records would show that earlier one Adv. Srikanth.S.Nair was appointed as Advocate Commissioner in the above OA. But no final report is seen filed by him. The copy of the said proceedings dated 23.05.2015 is submitted herewith as called for."

7. The petitioners would allege that the learned Advocate Commissioner did not avail assistance of the experts despite the court appointing experts to assist him and that instead of Taluk Surveyor, the learned commissioner availed the services of a private surveyor. From the report dated 06.06.2023 of the Tribunal, it is seen that there was no formal order appointing Sri.Sreenarayanan Unni as an Advocate Commissioner. It is alleged by the petitioners that the Commissioner did not properly execute the order. It has now come out that there is no formal order even appointing the learned Advocate Commissioner. In such circumstances, it is impossible to attach any value to the commission as provided in Order XXVI, Rule 10(2) of the Code of Civil Procedure, 1908. Therefore, the only option available is to set aside the report submitted by learned Advocate Commissioner.

8. Accordingly, I.A No.51 of 2016 is allowed. The report of the Advocate Commissioner is set aside. The learned Tribunal will consider whether a fresh commission is to be

deputed in O.A.Nos.7 of 2014, 8 of 2014, 5 of 2010 and 6 of 2010. This appeal is accordingly allowed, however, without prejudice to the right of the parties to move the learned Tribunal to get a Commissioner appointed, if either of them so desires.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF OP(FT) 6/2016

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF O.A.NO. 7/2014 ON THE FILE OF THE FOREST TRIBUNAL, KOZHIKODE.**
EXHIBIT P2	**TRUE COPY OF O.A.NO. 8/2014 ON THE FILE OF THE FOREST TRIBUNAL, KOZHIKODE.**
EXHIBIT P3	**TRUE COPY OF INTERIM REPORT DT. 17-12-2012 FILED BY THE ADVOCATE COMMISSIONER BEFORE THE TRIBUNAL.**
EXHIBIT P4	**TRUE COPY OF THE COMMISSION REPORT DATED 22-04-2016 SUBMITTED BY THE ADVOCATE COMMISSIONER, MR.SREENARAYANAN UNNI BEFORE THE TRIBUNAL.**
EXHIBIT P5	**TRUE COPY OF THE OBJECTION DATED 21-05-2016 FILED BY THE DIVISIONAL FOREST OFFICE, NORTH WAYANAD.**
EXHIBIT P6	**TRUE COPY OF I.A.50/2016 DATED 01-06-2016, THE SUMMON THE ADVOCATE COMMISSIONER FOR CROSS EXAMINATION.**
EXHIBIT P7	**TRUE COPY OF I.A.51/2016 DATED 01-06-2016 IN O.A.NOS. 5/2010, 6/2010, 7/2014 AND 8/2014 TO SET ASIDE EXHIBIT P4 ADVOCATE COMMISSION REPORT OF THE ADVOCATE MR.SREENARAYANAN UNNI.**
EXHIBIT P8	**TRUE READABLE COPY OF THE DEPOSITION OF ADV.COMMISSIONER ON EXAMINATION ON 19-07-2016 IN THE ABOVE O.As.**

EXHIBIT P9	**TRUE COPY OF THE JUDGMENT DATED 08-09-2016 IN OP(FT) 5/2016.**
EXHIBIT P10	**TRUE COPY OF ORDER DATED 05-08-2016 OF THE EFL TRIBUNAL IN IA.NO. 51/2016 IN OA NOS. 5/2010, 6/2010, 7/2014 AND 8/2014.**

RESPONDENT EXHIBITS

EXHIBIT R1(A)	**TRUE COPY OF THE SALE DEED NO.1093 OF 1967 OF THE SRO THALASSERY.**
EXHIBIT R1(B)	**TRUE COPY OF REGISTRATION CERTIFICATE NO.RC 14/1970 ISSUED IN RESPECT OF 250 ACRES OF CARDAMOM PLANTATION DATED 04.06.1973.**
EXHIBIT R1(C)	**TRUE COPY OF THE COFFEE PLANTATION CERTIFICATE NO.225/1971 IN RESPECDT OF 30 ACRES DATED 08.01.1972.**
EXHIBIT R1(D)	**TRUE COPY OF THE ORDER OF THE TALUK LAND BORAD NO.K.DIS.11/1975 DATED 29.05.1975.**
EXHIBIT R1(E)	**TRUE COPY OF THE INSPECTION REPORT ISSUED BY THE AGRICULTURAL INCOME TAX OFFICER, MANANTHAVADI DATED 25.03.1977.**
EXHIBIT R1(F)	**TRUE COPY OF THE PROCEEDINGS OF THE TAHSILDAR, MANANTHAVADI DATED 30.11.1999.**
EXHIBIT R1(G)	**TRUE COPY OF THE PLANTATION TAX PAID BY THE PETITIONERS DURING 1999 TO 2005.**

EXHIBIT R1(H)	**TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT IN CIVIL APPEAL NO.2303/1999 DATED 18.11.2004.**
EXHIBIT R1(I)	**TRUE COPY OF THE COMMUNICATION DATED 28.12.2006 ISSUED BY THE DIVISIONAL FOREST OFFICER, MANANTHAVADI.**
EXHIBIT R1(J)	**TRUE COPY OF THE CHIEF AFFIDAVIT DATED 23.08.2016 FILED BY THE RESPONDENTS BEFORE THE EFL TRIBUNAL, KOZHIKODE.**