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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 22<sup>ND</sup> DAY OF MAY 2024 / 1ST JYAISHTA, 1946

WP(C) NO. 9108 OF 2017

PETITIONERS:

- 1 MUSTHAFA  
S/O. MUHAMMEDKUTTY, CHARALIL HOUSE, VALLAPUZHA  
PATTAMBI TALUK, PALAKKAD DISTRICT
- 2 DAVOOD  
S/O. KUNHIMUHAMMED, KALATHIL HOUSE, VALLAPUZHA,  
PATTAMBI TALUK, PALAKKAD DISTRICT
- 3 SAJEER  
S/O. KUNHIMUHAMMEDKALATHIL HOUSE, VALLAPUZHA,  
PATTAMBI TALUK, PALAKKAD DISTRICT  
BY ADV. SRI.P.JAYARAM

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF  
FOREST AND WILD LIFE, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001
- 2 PRINCIPAL CHIEF CONSERVATOR OF FORESTS,  
FOREST HEADQUARTERS, VAZHUTHACAUD,  
THIRUVANANTHAPURAM - 695 014
- 3 CHIEF FOREST CONSERVATOR  
EASTERN CIRCLE, OLAVAKODE, PALAKKAD - 678 002
- 4 DEPUTY FOREST CONSERVATOR (N.C)  
SOCIAL FORESTRY DIVISION, AARANYABHAVAN COMPLEX,  
PALAKKAD - 678 002
- 5 FOREST CONSERVATOR  
SOCIAL FORESTRY, 'ERNAKULAM REGION,  
ERNAKULAM - 682 016
- 6 DIVISIONAL FOREST OFFICER  
PALAKKAD - 678 001
- 7 ADDITIONAL PRINCIPAL CHIEF FOREST CONSERVATOR  
(SPECIAL AFFORESTATION) & NODAL OFFICER,  
VAZHUTHACAUD, THIRUVANANTHAPURAM - 695 014



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- 8 ASSISTANT ENGINEER  
PUBLIC WORKS-ROAD SECTION NO.1,  
PALAKKAD - 678 001
- 9 ASSISTANT EXECUTIVE ENGINEER  
PUBLIC WORKS-ROAD SECTION NO.1,  
PALAKKAD 678 001
- 10 STATE OF KERALA  
REPRESENTED BY THE SECRETARY PUBLIC WORKS  
DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001
- 11 ASSISTANT CONSERVATOR OF FORESTS SOCIAL  
FORESTRY, SOCIAL FORESTRY DIVISION OFFICE,  
ARANYA BHAVAN COMPLEX, OLAVAKODE,  
PALAKKAD-2.  
BY ADV.  
SRI.SANGEETH.C.U, SPECIAL GOVERNMENT  
PLEADER (FOREST)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 22.05.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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**CR**

**P.V.KUNHIKRISHNAN, J.**

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**Dated this the 22<sup>nd</sup> day of May, 2024**

## **JUDGMENT**

This Writ petition is filed by the petitioners against an order rejecting their application for cutting and removing trees standing near their building on the Palakkad – Ponnani road (via Pattambi), which, according to them, is a danger to the public and also obstructs the view to their building. While going through the pleadings in this case, I remember the great poet and environmentalist, Smt. Sugathakumari teacher. She is known for her love towards the nature and the environment. No Malayalee will be blamed if



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she is called the Mother of nature. It will be beneficial to quote a few lines of her famous poem:

"ഒരു തൈ നടാം നമുക്കമ്മയ്ക്കു വേണ്ടി  
 ഒരു തൈ നടാം കൊച്ചു മക്കൾക്കു വേണ്ടി  
 ഒരു തൈ നടാം നൂറു കിളികൾക്കു വേണ്ടി  
 ഒരു തൈ നടാം നല്ല നാളേയ്ക്കു വേണ്ടി .....  
 ഇതു പ്രാണവായുവീനായി നടുന്നു  
 ഇതു മഴയ്ക്കായി തൊഴുതു നടുന്നു  
 അഴകിനായ് തണലിനായ് തേൻ  
 പഴങ്ങൾക്കായ് ഒരു നൂറു തൈകൾ  
 നിറഞ്ഞു നടുന്നു "

2. The sum and substance of the poem is like this:

*'Let us plant a sapling for our mother,*  
*Let us plant a sapling for our little ones,*  
*Let us plant a sapling for a hundred birds,*  
*Let us plant a sapling for a better tomorrow,*  
*It is planted for breath,*  
*It is planted with gratitude for rainfall,*



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*For beauty, for shades, for honey like fruits,*

*Let us plant hundreds of saplings'*

Every citizen of this country should remember these words of Sugathakumari teacher who lived for the nature and the environment, whenever they take an axe to cut and remove trees. Cutting trees without any reason is nothing but a massacre of the nature and environment of our motherland.

3. Petitioners are absolute owners, who are in actual possession of land bearing Re-survey No.240/1 and 0.0633 at Edathara Village, Palakkad. Petitioners were granted a permit to construct a commercial building on the said land by the local authority, Parali Grama Panchayat. When the writ petition was filed, the construction of the building was almost complete. It is submitted that the petitioners' land abuts, on the north, the Palakkad to Pattambi State Highway. It is



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stated that huge trees are standing between the petitioners' property and the public road. The trees are planted by the Forest Department as part of afforestation. According to the petitioners, the trees stand in a manner hazardous to the petitioners' building. The petitioners approached the Public Works Department with a request to remove the trees. It is submitted that, on inspection, the Officials of the Public Works Department were convinced about the veracity of the complaints of the petitioners. According to the petitioners, unless the trees are cut, it would not be practical to carry on business activities in the petitioners' building. It is also stated that the intending tenants shy away to occupy the rooms. The trees actually have now begun to pose challenge to the very livelihood of the petitioners, is the submission. It is the case of the petitioners that hard



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earned money of the petitioners is used to construct the building. The trees are now causing a threat to the life and property of the petitioners. The trees are standing on the road belonging to the Public Works Department. It is submitted that the Executive Engineer of the Public Works Department, on the basis of the petitioners' complaint and the inspection report, requested the Assistant Conservator of Forest, Social Forestry Division, the permission to cut and remove the trees. It is also submitted that the petitioners are ready to plant trees at their property in substitution for the trees to be cut in their complaint. Petitioners are also ready to bear the expenses of cutting and removing the trees and also to pay the value of the trees. Ext.P5 is the letter dated 05.03.2016 from the Assistant Engineer, Public Works - Road Section No.1, Palakkad to the Assistant Executive Engineer, Public



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Works - Road Section No.1, Palakkad recommending the cutting of trees because the branches of the trees are hanging in a dangerous manner. Ext.P6 is the letter dated 09.03.2016 from the Assistant Executive Engineer, Public Works – Road Section to the Assistant Conservator of Forest, Social Forestry Division, Olavakkod, Palakkad in which also it is stated that the branches of the trees are hanging in a dangerous condition and permission may be granted to cut and remove the trees. Exts.P7 and P8 are the replies received by the 1<sup>st</sup> petitioner under the Right to Information Act from the Assistant Engineer, Public Works Department, and the Public Information Officer and Deputy Forest Conservator. Ext.P9 is the letter dated 09.02.2017 issued by the Deputy Forest Conservator rejecting the applications of the petitioners. Hence, this writ petition is filed with the





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following prayers:

“i) Declare that the trees planted by Forest Department and standing on the side of PWD road, on the northern side of the petitioners' property covered by Exhibits P1 to P4 documents, are liable to be cut and removed;

ia) issue a writ of certiorari or other appropriate writ, direction or order quashing Exhibit P9 letter/order;

ii) Issue a writ of mandamus or other appropriate writ, direction or order directing the respondents to cut and remove the trees standing on the northern side of the petitioners' property, on the side of Palakkad to Pattambi State Highway, covered by Exhibits P1 to P4 documents;

iii) Grant such other reliefs found just and proper in the facts and circumstances of the case.”[SIC]

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

5. Counsel for the petitioners reiterated the contentions raised in this writ petition. The counsel



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submitted that there is a recommendation from the Public Works Department to cut and remove the trees because the branches of the trees are hanging in a dangerous manner. The counsel also submitted that the petitioners are ready to plant trees on their property in substitution of the trees to be cut and removed.

6. But the learned Special Government Pleader (Forest) submitted that the trees are not standing hazardous to life and property of the petitioner. The Special Government Pleader took me through the statement filed by the 11<sup>th</sup> respondent in which it is stated that, contrary to the averments in the writ petition, the trees are beneficial to the local public by giving cool shade in the hot and dry climate. It is also stated that the trees are also giving shelter to many birds and there is a huge protest from the part of the



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local public against the cutting of the above said trees and a mass petition signed by 124 persons which was intended to be submitted to the Parali Panchayat authorities was given by the local public at the time of verification by the forest authorities and public have also exhibited board against the cutting of trees in the site. The Special Government Pleader submitted that, in such a situation, the authorities passed Ext.P9 letter rejecting the application for cutting and removal of the trees. The 11<sup>th</sup> respondent in his statement clearly stated that the averments in the writ petition that the trees standing on the road side of Palakkad – Shoranur road is dangerous to the petitioners' building is a false statement. It is also submitted that there is absolutely no damage to the trees and there is no threat to the life and property of the petitioners because of the trees and it is helpful to the general



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public.

7. This Court considered the contentions of the petitioners and the Special Government Pleader (Forest). I am surprised to see Exts.P5 and P6 proceedings of the Assistant Engineer, Public Works – Road Section No.1, Palakkad and the Assistant Executive Engineer, Public Works – Road Section No.1, Palakkad in which it is stated that the trees situated on the side of Palakkad – Ponnani road (Km. 12/00) is dangerous because the branches of the trees are hanging in a dangerous manner. Therefore, the PWD wants to cut and remove the trees. This is flatly denied by the 11<sup>th</sup> respondent in the statement. The inspection of the 11<sup>th</sup> respondent was after the inspection conducted by the PWD officials. Moreover, a perusal of Exts.P5 and P6 would not show that there is any danger to the public because of the trees. In



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these proceedings, it is only stated that the branches of the trees are hanging in a dangerous manner. It is surprising to see that, simply because some of the branches of the trees are hanging dangerously, how PWD recommended to cut and remove the trees itself. Moreover, the 11<sup>th</sup> respondent clearly stated that there is absolutely no threat to the life and property of the public because of these trees. I am of the considered opinion that the 10<sup>th</sup> respondent should consider this issue very seriously and action should be taken against the officers concerned if there is any dereliction of duty from their side for issuing proceedings like Exts.P5 and P6, if they are in service, of course, after giving an opportunity of hearing to them. Even if the branches of the trees are dangerously leaning, at the maximum, the recommendation can only be to cut and remove those



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branches. However, the Assistant Executive Engineer and the Assistant Engineer recommended to cut and remove the trees itself on the roadside because some of the branches are dangerously hanging which is flatly denied by the 11<sup>th</sup> respondent. The duty of the PWD is to protect the trees standing on the roadside and not to destroy the same.

8. The prayer of the petitioners is that a commercial building is constructed by them in their property and the trees are standing in a manner hazardous to the petitioners building. This is denied by the 11<sup>th</sup> respondent in the statement. The real intention of the petitioners is to cut and remove the trees from the roadside to give a direct view from the road to their building which is clear from the averments in the writ petition itself. According to the petitioners, they invested lots of hard earned money



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to construct the commercial building and if the trees are not cut and removed, it will create difficulties to the petitioners to get tenants in the commercial building. This Court cannot accept this contention. To protect a building or to protect a commercial activity of a citizen, the trees cannot be cut and removed. There are instances where trees are protected by maintaining the trees inside the construction. We should appreciate such initiatives. Here is a case where the petitioners want to cut and remove the trees for getting tenants to their commercial building. This cannot be allowed. A perusal of the statement filed by the 11<sup>th</sup> respondent would show that the trees are beneficial to the local public by giving cool shade in the hot and dry climate. It is also submitted that the trees are also giving shelter to many birds. The trees which are giving shelter to the birds and giving



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cool shade to the public from the hot and dry climate cannot be cut and removed for the benefit of the petitioners' commercial building and to get tenants to their commercial building. The trees are not only to men and women but to the birds and animals too. Therefore, I am of the considered opinion that there is nothing to interfere with Ext.P9 order passed by the authority concerned. No relief can be granted in this case.

9. Moreover, the State of Kerala should see that no request to cut and remove trees on the roadsides of the State can be permitted without sufficient reasons. Trees give cool shades, pure oxygen and shelter to birds and animals. The learned Special Government Pleader produced a Government Order (G.O.(Rt.)No.68/2010/F&WLD dated 10.02.2010) which regulates the felling and disposal





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of trees growing on Government lands. The Government should see that the above order is obeyed in the letter and spirit in future. The Chief Secretary of the State should issue necessary orders to see that no trees on the roadsides of the State are cut and removed merely for the reason that it obstructs commercial activities or shade adjacent buildings. The trees can be cut and removed only if the same is in such a damaged condition and it is dangerous to the life of the people because of its damage. It should be decided by a committee constituted as mentioned in the above Government Order. Without such a decision, no trees on the roadside of the State shall be cut and removed by any authorities. The Chief Secretary of the State shall issue necessary orders to that effect. The registry will forward a copy of this writ petition to the Chief



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Secretary of the State for issuing consequential orders based on this judgment.

With the above observation, I think this Writ petition is to be dismissed. There is no merit in this writ petition and there is nothing to interfere with Ext.P9 order. Accordingly, the Writ petition is dismissed with the above observations.

Sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**

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APPENDIX OF WP(C) 9108/2017

## PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE SALE DEED NO 2815/2014, S.R.O PARALI
- EXHIBIT P2 TRUE COPY OF THE LAND TAX RECEIPT DATED 4-12-2015 ISSUED TO THE PETITIONER WITH RESPECT TO PROPERTY COVERED BY EXHIBIT P1 VILLAGE OFFICE, EDATHARA
- EXHIBIT P3 TRUE COPY OF THE POSSESSION CERTIFICATE NO 9009929 DATED 1-12-2014 ISSUED TO THE PETITIONERS WITH RESPECT TO PROPERTY COVERED BY EXHIBIT P1 FROM VILLAGE OFFICE, EDATHARA
- EXHIBIT P4 TRUE COPY OF THE BUILDING PERMIT NO 027/2015 DATED 7-3-2015 ISSUED TO THE PETITIONERS TO CONSTRUCT COMMERCIAL BUILDING OVER THE PROPERTY COVERED BY EXHIBIT P1 FROM PARALI GRAMA PANCHAYAT
- EXHIBIT P5 TRUE COPY OF THE LETTER DATED 5-3-2016 FROM ASSISTANT ENGINEER, PUBLIC WORKS ROAD SECTION NO 1, PALAKKAD TO ASSISTANT EXECUTIVE ENGINEER, PUBLIC WORKS ROAD SECTION, PALAKKAD
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 9-3-2016 FROM ASSISTANT EXECUTIVE ENGINEER, PUBLIC WORKS-ROAD SECTION, PALAKKAD TO ASSISTANT CONSERVATOR OF FOREST, SOCIAL FORESTY DIVISION, AARANYABHAVAN COMPLEX, OLAVAKODE, PALAKKAD
- EXHIBIT P7 TRUE COPY OF THE REPLY DATED 3-1-2017 RECEIVED BY THE 1ST PETITIONER UNDER THE RIGHT TO INFORMATION ACT FROM THE OFFICE OF THE ASSISTANT ENGINEER, PUBLIC WORKS-ROAD SECTION NO.1, PALAKKAD



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EXHIBIT P8                    TRUE COPY OF THE REPLY/ORDER DATED  
18-2-2017    RECEIVED BY THE 1ST  
PETITIONER FROM PUBLIC INFORMATION  
OFFICER        AND        DEPUTY        FOREST  
CONSERVATOR(N.C) PALAKKAD

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE