

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 5<sup>TH</sup> DAY OF JANUARY 2023 / 15TH POUSHA, 1944

CRL.MC NO. 1838 OF 2021

(O.R.2/2020 REGISTERED MARAYOOR FOREST RANGE ON THE FILE OF  
THE JUDICIAL FIRST CLASS MAGISTRATE COURT, DEVIKULAM)

**PETITIONER/3RD ACCUSED:**

SIRAJ,  
AGED 33 YEARS,  
S/O.JEBHAR, PULINTHANAM HOUSE, ILAMDESAM KARA,  
VELLIYAMATTAM VILLAGE, THODUPUZHA TALUK,  
IDUKKI 685 588.  
BY ADV JAVED HAIDER

**RESPONDENT/COMPLAINANT:**

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM 682 031.

PUBLIC PROSECUTOR SRI SANAL P.RAJ

THIS CRIMINAL MISC.CASE HAVING BEEN FINALLY HEARD ON  
24.11.2022 ALONG WITH CRL.M.C.NO.2697/2021, THE COURT ON  
05.01.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 5<sup>TH</sup> DAY OF JANUARY 2023 / 15TH POUSHA, 1944

CRL.MC NO. 2697 OF 2021

(FOREST OFFENCE NO.2/2020(M) OF MARAYOOR FOREST RANGE

DATED 02.10.2020)

**PETITIONER/NOT A PARTY:**

ABHILASH,  
AGED 42 YEARS,  
S/O. JOY, KACHIRAYIL HOUSE, MUTTITHADI P.O. KALLUR,  
THRISSUR 680 302.

BY ADV P.DEEPAK

**RESPONDENTS/STATE-COMPLAINANT:**

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH CORUT OF KERALA, ERNAKULAM 682 031.
- 2 THE DEPUTY RANGE FOREST OFFICER,  
MARAYOOR FOREST STATION, MARAYOOR, IDUKKI 685 620.

BY GOVERNMENT PLEADER (FOREST) SRI NAGARAJ  
NARAYANAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
24.11.2022 ALONG WITH CRL.M.C.NO.1838 OF 2021, THE COURT ON  
05.01.2023 PASSED THE FOLLOWING:

**“C.R”**

***A. BADHARUDEEN, J.***

=====  
*Crl.M.C No.1838 of 2021*  
*and*  
*Crl.M.C.No.2697 of 2021*  
=====

*Dated this the 5<sup>th</sup> day of January, 2023*

***C O M M O N   O R D E R***

Crl.M.C.No.1838/2021 has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `Cr.P.C' for short) by the petitioner, who is the 3<sup>rd</sup> accused in O.R.No.2/2020 of Marayoor Forest Range, for quashment of Annexure 1, viz., O.R.No.2/2020, of Marayoor Forest Range.

2. Crl.M.C.No.2697/2021 has been filed under Section 482 of Cr.P.C by the petitioner, who is registered owner of a goods carriage, bearing Registration No.KL-62-A-1140, for setting aside Annexure A2 seizure report in the above crime and for the release of the above vehicle.

3. Heard the learned counsel for the petitioners and the learned Senior Government Pleader appearing for the Forest Department.

4. The parties and the documents in these cases shall be referred to in this order as to their description in CrI.M.C.No.1838 of 2021.

5. In this matter, O.R.2/2020 of Marayoor Forest Range has been registered alleging commission of offence punishable under Section 52 of the Kerala Forest Act and it is alleged therein that on 02.10.2021, the Forest Officer intercepted and seized 'vembu trees' collected from private property, when the vehicle carrying the above contraband was stationed at Karimutti near Marayoor. The allegations in the report run on the premise that the above 'vembu trees' situated in S.R.No.51, reserved forest were cut and removed against the prohibitions contained in Section 52 of the Kerala Forest Act.

6. The learned counsel for the petitioners highlighted Annexure 8 circular dated 11.03.2020 issued by the Revenue Department to justify cut and removal of 'vembu trees' from property having an extent of 0.60.70 (1 ½ acre), situated in old Survey No.238/1 in block No.48 in Sub Division No.277 of Devikulam village. It is argued by the learned counsel for the petitioners that the above extent of land was assigned in favour of Chapli, S/o.Palani and Smt.Pappa, W/o.Chapli, House No.97, Karimutty Hill Pulaya Colony, Marayoor, as per Annexure 9 patta issued on 29.12.2001. Annexure-9(a) is the patta in favour of the above persons and similarly, Annexures-9(b) and 9(c) are also pattas issued respectively in favour of Meenakshi, D/o.Sundaram and Chadayan, S/o.Late Mari and others. Relying on Annexure-8 circular, the learned counsel for the petitioner argued that as per the circular, the Revenue Department clarified that as per G.O(P).No.60/2017/Rev. SRO No.621/17 the patta holders would

have right to cut and remove trees except sandal wood which were grown by them. It is submitted by the learned counsel for the petitioners further that the above circular was issued to clarify the anomaly prevailed in this regard. The cardinal point argued by the learned counsel for the petitioners is that since as per Annexure-8 circular, cut and removal of 'vembu trees' from the property for which patta was issued, is within the sanction of law, no offence as alleged in the present crime would attract. Therefore, the occurrence report as well as recovery mahazar are liable to be quashed.

7. The learned Senior Government Pleader zealously argued that Annexure-8 has no legal sanctity since the same is not the law, enacted by the legislature. Further he submitted that Annexure-8 circular is against the statutory provisions and any circular issued by the Government or its Departments without the authority of the Governor, that too, against the statutory provisions,

is bad in law and the same cannot supersede the statutory provisions. In this connection, the learned Senior Government Pleader placed various decisions of the Apex Court as well as this Court. He has pointed out the decision of the Apex Court reported in [(2014) 10 SCC 673], ***Gulf Goans Hotels Company Limited & anr. v. Union of India & Ors.*** to contend that in the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. In law, the said guidelines and their binding effect would be no more than what was expressed by the Apex Court in [(2011) 8 SCC 670 : (2011) 4 SCC (Civ) 325 : (2011) 3 SCC (Cri) 542 : (2011) 2 SCC (L&S) 410], ***Uttaranchal v. Sunil Kumar Vaish.*** Another decision reported in [(2011) 12 SCC 94], ***Jaipur Development Authority & Ors. v. Vijay Kumar Data & anr.*** is highlighted to substantiate that unless an order is expressed in the name of the President or the

Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government.

8. The decision of the Apex Court reported in [(2008) 13 SCC 1], *Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries* has been placed to contend that in so far as clarification/circulars issued by the Central Government and of the State Government are concerned, they represent merely an understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular portion of the statute says and it is not for the executive. In para.7 of the above judgment it has been observed as under:

*“7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely*



*their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”*

9. Another decision reported in [(2013) 11 SCC 262], ***B.Rugmini Amma & anr. v. B.S.Nirmala Kumari & Ors.*** has been placed to contend that the effect of clarificatory Government order cannot, by any means, supersede or override the terms of the main order and this is an elementary principle of interpretation. The relevant observations in paragraph 12 are extracted hereunder:

*“12. The above stated effect of the clarification, if accepted, would occasion in corollary that after 17.6.1988, graduate typists/confidential assistants will always have priority over non-graduates though such non-graduates may have passed the qualifying examination and are otherwise eligible for promotion. If the above meaning is to be attributed to the clarificatory G.O the same would surpass the main G.O. dated 17.6.1988. The effect of the clarificatory G.O. cannot, by any means, supersede or override the terms of the main order. This is an elementary principle of interpretation. This is precisely how the High Court has understood the issue before it and has held that the original G.O. dated 17.6.1988 merely exempts graduate typists/confidential assistants from passing the suitability test and no further. If that is the true purport and effect of the G.O. dated 17.6.1988, on which we have no doubt, naturally, the clarificatory G.O. has to be*

*restricted in its meaning as has been done by the High Court and cannot be allowed to work to the undue advantage of the graduates and to the detriment of the non-graduates.”*

10. Decision of this Court reported in [(2018) (4) KHC 827], ***One Earth One Life v. Ministry of Environment and Forests & Ors.*** is also placed to buttress the point that after a transfer of registry in respect of the land whereby the State Government relinquished its title over the land in favour of the assignee, the notification declaring the lands as Reserved Forests would continue to apply in respect of the said lands, so as to impose restrictions with regard to the manner of use of the lands.

11. Similarly, in the decision reported in [ILR 2016 (1) Ker. 817 : 2015 KHC 7103 : AIR 2016 NOC 369 : 2016 (4) KLT SN 101], ***State of Kerala & Ors. v. New World Investment (P) Ltd. & Ors.*** this Court considered Section 22 of the Forest Act, 1951, which provides that no right of any description shall be acquired in or over a reserved forest except under a grant or contract in writing

made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under Section 19 was issued or by succession from such person. It is also observed that the Forest Conservation Act was intended to provide for protection of forest and for such other incidental purposes and the provisions will have overriding effect on all other laws. The diversion of any forest land will require prior approval of the Central Government under Section 2 and under Section 4, the Forest (Conservation) Rules, 1981 have been framed which provide for the composition of Advisory Committee and how the proposal for diversion of forest land, is to be dealt by the authorities. It is further observed that neither the word "Forest" nor "Forest land" are defined in the Act or the Rules, but the courts have recognised that all areas recorded as Forests in the Government records irrespective of ownership, should be understood as Forest under the Act and the Rules.

12. It is also observed in the above decision that when a Special Leave Petition was filed against the Full Bench judgment dated 07.10.1999, the Supreme Court in *Nature Lovers Movement v. State of Kerala*, reported in [2009 (5) SCC 373 : 2009 KHC 327 : 2009 (4) SCALE 132 : 2010 (1) MPLJ 294 : 2010 (1) Mah LJ 705] on account of the approval granted by the Central Government, refused to interfere with the action taken by the State Government to regularise the encroachment in the forest land in the five districts. However, in the same context, the Apex Court also indicated that the word “forest” in the Forest Conservation Act will not only include “forest” as is understood in the dictionary sense, but shall also cover any area recorded as forest in the Government records, irrespective of ownership.

13. In *State of Kerala v. New World Investments (P) Ltd.* (*supra*) the Division Bench was referring to the provisions of the Forest Act, 1961 (Kerala Act 4 of 1962) and observed that, when an

area is declared as reserve forest, there is prohibition of right of any description over the reserve forest and the statutory scheme admits only two contingencies (i) grant or contract in writing made by or on behalf of the Government and (ii) by or on behalf of some persons in whom such right or the power to create such right is vested when the notification under S.19 was published or by succession from such person.

14. In this case, the prosecution alleges commission of offence punishable under Section 52 of the Kerala Forest Act. Section 52 provides as under:

*“52. Seizure of property Liable to confiscation. - (1)  
When there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.”*

15. It is submitted by the learned Senior Government Pleader that as per Section 3 of the Kerala Forest (Prohibition of

Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995, published with effect from 10.10.1995, all trees standing on lands temporarily or permanently assigned, the right of the Government over which has been expressly reserved in the deed of grant or order of assignment of such land, shall be the absolute property of Government. He also argued that no person shall fell, lop, cut or maim or otherwise maltreat any tree which is the property of Government without prior sanction granted by the Divisional Forest Officer having jurisdiction over the area and any of the overt acts would attract offence punishable under Section 7 of the above Rules.

16. At the outset, it has to be held that Section 3 or 4 and 7 of the above Rules have no application in the present case since Section 3 deals with trees standing on lands temporarily or permanently assigned, which have been expressly reserved in the deed of grant or order of assignment of such land. In this matter

evidently, Annexure-9(a), 9(b) and 9(c) 'pattas' were issued in favour of the persons named herein above and in the said 'pattas', no restriction, as contemplated under Section 3, seen imposed. It is in this context, the learned counsel for the petitioners argued that since 'pattas' have been issued in respect of the property, where from 'vembu trees' were alleged to be cut and removed, the title of the patta holders become absolute subject to the conditions stated in the 'pattas'. He also argued that in case anybody is aggrieved in the matter of issuance of 'pattas', the order issuing 'pattas' shall be challenged in appeal. No such procedure was adopted in the present case.

17. Whereas it is submitted by the learned Senior Government Pleader that the 'pattas' issued in the present case are *ab initio void* in view of the specific provisions under Section 22 of the Kerala Forest Act. Section 22 of the Kerala Forest Act provides as under:

*“22. No right acquired over Reserved Forests except as herein provided. - No right of any description shall be acquired in or over a Reserved Forest except under a grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under section 19 was published or by succession from such person: Provided that no patta shall, without the previous sanction of the Government, be granted for any land included within a Reserved Forest and every patta granted without such sanction shall be null and void.”*

Going by the proviso to Section 22, the statutory wording is very clear that no patta shall, without the previous sanction of the Government, be granted for any land included within a Reserved Forest and every patta granted without such sanction shall be null and void. In the present case, Annexure-9 series pattas would not suggest that the same were issued with previous sanction of the Government. If so, the said pattas are hit by transfer to Section 22 of the Kerala Forest Act. Therefore, it could not be held that the above pattas conferred absolute right upon the patta holders.

18. The legal principles emerge from the above discussions are under:



(i) In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. In law, the said guidelines and their binding effect would be no more than what was expressed by this Court in [(2011) 8 SCC 670 : (2011) 4 SCC (Civ) 325 : (2011) 3 SCC (Cri) 542 : (2011) 2 SCC (L&S) 410], *Uttaranchal v. Sunil Kumar Vaish*;

(ii) Unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government;

(iii) Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court.

(iv) So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive;

(v) A circular which is contrary to the statutory provisions has really no existence in law;

(vi) The effect of the clarificatory G.O. cannot, by any means, supersede or override the terms of the main order. This is an elementary principle of interpretation.

(vii) No right of any description shall be acquired in or over a reserved forest except under a grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under Section 19 was issued or by succession from such person, under Section 22 of the Kerala Forest Act.

(viii) Forest Conservation Act was intended to provide for protection of forest and for such other incidental purposes and the provisions will have overriding effect on all other laws.

(ix) The diversion of any forest land will require prior approval of the Central Government under Section 2 and under Section 4, the Forest (Conservation) Rules, 1981 have been framed which provide for the composition of Advisory Committee and how the proposal for diversion of forest land, is to be dealt by the authorities. It is further observed that neither the word “Forest” nor “Forest land” are defined in the Act or the Rules, but the courts have recognised that all areas recorded as Forests in the Government records irrespective of ownership, should be understood as Forest under the Act and the Rules.

(x) the word “forest” in the Forest Conservation Act will not only include “forest” as is understood in the dictionary sense, but shall also cover any area recorded as forest in the Government records, irrespective of

ownership.

(xi) when an area is declared as reserve forest, there is prohibition of right of any description over the reserve forest and the statutory scheme admits only two contingencies (i) grant or contract in writing made by or on behalf of the Government and (ii) by or on behalf of some persons in whom such right or the power to create such right is vested when the notification under S.19 of the Forest Act was published or by succession from such person,

(xii) as per Section 3 of the Kerala Forest (Prohibition of Felling of Trees Standing on Land Temporarily or Permanently Assigned) Rules, 1995, published with effect from 10.10.1995, all trees standing on lands temporarily or permanently assigned, the right of the Government over which has been expressly reserved in the deed of grant or order of assignment of such land, shall be the absolute property of Government. He also argued that no person shall fell, lop, cut or maim or otherwise maltreat any tree which is the property of Government

without prior sanction granted by the Divisional Forest Officer having jurisdiction over the area and any of the overt acts would attract offence punishable under Section 7 of the above Rules.

(xiii) No right of any description shall be acquired in or over a Reserved Forest except under a grant or contract in writing made by or on behalf of the Government or by or on behalf of some person in whom such right or the power to create such right was vested when the notification under section 19 was published or by succession from such person:

Provided that no patta shall, without the previous sanction of the Government, be granted for any land included within a Reserved Forest and every patta granted without such sanction shall be null and void."

19. In this case, though pattas were issued without applying for sanction provided under the proviso to Section 22 of the Kerala Forest Act, it is an undisputed fact that the property is part of the Reserved forest. However, the learned counsel for the petitioners

given emphasis to Annexure-4 report filed by the Village Officer dated 20.08.2020 stating that the property in Re-survey No.277/1 in block No.48 having an extent of 01.82.10 Hectares property and the trees therein are not the property of the Government. Annexure-5 and Annexure-6 respective tax receipts also have been placed to substantiate continuous possession of the property by the patta holders in consequence of issuance of pattas. Since it is established that the property wherefrom the 'vembu trees' were cut and removed is 'Reserve Forest', this contention could not yield.

20. The crucial question is, what is the legal effect of Annexure-8 circular. In order to look into this aspect, the recitals in Annexure-8 circular, produced in Crl.M.C.No.1838/2021 is relevant and, therefore, the same is extracted hereunder:

**"കേരള സർക്കാർ**

റവന്യൂ (യു) വകുപ്പ്

നം.യു3/187/2019/റവന്യൂ

റവന്യൂ (യു) വകുപ്പ്  
തിരുവനന്തപുരം

തീയതി :11/03/2020

**പരിപത്രം**

വിഷയം : റവന്യൂ വകുപ്പ് - പട്ടയ ഭൂമിയിൽ കർഷകർ നട്ടു വളർത്തിയതും സ്വമേധയാ കിളിർത്തുവന്നതുമായ റിസർവ് ചെയ്ത മരങ്ങൾ മുറിക്കുന്നത് സംബന്ധിച്ച് വ്യക്തത വരുത്തിക്കൊണ്ടുള്ളനിർദ്ദേശം സംബന്ധിച്ച്

17.08.2017 ലെ ജി.ഒ(പി)നം.60/2017/റവ.SRO No.621/17/പ്രകാരം പട്ടയ ഭൂമിയിൽ നിന്നും കർഷകർ നട്ടുവളർത്തിയ ചന്ദനം ഒഴികെയുള്ള മറ്റ് മരങ്ങൾ മുറിക്കുന്നതിന് പട്ടാദാർമാർക്ക് അനുമതിയുള്ളതാണ്. എങ്കിലും സംസ്ഥാനത്തിന്റെ വിവിധ ഭാഗങ്ങളിൽ പട്ടയ ഭൂമിയിലെ മരം മുറിക്കുന്നത് സംബന്ധിച്ച അന്വേഷകർ നിലനിൽക്കുന്നുവെന്നും പലയിടങ്ങളിലും പട്ടാദാർമാർക്ക് പട്ടയ ഭൂമിയിലെ മരം മുറിക്കാനുവാത്ത അവസ്ഥയാണുള്ളതെന്നുമുള്ള വസ്തുതകൾ വകുപ്പിന്റെ ശ്രദ്ധയിൽപ്പെട്ടു. കൂടാതെ കേരള ഭൂ പതിവ് ചട്ടങ്ങൾ പ്രകാരം നൽകുന്ന പട്ടയ ഭൂമിയിൽ കർഷകർ നട്ടു പിടിപ്പിച്ചിരിക്കുന്ന തേക്ക് ഉൾപ്പെടെയുള്ള റിസർവ് മരങ്ങൾ മുറിക്കുവാൻ അനുവദിക്കണമെന്നുള്ള നിരവധി അപേക്ഷകളും ലഭിക്കുന്നുണ്ട്. ഈ വിഷയം സംബന്ധിച്ച റവന്യൂ/വനം വകുപ്പുകളിലെ ഉദ്യോഗസ്ഥരുമായി ബഹു.വനം വകുപ്പ് മന്ത്രിയുടെ സാന്നിധ്യത്തിൽ ബഹു.റവന്യൂ മന്ത്രി നിരവധി യോഗങ്ങൾ വിളിച്ചു ചേർത്തിരുന്നു.

അതിൻ പ്രകാരം, ഇക്കാര്യത്തിൽ നിലനിൽക്കുന്ന അന്വേഷകർ പരിഹരിക്കുന്നതിനായി സ്പെഷ്ലീകരണം എല്ലാ

ജില്ലാ കളക്ടർമാർക്കും നൽകേണ്ടതാണ് എന്ന് യോഗത്തിൽ തീരുമാനിച്ചിരുന്നു.

പട്ടയ വ്യവസ്ഥകളിൽ ഭേദഗതി വരുത്തിക്കൊണ്ട് പുറപ്പെടുവിച്ച SRO No.621/2017 നോട്ടീഫിക്കേഷൻ അനുസരിച്ചു കർഷകർ നട്ടു വളർത്തിയതും പട്ടയ ഭൂമിയിൽ നിലനിർത്തിയതുമായ ചന്ദനം ഒഴികെയുള്ള എല്ലാ മരങ്ങളുടെയും ഉടമസ്ഥാവകാശം പട്ടാദാർക്കാണ് എന്നും, SRO No.621/2017, 17.08.2017 മുതൽ നിലവിലുള്ളതിനാൽ പഴയ പട്ടയ ഹോറത്തിലുള്ള വ്യവസ്ഥകൾ 17.08.2017 മുതൽ കണക്കുകേൾക്കേണ്ടതില്ല എന്നും വ്യക്തമാക്കുന്നു.

ഡോ.വേണു വി.  
പ്രിൻസിപ്പൽ സെക്രട്ടറി

ലാൻഡ് റവന്യൂ കമ്മീഷണർ, തിരുവനന്തപുരം  
എല്ലാ ജില്ലാ കളക്ടർമാർക്കും (ലാൻഡ് റവന്യൂ കമ്മീഷണർ മുഖാന്തിരം)  
വനം വന്യജീവി (ബി) വകുപ്പ്  
റവന്യൂ (എ. എൽ) വകുപ്പുകൾക്ക് അറിയിലേക്കായി"

21. In this matter, evidently, as per Annexure-11 G.O.No.30/2021 dated 02.02.2021, Annexure-8 order was cancelled. The reasons for cancellation are stated in para.3 of the order, which reads as follows:



"പട്ടയഭൂമിയിലെ മരങ്ങൾ മുറിക്കുന്നത് സംബന്ധിച്ചു പുറപ്പെടുവിച്ചിട്ടുള്ള മേൽ പരിപത്രവും ഉത്തരവും ചോദ്യം ചെയ്തുകൊണ്ട് ബഹു ഹൈക്കോടതി മുൻപാകെ കേസുകൾ നിലനിൽക്കുന്നതിനാലും 1964 -ലെ ഭൂമി പതിവ് ചട്ടങ്ങൾ പ്രകാരമുള്ള പട്ടയഭൂമിയിലെ ഷെഡ്യൂൾഡ് വൃക്ഷങ്ങളെ സംബന്ധിച്ച പട്ടയ ഘോരത്തിൽ 17/08/ 2017 -തീയതിക്ക് ശേഷം നിബന്ധനകൾ ഉള്ളകൊള്ളിച്ചിട്ടില്ലാത്തതിനാലും 1986 -ലെ The Kerala Preservation of Trees Act ലെ "Tree" എന്നതിന്റേയും 2005 -ലെ The Kerala Promotion of Tree Growth in non Forest Areas Act ലെ "Specified Tree" എന്നതിന്റേയും നിർവചനങ്ങളും പ്രസ്തുത നിയമങ്ങളുടെ ഉദ്ദേശ്യ ലക്ഷ്യങ്ങളും 1964 -ലെ ഭൂമി പതിവ് ചട്ടങ്ങളിൽ നിന്നും വിഭിന്നങ്ങളാകയാലും പരാമർശം (2 ) പ്രകാരമുള്ള ഉത്തരവ് തെറ്റായി വ്യാഖ്യാനിച്ച പട്ടയത്തിലെ ഷെഡ്യൂൾ പ്രകാരം റിസർവ് ചെയ്തിരുന്ന മരങ്ങളും മുറിക്കുന്നതായുള്ള പരാതികൾ സർക്കാരിന്റേ ശ്രദ്ധയിൽപെട്ടതിനാലും പതിച്ചു നൽകുന്ന ഭൂമിയിലെ മരങ്ങൾ മുറിക്കുന്നതും അതിന്റേ നിബന്ധനകളും 1964 -ലെ കേരള ഭൂമി പതിവ് ചട്ടങ്ങൾ മുഖേന വ്യവസ്ഥ ചെയ്യപ്പെടേണ്ടവയാകയാലും 1964 -ലെ കേരള ഭൂമി പതിവ് ചട്ടങ്ങൾ പ്രകാരം പതിച്ചു നൽകിയ പട്ടയ ഭൂമിയിലെ ചന്ദനം ഒഴികെയുള്ള മരങ്ങൾ സംബന്ധിച്ചു നിർദ്ദേശങ്ങൾ ഉൾപ്പെടുത്തി പുറപ്പെടുവിച്ച പരാമർശം (1 ) പരിപത്രവും പരാമർശം (2 ) ഉത്തരവ് നൂ ചെയ്തുകൊണ്ട് ഇതിനാൽ ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു."

22. The alleged cut and removal of `vembu trees' was on 2.10.2021. During the said period, Annexure-8 circular was in

force. The specific case put up by the petitioners is that in view of Annexure-8 circular issued by the Government permitting cut and removal of trees (except sandal wood) lying in the assigned land, the farmers were permitted cut and removal till cancellation of the said order as per Annexure-A2 dated 2.2.2021. Hence the alleged cut and removal of 'vembu trees' from the property in the present case cannot be held as an offence. However, the case of the Forest Department is that Annexure-8 order has no legal effect.

23. Having appraised the rival arguments, the conclusion that could be reached is that in view of the legal principles discussed in para.18 of this order, Annexure-8 circular has no legal effect at all. Therefore, cut and removal of 'vembu trees' in the present case otherwise prohibited by law is an offence under Section 52 of the Kerala Forest Act, 1961. Therefore, the criminal prosecution initiated in this regard in O.R.2/2020 or the seizure

report in consequence thereof are not liable to be quashed.

Therefore, both petitions fail and are accordingly dismissed.

However, it is made clear that the petitioners herein can raise these contentions before the Magistrate Court during trial to resist the case advanced by the Forest Department, in accordance with law.

Sd/-

**(A. BADHARUDEEN, JUDGE)**

*rtr/*

**APPENDIX OF CRL.MC 1838/2021**

PETITIONER'S ANNEXURES

- ANNEXURE 1 TRUE COPY OF THE OCCURRENCE REPORT  
2/2020 DATED 2.10.2020.
- ANNEXURE 2 TRUE COPY OF THE MAHAZAR PREPARED ALONG  
WITH ANNEXURE 1 DATED 5.10.2020.
- ANNEXURE 3 TRUE COPY OF THE BASIC TAX REGISTER  
DATED 17.2.2021.
- ANNEXURE 4 TRUE COPY OF THE CERTIFICATE ISSUED BY  
THE VILLAGE OFFICER, MARAYOOR VILLAGE  
DATED 20.8.2020.
- ANNEXURE 5 TRUE COPY OF THE TAX RECEIPT OF THE  
PROPERTY IN FAVOUR FO MEENIAKSHI DATED  
28.7.2020.
- ANNEXURE 6 TRUE COPY OF THE TAX RECEIPT OF THE  
PROPERTY IN FAVOUR OF CHAPLY DATED  
18.7.2020.
- ANNEXURE 7 TRUE COPY OF THE STATUTE, THE KERALA  
PROMOTION OF TREES GROWTH IN NON-FOREST  
AREAS ACT, 2005 DATED NIL.
- ANNEXURE 8 TRUE COPY OF THE GOVERNMENT ORDER DATED  
11.3.2020.
- ANNEXURE 9 (a) TRUE COPY OF THE PATTA ISSUED BY THE  
TAHSILDAR, DEVIKULAM IN FAVOUR OF CHAPLY  
DATED 29.12.2001 IN PLOT NO.183.
- ANNEXURE 9 (b) TRUE COPY OF THE PATTA ISSUED BY THE  
TAHSILDAR, DEVIKULAM IN FAVOUR OF  
MEENAKSHI DATED 29.12.2001 IN PLOT  
NO.161.

- ANNEXURE 9 (c) TRUE COPY OF THE PATTA ISSUED BY THE  
TAHSILDAR, DEVIKULAM IN FAVOUR OF  
CHADAYAN DATED 29.12.2001 IN PLOT  
NO.191.
- ANNEXURE 10 TRUE COPY OF THE JUDGMENT OF THE HON'BLE  
COURT IN CR. MC 2478/2009 REPORTED IN  
2010 KLT 546.
- ANNEXURE 11 TRUE COPY OF THE ORDER WITHDRAWING  
ANNEXURE 9 DATED 2.2.2021.
- ANNEXURE 12 TRUE COPY OF THE STATEMENT RECORDED FROM  
THE CO-ACCUSED SUBRAMANIN DATED  
4.10.2020.
- ANNEXURE 13 TRUE COPY OF THE STATEMENT RECORDED FROM  
THE CO-ACCUSED CHELLAMUTHU DATED  
2.10.2020.

**APPENDIX OF CRL.MC 2697/2021**

PETITIONER'S ANNEXURES

- ANNEXURE A1                   A TRUE COPY OF THE CERTIFICATE OF  
REGISTRATION OF KL-62-A-1140.
- ANNEXURE A2                   TRUE COPY OF THE FOREST OFFENCE SEIZURE  
REPORT (PRELIMINARY) IN OFFENCE  
NO.02/2020 OF MARAYUR FOREST RANGE DATED  
2.10.2020.
- ANNEXURE A3                   TRUE COPY OF THE MAHASAR DATED  
3.10.2020.
- ANNEXURE A4                   TRUE COPY OF THE ORDER DATED 08.04.2021  
IN CRL.M.C.NO.1838/2021.
- ANNEXURE A5                   A TRUE COPY OF THE GOVERNMENT ORDER  
DATED 11.03.2021.
- ANNEXURE A6                   A TRUE COPY OF THE GOVERNMENT ORDER  
DATED 02.02.2021.
- ANNEXURE A7                   PHOTOSTATE COPIES OF THE PHOTOGRAPHS OF  
THE VEHICLE.
- ANNEXURE A8                   TRUE COPY OF THE NOTICE DATED 06.12.2021  
ISSUED BY THE FINANCIER OF THE VEHICLE  
FOR RECOVERY PROCEEDINGS.

RESPONDENTS' ANNEXURES

- ANNEXURE R2 (a)               TRUE COPY OF THE NOTIFICATION NO.  
R.Dis.2111/37/Devpt. DATED 29.07.1937 OF  
THE DEWAN OF TRAVANCORE PUBLISHED IN  
PART-I OF THE TRAVANCORE GOVERNMENT  
GAZETTE DATED 03.08.1937.

- ANNEXURE R2 (b) TRUE COPY OF THE BASIC TAX REGISTER MAINTAINED AT THE VILLAGE OFFICE, MARAYOOR SHOWING THE CORRELATION OF SURVEY NO.238/1 TO RE-SURVEY NO.277/1.
- ANNEXURER R2 (c) TRUE COPY OF THE PATTA NO.B6-5934/2001 DATED 29.12.2001 ISSUED TO MR.CHAPLI AND MRS.PAPPA.
- ANNEXURE R2 (d) TRUE COPY OF THE PATTA NO.B6-5934/2001 DATED 29.12.2001 ISSUED TO MEENAKSHI.
- ANNEXURE R2 (e) TRUE COPY OF THE PATTA NO.B6-5934/2001 DATED 29.12.2001 ISSUED TO MR.CHADAYAN.
- ANNEXURE R2 (f) TRUE COPY OF THE LAND TAX NO.4506027 DATED 18.07.2017 ISSUED TO CHAPLI AND MRS.PAPPA PRODUCED BY THE ACCUSED.
- ANNEXURE R2 (g) THE TRUE COPY OF THE LAND TAX NO.KL06010901138/2020 DATED 28.07.2020 ISSUED TO MEENAKSHI, BALAMURUGAN AND SUNDARAM PRODUCED BY THE ACCUSED.
- ANNEUXRE R2 (h) TRUE COPY OF THE REPLY TO 61 A NOTICE DATED 08.04.2021 SUBMITTED BY THE PETITIONER.