

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

**Application No. 455 of 2013 (SZ) (THC)
(W.P No. 9846 of 2010, Kerala High Court)**

IN THE MATTER OF:

Association for Environment Protection
Rep. by its Secretary
Dr. S. Seetharaman
High Road
Aluva-683 104
Kerala

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Applicant(s)

AND

1. The Principal Chief Conservator of Forests
Rep. by its Secretary
Forests and Wildlife Department
Forest Headquarters, Vazhuthacaud
Thiruvananthapuram-695014
Kerala

2. The Assistant Conservator of Forests (SF)
Manimala Road
Edappally P.O., Ernakulam
Cochin-682 024
Kerala

3. The Divisonal Manager (Works)
Southern Railway
Thiruvananthapuram

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Respondent(s)

NGT

Counsel appearing for the Applicant:
Mr. P.B. Sahasranaman
Mr. K. Jagadeesh and
Mr. T.S. Harikumar

Counsel appearing for the Respondents:
Mrs. Suvitha, A.S for R-1 and R-2
Mr. K. Muthamilraja R-3

ORDER

PRESENT:

HON'BLE SHRI JUSTICE M. CHOCKALINGAM, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Dated 16th December, 2015

Whether the Judgement is allowed to be published on the Internet – Yes/No

Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

Heard the counsel for the applicant and also the respondents. In pursuance of the transfer order of the Hon'ble High Court of Kerala made in Writ Petition (Civil) No. 9846 of 2010, this application was taken on file. The case of the applicant, in short, is that it is an organization engaged in protecting the environment and ecology of the State of Kerala. The application is filed in public interest against the proposed indiscriminate cutting of shady trees in the Railway Compound of Aluva Railway Station in Ernakulam District, which is contrary to the endeavours of tree conservation, internationally

accepted. The trees existing within the compound of the said Railway Station provide shade and give oxygen, which makes the atmosphere cool and keeps a better environment. If discriminate cutting of trees is allowed, it would cause severe impact on the atmosphere of the area. Considering the importance, the Government of Kerala has made suitable amendment to the Kerala Promotion of Tree (Growth in Non-Forest Areas) Act. The authority incharge of the property, where the trees stand has to necessarily make an application therefor to the competent authority who would decide as to the steps to be taken including the planting of saplings of tree species in the same or nearby locality. A copy of the order issued by the Government of Kerala, Forest and Wildlife Department in G.O. (Rt) No.68/2010/F&WLD, dated 10th February, 2010 is filed under Exhibit-P2.

While so, the 3rd respondent, the Divisional Manager (Works) Southern Railway, Thiruvananthapuram, who is incharge of all the railway properties has decided to cut and remove about four number of big trees standing in the Railway Station Compound at Aluva. The reason stated for doing so is for the construction of shelters to the vehicles being parked by the commuters of railway. On enquiry, the applicant came to know that no application was either filed or any orders were passed for cutting and removing the trees. Hence the applicant was constrained to make a representation as found in the Exhibit-P3 on 14.3.2010. The 2nd respondent has issued a letter to the 3rd respondent to comply with Exhibit P-2 Government Order noted above. But on the contrary, the 3rd respondent has invited tenders and decided to take steps to cut the

trees in the Railway compound at Aluva. Under such circumstances, necessity arose for filing the Writ Petition for necessary reliefs in that regard.

The counsel for the 2nd respondent filed reply which is adopted by the 1st respondent stating that out of 9 trees which are standing in the Railway Station compound, 8 are huge trees having high ecological value. Many of them are standing at a distance of 20 to 50 mtrs away from the railway track, which cannot cause any safety threat to Railway property. The respondents 1 and 2 have not given any permission to cut the trees standing in the Aluva Railway Station Compound and thus the attempt of the Railway Authorities to cut the trees without obtaining permission from the 3rd respondent is illegal and it is purely in violation of the Government orders.

The 3rd respondent has filed a reply stating that the Railway is under the Central Government, which is governed by the Railways Act, 1989. The Act deals with the construction and maintenance of works. A sub section (da) was inserted to Section 11 of the Act, which empowers the Railway administration to develop any railway land for commercial use. In the instant case, all the trees are matured ones and likely to fall at any time on the railway platforms, railway installations and also on the PWD road causing public inconvenience. On receipt of Exhibit P-4 letter dated 16.3.2010, the Assistant Divisional Engineer, Thrissur who is incharge of the Aluva Railway Station, by a letter dated 23.3.2010, has informed that the trees were to be removed for public safety and also for developmental purpose. There is very possibility of branches falling on the electric lines as seen in the photographs filed. The Railway administration is

duty bound to secure the safety of the public. Likewise nothing from the railway compound has to cause any damage outside the railway premises. As a matter of fact, a soft wood tree at the Aluva Railway Station got uprooted during the last rainy season blocking the public transport system. During the blowing of winds, there is every possibility of branches of the trees falling into the railway premises as well as on the public road which can cause injury to the public and affect the running of railways. The Railway Administration is also well aware about the phenomena like deforestation, global warming, etc. Therefore, the railway has planted trees in its vacant land and it has also undertaken that for the trees to be removed in the Aluva Railway Station premises, double the number of trees would be planted at the vacant land existing under the Railway Administration near the Aluva Railway station and hence, the Writ Petition has got to be dismissed.

Heard the counsel for the applicant and also the respondents. The question that arises for determination is whether the 3rd respondent can be permitted to cut and fell trees which are located within the premises of the Aluva Railway Station. The only grievance ventilated by the applicant is that the 3rd respondent, Southern Railway has got a proposal to cut and remove some of the fully grown huge trees which are now standing in the Aluva Railway Station and if permitted, it would have a severe impact causing damage to the environment and also it would go against the Order issued by the Government of Kerala, Forest and Wildlife Department referred to above. The respondents 1 and 2 have filed their reply to the effect that when a complaint was received, necessary instructions were given to the 3rd respondent Railways. It is also

specifically averred that for cutting and felling trees neither the application was made by the 3rd respondent nor permission was granted. The defence of the 3rd respondent is that a piece of land, where the trees are situated and which is within the control and management of Railways and those trees, which are matured, might fall at any time not only damaging the Railway property but may also cause injury and inconvenience to the public and hence, they could not be prevented from removing the trees and it is for these reasons cutting of trees is also required from the point of public cause and if necessary, they would plant saplings double in number in the nearby area within the control and management of Railways.

As seen from the pleadings put forth by the parties, it is quite evident that a number of fully grown trees are situated within the compound of Aluva Railway Station. No doubt, though the area within which the Railway Station is situated is within the control and management of the 3rd respondent, there cannot be any defence by the 3rd respondent that they are entitled to cut and fell trees without getting necessary permission from the concerned authorities as required by law. However, no cutting has been done. From the reply filed by the 3rd respondent Railways, it is quite explicit that the Writ Petition was filed by the applicant apprehending that the trees might be cut. When the representation was made by the applicant to the 1st and 2nd respondents necessary instructions were given to the Railways. But the reply would clearly indicate that the 3rd respondent Railways has got a proposal to cut and fell the trees which according to them, could be done without any permission from the Forest Department. It is made clear that without making necessary application to the concerned authorities

and without obtaining permission therefor from the respondents 1 and 2, the 3rd respondent cannot be permitted either to cut or fell the trees and sell transport the wood as per their proposal. There cannot be any impediment for the 3rd respondent to carry on its proposal to put into effect if and when necessary permission is accorded by the 1st and 2nd respondents therefor.

In view of the facts and circumstances and for the reasons stated above, the Tribunal feels it fit to grant an order of injunction against the 3rd respondent not to cut and fell trees existing within the compound of the Aluva Railway station without obtaining necessary permission as required by law. Accordingly the application is disposed of.

No cost.

Justice M. Chockalingam
Judicial Member

P.S. Rao
Expert Member

NGT