

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 31<sup>ST</sup> DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945

WP(C) NO. 26821 OF 2023

PETITIONERS :

- 1 KEERTHI NAGAR RESIDENTS ASSOCIATION,  
REPRESENTED BY ITS PRESIDENT,  
AYYANTHOLE, THRISSUR DISTRICT,  
PIN - 680 003
- 2 PRASANNA C. ,

BY ADVS.  
BHARATH MOHAN  
N.KRISHNA PRASAD  
SHANES MATHER  
TELLMY JOLLY

RESPONDENTS :

- 1 THE STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF LOCAL SELF GOVERNMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM DISTRICT,  
PIN - 695 001
- 2 THE DISTRICT COLLECTOR,  
FIRST FLOOR, CIVIL STATION,  
CIVIL LINES RD, KALYAN NAGAR,  
AYYANTHOLE, THRISSUR DISTRICT,  
PIN - 680 003
- 3 THE MAYOR,  
THRISSUR MUNICIPAL CORPORATION,  
MUNICIPAL OFFICE RD, KURUPPAM,  
THEKKINKADU MAIDAN, THRISSUR DISTRICT,  
PIN - 680 020

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4 THE ASSISTANT CONSERVATOR OF FOREST,  
THRISSUR SOCIAL FORESTRY RANGE,  
CHEMBUKKAVU, THRISSUR CITY,  
THRISSUR DISTRICT, PIN - 680 020

5 THE VILLAGE OFFICER,  
AYYANTHOLE PANCHAYAT,  
NGO QUARTERS ROAD, AYYANTHOLE,  
THRISSUR DISTRICT, PIN - 680 003

BY ADV SANTHOSH P.PODUVAL, SC

BY SMT.T.P.SAJAN, SPECIAL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.26821 of 2023**

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**Dated this the 31<sup>st</sup> day of October, 2023**

**JUDGMENT**

Petitioners seek for a direction to cut and remove an old teak tree standing adjacent to the boundary of 2<sup>nd</sup> petitioner's property. According to the petitioners, an old teak tree which is evident with signs of decay and hollow sections, stands adjacent to 2<sup>nd</sup> petitioner's property and he fears danger to his life and that of his family members. Though requests were made to the statutory authorities, no action has been initiated. It is further stated that an auction to cut and remove the tree was scheduled as referred to in Ext.P4 in 2019. Since no one turned up, the auction did not take place which itself indicates that the department had intentions to cut and remove the teak tree. In the above circumstances, petitioners seek for a direction to cut and remove the old teak tree.

2. A statement has been filed on behalf of the 4<sup>th</sup> respondent pointing out that though the Secretary of the Thrissur Corporation had requested for permission to cut and remove the dangerous teak tree, the Local Level Tree Committee constituted by the Government considered the request for cutting the tree. As per the decision on 17.07.2023, it was found that four branches of the tree alone need to be cut and

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removed to avoid any possible danger based upon the report of the Health Inspector.

3. Sri.Bharath Mohan, the learned counsel for the petitioners submitted that the tree is standing dangerously adjacent to the 2<sup>nd</sup> petitioner's property and ought to be cut and removed. It was submitted that even the four branches of the teak tree have not been cut and removed as seen from the report of the Health Inspector and that the tree still stands dangerously.

4. I have considered the submissions of the learned counsel for the petitioner and that of Sri.Santhosh P.Poduval, the learned Standing Counsel for the Corporation as well as Sri.T.P.Sajan, the learned Special Government Pleader.

5. The remedy of a person in case any tree is standing dangerously on any property is to approach the Sub Divisional Magistrate under Section 133 of the Code of Criminal Procedure, 1973. Admittedly, petitioners have not approached the said statutory authority. The Tree Committee has taken a decision to cut and remove four branches of the trees to avoid the danger that could be caused by the said tree. If the petitioners are not satisfied with the said decision, their remedy is to approach the appropriate authority.

6. The jurisdiction under Article 226 of the Constitution of India cannot be invoked for the purpose of directing cutting and removal of trees, especially since there is no basic order that has been produced to

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exercise such a jurisdiction or to allege inaction. In the absence of any order produced by the petitioners and in the absence of any order evident from the records produced before this Court directing the cutting and removal of the tree, it is not proper for this Court to exercise the jurisdiction directing the tree to be cut and removed, especially since the Tree Committee states that by cutting and removing the four branches, the danger can be avoided.

7. Therefore I find no reason to exercise the jurisdiction of this Court under Article 226 of the Constitution of India. However, in case the petitioners believe that the tree still continues to remain a danger, their remedy before the approach statutory authority must be left open.

Reserving the liberty of the petitioners to approach the appropriate statutory authority, in accordance with law, this writ petition is disposed of .

Sd/-

**BECHU KURIAN THOMAS, JUDGE**

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APPENDIX OF WP(C) 26821/2023

PETITIONERS' EXHIBITS :

- Exhibit P1 TRUE COPY OF THE COMMUNICATION DATED 18/02/2017 ISSUE TO THE ASSISTANT FOREST CONSERVATOR
- Exhibit P2 TRUE COPY OF THE COMMUNICATION NO. SF2-245/17 DATED 21/03/2017 FORM ASSISTANT FOREST CONSERVATOR TO THE SECRETARY OF THRISSUR CORPORATION
- Exhibit P3 TRUE COPY OF THE LETTER DATED 27/02/2020 ADDRESSING THE MAYOR THRISSUR CORPORATION
- Exhibit P4 TRUE COPY OF THE COMMUNICATION DATED 05/03/2020 BEFORE THE DISTRICT COLLECTOR THRISSUR
- Exhibit P5 TRUE COPY OF THE COMMUNICATION DATED 11/04/2023 ADDRESSING THE VILLAGE OFFICER, AYYANTHOLE

RESPONDENTS' ANNEXURES :

- ANNEXURE R4 (A) TRUE COPY OF THE GOVERNMENT CIRCULAR VIDE REF NO. 243/RC3/2016/LSGD DATED 14.7.2017 REGARDING THE FORMATION OF LOCAL LEVEL TREE COMMITTEE
- ANNEXURE R4 (B) TRUE COPY OF THE MINUTES OF THE MEETING OF THE COMMITTEE CONVENTED ON 17.02.2023
- ANNEXURE R4 (C) TRUE COPY OF THE LETTER DATED 19.2.2016.
- ANNEXURE R4 (D) TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 11.7.2013 UNDER THE CHAIRMANSHIP OF HONBLE CHIEF MINISTER OF KERALA WHICH CONTAINS THE GUIDELINES.
- ANNEXURE R4 (E) TRUE PHOTOCOPY OF THE REPORT OF THE HEALTH INSPECTOR THRISSUR CORPORATION DATED 5.8.2022