

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

W.A.No.1580 of 2011

1. The District Forest Officer,
The Nilgris.
2. The Forest Ranger,
Ooty-South, Ooty. ... Appellants

vs.

R.Murugan ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.12.2009 in W.P.No.12143 of 2009.

Writ Petition praying to Writ of certiorarified mandamus, calling for the records of the second respondent herein, pertaining to communication No.375/2003 dated 10.11.2007 (Find on 10.10.2008) and quash the same and consequently forbearing property of an extent of 0.51 acres in Survey No.443/1 in Thalakkadu Forest, Cocalada Village, Ooty.

For Appellant : Mr.M.K.Subramanian,
Special Government Pleader (Forest)

For Respondent : Mr.Ramesh,
for Mr.Srinath Sridevan

J U D G M E N T

(Judgment of the Court was delivered by V.Dhanapalan,J.)

Heard Mr.M.K.Subramanian, learned Special Government Pleader (Forest) appearing for the appellants and Mr.Ramesh, learned counsel appearing for M/s.Srinath Sridevan, learned counsel for the respondent.

2. Challenging the order dated 22.12.2009 passed by the learned Single Judge in W.P.No.12143 of 2009, whereby the relief sought to quash the order dated 10.11.2007 passed by the Forest Ranger, Ooty vide Communication No.375/2003, was allowed, the respondents in the said Writ Petition have come up with the present Appeal.

3. The respondent herein is the writ petitioner. It is his case before the Writ Court that the property of an extent of 0.51 acres within Talakkadu Forest in Ooty District was leased out to his father by the Forest Department in 1948. His father continued as a lessee for several years until his death in the year 2000. During his lifetime, the appellants made merely unlawful attempts to evict him from the said property. In order to safeguard himself, he filed O.S.No.485 of 1991 before the District Munsif, Ooty for permanent injunction to restrain the wrongful alienation. That suit was decreed after contest on 21.08.1992. In spite of the decree, the appellants took hectic steps to evict him. As a result, he filed E.P.in O.S.No.485 of 1991, in which, the appellants filed an affidavit of undertaking that they would not evict his father except by due process of law, and on such undertaking, the E.P. came to be closed on 22.06.1999. Subsequent thereto, his father died on 12.02.2002 and the writ petitioner is enjoying the property after him.

4. While so, the 1st appellant - District Forest Officer, The Nilgris issued a notice bearing Na.Ka.No.3090/02 dated 23.11.2003 under Section 68-A of Tamil Nadu Forest Act, 1882 (hereinafter referred to as 'Act') calling upon the writ petitioner to vacate. To the said notice, the writ petitioner sent a detailed reply on 22.12.2003 citing all circumstances as to why the said notice of eviction was not sustainable. Thereafter, there was no enquiry of any kind and the writ petitioner was not invited for any personal enquiry nor was asked to explain the various points set out by him in response. Though there was no response from the appellants for five years, all of a sudden, in the last week of October 2008, the writ petitioner received a letter signed by the 2nd appellant - The Forest Ranger, Ooty-South, Ooty on 10.10.2007 purporting to reject all the objections and calling upon him to vacate within thirty days. Seeking to quash the said letter, he approached the Writ Court.

5. Resisting the averments of the writ petitioner, the 1st appellant filed a counter affidavit before the Writ Court stating that the writ petitioner, viz. R.Murugan, S/o.Late Radhakrishnan is not residing in Thalakkadu Forest Village and that the original petitioner's name has to be confirmed with the support of evidence and by production of Government documents issued by Revenue authorities.

6. It is further stated in the counter that in Nilgris Forest Division R.Dis. Permit No.2960/48 under Section 21 of the Act, in the year 1948, permission was granted to Thiru.K.Pappukanu, Konamuthu Estate, Kilkundha to clear the surroundings of his house in Thalakkadu R.F. Uthagai South Range over an extent of 0.51 ½ acres, so as to avoid wild animals approaching his house. Such lease permit was transferred to Thiru. P.Ramakrishnan, S/o.Thiru.Pappukannu, after the death of Thiru.K.Pappukannu for the same purpose. The leased out

area was inspected by the Forest Officers during 1988 and it was found that Thiru. Ramakrishnan was cultivating by cleaning the existing forest land and built a house in the leased out land without previous written orders from the competent authority of original lease permit issued or other competent authority, which is in violation of permit conditions 4, 5 and 6 of the permit issued under Section 21 of the Act.

7. Due to violation of lease permit Condition Nos.4, 5 and 6 by the lessee, cancellation of Permit No.R.Dis.2960/48 had been issued vide District Forest Officer's proceedings No.D3/14627/86, dated 09.06.1988, according to Permit Condition No.9 and it was ordered to hand over the Forest land within 15 days. As against the said proceedings, the Lessee filed a case in the Court of District Munsif, Ootacamund under O.S.No.485/1991 and by order dated 21.08.1992, the Court issued an order of permanent injunction. As per the said judgment, action was taken to issue encroachment eviction notice under Section 68-A of the Act to show cause to vacate the Forest land within stipulated time. As against the action of forest officials, the lessee filed an Execution Petition in District Munsif Court, Ootacamund making false allegation against the forest staff alleging that the forest officials are threatening to vacate the leased out and encroached land. There is no record or evidence on the allegation alleged by the writ petitioner. In E.P.No.172 of 1996, the lessee filed a petition under Sections 21 and 32 of C.P.C. for contempt action against violation of judgment and decree in O.S.No.485 of 1991, dated 21.08.1992. Executive Petition came up for enquiry on 22.06.1999 and the same was disposed by the Court observing that the respondents have no intention to evict the petitioner except by due process of law. Based on the said endorsement, the above petition was dismissed as not pressed. Therefore, according to the appellants, all the proceedings had been initiated according to the legal procedures laid down under the Act and no hectic steps were taken by the forest officials to evict the encroacher.

8. The appellants have further stated in the counter that no order was passed against the order passed by the District Munsif Court, Ootacamund in O.S.No.485 of 1991, dated 21.08.1992, and all action is being taken to evict the unauthorised occupation and encroachment in Thalakkadu R.F. over 0.51½ acres by Thiru. R.Murugan, S/o.P.Ramakrishnan (Late) as per legal proceedings and under the directions issued by the Supreme Court in W.P.(Civil) No.202/1995, notice under Section 68-A of the Act was issued. Therefore, to safeguard, protect the forest wealth and Government property, all legal action was pursued in exercise of the powers delegated to the forest officials so as to protect the Flora and Fauna and to preserve environmental and ecological systems according to the Rules in force.

9. On a consideration of the facts and circumstances of the

case, the learned Single Judge allowed the Writ Petition in W.P.No.12143 of 2003, by an order dated 22.12.2009. Relevant portion of the said order reads thus:

"6. This Court ordered notice to the learned Government Advocate (Forest) on 17.08.2009. An interim stay was also granted against the order of eviction. The respondents have filed a counter affidavit dated 27.08.2009. In the counter affidavit, the respondents after referring to the Civil Court's decree had also referred to the EP Proceedings in E.P.No.172/96. The Execution Petition was disposed of by the Court observing that the respondents have no intention to evict the petitioner except by due process of law.

7. Therefore, they subsequently issued a notice under Section 68-A of the Act and since the petitioner's reply was not convincing, the only option open to the respondents was to evict the petitioner from the Forest area. The respondents also relied upon a direction issued by the Supreme Court in W.P.No.202/95, Tamil Nadu Godavarman Thirumalpad vs. Union of India and others to the State to clear the Forest area from any encroachment. However, that reason is not found in the eviction notice.

8. On the contrary, the fact that the petitioner's grand father was given the lease was admitted. The lease was given as early as in the year 1948 namely, 61 years before. That the land was utilised for growing Tea plantation and other crops is established by the findings given by the Civil Court in the judgment dated 21.08.1992 in O.S.No.485/91. It was also recorded that the said land was given to the petitioner's grand father as his brother was killed by a Wild Tiger. The forest department did not have any machinery to protect the forest. Therefore, petitioner's grand father was given the land on compassionate ground for a lease amount of Rs.0.50 paise. Subsequently, the lease amount was increased only on the ground that the land was utilised for agricultural purposes and the last revision fixed it at Rs.51.50 paise.

9. It is not as if the respondents were never aware that the land which was given for the neat keep by the petitioner's grand father was also utilised for growing crops with the knowledge and consent of the respondents. As found by the Civil Court even during the petitioner's grand father and father's

time, the land was used for growing crops and that was the reason there was periodical increase in the lease amount. Therefore, the present attempt to evict the petitioner on the basis that there was violation of conditions of lease cannot be accepted and not borne out by records. Therefore, the impugned notice asking the petitioner to vacate the land on the ground of violation of lease condition cannot be accepted by this Court. Hence, the impugned order is liable to be set aside.

10. The other contention raised by the respondents that the eviction is sought to be made on account of the directions issued by the Supreme Court was not found reflected in the impugned notice. If that contention is accepted, then the respondents statement in the counter that there are near by pattadars and also movement of school children in a reserved forest cannot be found true. In as much as that reason was not set out in the eviction notice, this Court is not willing to accept the stand taken by the respondents.

11. In the light of the above, the writ petition stands allowed; the impugned notice dated 10.11.2007 is set aside. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed. "

10. Learned Special Government Pleader appearing for the appellants contended that various lands in Udagamandalam are in the legal battle by various lease holders. In view of the Jenmam Lands Abolition, to regulate the lands which have been held by Nilambur Kovilagam and those lands which have been given to lease holders, have been challenged and the matter went up to Supreme Court and in the case of T.N.Godavarman vs. Union of India in W.P.(Civil) No.202 of 1995, the Supreme Court has given a clear direction to the Forest Department to take note of the situation and take action to evict all encroachers. Learned Special Government Pleader highlighted upon the circumstances under which action was taken wherever there were encroachments. He submitted that the impugned notice was issued to the writ petitioner as there was violation of leasehold rights.

11. Controverting the said submissions, learned counsel appearing for the respondent/writ petitioner vehemently contended that the reason for not accepting the leasehold amount after 1991 is not attributed either in the impugned notice or in the counter affidavit of the appellants filed before the Writ Court. Though the writ petitioner's family enjoyed the leasehold right from 1948, all of a sudden, the appellants have taken a decision to evict the writ petitioner from his possession. He also contended that the Sub-

Court's decree gives a clear position that as the writ petitioner is in occupation of the land in question, the right conferred upon him could not be denied.

12. We have given careful consideration to the submissions made by the learned counsel on either side and perused the material documents available on record.

13. It is not in dispute that the land in question was given as lease to the grandfather of the respondent/writ petitioner in the year 1948 and a lease deed was executed on 01.12.1948. According to the respondent/writ petitioner, they have been paying the lease amount till 1991 and thereafter, the Forest Department refused to receive the lease amount from them. Hence, they filed a suit before the District Munsif Court, Udhagamandalam in O.S.No.485 of 1991 and permanent injunction was granted by the said Court holding that the writ petitioner cannot be removed except by due process of law and that after the death of his father, the writ petitioner is continuing to stay in the hut and growing Tea crops, thereby contravened the conditions of lease. Pursuant thereto, the District Forest Officer issued a notice dated 23.11.2003 under Section 68-A of the Act to the writ petitioner to vacate the area.

14. It is seen that the District Forest Officer, in his counter affidavit before the Writ Court has clearly stated that the writ petitioner is not residing at Thalakkadu Forest Village and that the original petitioner's name has to be confirmed with proper evidence issued by the Revenue authorities. According to him, in Nilgris Forest Division R.Dis. Permit No.2960/48 under Section 21 of the Act, in the year 1948, permission was granted to Thiru.K.Pappukanu, Konamuthu Estate, Kilkundha to clear the surroundings of his house in Thalakkadu R.F. Uthagai South Range over an extent of 0.51 ½ acres, so as to avoid wild animals approaching his house and thereafter, the lease permit was transferred to Thiru. P.Ramakrishnan, S/o.Thiru.Pappukannu, after the death of Thiru.K.Pappukannu for the same purpose. When the leased out area was inspected by the Forest Officers during 1988, it was found that Thiru. Ramakrishnan was cultivating by cleaning the existing forest land and built a house in the leased out land without previous written orders from the competent authority of original lease permit issued or other competent authority, which is in violation of permit conditions 4, 5 and 6 of the permit issued under Section 21 of the Act.

15. For better understanding, relevant Conditions of the Permit dated 01.12.1948 vide R.Dis.2960/48 are extracted hereunder:

"4. The area covered by this permit (hereinafter referred as the said land) shall not be used for any purpose other than the one specified in this permit and the permit-holder shall not encroach upon adjacent lands.

5. No structure shall be erected on the said land

without the previous written permission of the District Forest Officer and any structure erected shall be of a temporary nature.

6. No standing trees growth or any forest produce, except as has been specifically permitted in writing by the District Forest Officer shall be cut or removed either from the said land or from the adjoining Reserved Forest.

9. Failure on the part of the permit-holder to observe any of the above conditions will render the permit liable to cancellation without compensation at the discretion of the District Forest Officer."

16. The appellants have made a specific plea in their counter before the Writ Court that they have taken action to evict the unauthorised occupation under encroachment in Thalakkadu R.F. over 0.51 ½ acres by the writ petitioner as per legal proceedings and as per the direction issued by the Supreme Court in W.P.(Civil) No.202 of 1995 under Section 68-A of the Act.

17. From the above factual aspects, it is seen that the action was initiated on the breach of conditions stipulated under the Deed of Lease, dated 01.12.1948, and as there is growing of tea plantation, there is a possibility of wild animals taking shelter in that area, whereas, the real purpose for which the lease was granted is only to keep the surroundings clean, remove the bushes and to keep the forest tidy. Such being the position, the action contemplated in the impugned notice to evict the writ petitioner from the land belonging to the Forest Department, which is issued only by due process of law and there is no legal infirmity in it. On the other hand, the Writ Court has taken a stand that the view of the appellants is contradictory.

18. In our opinion, the impugned notice would clearly impress upon us to indicate that due process of law had been followed by the appellants and accordingly action had been initiated to evict the writ petitioner. Therefore, we consider it appropriate to allow the Writ Appeal by upholding the order dated 10.11.2007 passed by the 2nd appellant, i.e. the Forest Ranger, Ooty.

19. However, learned counsel appearing for the respondent/writ petitioner pleaded that taking note of the fact that the writ petitioner had been paying the lease amount till 1991, he may be permitted to move the authority concerned to continue with the leasehold rights and for any other requirement to continue with the lease.

20. Taking note of the said submission, this Court is of the view that it is always open for the respondent/writ petitioner to pursue such a course in making his claim in a lawful manner and in

such event, it is for the authorities concerned to consider the same in accordance with law.

21. In the result, the order dated 10.11.2007 passed by the 2nd appellant-Forest Ranger, Ooty is confirmed by setting aside the order of the learned Single Judge and the Writ Appeal is allowed with the above observation and direction. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Forest Officer,
The Nilgris.
2. The Forest Ranger,
Ooty-South, Ooty.

1 cc to Mr.Srinath Sridevan ,Advocate, SR.No.8721
1 cc to Spl.Government Pleader,Sr.No8019

W.A.NO.1580 of 2011

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