

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.540 of 2015

Tamil Nadu Scheduled Tribe (Malayali)
Peravai, Rep. by its President.

.. Petitioner

-vs-

- 1.Ministry of Tribal Affairs,
Rep. by its Secretary to Govt.
Of India, Ground Floor, 'D' Wing,
Shastri Bhawan, New Delhi-110 001
- 2.The State of Tamil Nadu,
Rep. by its Chief Secretary to Govt.,
Secretariat, Fort St. George,
Chennai-600 009
- 3.The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Adi-Dravidar and Tribal Welfare Dept.,
Secretariat, Fort St. George,
Chennai-600 009
- 4.The Director,
Adi-dravidar and Tribal Welfare Dept.,
Chepauk, Chennai-600 005

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the letter having Ref.No.D.O.No.18013/8/10 C&LM-II dated 08.04.2011 issued by the 1st respondent and quash the same and direct the 4th respondent to submit a detailed proposal to the 2nd respondent for implementation of the 5th Schedule of the Constitution of India including the declaration of the scheduled areas in the State of Tamil nadu to facilitate notification of the Scheduled areas in the State of Tamil Nadu in accordance with law for the purpose of the 5th Schedule to the Constitution of India.

For Petitioner : Mrs.Nalini Chidambaram, S.C.
For M/s.C.Uma

For Respondents : Mr.Su.Srinivasan,
Asst. Solicitor General for R-1
: Mr.S.T.S.Moorthy,
Govt. Pleader, assisted by
Mr.V.Shanmugha Sundar for RR 2 to 4.

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O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The grievance of the petitioner is that in Tamil Nadu, scheduled areas have not been declared, though there is a sizeable scheduled tribe population. In this behalf, the specific instance given is of Pachamalai hill station falling under 3 districts namely, Salem, Trichy and Perambalur, which are stated to have a sizeable scheduled tribe population. It is, thus, pleaded that Pachamalai is to be brought under a single district administration and a separate block be declared for scheduled tribe. The two other similar blocks are stated to be Vellimalai in Periya Kalrayan Hills, Villupuram District and Jamanamarathur in Javathu Hills, Tiruvannamalai District.

2.The Adi-Dravidar and Tribal Welfare Department of the State of Tamil Nadu, on remarks being called from them by the Central Government, on a representation received, vide their letter dated 17.07.1998, inter alia opined as under:

"The request of the petitioner Thiru.Ponnudurai for declaraing Tribal blocks/Taluk is not possible as there is no programmed to declare so. His request for declaring the tribal concentrated areas as "Scheduled Areas" may be considered. As per the Constitution of India, under Fifth Schedule, Tribal concentrated areas can be declared as Scheduled Areas. If declared, the Governor of the States, have special responsibilities and Powers, to make regulation for the peace and Good Government of the Scheduled areas and Scheduled Tribes particularly for the following purposes:

1.Allotment of land and transfer of land from Tribals to non-Tribals.

2.Regulating money lending by Non-Tribals in such areas.

The Governor has to submit a report to the Government of India, annually, Constitution of Tribes Advisory Council is mandatory. The States like Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Orissa, have scheduled areas. Hence Tamil Nadu may also declare the Tribal Concentrated Pocket as scheduled areas. If agreed to in principles, detailed proposals will be submitted to Government after consulting the neighbouring State.'

3.The aforesaid discussion appears to have carried on and finally, the matter was put to rest by the Government of India vide G.O. Letter dated 08.04.2011 addressed to the General Secretary of the petitioner as under:

'Please refer to your letter No.64/2010-11 dated 1.12.2010 and letter No.63/2010 dated 1.12.2010 regarding single department for administration of Scheduled Tribes and the implementation of Fifth Schedule in the State of Tamil Nadu respectively.

I would like to inform you that the issues raised by you were referred to the State Government of Tamil Nadu for their comments. In regard to implementation of V Schedule in the State, the State Government of Tamil Nadu has informed that 'there are no scheduled areas, as Scheduled Tribes population is only 1.04% and they reside in scattered areas. However, the areas where the ST population is more than 50% they are declared as Integrated Tribal Development Projects (ITDPs) Areas.

In regard to single Department, the Government of Tamil Nadu has informed that they have adopted the Tribal Sub Plan (TSP) concept to improve the socio-economic condition of scheduled tribes since 1975-77. The TSP is implemented through 21 sectoral departments. The Schemes under TSP are implemented as divisible and indivisible from 10th Five Year Plan onwards. Nodal Officers are appointed in all Sectoral Departments to monitor the schemes implemented under TSP. The TSP concept is effectively functioning, which is monitored by the Adi-Dravidar and Tribal Welfare Department, which is the nodal department in the State. Hence, the implementation of Tribal Welfare schemes under single department is not required'. Alienation of scheduled tribes land to non scheduled Tribes is not reported in any part of the State.'

4.It is the aforesaid communication letter, which is sought to be assailed in the present petition with a further prayer to direct the 4th respondent / The Adi-Dravidar Tribal and Welfare Department of the State to submit a detailed proposal to the second respondent /

State of Tamil Nadu for implementation of the V Schedule of the Constitution of India including the declaration of the scheduled areas in the State of Tamil Nadu to facilitate notification of the scheduled areas in accordance with law for purposes of the V Schedule of the Constitution of India.

5.We have heard the learned Senior Counsel appearing for the petitioner as well as the learned Assistant Solicitor General and we find the nature of the relief as prayed for could not be admissible. In matters of this nature, the Court could have at best asked the concerned authorities to examine the matter, but that examination has already taken place.

6.Learned Senior Counsel for the petitioner contends that considerable time has passed since 2011. If that be so, let the petitioner submit a comprehensive representation including the fresh material which has come into being between 2011-2015 for consideration of the relevant department of the State Government, i.e., the fourth respondent. In case such a representation is made, the fourth respondent will examine the same within a period of three months of receipt of the representation and if they are of the view that it deserves a favourable consideration, the relevant proposal can be forwarded to the second respondent.

7.Writ Petition, accordingly, stands disposed of. No costs.

-s/d-

Assistant Registrar(CSV)
dated:27/07/2015

True Copy

Sub-Assistant Registrar

sra
To

1.The Secretary to Govt. of India,
Ministry of Tribal Affairs,
Ground Floor, 'D' Wing,
Shastri Bhawan, New Delhi-110 001

2.The Chief Secretary to Govt.
of Tamil Nadu,
Secretariat, Fort St. George, Chennai-600 009

3.The Secretary to Govt. of Tamil Nadu,
Adi-Dravidar and Tribal Welfare Dept.,
Secretariat, Fort St. George,
Chennai 600 009

4.The Director,
Adi-dravidar and Tribal Welfare Dept.,
Chepauk,
Chennai-600 005

+1 cc to Mr.Su.Srinivasan Advocate sr.35280
+1 cc to M/S.C.Uma Advocate sr.35175
+1 cc to Government Pleader sr.35590

W.P.No.540 of 2015

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