

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.1374 of 2016

&

WMP.No.1148 of 2016

Mrs. V. Jone Srinivasan

.. Petitioner

Versus

1. State of Tamil Nadu
represented by District Forest Officer
Thiruvallur
Thiruvallur District

2. The Forest Ranger
Madhar Pakkam Range
Office of the Range Officer
Palavakkam Reserve Forest
Thiruvallur District

.. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus to forbear the respondents, their men, agents, servants, subordinates or anybody acting on their behalf from in any way interfering with/preventing the usage of the pathway to enter the petitioner's patta agricultural land on the Eastern side of the entire lands in Survey No. 259, 260 and 261 in No.56, Sengarai Village, Thiruvallur District.

For Petitioner : Mr. K. Sridhar

For Respondents : Mr.Santhana Raman

Special Government Pleader (F)

ORDER

The petitioner has come forward with this writ petition praying for issuing a Writ of Mandamus to forbear respondents, their men, agents, servants, subordinates or anybody acting on their behalf from in any way interfering with/preventing the usage of the pathway to enter the petitioner's patta agricultural land on the Eastern side of the entire lands in Survey No. 259, 260 and 261 in No.56, Sengarai Village, Thiruvallur District.

2. The petitioner would contend that she is the absolute owner of the land measuring 4.18 acres in Survey No.259, 3.91 Acres in Survey No.260 and 5.95 Acres in Survey No.261 situate in No.56, Sengarai Village, Thambunayudu Palayam, Uttukottai

Taluk, Thiruvallur District having purchased the same by means of a registered sale deed registered as document No. 821 of 1986 in the office of the Joint Sub-Registrar I, Chennai.. According to the petitioner patta was also issued to her in respect of the total extent of the land measuring 14.5 acres. At the time when the petitioner purchased the above said lands, her vendor has also conveyed the usage of a passage which she is using from time immemorial. It is the contention of the petitioner that the lands in Survey Nos. 259, 260 and 261 is bounded on the North by a Canal, South by lands owned by Mr. Chellappa Naidu, East by: Government Forest lands and West by the land owned by Arumugam. It is her further contention that the passage which is being used by her falls on the Eastern side of her land and it connects Mukkarampakkam, Kollanur and Thervoy Kandigai and apart from this passage/road, there is no other road or access to enable her to enter into her own property. It is her specific contention that the passage meant to reach her property does not fall within the Forest lands situate on the Eastern side of her land. According to the petitioner, the lands owned by her are agricultural lands and she is doing cultivation over such land by engaging labourers. The road/passage meant to reach her property is in existence for more than 100 years and nobody had prevented her from using the passage. In the year 2010, the Government formed a link road from Thirupathy Highway to Sathyavedu Junction connecting more than 20 Villages including the Sengarai Village and a 100 feet road was formed from a distance of 30 feet from the passage which the petitioner used to reach her property. While so, all of a sudden, the respondents prevented the labour engaged by the petitioner from using the passage meant to reach her property. According to the petitioner, the passage does not falls or comes within the purview of forest area. The respondent has not issued any notification declaring the said pathway as a forest land, while so, preventing the petitioner from reaching her own property is unlawful. Therefore, the petitioner has come up with this writ petition.

3. The first respondent has filed a counter affidavit opposing the prayer sought for in the writ petition. According to the first respondent, the relief sought for by the petitioner is untenable inasmuch as the relief is not sought for by the petitioner with respect to the existing pathway but the petitioner is attempting to create a new pathway through the reserved forest area where non-forest activity cannot be permitted. According to the first respondent, by a notification dated 24.11.1891, the then Excellency, the Governor in Council notified the lands in Palavakkam block as reserved forest under Section 16 of the Forest Act. The passage and/or road as claimed by the petitioner having thirty feet width was formed by order dated 09.08.1975 which is running through the reserved forest limits of Palavakkam from Aramani Village to Pudupakkam

Village. According to the first respondent, the pathway claimed by the petitioner is not the only access to enter her land inasmuch as she is having alternate option to enter her land without using the passage inside the reserve forest. The petitioner, for her convenience, is attempting to create a new passage from the existing road to her patta land by disturbing the flora and fauna as well as the bio-diversity of the forest land. It is the specific contention of the first respondent that the passage abutting the patta lands of the petitioner was formed by an order dated 09.08.1975 which was earlier declared as a forest land by notification dated 24.11.1891. Therefore, such road formed based on the notification dated 24.11.1891 and the order dated 09.08.1975 will not provide any right of access to the petitioner to use it as a pathway. While so, the allegation that the respondents and their officials are disturbing the possession of the petitioner to have access through the alleged private pathway does not arise. It is further stated that the officials of the respondents are not in any way creating hindrance to the petitioner from enjoying her own lands situated on the Western boundary of the reserved forest land. In any event, if the claim of the petitioner is accepted, it will result in conversion of the forest property for non-forest activity and would result in deterioration of the 'reserved forest' area.

4. The petitioner has filed a rejoinder to the counter affidavit of the respondent reiterating the averments contained in the affidavit filed in support of the writ petition and inter alia contending that even as per the notification relied on by the respondent, the reserve Forest is in the North of the land of the petitioner. Therefore, the respondent has no jurisdiction or right to prevent the petitioner from using the pathway to have access to her agricultural land. The existing road leading to the petitioner's agricultural land is the panchayat road and the reserve forest is situate only on the northern side of the petitioner's land.

5. The first respondent has filed an additional counter affidavit to the rejoinder filed by the petitioner stating that during the pendency of the writ petition, on 05.04.2016, the petitioner trespassed into the reserve forest and destroyed the trees, plants and shrubs to form a new road through the forest land to an extent of 40 meters. Therefore, the Forest Range Officer, Gummudipoondi has registered a case in O.R. No. 20 of 2016 dated 06.04.2016 against the petitioner for the offence punishable under Section 21 (d) (e) (g) and (f) read with Section 21 of the Tamil Nadu Forest Act, 1882. On registration of such case, the petitioner has filed CrI.M.P. No. 1424 of 2016 before the learned Principal Sessions Judge, Tiruvallur seeking anticipatory bail and it was rejected. The petitioner has thereafter filed CrI.OP No. 10203 of 2016 before this Court and

by order dated 05.05.2016, she was granted anticipatory bail. Even as per the averments of the petitioner, the land where the petitioner is attempting to form a road is a notified reserve forest. The said land contains vegetations which constitutes a forest technically called as Tropical Dry Evergreen Forest (TDEF) which is important to maintain ecological balance in the area. The forest is a shelter for many endangered species of fauna such as jungle cat, spotted deer, jackal, civet etc., The flora of the forest consists of endangered red sander trees and other endemic species of TDEF. In order to protect the invaluable forest wealth, it is necessary that the writ petition of the petitioner has to be dismissed.

6. I heard the counsel for both sides at length and perused the materials placed on record, including the Survey field map produced by the counsel for both sides. Even though the petitioner seeks for issuing a Mandamus to forbear the respondents and their officials from disturbing her from using the pathway which is said to be the only access to her to reach her patta lands, the petitioner herself has admitted that in the southern side of her land, the reserve forest is in existence. It is seen that the petitioner has been utilising the road on the Northern portion of the forest area and it was not objected to by the respondents for a long time. Along with the writ petition, a survey field map was produced which clearly indicates that physical features of the locality. It also discloses that the petitioner has to take a detour to reach her property in the absence of the existing road which is in dispute.

7. During the course of arguments, the respondents produced the notification dated 09.08.1975 issued by the District Forest Officer, Chengalpet according permission for formation of a road from Araneri Village to Pudupakkam Village through Palavakkam Reserved Forest to a width of 30 feet subject to certain conditions. The respondents have also produced a plan wherein the area which are demarcated as reserve forest land were shown in green in colour and it abuts the lands of the petitioner. But, according to the petitioner, even as per the notification dated 24.11.1891, if the southern side boundary is taken into consideration, it did not immediately abut the property of the petitioner and therefore, the road which was in existence is being maintained by the Village Panchayat and it will not fall within the forest area. If it is the case of the petitioner that the road in existence leads to her land and not into the forest land, it belongs to the Government only and the petitioner cannot be permitted to lay or form a new road.

8. The contention of the respondent is in the guise of using the panchayat road, the petitioner is attempting to form a new road and therefore it was objected to by the officials of

the respondents. According to the respondents, during the pendency of the writ petition, a case was registered against the petitioner for having caused damage to the eco system in the forest area and she has also obtained an anticipatory and the investigation in the criminal case registered against the petitioner is pending.

9. This Court cannot go into the factual disputes or the validity of the criminal case registered against the petitioner in this writ petition. Suffice it to state that the petitioner can assert a right over the pathway as formed by order dated 09.08.1975 which is running through the reserved forest limits of Palavakkam from Aramani Village to Pudupakkam Village and the 30 feet road which was in existence can be used by every one for their ingress and egress, including the petitioner. Even as per the rejoinder filed by the petitioner, it is admitted that as per the notification issued by the Forest Department, the reserve Forest is in the North of the land of the petitioner. Thus, the petitioner can use the pathway exist on the Southern side of the reserve forest. Thus, from the Northern side of the petitioner land, the petitioner cannot lay any other road, as alleged by the respondents, but the petitioner or others can only pass through. Such an observation is made to permit access to the lands of the petitioner and that cannot be misconstrued to form a new road by the petitioner or any one. Thus, the petitioner can use the road which was formed in the year 1975 on the Eastern side of her land and she cannot form a new road. It is also made clear that this order cannot be construed as a one by which the petitioner or any one can violate the Forest Rules or Regulations. As regards the criminal case registered against the petitioner, it shall be proceeded with in accordance with law. Thus, the prayer sought for in the writ petition is allowed to the limited extent of permitting the petitioner to utilise the existing road, as formed by the Government and not by creating a new road by herself.

10. With the above direction, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CSVIII)

True Copy

Sub-Assistant Registrar

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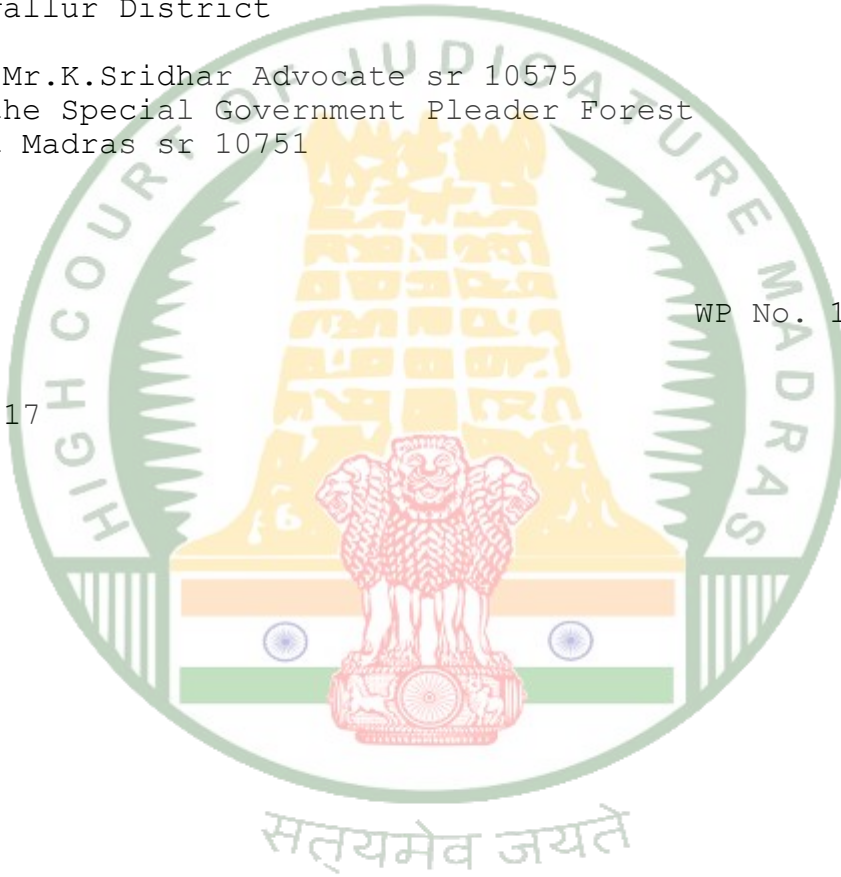
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+3 ccs to Mr.K.Sridhar Advocate sr 10575
+1 cc to the Special Government Pleader Forest
High Court Madras sr 10751

WP No. 1374 of 2016

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