

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP.No.27496/2017 & WMP.Nos.29390 & 29391/2017

Sajeev Kurian .. Petitioner

Versus

- 1.The Forest Settlement Officer
Gudalur, The Nilgiris District.
- 2.The District Forest Officer
Gudalur Division, The Nilgiris District.
- 3.The Assistant Conservator of Forest
Gudalur Division, The Nilgiris District.
- 4.The Forest Range Officer
Pandalur Range, Devala-643270
Gudalur, The Nilgiris District. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus calling for the records relating to the Notice bearing No.Nil dated 22.10.2016 issued u/s.68-A of the Tamil Nadu Forest Act, 1882, and the order bearing C.No.128/2016 dated 16.11.2016 on the file of the 4th respondent and to quash the same and consequently, direct the respondents to obey and comply with the specific directions issued by this Court in the order dated 14.07.2006 made in WP.No.15838/2004, the 1st respondent to issue notice to the petitioner proceed with the enquiry u/s.8 of the Tamil Nadu Forest Act, 1882, and pass order u/s.10 of the Tamil Nadu Forest Act, 1882 and the respondents 2 to 4 to restore the movable Tin sheet Sales Centre along with the materials high handedly removed by them on 09.01.2017.

For Petitioner : Mr.T.P.Manoharan, Senior Counsel for
Mr.K.P.Jotheeswaran
For R1 : Mr.A.N.Thambidurai, Spl.GP
For R2 to R4 : Mr.M.Santhanaraman, AGP [Forests]

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the 1st respondent and Mr.M.Santhanaraman, learned Additional Government Pleader [Forests] accepts notice on behalf of the respondents 2 to 4.

2 The petitioner in the affidavit filed in support of this writ petition, would aver among other things that the land comprised in RS.No.632, Amaikulam, Puliamparai Village, Devala, Gudalur Taluk, the Nilgiris District, is admeasuring to an extent of 48.10 Acres [19.47.50 Hectares] and it is situate in Ward No.5, Nelliylam Municipality, consisting of Puliamparai, Irumbupalam, Palamedu, Marapalam and Amaikulam and there are 250 residential houses located in the said places apart from Schools and Tea Factory. The petitioner would further aver that 250 families consist of more than 1800 members and they are living in portions of the said land and they have also put up superstructures and planting Coffee, Tea, Pepper, Orange, Pomegranate, Coconut, Arecaunut, Plantains etc and eking out their livelihood out of the meager income derived from the sale of those produces for several decades and the superstructures put up by the petitioner and others have also been assigned with door numbers and statutory levies have also been collected and in the Voters List, the name of the petitioner also finds place. It is specific claim of the petitioner that he and his family members are in possession of the portion of the land admeasuring to a extent of 1.50 acres for more than 32 years and he has constructed a terraced house measuring 750 sq.ft., in a portion and living there along with his wife and children.

3 The petitioner had also moved the Assistant Settlement Officer, Dharapuram, for grant of patta in his name and so far no orders have been passed and the wife of the petitioner also made an application to the Tamil Nadu Tea Plantation Corporation [TANTEA], a Government of Tamil Nadu Undertaking, requesting her to appoint her as a Dealer to establish a Sales Centre in the portion of the above said building and vide letter dated 02.05.2016, the request made by the petitioner's wife has also been accepted and the Dealership Agreement dated 31.05.2016 also came into being and the petitioner had also obtained Trade Licence from Nelliylam Municipality. The petitioner would further state that the Government of Tamil Nadu has published a Notification u/s.4 of the Tamil Nadu Forest Act, 1882 [in short "the Act"] in G.O.Ms.No.135, Environment and Forest [FR-III] Department dated 30.04.1993, proposing to constitute the land comprised in RS.No.632 situate at Devala Village admeasuring to

an extent of 19.47.5 hectares as "Reserved Forest" and appointed the 1st respondent as the Forest Settlement Officer to exercise the powers under clause [c] of Section 4 of the Tamil Nadu Forest Act, 1882, and a Proclamation was also published by the 1st respondent on 25.06.1993 in the Nilgiris District Gazette and notices u/s.6[d] of the Act were issued requesting all the persons in occupation claiming rights over the portion of the land, to be present for the enquiry with all relevant documents. The petitioner was issued with the said notice on 02.05.2001 and the petitioner appeared along with all relevant documents and an enquiry was also conducted u/s.8 of the Act by the 1st respondent. It is the specific case of the petitioner that the claim made by 63 claimants has been admitted and the portions of the land which are in occupation of them, have been excluded from the Reserved Forest Area and insofar as the claim made by the petitioner and 10 others are concerned, the 1st respondent is yet to complete the enquiry u/s.8 of the Act and no orders have been passed either accepting or rejecting the claim and in the event of rejection of the petitioner's claim, the petitioner is having an effective alternate remedy by way of appeal u/s.10[2] of the Act before the District Court.

4 The petitioner, on an earlier occasion, was issued with Eviction Notice u/s.68-A of the Act, challenging the legality of the same, he filed WP/No.15838/2004 and a Single Bench of the Court, vide order dated 14.07.2006, has disposed of the said writ petition, by quashing the said Eviction Notice with a further direction, directing the 1st respondent herein, to pass orders on the enquiry conducted by him u/s.8 of the Act and thereafter, initiate proceedings u/s.68-A of the Act, if it is warranted. The petitioner also filed a contempt petition to implement the said order in Cont.P.No.509/2017 and in the counter affidavit filed on behalf of the respondents therein, it has been stated among other things that the petitioner through his wife had put up a fresh shed by erecting iron posts and laying concrete mixture in a fresh area in the said Survey Number and also drawn the attention of this Court to the Notice dated 16.11.2016 issued u/s.68-A of the Act with regard to the said offending construction. The contempt petition was closed granting opportunity to the petitioner to challenge the said proceedings and hence, came forward to file the present writ petition.

5 Mr.T.P.Manoharan, learned Senior Counsel assisted by Mr.K.P.Jotheeswaran, learned counsel appearing for the petitioner would submit that unless final determination is made u/s.10 of the Act, the 4th respondent lacks jurisdiction to issue a notice u/s.68-A of the Act and prays for interference.

6 Per contra, Mr.M.Santhanaraman, learned Additional

Government Pleader [Forests] appearing for the respondents 2 to 4 has drawn the attention of this Court to the counter affidavit filed in the contempt petition and would submit that the subject lands were notified under the Tamil Nadu Preservation of Private Forests Act, 1949 by the Collector of the Nilgiris during the year 1967 itself and was declared as "forest" under section 53 of the Gudalur Janmam Estates [Abolition and Conversion into Ryotwari] Act, 1969, and handed over to the Forest Department on 04.10.1977 and it was also notified u/s.26 of the Act vide the Nilgiris District Gazette No.7, dated 01.07.1978 and further notified u/s.4 of the said Act vide G.O.Ms.No.135, Environment and Forest [FR-III] Department dated 30.04.1993 and since the land has been declared as Forest even prior to the year 1980, the provisions of the Forest [Conservation] Act, 1980 would apply to the case on hand and once it is declared, the petitioner is not entitled to any deviations or alterations on the land in question and in utter disregard to the mandatory provisions, the petitioner has put up a fresh shed by erecting iron posts and laying concrete mixture in a fresh area and in order to curtail the same, the impugned notice came to be issued rightly and would further add that action would be taken against the petitioner strictly in accordance with law.

7 The Court has paid its best attention to the rival submissions and also perused the materials placed before it.

8 The earlier order passed by this Court in WP.No.15838/2004 dated 14.07.2006 would make it amply clear that the 1st respondent herein was directed to pass orders on the enquiry conducted by him u/s.8 of the Tamil Nadu Forest Act, 1882, and thereafter, initiate action u/s.68-A of the Act. Admittedly, the enquiry is yet to be completed. It is also brought to the knowledge of this Court that offending construction put up by the petitioner as pointed out in the counter affidavit filed by the respondents have now been removed and the original position has been restored excepting the fact that the superstructure put up by the petitioner, in which the petitioner is residing along with his family, remain undisturbed.

9 It is the submission of the learned Additional Government Pleader [Forests] appearing for the respondents 2 to 4 that pending disposal of the claim in respect of the persons similarly placed, the petitioner is not permitting the 1st respondent to proceed further with the enquiry insofar as he is concerned.

10 In the light of the above facts and circumstances, the impugned notice dated 22.10.2016 and the consequential order dated 16.11.2016 passed by the 4th respondent are hereby quashed and the 1st respondent is directed to comply with the order

dated 14.07.2006 made in WP.No.15838/2004 and pass final orders under section 8 read with sections 9 and 10 of the Tamil Nadu Forest Act, 1882 within a period of eight weeks from the date of receipt of a copy of this order and the petitioner is directed to extend his maximum cooperation to the 1st respondent to complete the said enquiry. It is also made clear that till the disposal of the claim made by the petitioner by the 1st respondent, the petitioner shall not alter the physical features of the land as well as the superstructure in question and shall not commit any further encroachments. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Forest Settlement Officer
Gudalur, The Nilgiris District.
- 2.The District Forest Officer
Gudalur Division, The Nilgiris District.
- 3.The Assistant Conservator of Forest
Gudalur Division, The Nilgiris District.
- 4.The Forest Range Officer
Pandalur Range, Devala-643270
Gudalur, The Nilgiris District.

+1cc to the Special Government Pleader, S.R.No. 88300
+1cc to Mr.K.P.JOTHEESWARAN Advocate, S.R.No. 88181
+1cc to the Government Pleader, S.R.No. 89028

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TR(03/01/2018)