

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.18196 of 2017
and
WMP.No.19789 of 2017

- 1.G.Dharmaraj
- 2.P.Ganagaraj
- 3.S.Subramani
- 4.P.Sengamalai
- 5.M.Kumarasamy
- 6.P.Sundaraj
- 7.C.Raj
- 8.V.Sivabalan
- 9.V.Senthilkumar
- 10.P.Masi

.. Petitioners

Vs.

- 1.State of Tamil Nadu
Represented by the Secretary
Department of Environment and Forests
Secretariat, Fort St.George,
Chennai - 9.
- 2.The District Collector / Chair Person District Level Committee
Under the Scheduled Tribes and Other Traditional Forest
Dwellers
(Recognized of Forest Rights) Rules 2007,
District Collectorate,
Perambalur District.
- 3.The District Forest Officer,
O/o. The District Forest Officer,
Perambalur District,
Perambalur.
- 4.The District Level Forest Right Committee,
(Constituted under The Scheduled Tribes and Other Traditional
Forest Dwellers (Recognized of Forest Rights) Rules 2007,
Represented by its Chairman,
District Collectorate, Sivagangai District.
- 5.The Tahsildar,
Perambalur Taluk Office,
Perambalur District.

6.The Gram Sabha

Represented by the President
(Keezhakanavai Village)
Velur Village Panchayat,
Perambalur Taluk,
Perambalur District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, calling for the entire records connected with the impugned order of eviction in Se.Mu.Aa.No.894/11 /va dated 21.03.2017 passed by the third respondent and quash the same and consequently direct the respondents to conduct enquiry under Section 2(O) Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to determine the rights of the petitioners.

For Petitioners : Mr. M.Thilageswaran
For Respondents : Mr. R.Vijaya Kumar
Additional Govt. Pleader [R5]
Mr.M.Santhanaraman
Additional Govt. Pleader (Forest)
[for RR1 to 4]

O R D E R

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

By consent, the writ petition is taken up for final disposal. Mr.S.Santhana Raman, learned Additional Government Pleader (Forests) accepts notice on behalf of the respondents 1 to 4 and Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the fifth respondent.

2. The claim of the petitioners is that their forefathers are in occupation of the lands in Survey No.404, Keezhakhanavai Village, Velur Panchayat, Perambalur Talu, Perambalur Disitrct, and after their demise, they are residing in the lands in question for more than three generations (90 years) and initially action was contemplated under Section 68-A of the Tamil Nadu Forest Act 1882, and therefore, they filed the writ petition in W.P.No.566 of 2014 against the respondents praying for an issuance of writ of mandamus, forbearing the District Forest Officer, Perambalur, from evicting the petitioners from the dwelling houses in the lands in Survey No.404, Keezhakhanavai Village, Velur Panchayat, Perambalur Taluk, Perambalur District, without conducting enquiry and passing orders under the Schedule Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006 and Rules framed thereunder (in short Act and Rules), based on their

representation dated 13.8.2013. The petitioner would state that the writ petition was entertained and counter affidavit was filed by the third respondent. The Hon'ble First Bench of this Court, vide order dated 19.12.2016, granted liberty to the petitioners to furnish further materials apart from the materials already submitted by them in their representation dated 13.8.2013, and also granted a month's time to produce the same, and further directed the respondents to take a decision on the same within a maximum period of three months thereafter, after holding a proper enquiry.

3. The petitioners would further submit that after the disposal of the said writ petition on 19.12.2016, they have submitted a further representation dated 13.01.2017 to the respondents enclosing the documents establishing that their forefathers continued to remain in possession of the said lands for three generations in the form of tax receipts, electricity consumption charges receipts, voter ID cards and other materials. However, the third respondent without considering the content of the representation submitted by the petitioners and also the documents filed by them, has passed a cryptic impugned order dated 21.03.2017, rejecting their requests. Therefore, the petitioners have filed the present writ petition challenging the legality of the said order.

4. Mr.K.Thilageswaran, learned counsel appearing for the petitioners has invited the attention of this Court to the above stated Acts and Rules and would submit that the petitioners fall within the definition of "Other Traditional Forest Dwellers" under Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, as well as the definition of "bonafide livelihood needs" meant under Section 2 (b) of the said Rules, and also provided all the supporting documents to that effect. Therefore, it is obligatory on the part of the third respondent to consider the representation along with the documents and pass appropriate orders, but without doing so, the third respondent has passed a cryptic order without assigning any reason thereby affecting the fundamental and constitutional rights of the petitioners and hence, prays for interference.

5. Per contra, Mr. M.Santhana Raman, learned Additional Government Pleader (Forests) appearing for the Forest Department has invited the attention of this Court by referring to the counter affidavit filed in writ petition W.P.No.566 of 2014 and would submit that admittedly the land in question was declared as " Velur Reserved Forest Area" and it was also notified as " Reserved Forests" under Section 16 of the Tamil Nadu Forest Act, 1882, with effect from 01.01.1995, and the petitioners are only the recent encroachers, and originally they were residing

outside the boundary and thereafter, encroached the adjoining reserved forest areas and started putting up constructions. It is the further submission of the learned Additional Government Pleader (Forests) that the petitioners did not satisfy the definitions of Section 2(o) as well as Section 2(b) of the Acts and Rules, and taking note of the same, the third respondent has rightly passed orders rejecting their requests made under the said Acts and Rules framed therein and therefore, prays for dismissal of the said writ petition.

6. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

7. It is relevant to extract the definitions under Sections 2(o) and 2(b) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 :

"Section 2(o): other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bonafide livelihood"

Section 2(b): "bona fide livelihood needs" means fulfilment of sustenance needs of self and family through production or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of Sub Section (1) of Section 3 of the Act;

As per Section 2(o) of the Acts and Rules, any member or community for atleast three generations prior to 13.12.2005 would have primarily resided in and who depend on the forest or forests lands for bonafide livelihood needs. As per 2(b) of the Acts and Rules, would contain that other traditional forest dwellers, shall fulfill sustenance needs of self and family through production or sale of produce resulting from self-cultivation of the forest land as provided under the relevant proviso of Section 3(1) of the said Acts and Rules. Section 2 (3) of the Acts and Rules also defines that the claimants means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act;

8. The petitioners in the typed set of documents also enclosed the documents to prove and substantiate that they come within the definition of "other traditional forest dwellers".

9. This Court, on a perusal of the documents enclosed in typed set of documents, is prima facie of the view that no document has evidenced that for sustenance of needs, the

petitioners are depending upon the produce resulting from self-cultivation, and that the documents produced are only the income tax receipts and other receipts evidencing statutory levies and payment of electricity consumption charges, and for possession they have also enclosed the Voter Identity Card issued by the Election Commissioner.

10. In the considered opinion of the Court, unless and until the petitioners fulfill the relevant provisions of the aforesaid Acts and Rules, they are not entitled to avail the benefits of the said Act for the said reason that once the forest is declared as a Reserved Forest, without the permission of the competent authority, no one cannot enter upon the forest. Since the above said Act and Rules provides that the petitioners are under obligation to prove and substantiate their claim that they are "other traditional forest dwellers", in the considered opinion of the Court, from the materials placed before it, the petitioners are the encroachers of the land in question and not "other traditional forest dwellers".

11. In the light of the reasons assigned, this Court is of the view that the claim made by the petitioners lack merit and the writ petition deserves to be dismissed.

12. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary

Rep. The State of Tamil Nadu,
Department of Environment and Forests
Secretariat, Fort St.George,
Chennai - 9.

2.The District Collector / Chair Person District Level Committee
Under the Scheduled Tribes and Other Traditional Forest
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3.The District Forest Officer,
O/o. The District Forest Officer,
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4.The District Level Forest Right Committee,
(Constituted under The Scheduled Tribes and Other Traditional
Forest Dwellers (Recognized of Forest Rights) Rules 2007,
Represented by its Chairman,
District Collectorate, Sivagangai District.

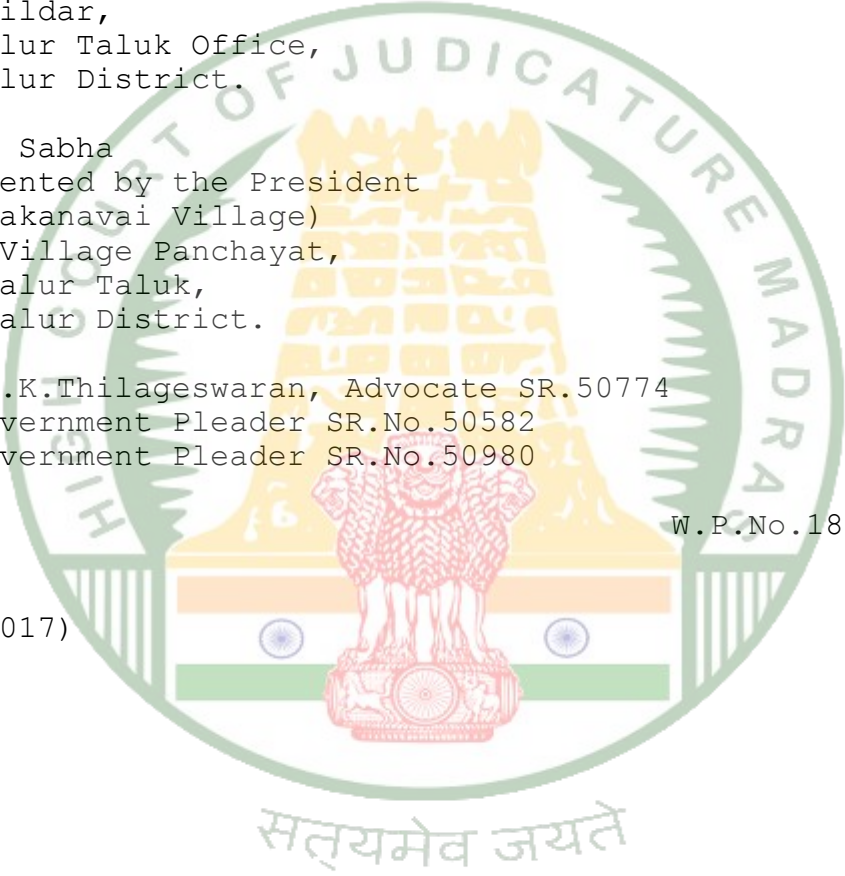
5.The Tahsildar,
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6.The Gram Sabha
Represented by the President
(Keezhakanavai Village)
Velur Village Panchayat,
Perambalur Taluk,
Perambalur District.

+1cc to Mr.K.Thilageswaran, Advocate SR.50774
+1cc to Government Pleader SR.No.50582
+1cc to Government Pleader SR.No.50980

W.P.No.18196 of 2017

PVS (CO)
GN(19/09/2017)



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