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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/12/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Writ Appeal No.35 of 2012

1. Fr. George Padinjarayil
2. John P.E.
3. Sr. Gracy Sebastian
4. Thomas Madapallyil
5. A.C. Joseph
6. Sebastian
7. Varghese
8. Pious
9. Jose
10. Leelama
11. Sr. Lucy
12. Mrs.C.D.Thressiamma
13. Scaria Erath
14. P.M.Johney

...Appellants/Petitioners

Vs.

1. The State of Tamil Nadu
rep. by the Secretary to Government
Environment and Forest Department
(FR - 5)
Fort St. George
Chennai 9.
2. The Collector of Nilgiris
Udhagamandalam
The Nilgiris.
3. The District Registrar
Registration Department
Udagamandalam
4. The Principal Conservator of Forest
No.1 Geenis Road
Panagal Maligai
Chennai 600 015.

...Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against the judgment made in W.P.No.14067 of 2010, dated 12/7/2011.



WP.No.14067 of 2010:Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the notification dated 11.12.1991 issued under section 1(2) (ii) of the Tamilnadu preservation of private forest land Act 1949 and published in the District gazette on 15.11.1991 and quash the same and so far as the petitioner is concerned.

For appellants ... Mr.S.Sreesh
for Mr.V.Raghavachari

For respondents ... Mr.Rajesh Kumar
for Mr.Santhanaraman
for R.R.1 to 4.

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J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J)

Writ Appeal is directed against the order made in W.P.No.14067 of 2010, dated 12/7/2011, by which the writ Court, based on the judgment in W.P.No.24575 of 2005, etc., batch, in W.P.No.24575 of 2009, upheld the Notification, under challenge in the writ petition, and declined, to quash the Notification, dated 11/12/1991, issued under Section 1 (2) (ii) of the Tamil Nadu Preservation of Private Forest Land Act, 1949 and published in the District Gazette, on 15/11/1991.

2. In the memorandum of grounds of appeal, the following contentions have been made.

(a). Writ Court has not given any reasons to reject W.P.No.14067 of 2010. Private property cannot be taken away by the State, without payment of compensation.

(b). As per the provisions of the Tamil Nadu Preservation of Forest Land Act, it mandates upon the State legislature to table the rules before the Assembly. Mere publication of the Notification, dated 15/11/1991, does not mean the passing of a Notification in law. Section 1 (2) (ii) of the Act demands that every Notification/order be tables before the Legislative Assembly. In the present case, the Secretary to Government on 9/10/2009, has clearly informed the fact that Notification had not been tabled. Under such circumstances, the entire proceeding is void and ineffective.

(c). Order of the learned Single Judge is against the judgment of the Hon'ble Supreme Court in K.T.Plantation's case.



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(d). Some of the lands at Gudalur were assigned by the State to the petitioners and the assigned lands cannot be resumed unless and until there is a breach to the conditions. Government of Tamil Nadu had attempted to take away the properties to the petitioners without recourse to the procedure known to law.

(e). The Tamil Nadu Estate Land Act, 1908, does not extend to Nilgiris District and whole area of Gudalur is exempted from the operation of Section 1 of the Tamil Nadu Private Forest Preservation Act. This Act empowers the competent authority to declare private lands, as forest lands, only if it is in excess of 2 hectares and contiguously situate with the forest. In the present case, 80% of the notified lands are below 2 hectares and hence the Notification is bad in law and beyond the competence of issuing authority.

(f). As per the provisions of the Gudalur Jenmam (Abolition and Conversion into Ryotwari) Act, 1969, patta is issued to the tenant under Section 9. The land is deemed to be cultivated for a continuous period, for agricultural operation. When the Government had issued patta and recognized the land as agricultural holding, it would be inappropriate to construe it as forest lands.

3. In the typed set of papers, filed along with the memorandum of appeal, proceedings, dated 11/12/1991, has been stated as the impugned order, which is a Demi-Official letter, sent by the Collector of Nilgiris District, to the Secretary to the Government, Environment and Forest Department, Government of Tamil Nadu. We are at loss to understand as to how the appellants had access to an inter-departmental correspondence, that too a demi-official letter, between the Collector of a District and Secretary to the Government.

4. Power of the Government to issue Notification, declaring private lands as forest lands, has been considered and upheld by a Hon'ble Division Bench of this Court in N.MANGALCHAND VAID AND ORS Vs. THE SECRETARY TO GOVERNMENT OF TAMIL NADU, FORESTS AND FISHERIES DEPARTMENT, THE COLLECTOR OF NILGIRIS, THE PERSONAL ASSISTANT (GENERAL) TO THE COLLECTOR OF THE NILGIRIS AND THE SECRETARY OF THE COMMITTEE, CONSTITUTED UNDER THE TNPPF ACT AND THE DISTRICT FOREST OFFICER, GUDALUR DIVISION AND IN KANYAKUMARI DISTRICT PLANTERS ASSOCIATION AND ORS {(2016) 2 MLJ 513}.

5. First of all, equity cannot be extended to the appellants, who have not offered any reasons, in the memorandum of grounds, as to how they had access to the demi-official letter. Secondly, power of the Government, to issue



Notifications, has been upheld. There are no merits in the appeal.

6. Accordingly, instant Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Secretary to Government
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Environment and Forest Department
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The Nilgiris.
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+1 cc to Mr.V.Raghavachari Advocate sr 87647
+1 cc to the Special Govt Pleader Forest sr 87767

Writ Appeal No.35 of 2012

br(co)
aa19/01/2018