



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.06.2017
Pronounced on : 24.07.2017

WEB COPY

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.15486 of 2014
and
M.P. (MD) .Nos.1 and 2 of 2014

S.Mathavan

... Petitioner

Vs.

1. The Chief Conservator of Forest / Director,
Kalakadu Mundathurai Tiger Sanctuary,
Tirunelveli District.
2. The Deputy Director cum Wild Life Warden,
Kalakadu Mundathurai Tiger Sanctuary,
Kalakadu Sanctuary,
Kalakadu,
Tirunelveli District.
3. The Forest Ranger,
Thirukarankudi Range,
Thirukarankudi,
Naguneri Taluk,
Tirunelveli District.

... Respondents

(The cause title amended as per the order of this Court dated 29.10.2014 in M.P. (MD).No.3 of 2014)

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 2nd respondent vide proceedings in Na.Ka.No.1591/2013 V, dated 14.08.2014 and quash the same as illegal.

For Petitioner : Mr.S.Chellapandian
For Respondents : Mr.G.Muthukannan,
Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the order passed by the 2nd respondent, dated 14.08.2014, whereby and whereunder the second respondent prohibited the petitioner from entering into his leasehold land through the Tiger



Reserve Forest.

2. The petitioner averred among the other things that Sri Vanumamalai Mutt, Nanguneri, is the owner a patta land to an extent of 1.34.0 hectares (3.31 acres) in Survey No.495 at Malayadiputhur Village, Nanguneri Taluk, Tirunelveli District and the same is located adjacent to Kalakadu Mundanthruai Tiger Sanctuary. The said land has been leased out periodically by the Mutt to the individuals for cultivation. While so, on 29.04.2013 the petitioner has been granted lease of the said land for a period of five years from the fasali 1422 to 1426 by virtue of Adavollai. The petitioner's predecessor viz., who were given lease by the Mutt, were doing Horticulture operation by their physical labour or by employing local people. In order to reach the said leasehold land, all these years, the lessees and their employees were using the mamool pathway, which is known as pathway leading to Narakadu Bungalow, except a diversion at few hundred yards before Narakadu Bungalow and further walk for about 100 yards in another pathway which leads to Chinna Manjulai estate. The pathway to Chinnamanjulai is in existence and in use for several decades and the same is being used by the others even today to have the access to private patta lands situated within or adjacent to the sanctuary.

3. It is further averred in the petition that while so, the second respondent has informed the petitioner to get permission from the District Collector for using the mamool pathway which runs towards the sanctuary for few hundred yards, on the ground that the leasehold land in survey No.495 is declared as Private Forest land under the provision of the Tamil Nadu Preservation of Private Forest Act, 1949. The second respondent also, in response to application under Right to Information Act, informed that the extend of 1.34.0 hectares in Survey No.495 of Malayadiputhur Village has been declared as a Private Forest. In pursuance of the same, the petitioner has filed a petition under Section 2 of the Tamil Nadu Prevention of Private Forest Act, 1949, before the Committee constituted under the said Act to grant permission to him and his employees to have the access to his leasehold land through the forest land. But, the said application was forwarded by the Committee headed by the District Collector, to the first respondent by proceedings dated 21.01.2014. In the said proceeding, the District Collector has stated that the land in Survey No.495 of Malayadiputhur has not been declared as private forest. In this regard, the petitioner has also sent a representation, dated 25.04.2014, to the second respondent. The second respondent, without passing any order on the said representation, has passed the impugned order stating that if license to use the pathway is given to the petitioner, the same may lead to adverse impact to tiger habitat and forwarded the same to the petitioner as well as to the first respondent. Based on the order passed by the second respondent, the third respondent prevented the petitioner to use the mamool pathway and to have access to his leasehold land through the forest land. Therefore, he has come up with this writ petition



seeking to quash the impugned order passed by the second respondent.

4.The main grounds raised by the learned counsel for the petitioner in the writ petition are:

(a) The systematic horticultural operations have been done in the patta land in S.No.495 by the petitioner's lessor and previous lessees for several decades only by using the pathway across the forest land and the said access cannot be denied as per Section 27 of the Wildlife Protection Act, 1972.

(b) Though the mamool pathway is being used by the petitioner and several others to have access to their patta lands within or adjacent to forest land, the denial of access to the petitioner alone is discriminative and violative of Article 14 of the Constitution of India.

(c) As per Section 27 of the Wild Life Protection Act, 1972, even a person, who has some right over immovable property within the limits of sanctuary, cannot be prevented from entering the forest land and no permission is also required for such person under the Act.

(d)When the substantive provision under the Wild Life Protection Act recognize the enjoyment of rights even within the limits of sanctuary, the respondents cannot restrict the right of the petitioner on the strength of G.O.Ms.No.145, dated 28.12.2007.

5.The respondents have filed their counter affidavit stating that it is not true that the Mutt has been periodically leasing out the land in Survey No.495 to the individuals for cultivation and that there is no cultivation for a long period. There is no mamool pathway as alleged. The averment that to reach the land in S.No.495, the lessor, previous lessees and the petitioner and his employees have been using Narakkadu Bungalow pathway, except a diversion at few hundred yards before Narakkadu Bungalow and further walk for about 100 yards in another pathway which leads to Chinna Manjolai, is not true. Though the petitioner's leasehold land is situated adjacent to Kalakad Mundanthurai Tiger Reserve forest, which has been declared as "Critical Tiger Reserve" in G.O.Ms.No.145 dated 28.12.2007, the petitioner needs to walk for nearly 3 kms through the Reserved Forest area even from the alleged diversion from the pathway to Narakkadu Bungalow. The petitioner's leasehold land has not been declared as Private Forest under the provisions of the Tamil Nadu Preservation of Private Forest Act, 1949. The first respondent has already sent a proposal to the Central Government for acquisition of lands including S.No.495 and for declaration as forest lands. The petitioner is not merely seeking the right of pathway. He is attempting to make a large scale commercial activity. Section 27 of the Wild Life (Protection) Act, 1972 does not give the petitioner any right to do such large scale commercial activity. The petitioner is seeking to create new rights which are not in existence heretofore. The proposed activity in S.No.495 will damage the fauna and flora of the tiger habitat and it will be in violation of the guidelines issued by the National Tiger Conservation



Authority and also G.O.Ms.No.145, dated 28.12.2007.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the records.

7. Admittedly, it is not in dispute that Sri Vanamamalai Madam is the owner of the patta land in Survey No.495, situated at Malayadiputhur Village, Nanguneri Taluk, Tirunelveli District and that the said land is situated adjacent to Kalakadu Mundanthurai Tiger Sanctuary. According to the petitioner, on 29.04.2013 the above said Mutt has leased out the land in Survey No.495 by virtue of Adavollai to him for five years. As the topography of the above said land is surrounded by the forest, from time memorial, the Mutt authorities have been accessing the land by using the pathway went through the Tiger Sanctuary. When the petitioner and his employees tried to access the land through the regular pathway, the second respondent has stopped them and informed them to get permission from the District Collector on the ground that the land in Survey No.495 is declared as Private Forest under the provisions of the Tamil Nadu Preservation of Private Forest Act, 1949. The second respondent, in response to the application filed under the Right to Information Act, has further informed that the extend of 1.34.0 hectares in Survey No.495 has been declared as a Private Forest. Hence, the petitioner has filed an application to the committee constituted under the District Collector seeking permission to use the mamool pathway. But, the District Collector, vide order dated 22.01.2014, remitted the matter to the file of the respondents stating that the land in Survey No.495 has not been declared as Private Forest and therefore, the committee cannot decide the matter. However, the petitioner has sent an application to the second respondent seeking permission to use the mamool pathway. But, the second respondent, by the impugned order dated 14.08.2014, rejected the request of the petitioner stating that the land in Survey No.495 and its adjacent lands have been declared as "Critical Tiger Habitat" under G.O.Ms.No.145, dated 28.12.2007 and that if the pathway right is given to the petitioner, it will affect the Tiger Habitat.

8. The only issue to be decided in this case is that the right of the petitioner can be rejected based on G.O.Ms.No.145, Environment and Forests (FR.5) Department, dated 28.12.2007?

9. At this juncture, it would be appropriate to refer to Section 27 of the Wild Life (Protection) Act, 1972, which reads as follows;

"27. Restriction on entry in sanctuary-(1) No person other than,-

(a) a public servant on duty;

(b) a person who has been permitted by the Chief Wild Life Warden or the authorised officer to

<https://hcservices.ecourts.gov.in/hcservices/>

reside within the limits of the sanctuary;

(c) a person who has any right over immovable



property within the limits of the sanctuary;

(d) a person passing through the sanctuary along a public highway; and

(e) the dependants of the person referred to in clause (a), clause (b) or clause (c), shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under Section 28.

(2) Every person shall, so long as he resides in the sanctuary, be bound-

(a) to prevent the commission, in the sanctuary, of an offence against this Act;

(b) where there is reason to believe that any such offence against this Act has been committed in such sanctuary, to help in discovering and arresting the offender;

(c) to report the death of any wild animal and to safeguard its remains until the Chief Wild Life Warden or the authorised officer takes charge thereof;

(d) to extinguish any fire in such sanctuary of which he has knowledge or information and to prevent from spreading, by any lawful means in his power, any fire within the vicinity of such sanctuary of which he has knowledge or information; and

(e) to assist any Forest Officer, Chief Wild Life Warden, Wild Life Warden or Police Officer demanding his aid for preventing the commission of any offence against this Act or in the investigation of any such offence.

(3) No person shall, with intent to cause damage to any boundary-mark of a sanctuary or to cause wrongful gain as defined in the Indian Penal Code (45 of 1860), alter, destroy, move or deface such boundary-mark.

(4) No person shall tease or molest any wild animal or litter the grounds of sanctuary."

A bare reading of Sub section (1)(c) of Section 27 of the Act makes it clear that a person, who has any right over the immovable property within the limits of the sanctuary, can be permitted to enter or reside in the sanctuary. The persons, who do not come within the category indicated in Section 27(1)(a) to (e), are required to obtain a permit as contemplated in Section 28 to enter or reside in the sanctuary. However, no such permit is required for a person who has any right over the immovable property within the limits of the sanctuary. He can exercise his normal right available, save and except certain restrictions which are contemplated. But, there appears to be no provision prohibiting an owner of a land exercising his right over such land. This was the position before the Act was amended and continues to be so even after amendment. However, under the unamended provisions, the



Collector was either required to exclude such land from the limits of the proposed sanctuary or proceed to acquire such land or right. It is obvious that until such land was acquired, the owner could more or less exercise all his rights.

10. In this case, according to the second respondent, the leasehold land of the petitioner has been declared as "Critical Tiger Habitats", by virtue of G.O.Ms.No.145, Environment and Forests (FR.5) Department, dated 28.12.2007. When there is no statutory embargo debarring the petitioner from exercising his rights, the second respondent cannot reject the claim of the petitioner based on the said G.O. Time and again, the Hon'ble Supreme Court has held that no G.O. or administrative order can override the statutory provision or statutory rule, vide **Virender Singh Hooda Vs. State of Harayana (AIR 2005 SC 137)**, wherein the Hon'ble Supreme Court has further observed that "In law if an executive instruction is contrary to statutory Rules, the Rules will prevail and not the executive instructions." The same view has been taken in a large number of decisions of the Supreme Court, e.g. **T.N.Housing Board vs. S.N.Balasubramaniam (2004) 6 SCC 85**, etc.

11. It is submitted by the learned counsel for the respondents that in order to protect the Tiger habitat, the first respondent has already sent a proposal to the Central Government to acquire the lands, including S.No.495, for declaration as forest lands, in WL3/13810/2011, dated 08.11.2011. But the fact remains that till date, no action has been taken on the said proposal and the petitioner's leasehold land has not been acquired by the District Collector. Unless and until the right or ownership of the land in question has been acquired by the District Collector in accordance with the provisions of the Act, the right of the owner of the land to have the access through the sanctuary cannot be denied by the respondents. The petitioner, who is the lessee of the land, also cannot be denied permission to have access through the sanctuary, until the completion of his lease period. Further, when the mamool pathway is being used by several others to have access to their registered patta lands within or adjacent to forest land, the petitioner alone cannot be discriminated by the respondents. Thus, viewing from any angle, there is no merit in the impugned order passed by the second respondent and the impugned order is liable to be set aside.

12. In the result, this Writ Petition is allowed and the impugned order passed by the second respondent, dated 14.08.2014 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

1. The Chief Conservator of Forest / Director,
Kalakadu Mundathurai Tiger Sanctuary,
Tirunelveli District.

2. The Deputy Director cum Wild Life Warden,
Kalakadu Mundathurai Tiger Sanctuary,
Kalakadu Sanctuary,
Kalakadu,
Tirunelveli District.

3. The Forest Ranger,
Thirukarankudi Range,
Thirukarankudi,
Naguneri Taluk,
Tirunelveli District.

+ 1 CC TO Mr.S.CHELLAPANDIAN, ADVOCATE IN SR No. 67189

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66412

GCG

TE/MR-KKR/SAR-II : 03/08/2017 : 7P/6C

order in
W.P(MD)No.15486 of 2017 and
M.P. (MD) .Nos.1 and 2 of 2014
24.07.2017