



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE **A.SELVAM**

and

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A(MD)No.248 of 2017

and

C.M.P(MD)No.2507 of 2017

D.Immanuel Das

.. Appellant/
Appellant

Vs.

The District Collector cum Chairman,
District Forest Committee, Nagercoil,
Kanyakumari District, Kanyakumari.

.. Respondent/
Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 14.11.2013 passed in W.P(MD)No.17575 of 2013 by the learned Single Judge.

Prayer in WP(MD). 17575/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ or Certiorarified Mandamus, to call for the records pertaining to the impugned order in Mu.Mu.M1/15385/2013 dated 05.09.2013 on the file of the Respondent and quash the same as illegal and consequently direct the respondent to permit the petitioner to cut and remove the rubber trees in survey No.491/1A1-A2-B, 491/1 A1A2A3, 491/1, 491/4 to a total extent of 1 Acre 89 cents in Kumbakode Village, Kalkullam Taluk, Kanyakumari District.

For Appellant : Mr.T.Lajapathi Roy

For Respondent : Mr.V.Muruganandam,
Additional Government Pleader.

J U D G M E N T

[Judgment of the Court was delivered by **A.SELVAM, J.**]

This Writ Appeal has been directed against the order dated 14.11.2013 passed in W.P(MD)No.17575 of 2013 by this Court.

dated 05.09.2013 passed by the respondent.

3. It is averred in the writ petition that the petitioner is the owner of Survey Nos. 491/1A1-A2-B, 491/1 A1A2A3, 491/1 and 491/4 totally admeasuring 1.89 acres, wherein the petitioner has planted rubber trees and for cutting the same, he sought permission from the respondent. But the respondent even without considering the total extent of survey numbers mentioned in the petition has erroneously dismissed the claim of the petitioner. Under the said circumstances the present writ petition has been filed.

4. The learned Single Judge after considering the divergent contentions raised on either side has dismissed the writ petition mainly on the ground that against the order passed by the respondent, an appeal provision is available under Section 4 of the Tamil Nadu Preservation of Private Forests Act, 1949. Against the dismissal order, the present writ appeal has been preferred.

5. Mr. V. Muruganandam, learned Additional Government Pleader, has taken notice for the respondent.

6. The learned counsel appearing for the appellant/petitioner has contended that in all survey numbers, the total extent of land comes to 1.89 acres and the Tamil Nadu Preservation of Private Forests Act, 1949 is applicable only in case of exceeding two hectares and since the property of the petitioner has not exceeded two hectares, the Tamil Nadu Preservation of Private Forests Act, 1949 is not applicable and the respondent without considering the extent of the lands mentioned in the petition has erroneously dismissed the claim of the petitioner and further the learned Single Judge has failed to consider the same and therefore the order passed by the learned Single Judge is liable to be set aside.

7. The learned Additional Government Pleader appearing for the respondent has contended to the effect that if any order is passed under Section 3(1) or Sub Section (2) of the said Section, an appeal provision is available under Section 4 of the Tamil Nadu Preservation of Private Forests Act, 1949 and the learned Single Judge has also relied upon the provision of the said Section and therefore the dismissal order passed by the learned Single Judge is perfectly correct and the same does not call for any interference.

8. The main grievance expressed on the side of the appellant/petitioner is that the respondent has not considered the extent of the survey numbers mentioned in the petition. As rightly pointed out on the side of the appellant/petitioner, the Tamil Nadu Preservation of Private Forests Act, 1949 is



applicable in a case of land exceeding two hectares. But in the instant case, the total extent of the land of the appellant/petitioner comes to 1 acre 89 cents. Further this Court has perused the impugned order passed by the respondent, wherein no mention has been made with regard to extent. Under the said circumstances, this Court is of the view to direct the respondent to consider the extent of lands of the appellant/petitioner and pass suitable orders and therefore the matter is liable to be remitted to the respondent.

9. In fine, this Writ Appeal is allowed without costs. The impugned order dated 14.11.2013 passed in W.P(MD)No.17575 of 2013 is set aside and W.P(MD)No.17575 of 2013 is allowed without costs and the matter is remitted to the file of the respondent. The respondent is directed to consider the total extent of the lands mentioned in the petition and pass suitable orders. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The District Collector cum Chairman,
District Forest Committee, Nagercoil,
Kanyakumari District, Kanyakumari.

+1cc to M/s. SPECIAL GOVERNMENT PLEADER Advocate in SR. No.15812

+1cc to M/s. T.LAJAPATHI ROY Advocate in SR. No.15764

SMN

JS/SKN/RSK/28.03.2017/3P-4C

**JUDGMENT MADE IN
W.A(MD)No.248 of 2017
and
C.M.P(MD)No.2507 of 2017**