



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.04.2017

WEB COPY

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.17376 of 2016

and

WMP (MD) .Nos.12599 and 12600 of 2016

K.Murugadas

.. Petitioner

Vs.

- 1.The Principal Chief Conservator of Forests,  
(Head of Department), Panagal Maaligai,  
Saidapet, Chennai-600 015.
- 2.The District Forest Committee,  
rep.by its Chairman/ District Collector,  
Kanyakumari District, Kanyakumari.
- 3.The District Forest Officer,  
Kanyakumari District, Kanyakumari.
- 4.The Executive Engineer,  
O/o.the Executive Engineer,  
Agricultural Engineering Department,  
Nagercoil, Kanyakumari District.
- 5.The Assistant Executive Engineer,  
O/o.the Assistant Executive Engineer,  
Agricultural Engineering Department,  
Nagercoil, Kanyakumari District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in Ref.No.PV2/12162/2016 dated 29.08.2016 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy  
For Respondents : Mr.R.Anandharaj  
Government Advocate

For Advocate  
Commissioner : Mr.J.Karthick

**ORDER**

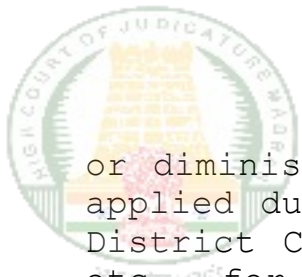
This writ petition has been filed praying for a Writ of Certiorari to call for the records pertaining to the impugned order in Ref.No.PV2/12162/2016 dated 29.08.2016 on the file of the first respondent and quash the same.

2. The petitioner would aver among other things that he has purchased land to an extent of nine acres in S.No.785/1C situated at Azhagiyapandipuram Village, Thovalai Taluk, Kanyakumari District. The said land has been classified as Private Forest under the Tamil Nadu Preservation of Private Forests Act, 1949 and the Tahsildar, Thovalai has issued patta to the afore-said land in his favour. It has been shown in the village record also.

3. The petitioner further submits that the said road to the lands of the petitioner has been totally damaged and needs to be repaired and maintained. Hence, the petitioner has applied before the second respondent Committee on 21.11.2015 in accordance with the Tamil Nadu Preservation of Private Forests Act, 1949. The second respondent after careful consideration of the application and based on the reports of the respondents 3 and 4 has passed an order in Mu.Mu.M1/45049/2014 dated 29.02.2016 granting permission for carrying out maintenance work in the road situated in S.No.785/1C1C4, Azhagiyapandipuram Village, Thovalai Taluk, Kanyakumari District with certain conditions.

4. Accordingly, the petitioner has commenced the maintenance work in the afore-said land in pursuance to the permission granted by the second respondent Forest Committee. However, to the shock and surprise to the petitioner, the first respondent has issued the impugned order dated 29.08.2016 directing the second respondent to withdraw the permission order and has directed the petitioner to seek permission under the Forest Conservation Act, 1980. As per the said direction, the permission already granted was withdrawn by the second respondent. Hence, the petitioner is before this Court for the afore-stated relief.

5. Learned counsel for the petitioner submits that only for the new road, permission is to be obtained from the first respondent, but, as far as repairing of the existing road is concerned, permission need not be obtained from the first respondent and also advanced his argument that the first respondent has no authority to pass impugned order. He further submits that per Section 3(2)(b) of the Tamil Nadu Preservation of Private Forests Act, 1949, no owner of any forest shall without the previous permission of the Committee do any act likely to denude the forest



or diminish its utility as Forest and accordingly, the petitioner applied duly before the second respondent Committee comprising of District Collector, District Forest Officer, Tahsildar, Executive etc., for carrying out the work of maintenance in the road and therefore, the order passed by the first respondent which is mentioned in the present writ petition dated 29.08.2016 is unlawful and without jurisdiction. He also submits that as per Section 4 of the Tamil Nadu Preservation of Private Forest Act, 1949 any person aggrieved by the order passed under Clause (a) of sub-section (1) of Section 3 or under sub-section (2) of that Section, the appeal lies before the government and therefore, he would contend that the State Government has the power to pass orders against the permission granted by the second respondent Committee and the first respondent has no authority to pass the impugned order.

6. The sum and substance of the counter affidavit is that the first respondent herein is the head of the department, namely, the Tamil Nadu Forest Department and he has got powers to examine and to issue instructions, directions etc., to the matters pertaining to forest activities and whenever the provisions of Forest Acts are found breached and violated, the first respondent shall issue directions for proper implementation of the Acts and as such, he has got jurisdiction to pass appropriate orders.

6.1. In the case on hand, the petitioner has submitted an application before the District Collector and he has granted permission to the petitioner. It is also averred in the counter affidavit such permission was granted with the following conditions;

(I) Conditions recommended by the District Forest Officer, Nagercoil;

1. Without causing any damage to the existing standing trees in the old road.
2. Do not lay down the bitumen/concrete/stones on the existing road.
3. Without causing any hurt or damage to the wildlife and forest.

ii) Conditions recommended by the Executive Engineer, Agricultural Engineering Department:

1. If any damage caused during the maintenance by using heavy vehicles, the petitioner has to rectify the road at his own cost.
2. If any damage caused to the agricultural land he has to resolve it at his own cost.
3. While maintenance it should not be affected the soil



conservation works under the Western Ghat Development Scheme by the Agricultural Engineering Department, if any, damage caused he has to resolve it at his own cost.

4. During rainy season, it should not affect the overflowing waterways."

6.2. In violation of the afore-said conditions, the petitioner has formed a new road. Section 2 of the Forest (Conservation) Act, 1980 clearly defines the forest as well as non-forest purposes and its applicability to all forests including any area recorded as forest in the government records irrespective of its ownership and therefore, as per the Act, the first respondent is having authority to take decisions in the matter of usage of forest land for non-forest purposes and taking advantage of the permission granted by the second respondent dated 29.02.2016, he has laid new road by breaking the rocks with heavy machineries by violating the Tamil Nadu Preservation of Private Forests Act, 1949.

7. The main contention raised in the counter affidavit is that the petitioner had laid new road and therefore, this Court, by its order, dated 08.11.2016 appointed the Advocate Commissioner to inspect whether the road was newly laid or maintenance and repairing work was done by the petitioner in the existing road. The Advocate Commissioner has filed his report and in paragraph No.8 of his report, dated 21.11.2016, it has been stated as follows:-

"a. It is revealed that from point "GATE" (GPS reading- Elevation:675.0m, North 08'21'43.7", East 077'26'49.4') to point "A" no new road is laid.

b. It is revealed that the petitioner has widened the width of the existing road by breaking the boulders and formed a road from point "A" to "C". It appears to be a old road and repair works are done.

c. It is revealed that at point "D" to "E" the petitioner has formed a new road by breaking the boulders and scrapping the soil.

d. It is revealed that there is no road beyond the point "E" (GPS reading Elevation:751.3m, North 08'21'42.4, East 077'26'54.8).

e. If a qualified surveyor is directed to earmark the Survey Number:785/1C1C4, it could be ascertained whether the subject matter road has been laid in the above survey number or gone beyond the S.No.785/1C1C4."

8. As per the Advocate Commissioner's Report dated 2.11.2016, it is revealed that at point "D" to "E", the petitioner has formed a new road by breaking the boulders and scrapping the soil.



9. However, today, when the matter was taken up for hearing, the petitioner submitted that he had repaired the existing road alone and he has not formed any new road as alleged in the Advocate Commissioner's Report. He also submitted he would not make further formation of road beyond "E".

10. Heard the learned counsel for the petitioner and learned Government Advocate for the respondents. I have also perused the Report of the Advocate Commissioner.

11. Admittedly, as per Section 4 of the said Act, any person aggrieved by an order under clause (a) of sub-section (1) of Section 3 or under sub-section (2) of that Section in regard to the sanction or permission referred to in that clause or sub-section may within two months of the receipt of such order prefer an appeal in writing to the State Government. However, in the case on hand, as per the Report of the Advocate Commissioner, in paragraph No.8(c), it is stated that the petitioner has formed a new road and it is done in the private patta land. Now, it is not proper to pass any order to restore the road in its original conditions, when it was already laid by the petitioner. At this juncture, the learned counsel for the petitioner would submit that he would not make any formation of road beyond "E". Therefore, in order to give quietus to this issue, for deviating the conditions of the Forest (Conservation) Act, 1980, I feel appropriate that costs can be imposed on the petitioner and accordingly, I impose a cost of Rs.50,000/- to be paid by the petitioner.

12. In the light of the above factual position, this writ petition is disposed of, with the following directions:-

a) The petitioner should not form any new road beyond 'E' and also he should not widen the width the existing road at any cost. He would not repeat any such act as pointed out by the Advocate Commissioner in paragraph No.8 (c) of the Advocate Commissioner's Report in future.

b) The advocate commissioner's report shall form part of this order. It is stated that as per the order of this Court a sum of Rs.20,000/- has already been paid to the Advocate Commissioner towards remuneration for the services rendered by him. This Court directs the petitioner to pay an additional remuneration of Rs.20,000/- to the Advocate Commissioner within a period of one week from the date of receipt of a copy of this order, for which, the petitioner has no objection.

<https://hcservices.ecourts.gov.in/hcservices/> As indicated above, this Court imposed the cost of Rs.50,000/- (Rupees Fifty Thousand Only), in which, the petitioner is directed to pay a sum of



Rs.25,000/- (Rupees Twenty Five Thousand only) towards the Legal Service Authority attached to the Madurai Bench of Madras High Court and also pay a sum of Rs.25,000/- towards the Women's Creche attached to the Madurai Bench of Madras High Court, within a period of two weeks from the date of receipt of a copy of this order.

No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

- 1.The Principal Chief Conservator of Forests,  
(Head of Department),  
Panagal Maaligai,Saidapet, Chennai-600 015.
- 2.The Chairman/ District Collector,  
The District Forest Committee,  
Kanyakumari District, Kanyakumari.
- 3.The District Forest Officer,  
Kanyakumari District, Kanyakumari.
- 4.The Executive Engineer,  
O/o.the Executive Engineer,  
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Nagercoil, Kanyakumari District.
- 5.The Assistant Executive Engineer,  
O/o.the Assistant Executive Engineer,  
Agricultural Engineering Department,  
Nagercoil, Kanyakumari District.

Copy to  
The Office Incharge  
Legal Services Authority,  
Madurai Bench of Madras High Court Madurai.

+2cc to Mr.T.Lajapathi Roy, Advocate Sr.No.50543 & 52839  
+1cc to Spl.Government Pleader Sr.No.50897

ssm

vb/jc/sar1/16.06.2017/6p/10c