

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2018

Pronounced on : 08-06-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Writ Petition No. 26062 of 2017
and
W.M.P. Nos. 27674 to 27676 of 2017

Smt. Shaheen Zainab ... Petitioner

Versus

The District Collector
(Chairman, District Committee)
Nilgiris District ... Respondent

Writ Petition filed under Article 226 of The Constitution of India praying for issuing a Writ of Certiorarified Mandamus to call for the records in R.C.A4.No.1287/2013 dated 24.02.2017 on the file of the respondent, rejecting the request of the petitioner to sell her land measuring 0.39 acres of land in Survey No.144/6, Sholur Village, Udagamandalam Taluk, Nilgiris District by illegally invoking Section 3 (1) (a) of the Tamil Nadu Preservation of Private Forest Act, which does not give any authority to the respondent to reject the sale permission already granted vide order dated 11.10.2011 and quash the same as contrary to law, facts and circumstances, ultra vires, arbitrary and

- i. Contrary to the orders of the Honourable Apex Court dated 30.04.2010 passed in C.C. No. 6342 of 6348 of 2010
- ii. contrary to the orders of the Division Bench of this Court dated 03.12.2009/07.04.2011 passed in W.P. Nos. 10098 of 2008 etc., batch of cases
- iii. Contrary to the report dated 04.11.2009 of the Expert Committee
- iv. contrary to G.O. Ms. No.125, Environment and Forest Department dated 31/08/2010
- v. contrary to the Nilgiris Government Gazzette dated 01.08.2011 and
- vi. contrary to the Judgment and Decree dated 06.01.2015

and consequently direct the respondent to act and issue a revised order in terms of the earlier order dated 11.10.2011, following the Division Bench order of this Court in W.P. No. 10098 of 2008 batch of cases; the report of the Expert Committee dated 04.11.2009; the Government Order in G.O. Ms. No.125, Environment and Forest Department dated 31.08.2010; the Nilgiris District Gazette dated 01.08.2011 and the Judgment and Decree dated 06.01.2015 in O.S. No. 9 of 2012 passed by the District Munsif Court, Udhagamandalam, Nilgiris District, without any deviation.

For Petitioner : Mr. R. Shanmugam
for M/s. Shanmuga Associates

For Respondents : Mr. M. Santhanaraman
Additional Government Pleader
(Forest)

ORDER

R. Subbiah, J

The petitioner has come up with this writ petition praying to quash the order dated 24.02.2017 of the respondent whereby and whereunder the respondent refused to accord permission to the petitioner to sell the land owned and possessed by her in Survey No.144/6 measuring 0.39 acres in Sholur Village, Udagamandalam Taluk, Nilgiris District.

2. According to the petitioner, she is the owner of the land comprised in Survey No. 144/6 (corresponding to Old Survey No.328/1A) measuring an extent of 0.15.80 hectares (0.39 acres) in Sholur Village, Udagamandalam Taluk, Nilgiris District, which she purchased by way of a registered sale deed dated 17.07.1996 registered as document No. 519 of 1996 on the file of Sub-Registrar, Udhagamandalam. After such purchase, the petitioner has mutated the revenue records and obtained Patta No.552 in her name. After sub-division, the land owned by the petitioner was sub-divided and Survey No. 328/1A3 (corresponding to Survey No. 328/1A) was assigned. The land was further sub-divided and the present Survey No.144/6 was assigned for the land owned by the petitioner. It is the contention of the petitioner that she is in possession and enjoyment of the land mentioned above from the date of its purchase on 17.07.1996. It is further stated that apart from the purchase of the land in Survey No.144/6 (corresponding to Old Survey No.328/1A or 328/1A3) measuring 0.39 acres out of 4.61 acres, the husband of the petitioner has also purchased certain lands in the very same locality. In essence, three pieces of lands were purchased by the petitioner and her husband by means of registered sale deeds and they are (i) land in Survey No.328/1A1 measuring 1.42 acres in favour of

the husband of the petitioner (ii) land in Survey No.328/1A2 measuring 2.80 acres in favour of the husband of the petitioner and (iii) land in Survey No.328/1A3 measuring 0.39 acres in favour of the petitioner. According to the petitioner, subsequently, the land belonging to her husband in Survey No.328/1A1 and 328/1A2 got merged as they are owned by one and the same person and new Survey No.144/7 was assigned for which Patta was also issued in favour of her husband bearing Patta No.1374. As far as the petitioner is concerned, as mentioned above, for the land owned by her in Survey No.328/1A3, corresponding to new Survey No.144/6, Patta No.1373 was issued to her. To fortify these re-allotment of survey numbers, the petitioner relies on the proceedings dated 24.02.1997 of the Tahsildar, Udhamandalam.

3. According to the petitioner, while facts are so as stated above, as per the order passed by the Division Bench of this Court in WP No. 10098 of 2008 etc., batch cases, the Government resorted to identify certain lands for setting up 'Elephant Corridor' in Sholur Panchayat as well as in the surrounding Nilgiris District. For this purpose, a committee was appointed to identify the lands for setting up Elephant Corridor and the Committee also submitted a report on 04.11.2009. The report of the Committee clearly spells out the details of Patta lands, Survey Number, Corresponding Survey Number before sub-division, name of the Village where the land is located etc., The report of the expert committee has also been acted upon and given effect to and the Elephant Corridor was duly constituted. While so, as against the order dated 03.12.2009 in WP No. 10098 of 2008 etc., batch cases, Civil Appeal in C.C. No. 6342 to 6348 of 2010 were filed before the Honourable Supreme Court, but the Honourable Supreme Court refused to interfere with the order passed by the Division Bench of this Court. Thereafter, the Government issued G.O. Ms. No.125, Environment and Forest Department dated 31.08.2010 accepting the report of the Expert Committee, which was constituted to identify the lands for setting up Elephant Corridor. According to the petitioner, the report of the Expert Committee did not indicate the land owned by the petitioner in Survey No.144/6 measuring 0.15.80 hectares (0.39 acres) (corresponding to Old Survey No.328/A. While so, the respondent erroneously issued a public notice, published in one issue of English newspaper The Hindu on 07.01.2010 in which the land of the petitioner was also included. The petitioner immediately submitted her representation objecting to the inclusion of her land within the purview of Elephant Corridor and requested to exclude her land. As there was no response from the officials, the petitioner approached this Court and filed WP No. 1897 of 2010 challenging the incorrect paper publication made by the government agencies in The Hindu newspaper dated 07.01.2010. During the pendency of the said Writ Petition, as mentioned

above, Government passed an order in G.O. Ms. No.125, Environment and Forest Department dated 31.08.2010 listing out the lands which are coming within the Elephant Corridor. In the said order, the land of the petitioner was not included. In the light of the above order passed by the Government in G.O. Ms. No.125 dated 31.08.2010, the Division Bench of this Court dismissed WP No. 1897 of 2010 filed by the petitioner on 07.04.2011. Subsequent to the order passed by the Government in G.O. Ms. No.125 dated 31.08.2010, a paper publication was made by the District Forest Officer, The Nilgiris in which the land of the petitioner was not included. Subsequently, a final notification was issued indicating the lands which are forming part of the Elephant Corridor in which also the land of the petitioner was not included. Thus, the land of the petitioner was excluded by the Forest Department in the public notice issued by them. In the light of the above developments, the petitioner submitted an application seeking to issue No Objection to enable her to sell the land and accordingly, by the proceedings dated 11.10.2011 of the respondent, No objection was also issued to the petitioner to sell her land.

4. According to the petitioner, inspite of all the above publications effected declaring the lands which forms part of the Elephant Corridor, the respondent has formed a special team to re-survey the lands in the Elephant Corridor without any valid reasons. On the basis of the reports dated 05.06.2012, 05.06.2012 and 06.06.2012 of the Executive Engineer, Agricultural Engineering Department, The Tahsildar, Udhagamandalam and the District Forest Officer, Udhagamandalam respectively, the respondent passed an order dated 29.06.2012 seeking to cancel the earlier order dated 11.10.2011 conferring No Objection for sale of the land of the petitioner. According to the petitioner, when the permission granted to her to sell her land was in force, on the instructions of the respondent, the officials of the respondent came to the land of the petitioner and attempted to remove the solar fencing put up by her surrounding her land to protect her life, the valuable trees and her property. In such circumstances, to prevent the high handed action of the respondent and his subordinates, the petitioner and her husband filed O.S. No. 9 of 2012 before the District Munsif, Ooty against the respondent and Tahsildar, Udhagamandalam for a permanent injunction restraining them and their subordinates from removing the solar fencing put up by the petitioner surrounding her land. At that point of time, as there was no Presiding Officer in the District Munsif Court, Ooty, the petitioner's husband filed WP No. 16365 of 2012 before this Court seeking to quash the notice dated 20.06.2012 issued by the respondent and for a consequential direction to restrain the respondents from removing the solar the fencing put up by her in her land. In the meanwhile, as the Presiding Officer assumed office in the District Munsif Court, Ooty, the

petitioner withdrew WP No. 16365 of 2012 on 15.03.2013. During the pendency of WP No. 16365 of 2012, respondent passed the order dated 29.06.2012, by which the permission granted to the petitioner to sell her land on 11.10.2011 was cancelled. Challenging the same, petitioner filed WP No. 35362 of 2012 before this Court. In the said writ petition, a counter affidavit was filed contending that permission granted to the petitioner to sell her land was a time bound order within which time she did not sell the land and therefore, the earlier order dated 11.10.2011 is not enforceable under law. The said writ petition No. 35362 of 2012 was allowed by the Division Bench of this Court on the ground that the petitioner was not put on notice before passing the order dated 29.06.2012. Thereafter, the respondent issued a notice calling upon the petitioner to submit her written representation. After affording an opportunity of hearing, the respondent passed the order dated 24.02.2017. According to the petitioner, the order dated 24.02.2017 contained reasons which are verbatim the same as contained in the earlier order dated 29.06.2012. Further, the order dated 24.02.2017 was passed by the first respondent without application of mind and in excess of the jurisdiction conferred under Section 3 (1) of The Tamil Nadu Preservation of Private Forest Act and therefore, she prayed for setting aside the impugned order.

5. The learned counsel appearing for the petitioner would contend that the impugned order has been passed by the respondent purportedly in exercise of the powers conferred under Section 3 (1) (a) of the Tamil Nadu Prevention of Private Forests Act, 1949. The respondent did not consider the fact that Section 3 (1) (a) of the said Act does not empower the respondent to cancel the earlier permission granted to the petitioner. According to the learned counsel for the petitioner, Section 3 (1) (a) of the Act deals with certain acts done by an owner of the land with respect to buying or selling etc., Thus, the learned counsel for the petitioner submits that the invocation of Section 3 (1) (a) of the Act itself is without application of mind and on that ground, the impugned order has to be set aside.

6. The learned counsel for the petitioner would further contend that earlier, the respondent has granted permission to sell the land which belonged to her on 11.10.2011. However, by an order dated 29.06.2012 of the respondent, the earlier order dated 11.10.2011 was recalled purportedly on the ground that in the order dated 11.10.2011, four months time was granted to the petitioner to alienate the land owned by her, but the petitioner did not utilise the time granted to her. According to the petitioner, the order dated 29.06.2012 was subjected to challenge before this Court in WP No. 35362 of 2012. The Division Bench of this Court, by order dated 28.09.2016, allowed

the writ petition and set aside the order dated 29.06.2012 of the petitioner on the ground that the order dated 29.06.2012 was passed by the respondent without affording an opportunity of hearing to the petitioner. Thereafter, a notice dated 31.10.2016 was issued by the respondent calling upon the petitioner to appear for an enquiry on 04.11.2016. Accordingly, the petitioner appeared for the enquiry and produced all the documentary evidence in support of her claim. However, the respondent, without considering any of the objections raised by the petitioner, has passed the order dated 24.02.2017.

7. The learned counsel for the petitioner would contend that the impugned order is contrary to Section 3 (1) (a) of The Tamil Nadu Preservation of Private Forests Act as per which the respondent is only empowered to confer permission to sell the land and the respondent has no power to cancel the earlier permission granted to the petitioner. The learned counsel for the petitioner would further contend that the land owned by the petitioner does not come within the Elephant Corridor which could be evident from the report of the Expert Committee dated 04.11.2009 which was constituted pursuant to the order dated 13.10.2009 passed by the Division Bench of this Court in WP No. 10098 of 2008 and 2762 and 2839 of 2009. The learned counsel for the petitioner also relied on the order passed by the Government in G.O. Ms. No.125, Environment and Forest Department dated 31.08.2010 by which the government has accepted the report dated 04.11.2009 of the Expert Committee in connection with the formation of the elephant corridor. Therefore, even as per the order passed by the Government in G.O. Ms. No.125 dated 31.08.2010, the land which belonged to the petitioner was not included in the Elephant Corridor area in Sholur Village, Nilgiris District. While so, the permission granted in favour of the petitioner to sell her land on 11.10.2011 was erroneously cancelled by the respondent without any basis. The learned counsel for the petitioner also invited the attention of this Court to the Judgment and Decree dated 06.01.2015 passed in O.S. No. 9 of 2012 on the file of the District Munsif Court, Udhamandalam whereby the respondent and his officials were restrained from interfering with the peaceful possession of the land owned by the petitioner. While so, the present order passed by the respondent, cancelling the earlier order dated 11.10.2011 is unjust, arbitrary and illegal. Therefore, the learned counsel for the petitioner prayed for setting aside the order dated 24.02.2017 of the respondent and thus enabling the petitioner to sell the land owned and possessed by her in Survey No.144/6 measuring 0.39 acres in Sholur Village, Udhamandalam Taluk, Nilgiris District.

8. Repudiating the submissions made by the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the respondent made elaborate arguments by placing

reliance on the counter affidavit of the respondent. According to the learned Additional Government Pleader, as per the directions issued by this Court in WP No. 10098 of 2008, 2762 of 2009 and 2839 of 2009, an expert committee was constituted by the Government to identify the 'elephant corridor' in Mudumalai - Segur Plateau. After exhaustive field inspection of all the lands in Sholur, Masinagudi, Hullathi and Kadanadu Villages in Udthagai Taluk, a report dated 04.11.2009 was submitted. During the course of inspection, the committee had taken note of various sub-divisions effected over the lands which formed part of the elephant corridor. As per the findings of the Expert committee, among other lands in Sholur Village, the entire original extent of 6.55.00 hectares of land in sub-divided S.F. No.144/3A1 comes within the purview of the Elephant Corridor. However, while submitting the earlier report, the Committee failed to take note of the subsequent sub-division effected to the land. In other words, the land in Survey No.144/3A1 was sub-divided twice on 14.06.2007 and on 15.07.2008. Therefore, the subsequent sub-division effected in as Survey No.144/3A1, 144/6, 144/7 and 144/8 will not vitiate the earlier report dated 04.11.2009 and it has no consequence. Therefore, it cannot be contended that the land of the petitioner was excluded from the purview of Elephant Corridor, as notified in G.O. Ms. No.125, Environment and Forest Department dated 31.08.2009.

9. According to the learned Additional Government Pleader appearing for the respondent, earlier, permission was granted to the petitioner on 11.10.2011 to sell the land owned by her in S.F. No.144/6 measuring 0.15.80 hectare (39 cents) within four months subject to further condition that the completion of the sale transaction has to be reported to the District Committee with particulars of registered sale deed. However, the petitioner did not avail the opportunity given to her even after lapse of the time indicated therein. Therefore, such permission granted to the petitioner gets lapsed automatically.

10. The learned Additional Government Pleader would further place reliance on the order passed by this Court in WP No. 10098 of 2008 by which this Court directed the resorts and private land owners to handover the vacant land which falls within the elephant Corridor by implementing G.O. Ms. No.125 dated 31.08.2010. Pursuant to such direction, the Principal Conservator of Forest, Chennai, by letter dated 06.01.2012 instructed the District Collector to take effective steps to implement the order passed by the Government. It is on the basis of such order passed by this Court, notices were issued to individual land owners to remove the electric fencing in the lands which were earmarked for setting up elephant corridor. Such a notice was also served on the petitioner, whose land also falls within the Elephant Corridor. Since the petitioner did not handover the land to the respondent, steps were taken to

remove the solar fencing. In order to thwart such an attempt, the petitioner and her husband filed O.S. No. 9 of 2012 before the District Munsif Court, Udthagamandalam for a bare injunction. The Civil Court, without reference to the notifications issued by the respondent and the orders passed by this Court, has erroneously decreed the suit on 06.01.2015 against which CRP No. 3025 of 2016 has been filed and pending before this Court.

11. The learned Additional Government Pleader would vehemently contend that due to inadvertence, the land belonging to the petitioner was not included in the earlier report. However, only after receipt of notice in O.S. No. 9 of 2012 filed by the petitioner, it came to light that the land owned by the petitioner was omitted to be included in the report. Immediately, a special team was constituted to verify the extent of lands in S.F. No. 144/3A1 which was subsequently sub-divided as S.F. No. 144/6 and 144/7. After ascertaining that the land in Survey No.144/3A1 was subsequently sub-divided and it forms part of the elephant corridor, the permission granted to the petitioner to sell her land itself was cancelled by an order dated 29.06.2012. The petitioner has subjected the order dated 29.06.2012 to challenge and this Court, by order dated 28.09.2016 in WP No. 35362 of 2012, set aside the order dated 29.06.2012 mainly on the ground that the said order was passed in violation of principles of natural justice. Pursuant to the order dated 28.09.2016, a notice was issued to the petitioner and she was given an opportunity of hearing. Thereafter, the order dated 24.02.2017 was passed by the respondent, which is impugned in this writ petition. Thus, it is evident that before passing the order dated 24.02.2017, the respondent afforded an opportunity of hearing to the petitioner and therefore, it cannot be said that the order, which is impugned in this writ petition, was passed in violation of principles of natural justice. Above all, the learned Additional Government Pleader would contend that the land in new S.F. No. 144/6 co-relates to old S.F. No. 328/1A measuring 4.61 acres in Sholur Village and this land has been notified as private forest land under Section 1 (2) (ii) of the Tamil Nadu Preservation of Private Forest Act vide Nilgiris District Gazzette Extraordinary No.1 dated 15.11.1991. As per Section 3 of the said Act, a owner of a land, which is classified as Private Forest, cannot sell, mortgage or lease out the said land or in any manner alienate the same or any portion thereof without the previous sanction of the committee. In the present case, without taking note of the sub-divided survey number of the land owned by the petitioner, the respondent conferred No Objection to the petitioner. However, on coming to know the inclusion of the land of the petitioner within the Elephant Corridor, such permission was revoked. When once the No Objection conferred to the petitioner was revoked by passing an order dated 24.02.2017, the petitioner cannot place reliance on the earlier order dated 11.10.2011

granting No Objection in her favour.

12. The learned Additional Government Pleader also brought to the notice of this Court that as against the order dated 24.02.2017, which is impugned in this writ petition, an appeal remedy is available under Section 4 of The Tamil Nadu Preservation of Private Forest Act. When such an alternative remedy of appeal is provided under the Act, the petitioner ought to have filed a statutory appeal. The petitioner, without availing such an alternative remedy, has filed the present writ petition under Article 226 of The Constitution of India and therefore, the writ petition is not maintainable and prayed for dismissal of the same.

13. We have heard the counsel for both sides and perused the material placed on record. It is seen from the records that pursuant to the directions issued by this Court in WP No. 10098 of 2008 etc., certain lands were identified and earmarked for setting up 'elephant Corridor' in The Nilgiris District. According to the petitioner, the Elephant Corridor was set up on the basis of the report submitted by the Expert Committee on 04.11.2009, in which the land in Survey No.144/6, Sholur Village, Udagamandalam Taluk, Nilgiris District does not find a place. Therefore, the petitioner submitted an application seeking permission to sell the lands and accordingly, the respondent granted No Objection in favour of the petitioner to sell her land on 11.10.2011. On perusal of the No Objection dated 11.10.2011 issued by the respondent in favour of the respondent, it is seen that such permission was subject to certain conditions and they are as follows:-

"Hence, permission is granted to Tmt. Shabeen Zainab, 4/28B2, Bokkapuram, Masinagudi to ratify and to sell an extent of 0.39 acres of land from the field in S.No.144/6 of Sholur Village in Udahgai Taluk, The Nilgiris District subject to the following conditions:-

"1. The character or status quo of the lands should not be changed. The land pattern should remain as it is.

2. The trees in the above land should not be cut without the prior permission of the District Committee

3. The boundaries of the lands should be clearly demarcated

4. The Tahsildar, Udahgai and the District Forest Officer, North Division, Udahgai should inspect the field frequently and report violations, if any.

5. The transaction should be completed within a period of four months from the date of the order and the fact of completion of the transaction should

be reported to the office with the document number and the date of execution of the sale deed etc.,

6. A clause should be incorporated in the sale deed to the effect that the sale deed is without prejudice to any action already taken or action proposed to be taken in respect of the lands under the provisions of the Tamil Nadu Land Reforms (FCL) Act, 1961 and subsequent amendments thereon and any other Act in force and this condition is binding on the vendor and the vendee.

7. The transaction time granted in the proceeding to execute sale deed, will not be extended/renewed in future."

14. Therefore, it is evident that the permission granted to the petitioner is attached with certain conditions. One of the conditions is that the petitioner has to complete the sale transaction within a period of four months from the date of the order and that the time granted shall not be extended under any circumstances. Admittedly, the petitioner did not utilise the No Objection granted in her favour to sell the land within the time stipulated. As rightly pointed out by the learned Additional Government Pleader, when once the petitioner failed to adhere to the conditions incorporated in the No Objection given in her favour on 11.10.2011, she is estopped from relying upon the said No Objection given in her favour any further.

15. The next limb of argument advanced by the learned counsel for the petitioner is that the land owned by the petitioner was not included in the report submitted by the expert committee on 04.11.2009 and based on such report, the Government has issued G.O. Ms. No.125, Environment and Forest Department dated 13.08.2010, in which also, the land owned by the petitioner was not included. Thus, it is the main contention of the petitioner that her land does not fall within the purview of elephant corridor. According to the learned counsel for the petitioner, the respondent has erroneously passed the order dated 29.06.2012 cancelling the permission granted to the petitioner on 11.10.2011. In support of this contention, the learned counsel for the petitioner relied on the proceedings dated 24.02.1997 of the Tahsildar, Udhagamandalam showing the sub-divisions effected in respect of the lands owned by the petitioner. In effect, it is the contention of the counsel for the petitioner that the land purchased by her in Survey No. 144/6 corresponds to Survey No. 328/1A which was further sub-divided as Survey No.328/1A3.

16. It is to be noted that even the respondent did not dispute the fact that the land purchased by the petitioner in Survey No. 328/1A was subsequently sub-divided and assigned a new Survey No. 328/1A3 which was further sub-divided as Survey

No.144/6. Further, the title of the petitioner with respect to the land in question is not in dispute. The dispute involved in the present writ petition is whether the land belonged to the petitioner falls within the area earmarked and identified for setting up elephant corridor or not. It is the contention of the respondent that admittedly in the report of the expert committee dated 04.11.2009 and in the order passed by the Government in G.O. Ms. No.125, Environment and Forest Department dated 13.08.2010, the land of the petitioner was not included. It is the further contention of the respondent that the land owned by the petitioner was sub-divided twice on 14.06.2007 and 15.07.2008 and that therefore, due to oversight, the land of the petitioner was not included in the report dated 04.11.2009 of the expert committee, based on which the order in G.O. Ms. No.125 dated 13.08.2010 was passed by the Government. It is also the further contention of the respondent that soon after the omission in not including the lands of the petitioner was brought to the notice of the respondent, an extensive survey and/or inspection was conducted by the respondent and it came to light that the lands owned by the petitioner and her husband in S.F. Nos. 144/6 and 144/7 formed part and parcel of the land in Survey No.144/3A1 but it has been inadvertently omitted to be included in the earlier report dated 04.11.2009 and G.O. Ms. No.125 dated 13.08.2010. Immediately, after examining the report of the members of the District Committee, the permission granted to the petitioner to sell the land was cancelled by passing an order dated 29.06.2012 by the respondent in exercise of the power conferred under Section 3(1) of The Tamil Nadu Preservation of Private Forest Act. According to the learned Additional Government Pleader, when an omission or error in including or excluding a particular land is brought to the notice of the respondent, the respondent is empowered to rectify it and such exercise of power by the respondent cannot be said to be arbitrary or perverse.

17. It is seen from the records that as against the order dated 29.06.2012 of the respondent, the petitioner has filed WP No. 35362 of 2012 praying to call for the records in RC No.A4/20559/2012 dated 29.6.2012 on the file of the respondent and quash the same, as ultra vires, unconstitutional, against the Rule of Law and against the principles of natural justice and consequently direct the respondent not to vary or alter the permission already granted to the petitioner to sell her land in S.No.144/6 in Sholur Village, Nilgiris District, measuring 0.15.80 hectares (0.39 acres) as per the earlier proceedings in R.C.No. A4/ 23889/2010 dated 11.10.2011 issued by the respondent. The said writ petition was allowed by this Court on 28.09.2016 by holding that before passing the order dated 29.06.2012 the respondent did not afford an opportunity of hearing to the petitioner and therefore the said order is in violation of the principles of natural justice. Admittedly,

after the order dated 28.09.2016 was passed, the respondent issued a notice to the petitioner, afforded her an opportunity of hearing, examined the records and thereafter passed the order dated 24.02.2017, which is impugned in this writ petition. In fact, the order dated 24.02.2017 was passed on the basis of the reports dated 05.06.2012, 05.06.2012 and 06.06.2012 of the Executive Engineer, Agricultural Engineering Department, The Tahsildar, Udhagamandalam and the District Forest Officer, Udhagamandalam respectively, cancelling the earlier order dated 11.10.2011 conferring No Objection for sale of the land of the petitioner. Thus, the order dated 24.02.2017 has been passed on the basis of the field inspection conducted by the officials of the various departments. Moreover, only after affording an opportunity of hearing to the petitioner the order dated 24.02.2017 was passed. Therefore, the contention of the petitioner that the order dated 24.02.2017 is in violation of principles of natural justice cannot be countenanced. It is to be noted that when the respondent has passed an order dated 24.02.2017 by acting upon the reports submitted by the officials attached to various departments, after conducting a field inspection, whereby the respondent concluded that the land of the petitioner also comes within the purview of Elephant Corridor, this Court, in exercise of the power conferred under Article 226 of The Constitution of India, cannot conduct a roving enquiry to examine as to whether the respondent is right in excluding or including the lands of the petitioner within the purview of Elephant Corridor. In a Writ Petition, this Court can only examine the compliance of the established procedures contemplated under law by the respondent to arrive at a decision and not the correctness or otherwise of such decision.

18. Yet another contention urged on behalf of the petitioner is that the respondent, in exercise of powers under Section 3 (1) of The Tamil Nadu Preservation of Private Forest Act is only empowered to grant permission and has no power to vary or modify an order already passed. In this context, it is necessary to look into Section 3 of The Tamil Nadu Preservation of Private Forest Act which reads as follows:-

"3. Preservation of private forests:- (1) (a) No owner of any private forest shall, without the previous sanction of the Committee sell, mortgage, lease or otherwise alienate the whole or any portion of the forest

(b) Any alienation in contravention of clause (a) shall be null and void

(i) if the alienation is of any forest declared by the District Collector to be a forest under clause (iii) of Section 1 (2) or of any portion of such a forest and is made on or after the date on which the declaration takes effect

(ii)

(iii) If the alienation is of any other forest or of any portion of such a forest, and is made on or after the 16th August 1946

(2) No owner of any forest and no person claiming under him, whether by virtue of a contract, licence or any other transaction entered into before or after the commencement of the Tamil Nadu Preservation of Private Forest Act, 1946 or any other person shall without the previous permission of the Committee

(a) cut trees or reeds

(b) do any Act likely to denude the forest or diminish its utility as Forest

Provided that nothing contained in this sub-section shall apply to the removal or dead or fallen trees or to any act done for the usual or customary domestic purpose or for making agricultural implements

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) the State Government may exempt any forest or class of forests or class of trees there in from all or any of the provisions of this Section."

19. It is evident that as per Section 3 of The Tamil Nadu Preservation of Private Forest Act, the respondent is empowered to confer permission in favour of an individual land owner to sell, alienate or mortgage the lands which falls within a private forest. When such a power is conferred on the respondent, for violation of any of the conditions incorporated therein, the respondent is equally empowered to rescind, revoke, amend or vary the order granted in favour of the land owner. In this context, reference can be made to Section 15 of The Tamil Nadu General Clauses Act, 1891 which reads as follows:-

"15. Where an Act confers a power to make any rules or by-laws, or to issue notifications or orders, the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, by-laws, notifications or orders."

20. Thus, the powers conferred on the respondent under Section 3 of The Tamil Nadu Preservation of Private Forest Act includes the powers to rescind, revoke or vary the earlier order passed by him, as indicated in Section 15 of The Tamil Nadu General Clauses Act, 1891. In other words, the powers conferred on the respondent under Section 3 of The Tamil Nadu Preservation of Private Forest Act to grant No Objection Certificate to the petitioner to alienate the land belonged to her will certainly

empower the respondent to cancel such order for reasons to be recorded by the respondent. Therefore, it is futile on the part of the petitioner to contend that the order passed by the respondent in exercise of power under 3 of The Tamil Nadu Preservation of Private Forest Act is without authority of law and the said contention is liable only to be rejected.

21. For all the reasons mentioned above, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rsh

To

The District Collector
(Chairman, District Committee)
Nilgiris District

+1 cc to M/s.Shanmugha Associates Advocate sr 35764
+1 cc to the Special Govt Pleader High Court Madras
sr 35798

WP No. 26062 of 2017

gp(co)
aa20/06/2018

सत्यमेव जयते

WEB COPY