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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.S.A.NO.40 OF 2003

1.A.G.Prabhakaran
2.E.Sasidharan

...Appellants/Appellants

Vs.

1.The District Forest Officer
Gudalur Division
Gudalur.

2.The Forest Settlement Officer
R.D.O's Office
Gudalur,
The Nilgiris.

...Respondents/Appellant & 1st Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of Civil Procedure Code read with Section 10 of the Tamil Nadu Forest Act, against the judgment of the District Judge, Nilgiris at Udhagamandalam dated 13.02.2003 in C.M.A.No.23 of 1998 reversing the order of the Forest Settlement Officer, Gudalur, dated 12.05.1998 made in R.C.A.No.58 of 1991.

For Appellants : Mr.S.Gunaseelan

For Respondents : Mr.M.Santhana Raman
Addl. Government Pleader (Forest)

J U D G M E N T

Aggrieved by the order dated 13.02.2003 passed in C.M.A.No.23 of 1998 by the learned District Judge, Nilgiris at Udhagamandalam,, the present Civil Miscellaneous Second Appeal is filed by the claimants / appellants.

2. The claimant/second appellant filed a writ petition in W.P.No.6532 of 1981 for writ of prohibition prohibiting the respondents from taking any proceedings to evict him from his land in S.Nos.141/1A1A35 and 163/C1A to the extent of 1.00 acre and 1.50 acres respectively, in Cherangode Village, Gudalur



Taluk, Nilgiris District, without following the procedures contemplated under Sections 6 to 16 of the Forest Act, 1882.

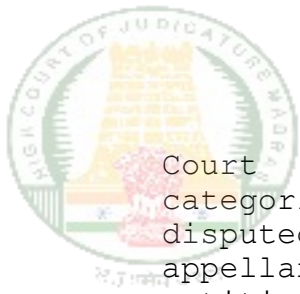
3. This Court by its judgment dated 18.02.1985 allowed the writ petition wherein it was held that in view of the provisions contained in Section 68-A and the rules connected thereto, the petitioner/second appellant cannot be summarily dispossessed without resorting to the due procedure indicated under Section 68-A and the rules framed thereunder, in the matter of eviction of the alleged encroachment by the petitioner/second appellant.

4. Thereafter, the petitioner/second appellant filed a claim petition before the Forest Settlement Officer. He would claim possession of 1.50 acres in R.S.No.77 old S.No.163/C1A1 Part of Cherangode Village. In support of his claim, he produced receipts issued by the Village Administrative Officer for "B" Memo fee and a letter issued by the Tahsildar, Gudalur Taluk, Nilgiris District. Since the land proposed for declaring as reserved forest is surrounded by patta lands of four sides and it is not adjacent to the reserved forest area and considering the possession of the appellant, it was held that it is not suitable for afforestation and consequently, excluded 1.08.0 hectares in R.S.No.776 of Cherangode Village from the proposed Cherangode Forest Block Addition "6". Against which, the Forest Department went on appeal in C.M.A.No.55 of 1995 and the District Court, by its order dated 12.02.1998, set aside the order and remanded the matter for fresh disposal after examination of witnesses as per procedure.

5. The Forest Settlement Officer again excluded the land from the Forest Block. Against which, Forest Department filed C.M.A.No.23 of 1998 before the District Court, Nilgiris. The District Court, Nilgiris, after finding that the appellants are unauthorised encroachers, reversed the findings of the Forest Settlement Officer and declared the land as reserve forest. The appellants would contend that in view of their long possession, they are entitled to the land and that only by mere notification, the land was included in the notification, will not come under reserve forest. It can be declared as a reserve forest after the finding is given by the Forest Settlement Officer and after finally published in the Government Gazette. Since the appellants and their ancestors are in possession from the year 1958 uninterruptedly and the revenue records established their possession, the order passed by the District Court, Nilgiris, is erroneous and liable to be set aside.

6. I have considered the rival contentions.

7. At the outset, relying on the judgment of this



Court in W.P.No.6532 of 1981 dated 18.02.1985, it is categorically proved that the lands which fall under the disputed survey numbers belongs to the Government and the first appellant is only an encroacher. Along with the writ petitioner/second appellant, in W.P.No.6532 of 1981, the first appellant has also filed a claim before the Forest Settlement Officer. Other than claiming that he has paid penal charges to the revenue officials, the petitioner does not produce any documentary evidence to show his possession or title.

8. It is well settled that the lands in Gudalur area were belonging to Nilambur Janmies till 1969 when Gudalur Jenmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 was passed. In the year 1974, the land is vested with the Government as forest land, after it came into force on 27.11.1974. The appellant can claim right over the property either as a lessee under the Nilambur Janmies or an occupier or a person through a lessee in possession of the property. In that event, he should have applied for patta under Jenmam Act. But the claim that the appellant and his ancestors were in possession of the property for over 60 years cannot be accepted without any documentary evidence. Further, payment of penal charges to revenue department will not confer any right on the appellants. In so far as the forest lands are concerned, the revenue officials have no right to issue pattas or "B" Memos whatsoever.

9. This Court in W.P.Nos.13624 to 13628 of 1999 dated 17.08.1999, has held as under:

"Though the individual has claimed that he has occupied the lands of the Government, that such land occupied by encroachment cannot be treated as occupied land. The payment of penal levy will not regularise their occupation. In the above decision, a Division Bench decision in W.A.No.641 of 1996 was followed which reads as follows:

"We are of the view that in the District of Ooty, encroachment of the forest land is increasing day by day..... we cannot appreciate the apathy of the Government officer and the Government in taking action against such encroacher. It is the safety and security of the forest that ensure the ecological balance in the District of Ooty. Therefore, we direct the State Government to take appropriate action in accordance with



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law for "eviction of the encroachers".

The Division Bench also directed that the Government should take action in respect of all such encroachments in accordance of (End of the 8th page in the original) with law in the District of Ooty. Further, the Supreme Court's decision in Writ Petition (Civil) No.202 of 1995 dated 7.5.1999 has passed a general order in I.A.No.400 etc., that no patta with regard to any forest land shall be granted nor shall any encroachment be regularised. In the decision, it is also further directed that both the Division Bench of the Hon'ble High Court as well as the Supreme Court held that the encroachment should not be regularised and no patta should be granted for the encroachers, on the contrary, that the encroachers should be evicted."

10. This Court in SIRUMALAI PAZHATHOTTA VIVASAYIGAL SANGAM REP. BY ITS PRESIDENT DURAISAMY BOOPATHY AND OTHERS VS. THE STATE OF TAMIL NADU REP. BY ITS SECRETARY, DEPARTMENT OF FOREST AND ENVIRONMENT AND OTHERS [W.P.NOS.731 OF 2007 ETC., BATCH DECIDED ON 13.07.2011] has observed as follows:

" 25. Therefore, the only question that arise for consideration is whether the petitioners have made out any case for countenancing the prayer made by them?. It must be noted that the association of the residents which original moved the Madurai Bench and got a direction to consider their representation and when it was refused, filing subsequent petitions before the Principal Bench for reasons best known to them is contrary to the jurisdiction vested on respective benches. In any event, their attempt to reopen the controversies which were already settled by virtue of final notification cannot be reopened at the instance of the third party like the petitioner association and individual petitioners. After proclamation under Section 6, none of the persons have filed any claim before the settlement officer. It would not be open to them to state that due procedure was not followed in issuing the final notification. The petitioners having B-memos in their possession has no relevance in deciding the issue raised in the present writ petitions. As rightly contended by the forest department, the



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revenue authorities have no holding in respect of the forest lands and even otherwise B-Memo does not confer any legal right.

26. The petitioners' other submission that they are entitled to have pattas for the said lands was also not proved before the authorities. In any event, if any patta was issued that will be directly in conflict with the order passed by the Supreme Court in I.A.No.418 in W.P.(C)No.202 of 1995, dated 7.5.1999. By the said order, the Supreme Court has held that no patta with reference to any forest land will be granted nor shall any encroachment be regularized. Therefore, the petitioners instead of moving the Supreme Court have come to this court for achieving some collateral benefits. In the present case, after abolition of the Inam under 1945 Act, the lands were taken over by the State and entrusted to the forest department to be kept as forest land. The State Government by virtue of the statutory power had issued a draft notification under Section 4 and thereafter published a final notification. While doing so, they had also exempted and recognized the public pathway which was in existence before the draft notification and no exception can be taken to the same.

27. In this context, it is necessary to refer to the attempt made by the Supreme Court to keep the forest free from encroachment and the necessity for keeping minimum forest cover so that environment degradation cannot take place. The Supreme Court in T.N. Godavarman Thirumulpad v. Union of India reported in (1997) 2 SCC 267 dealt with the need to keep the forest land as forest and in paragraphs 3 and 4 had observed as follows:

"3. It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short the Act) and the meaning of the word forest used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of



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certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word forest must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term forest land, occurring in Section 2, will not only include forest as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*¹, *Rural Litigation and Entitlement Kendra v. State of U.P.*² and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*)³. The earlier decision of this Court in *State of Bihar v. Bansi Ram Modi*⁴ has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the



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decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay." "

11. The above order granted by the Hon'ble Supreme Court is still in force. The petitioners, admittedly were in possession of the lands by virtue of "B" Memos issued by revenue department. As already premised in the judgments "B" memo will not confer any right or title and it only substantiate the status of the petitioners as encroachers as projected by them in the previous round of litigation in W.P.No.6532 of 1981. While so, without any evidence, the Forest Settlement Officer had excluded the property from forest land. The District Court has rightly found that merely on the basis of oral evidence, the land cannot be excluded and it should be construed as a reserve forest. In such circumstances, I do not find any illegality or infirmity in the order passed by the learned District Judge, Nilgiris.

12. Accordingly, the Civil Miscellaneous Second Appeal is dismissed. No costs.

TK

Sd/-

Assistant Registrar (CS VI)

// True Copy//

Sub Assistant Registrar

To

1.The District Judge Nilgiris at Udthagamandalam.

2.The Forest Settlement Officer
R.D.O's Office
Gudalur, The Nilgiris.



3. The Section Officer, V.R. Sec.
High Court, Madras.

+ 1 cc to Mr.S.Gunaseelan, Advocate Sr 31946

KR/4/10/18

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