

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.15348 of 2018 and
W.M.P.Nos.18247 & 35450 of 2018

- 1.Madhesh
- 2.Manickam
- 3.Chinna Goundar
- 4.Kandhasamy
- 5.Amudha
- 6.Natraj
- 7.A.C.Murugesan
- 8.Mani (A) Manivannan
- 9.Arumugam
- 10.Subramaniyan
- 11.Palani Ammal
- 12.Subramani
- 13.Raja
- 14.Govindharaj
- 15.Saradha Mani (A) Saradhambal
- 16.Setu
- 17.Raju
- 18.Natesan
- 19.Kali
- 20.Koolandhai
- 21.Subramani
- 22.Arunachalam
- 23.Aiyyanar
- 24.Valli
- 25.Anbarasan

.. Petitioners

Vs.

- 1.The District Collector,
Salem District,
Collectorate,
Salem.

- 2.The District Revenue Officer,
Salem.

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3.The District Forest Officer,
Salem.

4.Forest Range Officer,
Servarayan South Range,
Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records of the 4th respondent in connection with the eviction notice dated 13.06.2018, issued under Section 68-A of the Tamil Nadu Forest, Act 1882 and quash the same and direct the respondents not the dispossess the petitioners herein of their respective shares in the land comprised in Survey No.1 of Suriyur Village of Salem Taluk, Salem District.

For Petitioners : Mr.S.Jayakumar

For Respondents : Mr.S.Kamalesh Kannan,
Government Advocate (R1 & R2)

Mr.S.V.Vijay Prasad,
Special Government Pleader (Forest)
(R3 & R4)

O R D E R

(Order of the Court made by M.DURAI SWAMY,J.)

The petitioners have filed the above Writ Petition to issue a Writ of certiorarified mandamus calling for the records of the 4th respondent in connection with the eviction notice dated 13.06.2018, issued under Section 68-A of the Tamil Nadu Forest, Act 1882 and quash the same and direct the respondents not the dispossess the petitioners herein of their respective shares in the land comprised in Survey No.1 of Suriyur Village of Salem Taluk, Salem District.

2.It is the case of the petitioners that they along with some other residents of the Village made representations to the Salem District Administration for issuance of patta and the same was not considered and since the same was not considered by the authorities, they filed a Writ Petition in W.P.No.2301 of 1992 and this Court, by order dated 11.12.1996, directed the District Administration to conduct an enquiry with regard to the claims made by the petitioners and take necessary action as per law. Subsequently, by order dated 05.11.2004, the District Collector, the 1st respondent, rejected the representations given by the petitioners, against which the petitioners filed a Writ Petition

in W.P.No.1963 of 2006, which was dismissed by this Court on 19.10.2012. As against the dismissal of the Writ Petition, the petitioners preferred an appeal in W.A.No.2467 of 2012, which was also dismissed by the Division Bench of this Court on 19.03.2018. Against the dismissal of the Writ Appeal, the petitioners preferred an appeal in S.L.P.(Civil) No.18974 of 2018 and the Hon'ble Supreme Court, by order dated 03.08.2018, dismissed the Special Leave Petition. However, made it clear that the rights, if any, under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are left open to be agitated before appropriate Forum. Further, the Apex Court observed that the petitioners will not be removed for a period of twelve weeks from 03.08.2018. By eviction notice dated 13.06.2018, which is impugned in this Writ Petition, the 4th respondent called upon the petitioners to vacate the lands within ten days time.

3.The 4th respondent filed his counter and extracted the order passed in W.P.No.1963 of 2007 and also the order passed by the Hon'ble Supreme Court in S.L.P.(Civil) No.18974 of 2018. Further, the 4th respondent has stated that twelve weeks time granted by the Apex Court expires on 26.10.2018 and the encroachers will be removed on the said date.

4.The learned counsel appearing for the petitioners submitted that the petitioners are forest dwellers and therefore, their possession should be protected.

5.The learned Special Government Pleader (Forest) appearing for the respondents 3 & 4 submitted that the petitioners are not forest dwellers and therefore, no indulgence be shown to them. Further, the learned Special Government Pleader submitted that the petitioners themselves have stated that the land is not a forest land.

6.On a perusal of the order passed in W.P.No.1963 of 2006, it could be seen that the petitioners themselves have stated that the land is not a forest land. When the petitioners claim that it is not a forest land, they cannot be termed as forest dwellers. The relevant portion of the order passed in W.P.No.1963 of 2006 dated 19.10.2012 is extracted below:

"...

20.The learned Senior counsel for the petitioners invited my attention to the detailed report submitted by the National Commission for Scheduled Castes and Scheduled Tribes, after visiting the area in question. I have gone through the said report. The said report, cannot be relied upon for a variety of reasons. The report records the fact that persons who are affected by the stand taken by the respondents, are not only

those belonging to the Scheduled Castes, but also those belonging to Backward Classes. At the same time, the Commission has referred to the provisions of The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act, 2006. But the said Act, does not apply to persons belonging to Backward Communities. Moreover, the said Act, applies only to a person who is a forest dweller. The petitioners have not come up with a claim that they are forest dwellers. Obviously they cannot claim to be so. If the petitioners claim that they are forest dwellers, then there should be a forest. In other words, if the petitioners are to be recognised as forest dwellers, then the land should necessarily be a forest land. The petitioners claim that it is not a forest land. Therefore, they cannot be termed as forest dwellers. But the report of the National Commission for Scheduled Castes and Scheduled Tribes, overlooks these aspects and makes a simple recommendation for the grant of patta on humanitarian grounds. Therefore, the report of the National Commission, cannot be accepted.

21. The contention that the District Collector did not make an inspection, does not appear to be factually correct. At least after the interim direction issued by this Court, an inspection had been carried out.

22. The learned Senior Counsel for the petitioners drew my attention to page 10 of the Re-survey and Re-settlement Register of the Village and pointed out that wherever a land is classified as a reserve forest, the Register also contained a footnote mentioning the particulars of the notification under which the classification was made. But in respect of the land in question, there was no footnote in the relevant page, where the land is shown to be a reserve forest. Therefore, the learned Senior Counsel contended that the entry in the "A" Register cannot be relied upon.

23. I do not think that the absence of a footnote containing the details of the notification under which the classification was made, can be a ground to hold the entry in the Register to be not reliable. All entries in the official records are presumed to be validly made, till they are set aside. Therefore, I have no reason to suspect the entry in the village Register.

24. In view of the above, I see no merits in the writ petition and hence it is dismissed. There will be no order as to costs. Consequently, connected

miscellaneous petition is also dismissed."

6.1.As against the order passed by the learned Single Judge, the petitioners have filed an appeal in W.A.No.2467 of 2012 and the Division Bench of this Court, by order dated 19.03.2018, dismissed the Writ Appeal, finding that the petitioners have not proved that the lands were not included in the "Reserved Forest". When the burden lies on the petitioners, they have not discharged the said burden. Further, the entries made in the Re-settlement records also stare at them. In the records, it is specifically mentioned that the lands are Reserved Forest. While approaching the 1st respondent, the District Collector, for issuance of patta, the petitioners claimed that it is not a Reserved Forest and therefore, they are entitled to get patta. But now, they have taken a U turn and claimed that the lands are in Reserved Forest and that they are forest dwellers. The petitioners cannot be allowed to take inconsistent and contrary stand now in the present proceedings. As already stated, since the petitioners themselves have stated that the land is not a forest land, they cannot be construed as forest dwellers.

7.From the contrary stand taken by the petitioners, it is clear that the petitioners have not approached the Court with clean hands. Even while disposing of the Writ Appeal in W.A.No.2467 of 2012, the Division Bench of this Court observed that the petitioners should be evicted only under due process of law. Accordingly, the 4th respondent had issued the impugned eviction notice dated 13.06.2018 under Section 68-A of the Tamil Nadu Forest Act for evicting the petitioners. Since the 4th respondent had initiated action following due process of law, we do not find any ground to interfere with the same. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Salem District,
Collectorate, Salem.

2.The District Revenue Officer,
Salem.

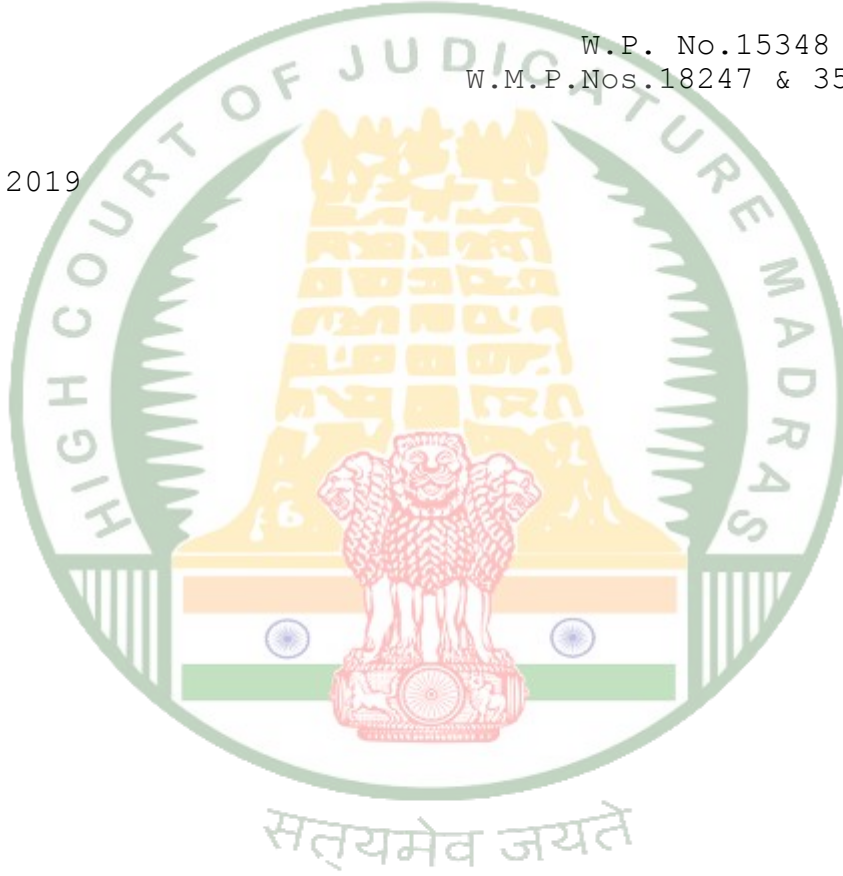
3.The District Forest Officer,
Salem.

4.Forest Range Officer,
Servarayan South Range,
Salem.

+2 cc to Mr.S.Jayakumar, Advocate Sr.No.83403

W.P. No.15348 of 2018 and
W.M.P.Nos.18247 & 35450 of 2018

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