

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.07.2018

Delivered on: 03.08.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.29226 of 2012

The Qauide Milleth Educational and Social Trust,
Represented by its The General Secretary
M.G.Dawood Miakhan
Having office at No.1, Mani Mudaliyar Garden,
Poes Road, 3rd Street,
Teynampet, Chennai-18.

.... Petitioner

vs

1. The Principal Secretary to Government,
Environment and Forest department,
Fort St George, Chennai-9.
2. The Principal Secretary &
Commissioner of Land Administration,
Chennai-9.
3. The Principal Chief Conservator of Forest,
Office of the Principal Chief Conservator of Forest,
Saidapet, Chennai-15.
4. The Conservator of Forest,
Office of the Conservator of Forest,
Chennai-15.
5. The District Forest Officer,
Chengleput Division,
Kancheepuram.
6. The Collector of Kancheepuram District,
Office of the Collector Kancheepuram District,
Kancheepuram Town And District.
7. The Thasildar,
Shollinganallur Taluk,
Kancheepuram District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for records of the 1st Respondent bearing G.O.(Ms) No.226 Environment and Forests (FR 10) Department Dated 25/9/2012 and the consequential communication issued by the 5th Respondent bearing reference C No.72 39/03/D dated 17/10/2012 received on 18/10/2012 quash the same and thereon for bearing the Respondents from any manner proceeding with the resumption of the 29.33 acres of lands out of the 40 acres of land in Survey No. 273/A of Nanmangalam Reserved Forest Saidapet Taluk (presently Shollinganallur Taluk) Chengleput district (presently Kancheepuram district)

For Petitioner : Mr. G. Masilamani, S.C., for
M/s.A. Palaniappan

For Respondents : Mr. Vijay Narayaan, AG
Assisted by
Mr.S.V.Vijay Prashant AGP(F)

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for records of the 1st Respondent bearing G.O.(Ms) No.226 Environment and Forests (FR 10) Department Dated 25/9/2012 and the consequential communication issued by the 5th Respondent bearing reference C No.72 39/03/D dated 17/10/2012 received on 18/10/2012 quash the same and thereon for bearing the Respondents from any manner proceeding with the resumption of the 29.33 acres of lands out of the 40 acres of land in Survey No. 273/A of Nanmangalam Reserved Forest Saidapet Taluk (presently Shollinganallur Taluk) Chengleput District (presently Kancheepuram district)."

2. The petitioner is an Educational and Social Trust registered under the Tamil Nadu Societies Registration Act, 1975. The primary object for the said trust is to promote education of all types and grades among the people of the country and with a view to remove ignorance, illiteracy and uplift the standard of the deprived and downtrodden minority classes. In furtherance of the activities of the trust, a request was made to the Government for assignment of lands. In consideration of the request of the petitioner trust, the first respondent issued G.O.(Ms).No. 18 dated 10.01.1975 assigning 40 acres of forest land in Nanmangalam Reserved Forest, Saidapet

Taluk (presently Shollinganallur Taluk), the then Chengalpattu district (presently Kancheepuram District) and on such assignment, the land was placed at the disposal of the said trust for further activities. According to the said G.O., a token land value was fixed at the rate of Rs.100/- per acre and the petitioner trust paid Rs.4000/- towards consideration for assigning the 40 acres of land in the reserved forest.

3. After the assignment of the land and aforesaid Government Order, the revenue authority namely, District Revenue Officer had issued a communication dated 06.02.1975 towards the alignment of 40 acres of forest land. In the said communication, the District Revenue Officer has clearly informed the petitioner trust that the land shall be used for the construction of college for educational purpose only and for no other purposes and in the event of any violation of the conditions attached to the assignment, the land may be resumed wholly or partly by the Government. The petitioner trust in response to the assignment of the land vide G.O.M.S.No.18 dated 10.01.1975, subsequently made an request to the Government for assignment of alternative land on the Southern portion of subject land instead of the Northern portion originally assigned, since the original assignment was not found suitable for their purpose. In consideration of the request made by the petitioner trust, a further order was issued in G.O. Ms.No.479 dated 17.05.1975 granting assignment of the Southern portion of the land in survey No.273/A of Nanmangalam Reserved Forest. As per the said Government Order, plantations and the standing trees in the land are to be placed at the disposal of the trust, may be removed either by the Forest Department or by the lessee before handing over the area to the trust. In pursuance of of the assignment under the aforesaid G.O., 5th respondent District Forest Officer has written to the Forest Range Officer for removing the trees grown in the land in order to hand over the property to the petitioner trust. The letter of the District Forest Officer was dated 21.5.1975.

4. One of the important conditions laid down in the assignment order was that the building has to be erected within a period of two years from the date of handing over the land. According to the petitioner trust, the building was erected in two years in compliance of the conditions and the academic activity of the college namely, Quaide Milleth College for Men at Medavakkam was commenced in the year 1977 and the college was affiliated to the University of Madras. The college was also recognized as "aided minority institution".

5. At the time of assignment of the lands to the petitioner trust, it was informed by the Government and the Forest Officials that the standing trees and the plantations were to be removed by the Forest Department or by the lessee. However, according to the petitioner trust, the entire area covering 40 acres of land assigned to the petitioner trust was not cleared as provided in the Government Orders. Because of inaction on the part of the respondents, the petitioner trust could not put the entire land to use for the educational purpose and they were able to put up construction only in portion of land to an extent of 40,000 square feet, consisting of class rooms, libraries, staff rooms, computer labs, etc., besides a separate area for administrative office and seminar hall.

6. After the assignment of lands in 1975, petitioner trust has been repeatedly requesting the respondents for taking suitable action for de-reservation of land as according to the petitioner, the entire consideration for assignment of 40 acres had been paid at the time of assignment in 1975 namely, Rs.4000/- for 40 acres. However, the request for de-reservation did not come through despite several requests made in this regard on behalf of the petitioner trust. In the meanwhile, the Forest (Conservation) Act, 1980 was enacted by the Central Government, wherein, it is provided that approval of the Central Government was necessary for de-reservation of reserved forests for use of forest land and for non-forest purposes. However, notwithstanding the central enactment which had come into effect on 25.10.1980, the college continued to function and catering to higher educational needs to the down trodden and the minority community.

According to the petitioner trust, they were effectively using an extent of 18 acres of the land assigned to them and the remaining land could not be utilized in view of the inaction on the part of the authorities concerned for not removing the plantation and the wild jungle growth in the land. But however, the averment regarding the actual utilization of the land is disputed by the respondents, stating that the actual land which was put to use was only an extent of 10.67 acres and the remaining area of 29.33 acres consisting of plantations and wild jungle growth, was not put to use at all by the petitioner trust.

7. After coming into force the Forest (Conservation) Act, 1980, the petitioner trust was informed not to carry on their non-forest activity in the remaining portion of the land i.e. 29.33 acres of the reserved forest out of 40 acres assigned to them. In the meanwhile, the Hon'ble Supreme Court of India, in a decision reported in "1997 (2) SCC 267 (T.N. Godavarman Thirumulpad vs Union Of India & Ors)", has given several

directives in order to implement the provisions of the Forest (Conservation) Act, 1980. Several directions were issued by the Hon'ble Supreme Court of India in order to protect the ecology of the forest land. It also appears that on the basis of the directions given by the Hon'ble Supreme Court of India, a High Power Central Committee was also formed to regulate the activities in the forest areas covered under the Forest (Conservation) Act 1980. Since the major portion of the land assigned to the petitioner trust was remaining un-utilized, the authorities have informed the petitioner trust to return the un-utilized portion of the land since non-forest activity was completely banned after coming into force the Forest (Conservation) Act, 1980 and also in view of the orders passed by the Hon'ble Supreme Court of India. At this, the petitioner trust informed the District Forest Officer by their communication dated 04.09.2008 that as far as the assignment of the land to them is concerned, the same was not covered by the Forest (Conservation) Act 1980 as assignment had taken place much before the Act. In any event, it was contended by the Trust that it was a clear case of conveyance and the question of returning the land or resumption of the same would not arise.

8. It, however appears that subsequently on advise, the petitioner approached the Hon'ble Supreme Court and filed I.A.Nos.142-143 in W.P.(C) No.337 of 1995, seeking for de-reservation of the land in question in terms of G.O.Ms.No.479 dated 17.5.1975. The Hon'ble Supreme Court of India, after hearing the submissions made on behalf of the petitioner trust, disposed of the applications by a common order, dated 16.9.2011 with the following observation:

"Appellant seeks de-reservation of certain areas which fall under the Reserve Forest. Learned counsel appearing for the applicant submits that even though they had approached the State Government vide letter dated 9.11.2009, they were advised to approach this Court for getting clearance for de-reservation of the forest land.

Learned Senior counsel Mr.Punjwani appearing before us referred to the letter of the Tamil Nadu Forest Department dated 12.5.2010 stating that the District Forest Officer has reported that only an extent of 10.67 acres of land is being utilized by the Trust and the balance area of 29.33 acres mostly consist of plantations and wild jungle growth.

We find it is not necessary to express our opinion on the various questions raised before us. We feel it appropriate that the matter be

examined by the State Government after conducting proper inquiry and taking note of the opinion expressed by the Forest Department. If the State Government finds that the matter requires approval under the Forest (Conservation) Act, then it may be referred to the Central Government and the Central Government will examine the same and pass appropriate orders in accordance with law.

Since the matter is pending before the State Government for a considerable long period, we direct the State Government to pass appropriate orders within three months from the date of receipt of copy of the order.

Applicant is also permitted to file proper application to the State Government within a period of two weeks from today.

I.As. stand disposed of accordingly."

9. Pursuant to the above order passed by the Hon'ble Supreme Court in the Interlocutory Applications, the petitioner trust approached the first respondent vide their application dated 03.10.2011 seeking de-reservation of land in S.No.273/A, Nanmangalam village, Saidapet taluk, Chinglepet District for the entire area of 40 acres of land. In the application, it was also mentioned by the trust that the built up area was to the extent of 52000 square feet, but for other amenities, an area to the extent of 18 acres has been utilized. The petitioner trust requested the first respondent for de-reservation of the entire land as they were also proposing to offer new courses by which, downtrodden and weaker sections will be benefitted. The trust also stated in the application said that it was a non-profit society. In response to the letter, dated 03.10.2011, the first respondent addressed a communication dated 02.02.2012 directing the trust to attend the hearing with the relevant documents and the meeting was slated on 9.2.2012. As per the direction, the meeting was attended by the trust and all the relevant documents were produced and recording the submissions of the trust before the first respondent in the aforesaid meeting, a communication was also issued to that effect on 15.02.2012 by the trust. In the said communication, the trust has contended that it was due to non-performance of the Government towards de-reservation for several years which prevented the trust from utilizing the entire area for educational purpose. Thereafter, it appears that several correspondences were exchanged between various officials and also the petitioner trust in regard to resumption of unutilized portion of the land. Finally, the first respondent issued a G.O.Ms.No.226 dated 25.9.2012 accepting the proposal of the Principal Chief Conservator of Forests that 29.33 acres

of reserved forest land out of the 40 acres of land placed at the disposal of the petitioner trust be resumed. The Principal Chief Conservator of Forests was directed to take follow up action in that regard. As a consequence of the Government Order, a further communication was sent by the District Forest Officer to the petitioner trust on 17.10.2012 directing the petitioner trust to co-operate with the authority towards resumption of the un-utilized land to the extent of 29.33 acres out of 40 acres originally assigned to them in 1975. The said G.O. dated 25.9.2012 and consequential order of the District Forest Officer, dated 17.10.2012 are put to challenge in the present Writ Petition.

10. Shri G.Masilamani, learned senior counsel appearing for the petitioner Trust, at the outset would draw the attention of this Court to the Government Orders in G.O.Ms.Nos.18, dated 10.1.1975 and 479, dated 17.5.1975 in which, it is clearly mentioned that the petitioner Trust had paid the entire consideration of Rs.4000/- by way of cost towards sale value of 40 acres of land assigned to them. The agreement which is entered into by the parties in pursuant to the Government Order, has clearly mentioned that the land is conveyed and transferred to the party of the First Part, namely, the petitioner Trust, that being the case, the question of resumption of the land by the Government was not permissible since by such conveyance, the petitioner Trust became absolute owner of the property and the title vested in the Trust on transfer of the land in 1975.

11. The learned senior counsel would therefore submit that the Forest (Conservation) Act, 1980 which came into force on 25.10.1980 has prospective application and cannot be retrospectively applied for the assignment/conveyance which took place prior to the said date, namely, 1975. He would submit that Sub Clause (iv) of Section 2 of the Forest (Conservation) Act, 1980 cannot be applied to the present case, since as per the assignment and agreement, the land allotted contained only plantation trees which were used by a Paper Mill for their activity. Sub Clause (iv) of Section 2 of the Forest (Conservation) Act, 1980 is reproduced below for better understanding of the case.

"(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-forestation."

Explanation- For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for."

12. The learned senior counsel would submit that since admittedly, it was only a plantation growth in the land, the question of obtaining permission from any authority did not arise in the first place and the question of application of provisions of Forest (Conservation) Act, 1980 also would not arise. He would further submit that the Hon'ble Supreme Court of India, in its decision as cited supra in "1997 (2) SCC 267 (T.N. Godavarman Thirumulpad vs Union Of India & Ors)" has held as under:

"IV. FOR THE STATE OF TAMIL NADU:

1. There will be a complete ban on felling of trees in all forest areas'. This will however not apply to:-

(a) trees which have been planted and grown, and are not of spontaneous growth, and

(b) are in areas which were not forests earlier, but were cleared for any reason.

2. The State Government, within four weeks from today, is to constitute a committee for identifying all "forests".

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

a) The felling of shade trees in these plantations will be -

i) limited to trees which have been planted, and not those which have grown spontaneously;

ii) limited to the species identified in the TANTEA report;

iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and

iv) under the supervision of the statutory committee constituted by the State Government.

b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of Shade trees, and the further action for felling them will be as per that report. Meanwhile, eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

c) the State Government is directed to ascertain and identify those areas of the plantation which are a "forest" and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub- paras (b) and (c) above will not apply to such areas.

d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of "forests".

5. As far as the trees already cut, prior to the interim order of this court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one time measure.

6. Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal Nos. 367 to 375 of 1977 in C.A. Nos. 1344-45 of 1976. After the order is made in those Civil Appeals on the I.As. pending therein, if necessary, this aspect may be re- examined.

7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court, including the High Court."

13. In this case, admittedly, trees were planted and grown and therefore, the directions of the Hon'ble Supreme Court will not apply for removal of the trees and the ban as provided under

the Act will have no operation if such trees being felled down or removed. The learned senior counsel would submit that it was not the fault of the petitioner Trust for not utilizing the entire 40 acres of land, as the petitioner was prevented from utilizing the same by inaction on the part of the respondents for not clearing the land assigned to the Trust. The petitioner Trust had periodically requested in that regard, but no effective steps were initiated by the authorities concerned for clearing the forest to enable the Trust to utilize the entire lands assigned to them. According to the learned senior counsel, the possession of the Trust vis-a-vis the provisions of the Forest (Conservation) Act 1980 was clearly disclosed in the communication dated 4.9.2008 to the District Forest Officer stating that the Forest authority had already permitted the conveyance of the entire area and the entire lands were handed over well ahead of the Act and the College was established on the structures built on the land as early as in the year 1977.

14. The learned senior counsel would in any event submit that on the basis of Survey Report submitted by the Collector, it was confirmed that usage of the land by the petitioner Trust was to an extent of 16.85 acres and this was also communicated to the first respondent by the Trust by their letter dated 20.3.2012. Therefore, he would submit that notwithstanding the objection to the resumption of the land to the extent of entire land, the statement by the Conservator of Forest, it was only 10.67 acres have been utilized by the Trust is a matter of dispute. According to the petitioner Trust, they are utilizing more than 18 acres of land. According to the senior counsel, one other survey conducted by private Surveyors, confirmed the land under use by the Trust was 21.11 acres and unutilized land was 17.89 acres as evidenced by the letter issued by the Trust to the first respondent dated 20.3.2012.

15. The learned senior counsel would submit that the respondents have prevented the petitioner trust from utilizing the entire land assigned to them on one hand, on the other, they are seeking to resume the un-utilized land by resorting to the provisions of Forest (Conservation) Act which came into force subsequent to the conveyance of the land to the petitioner Trust. In any event, the learned senior counsel would reiterate that the land was conveyed and transferred and the same cannot be subjected to resumption by the Government, since admittedly, the entire consideration was paid at the time of assignment of the land. He would therefore submit that the impugned action by the first respondent towards resumption of the land to an extent of undeveloped area of 29.33 acres of land out of 40 acres of land assigned to the petitioner, cannot be countenanced both in law and on facts and therefore, the same is liable to be interfered with.

16. Per contra, the learned Advocate General appearing for the respondents would make the following submissions.

17. According to the learned Advocate General, one of the conditions of allotment vide G.O.Ms.No.479 dated 17.5.1975 has clearly stipulated that if under any circumstances, the land could not be utilized for the purpose for which it has been assigned, the entire area shall revert to the Forest Department. The agreement executed between the parties, viz., the petitioner trust and the Forest Department vis-a-vis conditions stipulated therein, are extracted as under:

It is hereby agreed between the parties that in consideration of the payment of cost of the land dated in G.O.Ms.No.479 Forest and Fisheries, dated 17.5.1975, the land is conveyed and transferred to the party of the First part on the following terms and conditions:

1.The land shall be used as the site for construction of a college for educational purposes only and for no other purpose.

2.The land value, stone-value, sub division fee etc., shall be paid by the party of First Part as fixed by the party of the second part.

3.The part of the second part may resume the land on part with any buildings thereon, in the event of the infringement of any of the conditions of the grant. In these event of such resumption no compensation shall be payable for any improvements that may have been effected, or other words that may have been executed on the land by the party of the first part and the party of the first part shall not be entitled to the repayment of any amount that may have been paid to the party of the second part for the grant. If there are buildings on the land, the party of the second part may direct the grantee to remove them.

The Party of the Second Part may resume the land wholly or in part, (with any buildings thereon) if in the opinion of the party of the second part, the land is required for a public purpose or for conducting mining operation. In the event of such resumption or in the event of the acquisition of the land for any reason the

compensation payable for the land and trees, shall in no exceed the amount paid for them by the party of the part or their value at the time of resumption or acquisition whichever may be less.

In the event of resumption under condition (3) if there are buildings on the land, the Party of the Second part shall pay compensation for them in accordance with the provisions of condition (5).

In the event of the resumption of land under condition (3) or in the event of the acquisition of the land for any reason the compensation payable for buildings or other improvements shall in no case exceed the amount paid for them by the party of the First Part at the time of grant or their value at the time of resumption or acquisition whichever may be less, together with the initial cost or the value at the time of resumption or acquisition, whichever may be less of any building created or other improvements effected on the land by the party of the First part in accordance with the terms of the grant. The amount of any grant made by the party of the Second part towards, the cost of the building or other improvements shall be deducted from the compensation payable under this condition:

In the event of the Party of the First Part refusing to remove the buildings, when so directed condition (3), the party of the Second part them and realize the cost of the removal by the sale of the materials.

In the event of the voluntary relinquishment by the land by the party of the First part no compensation shall be payable for any improvements that may have been effected or for works that may have been executed on the land by the Party of the First part but the party of the First part shall be entitled to the repayment of any amount that, may have been paid to the party of the Second Part, for grant on the value of the land at the time of relinquishment whichever may be less.

The party of the First part undertake to

construct the building within two years from the date of grant.

The land placed at the disposal of the Party of the First part should be utilized for educational purpose only. If under any circumstances, the land could not be utilized for the purpose for which it was granted, the entire area should revert to the Party of the second part."

18. Though it is mentioned that the land being conveyed in consideration of payment of the cost of the land, the above conditions as set out would clearly disclose the intent of the Department in assigning the land to the petitioner trust. From the conditions stipulated therein, it could be seen that it was not an absolute conveyance or a sale of the land to the petitioner and in fact, it is specifically mentioned in the condition that the land shall be resumed wholly or in part if the conditions are violated. Such conditions can never be a part of the recital if sale is actually effected in favour of the petitioner trust. Though sale involves transfer of title, in the present case, from the Government Orders and the agreement entered into, there cannot even a remote inference that the assignment of the land in the instant case can be construed as one of sale or complete conveyance.

19. According to the learned Advocate General, the built up area of the college comprised in 52000 square feet, the petitioner trust has been utilizing only one acre of the land. In fact, the Government has considered the request of the petitioner trust liberally and though under the agreement, the Government has the power to resume entire assigned land, a decision was taken only to resume 29.33 acres out of 40 acres assigned to the petitioner. Therefore, he would submit that the petitioner trust ought to be happy to have more than 10.00 acres of land for their use and disposal in furtherance of the objectives of the trust. The learned Advocate General would refer the communication dated 12.5.2010 addressed by the Principal Chief Conservator of Forests to the Principal Secretary to Government, Environment and Forest Department, the first respondent herein, wherein, it is stated that after survey, it was reported that only an extent of 10.67 acres of land being utilized by the petitioner trust as shown in surveyed sketch which was enclosed along with the communication and the balance area of 29.33 acres is mostly consisting of plantations and wild jungle growth. It was also mentioned in the said communication that the trust has not yet filed any application before the Hon'ble Supreme Court of India to get specific orders for de-reservation of the actual extent of forest land under its

usage. In fact, the District Forest Officer, Chengalpattu Division was also advised to instruct and guide the trust in that regard.

20. When the petitioner trust approached the Hon'ble Supreme Court, in the order itself, it was mentioned that only an extent of 10.67 acres of land being utilized by the trust and the remaining area of 29.33 acres is mostly consisting of plantations and wild jungle growth based on the report of the District Forest Officer. Therefore, the learned Advocate General would contend that any statement disputing the said fact on behalf of the petitioner is without any material support and the statement that the petitioner trust was utilizing larger extent of land is not supported by any independent material except their own survey report. In any case, he would submit that non-utilization of the entire 40 acres of land is the admitted position. The learned Advocate General would submit that after the disposal of the Interlocutory Applications by the Hon'ble Supreme Court of India on 16.9.2011, the first respondent issued a communication dated 2.2.2012 providing personal hearing to the petitioner in a meeting scheduled on 9.2.2012 and therefore, the meeting did take place as admitted by the petitioner trust itself in their communication addressed to the first respondent dated 15.2.2012. Therefore, the petitioner trust was given sufficient opportunity to put forth their stand. The learned Advocate General would also refer to the petitioner's own communications dated 15.02.2012 and 30.03.2012 in which, it was admitted on behalf of the petitioner that the entire piece of land, namely, 40 acres were not utilized by the petitioner trust even as on 2012. On behalf of the petitioner, a communication dated 13.12.2011 was relied upon which was addressed to the District Collector, Kancheepuram by the Tahsildar, Shollinganallur in which, it was mentioned in paragraph-7 that the college was utilizing to an extent of 16.85 acres. Much reliance was placed on this letter by the petitioner trust because it was between two independent Government officials. However, the learned Advocate General had produced the original of the said communication, dated 13.12.2011 in which, paragraph-7 as found in the copy filed in the typed set of papers on behalf of the petitioner, is found missing. Therefore, he would submit that where from the petitioner had obtained such communication with the statement which is not found in the original. However, when the this Court confronted the petitioner with the above submission, there appears 'no proper explanation' or reply from the petitioner.

21. The learned Advocate General would submit the contention put forth on behalf of the petitioner that provisions of the

Forest (Conservation) Act, 1980 cannot be applied to the instant case in view of the transfer of the land much prior to the coming into force of the said Act, cannot be countenanced both in law and on facts for the reason that after the Central Act of 1980, without the permission of the Central Government or the High Power Committee, the reserved forest land cannot be allowed for any non-forest purposes. In this case, admittedly according to the Forest Department, 29.33 acres had not been utilized by the petitioner trust for their purpose. Therefore, it was right on part of the Forest Department to recommend resumption of the land to the extent of un-utilized portion in view of the coming into force the Forest (Conservation) Act, 1980 on 25.10.1980. The question is whether the land was fully utilized by the petitioner trust or not on the day when the Government proposed to resume the land. Therefore, he would submit that whether the Forest (Conservation) Act, 1980 would have retrospective effect or not, is not germane to the issue on hand. In any case, the learned Advocate General would submit that the petitioner trust ought to be satisfied that the proposed action by the Forest Department is only to resume un-utilised land to an extent of 29.33 acres and not the entire land and the petitioner has still enough land at their disposal for their activities.

22. This Court has given its anxious consideration to the submissions made by the learned senior counsel on behalf of the petitioner trust and the learned Advocate General on behalf of the respondents and perused the materials and pleadings placed on record.

23. From the arguments and materials placed for consideration before this Court, what emerges without any dispute between the parties, is that the petitioner trust has not utilized the entire 40 acres originally assigned to them in 1975. Therefore, this Court has to see whether un-utilized land should ever remain with the petitioner trust even after coming into force the Forest (Conservation) Act 1980 and also the subsequent directions issued by the Hon'ble Supreme Court of India as reported in "1997 (2) SCC 267 (T.N. Godavarman Thirumulpad vs Union Of India & Ors)" and also in view of the constitution of the Central empowered Committee. After coming into force the Act, 1980, i.e. Forest (Conservation) Act, 1980, it was no longer open to the private parties, to hold on forest land since there was a restriction on the usage of forest land for non-forest activities. As rightly contended by the learned Advocate General that the area which is being actually utilized by the petitioner trust is only to a small extent of one acre, which has not been actively disputed by the petitioner trust. The fact that the petitioner trust has still more than 9 acres of land for the usage and disposal, it is not open to the

petitioner trust to find fault with the impugned action of the respondents for resumption of the land only to an extent of 29.33 acres. The report of the Forest Department was very clear that by the superstructure and the open space providing amenities to the students, the remaining land to an extent of 29.33 acres had been un-utilized for more than 25 years. Whatever may be the reasons for non-utilization of the entire piece of land, the fact remains that a large portion of the land to the extent of 29.33 acres belonging to the forest cannot remain in the hands of private body for its non-forest activity particularly with reference to stringent provisions contained in the Forest (Conservation) Act, 1980. According to the impugned order as conveyed in G.O.Ms.No.226 dated 25.09.2012, it is clearly mentioned that the petitioner trust had utilized only 10.67 acres by way of construction of building etc., and the remaining area of 29.33 acres is consisting of plantation and wild jungle growth. This Court does not find any reason to disbelieve the report of the Forest Department, particularly, in view of the fact that it was not even the case of the petitioner trust that the entire 40 acres had been put to use by them.

24. As regards the submissions made by the learned senior counsel, Shri G.Masilamani, that it was a sale by the respondents to the petitioner trust since the cost of the land i.e. Rs.4000/- for 40 acres had been paid, appears to be a desperate plea in order to retain the forest land for having paid a pittance. Rs.100/- paid per acre. The so-called cost paid under any circumstances cannot be considered to be the correct and proper value for conveying large extent of land even at any point of time.

25. From the conditions stipulated in the agreement as well as the conditions as laid down in the G.O., under which the land was conveyed, it is clear that the acceptance of a token amount for assigning the land, cannot be construed as one of transfer of title or sale. By no stretch of legal standards, such transaction as disclosed in the document, it can even remotely be presumed as one of sale. The right of resumption was retained by the Forest Department admittedly and although the right of resumption of whole land was reserved in the assignment, yet the respondents had chosen only to resume 29.33 acres out of 40 acres of land. In these circumstances, the petitioner trust has to be content that their educational and academic activity has not been affected at all, as they were allowed to retain more than 10 acres of land. Although the petitioner trust has laudable objectives for promotion of education among the downtrodden minority community, yet, the larger public interest should warrant resumption of forest land in order to safe guard the ecology and the nature by giving adequate thrust to the provisions of the Forest (Conservation) Act, 1980. In fact, the State Government has very little role

in giving permission to any institution or body for utilizing the forest land for non-forest purpose after the Forest (Conservation) Act, 1980 and series of directions issued by the Hon'ble Supreme Court of India on the subject matter. In any event, the Hon'ble Supreme Court of India has directed the petitioner trust to approach the State Government and the Government within its wisdom, thought it fit to resume only 29.33 acres and not the entire 40 acres. Therefore, in the considered opinion of this Court, the petitioner must be thankful to the Government for not having resumed the entire 40 acres of land and thereby causing great disruption to the institutional function run by the petitioner trust. The arguments that the Forest (Conservation) Act, 1980 cannot be applied retrospectively appears to be preposterous and unconvincing since when the action was proposed to resume the land, admittedly a major portion of land was un-utilised by the petitioner trust and therefore, the provisions of Forest (Conservation) Act, 1980 were very much attracted and accordingly, the same were applied to the factual matrix of the case. The other arguments made on behalf of the petitioner that there were only plantation trees and therefore, the Act or the directions of the Hon'ble Supreme Court cannot be applied also, cannot be countenanced for the reason that apart from the plantation trees, there was wild jungle growth as per the report of the District Forest Officer. In any case, the factum of non-utilization of entire 40 acres is well established and admitted and in such scenario, it was open to the Government to resume the land only to an extent of un-utilized area and that is what the Government has done through the impugned Government Order dated 25.9.2012.

26. From the impugned Government Order, it is clearly mentioned that the resumption of the land is only in regard to undeveloped area of 29.33 acres of reserved forest land out of 40 acres placed at the disposal of the petitioner trust. The learned senior counsel appearing for the petitioner has harped on certain expressions used by the officials, viz., 'conveyance' assignment, etc., and implored this Court to construe the transaction as one of sale, this Court does not however, find any iota of merit in such contention when the scheme of assignment and the conditions stipulated therein clearly establish in unequivocal terms the intent of the Government, while transferring the land to the petitioner trust for their usage and disposal. Once any assignment is accompanied by conditions, the land can always be reverted to the Government if such conditions are not fulfilled. Therefore, such transaction can never be coloured as one complete sale or transfer of title. Such argument put forth on behalf of the petitioner has absolutely no merit whatsoever and the same has to be brushed aside as a specious piece of argument. Even in 1975, Rs.100/-

per acre cannot be the full cost of the land wherever the land and it can only be a token amount received by the Government for assigning the land. Be that as it may, the intent of the Government is very clear when the land was assigned to the petitioner trust and the intent was not to convey the land in absolute terms to the petitioner as the assignment was accompanied by several conditions imposed on the assignee. That being the case, this Court is unable to appreciate the arguments of the learned senior counsel appearing for the petitioners on this aspect.

27. For the above said reasons, this Court has no hesitation in accepting the case of the Government and is of the considered view that the Writ Petition lacks merit and substance and the impugned action by the respondents as conveyed in their G.O.Ms.No.226 dated 29.5.2012 Environment and Forests (FR.10) Department dated 25.9.2012 cannot held to be illegal or arbitrary. On the other hand, this Court does not see any merit in the claim of the petitioner for retention of the entire 40 acres of land in view of the subsequent developments as indicated as above. This Court also accepts the report of the District Forest Officer that the resumption of the land to an extent of 29.33 acres was not utilized by the petitioner trust and there was no reason to disbelieve the report of the District Forest Officer.

28. In the result, the Writ Petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Environment and Forest department,
Fort St George, Chennai-9.

2. The Principal Secretary &
Commissioner of Land Administration,
Chennai-9.

3. The Principal Chief Conservator of Forest,
Office of the Principal Chief Conservator of Forest,
Saidapet, Chennai-15.

4. The Conservator of Forest,
Office of the Conservator of Forest,
Chennai-15.

5. The District Forest Officer,
Chengleput Division,
Kancheepuram.

6. The Collector of Kancheepuram District,
Office of the Collector Kancheepuram District,
Kancheepuram Town And District.

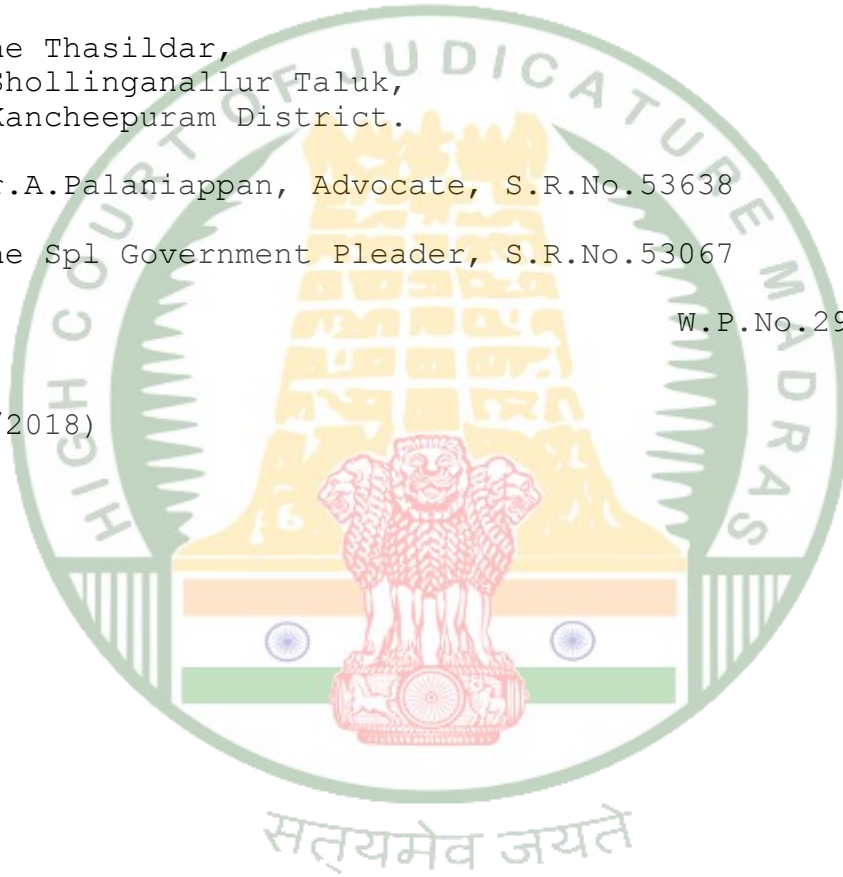
7. The Thasildar,
Shollinganallur Taluk,
Kancheepuram District.

+1cc to Mr.A.Palaniappan, Advocate, S.R.No.53638

+1cc to the Spl Government Pleader, S.R.No.53067

W.P.No.29226 of 2012

KAN (CO)
GSP (20/08/2018)



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