

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.29610 of 2018

1 Pushpabal Mangalchand Vaid
W/o. (Late) N. Mangalchand Vaid Popular
Building Commercial Road Ootacamund,
Tamil Nadu - 643 001. ...PETITIONER

Vs.

1 The State of Tamil Nadu
Rep. by the Secretary to Government,
Environment and Forest Department,
Fort St. George, Chennai, Tamil Nadu - 600 009.

2 The Principal Chief Conservator of Forests
(Head of Forest Force)
Panagal Building, Saidapet, Chennai,
Tamil Nadu - 600 015.

3 The District Collector
Nilgiris District, Udhagamandalam,
Tamil Nadu - 643 001.

4 The Deputy Director (Buffer),
Mudumalai Tiger Reserve,
Mount Steward Hill,
Udhagamandalam,
The Nilgiris - 643 001.

...RESPONDENTS

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorarified Mandamus, calling for the records of the impugned letter Na.Ka.U1.No.9340/2012 dated 30.06.2017 issued by the 3rd Respondent to the petitioner and quash the same and consequently direct the 1st Respondent to amend G.O.No.Ms.125 of 2010 (Environment and Forests (FR5) Department) dated 31.08.2010 to exclude the petitioners lands bearing Survey Numbers 254/2 and 252/4 of Masinagudi village measuring an extent of 8.16.0 Hectares (or) 22.85 Acres from the same.

For Petitioner : Mr.Naveenkumar Murthi

For Respondents : Mr.R.Santhanaraman, A.G.P.

O R D E R

According to the petitioner, one Elephant G.Rajendran has filed W.P.No.10098 of 2008 in respect of elephant corridors. By an order, dated 3.12.2009, this Court directed the Government to constitute an expert Committee to identify and delineate the Elephant Corridor. Pursuant to the order passed by this Court, Forest Department prepared a cadastral map delineating the lands that formed elephant corridor and issued a public notification, dated 7.1.2010 setting out the lands that constituted the elephant corridor, with the survey numbers. According to the learned counsel for the petitioner, pursuant to the direction issued by this Court, notification has been issued by the State Government on the basis of the report submitted by the expert Committee and included the petitioner's land although the same was not in the vicinity of the area demarcated. Further, it is submitted by the petitioner that the survey nos. owned by the petitioner fall above the 1000m contour line, therefore, conducive to the passage of elephants. By common order, dated 7.4.2011 in W.P.No.10098 of 2008, etc. batch of writ petitions, this Court directed the owners to vacate and handover possession of the lands falling within the notified "Elephant Corridor" to the District Collector, Nilgiris, within three months from the date of the order, thereby expanding the scope of the said G.O.No.125 of 2010. The petitioner and her husband made a representation, dated 12.9.2011 to the 2nd, 3rd and 4th respondents, then District Forest Officer, Nilgiris, stating that the lands of the petitioner which is the subject matter of the present writ petition, does not fall within the final Cadastral map of the notified Elephant Corridor and the same was erroneously included in the notification. Based on the representation of the petitioner and her husband, Tahsildar, Udthagamandalam conducted a field inspection and submitted his report in Na.Ka.A4/0118/12, dated 8.3.2012 to the Revenue Divisional Officer, Coonoor. The Revenue Divisional Officer has submitted a report to the third respondent on 9.4.2012 concurring with the findings of the Tahsildar and stated that the aforesaid survey numbers are not situated within the boundaries of the Elephant Corridor as notified.

2 In the aforesaid background, the petitioner has preferred a writ petition in W.P.(Civil) No.510 of 2012 before the Hon'ble Supreme Court. Hon'ble Supreme Court directed the petitioner to approach this Court to seek appropriate relief. Pursuant to the aforesaid order passed by the Hon'ble Supreme

Court, the petitioner and her husband have filed W.P.No.32689 and 32690 of 2013 for the following reliefs:

Prayer in W.P.No.32689 of 2013:

Writ petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the first respondent pertaining to G.O.Ms.No.125, Environment and Forest (FR-5) Department, dated 31.8.2010 notifying the Elephant Corridor and quash the same.

Prayer in W.P.No.32690 of 2013:

Writ petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondents to exclude the petitioner's lands bearing Survey Numbers 252/4, 254/3, 254/2, 254/4, 2547, 254/5, 252/5, 278, 266/1, 267/1, 268/2, 269/1, 270/1, 271/1, 263/1, 265/1, 267/3 of Masinagudi Village, Ootacamund Taluk totally measuring 150.86 hectares from the notification bearing G.O.Ms.No.125, Environment and Forest (FR-5) Department, dated 31.8.2010.

3. On 27.6.2014, this Court while disposing of the writ petition in W.P.No.32690 of 2013 passed the following order:

"In view of the above, the 3rd respondent herein is directed to consider and pass orders on the petitioner's representation, dated 12.9.2011 within a period of six weeks from the date of receipt of a copy of this order."

Thereafter, the petitioner has sent representation on 19.7.2014 requesting the third respondent to pass orders. The third respondent made recommendations to the first respondent, vide proceedings in Rc.UI No.9340/2012, dated 29.12.2014. The copy of the recommendation report was received by the writ petitioner through R.T.I. Act, filed before this Court in W.P.No.32689 and 32690 of 2013. Pursuant to the aforesaid order passed by this Court, the third respondent passed the impugned order. According to the learned counsel for the petitioner, prima facie, the impugned order passed by the third respondent is erroneous and illegal. Therefore, the third respondent has to independently consider the request of the petitioner without being influenced by the order passed by the Government. Hence, the present writ petition.

4. On the other hand, the learned Additional Government Pleader appearing for the respondent strongly objected that this

Court passed a detailed order in W.P.No.10098 of 2008, by issuing direction to the respondents to constitute a Committee comprising of forestry and wildlife experts from the Forest department including Principal Chief Conservator of Forests and Chief Wild Life Warden, Chief Conservator of Forests (TAP), Conservator of Forests, Coimbatore Circle, Conservator of Forests and Field Director, Mudumalai Tiger Reserve, Ooty and the District Forest Officer, Nilgiris North, Ooty to assess the extent and vitality of the corridors and prepare a map on scientific lines. Further, this Court also issued following directions:

"If the State Government in the meantime want to take over the Management of the Private Forests it may do so in terms of Section 3 of the Tamil Nadu Private Forests (Assumption of Management) Act of 1961 so as to enable the elephants to pass through the Corridor without any hindrance till the lands are acquired."

5. Pursuant to the aforesaid direction issued by this Court, State Government issued a public notice calling for objection from the aggrieved person. After examining all the objections, the Government issued notification under G.O.Ms.No.125, dated 31.8.2010 and consequently, writ petitions were dismissed and the same were challenged before the Hon'ble Supreme Court in SLP No.19112 of 2011 and SLP No.25010 of 2011 and the same are pending before the Hon'ble Supreme Court and several SLPs are filed by the aggrieved land owners before the Hon'ble Supreme Court challenging the the dismissal order in W.P.No.10098 of 2009 passed by this Court, and batch of cases are pending before the Hon'ble Supreme Court. Further, it is submitted that the petitioner has made representation to the Tahsildar. On the basis of the recommendations made by the Tahsildar, the District Collector, Nilgiris District, made recommendation to the first respondent. However, the Government had sent a communication to the District Collector, viz., third respondent herein informing that in view of the pendency of SLPs before the Hon'ble Supreme Court, request of the petitioner cannot be considered. On the basis of the said communication, the third respondent has rejected the request of the petitioner by stating that till the disposal of the SLPs., the request made by the petitioner cannot be considered.

6. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

7. Pursuant to the order passed by this Court in W.P.No.10098 of 2008, dated 3.12.2009 a Committee was constituted comprising forestry and wild life experts from the forest department viz., Principal Chief Conservator of Forests and Chief Wild Life Warden, Chief Conservator of Forests (TAP), Conservator of Forests, Coimbatore Circle, Conservator of Forests and Field Director, Mudumalai Tiger Reserve, Ooty and the District Forest Officer, Nilgiris North, Ooty to assess the extent and vitality of the corridors and prepare a map on scientific lines. Pursuant to the order, dated 3.12.2009, public notice was issued on 7.1.2012 along with map of proposed corridor, relevant documents in all four villages that are likely to be affected by the proposed Corridor and the said notice was published by the District Forest Officer, Nilgiris North Division, Ooty and public hearing was conducted, thereafter, the Committee considered each and every petitions submitted by the public as well as the objections raised by them. After examining the objections raised by the public, Government has passed G.O.(Ms.) No.125 Environment and Forest Department, dated 31.8.2010, wherein the lands which fall within the boundary of the Elephant Corridor were identified by furnishing the survey nos. of the said land including the writ petitioner's land.

8. In this background, writ petitions were filed in W.P.No.32689 and 32690 of 2013 by the petitioner and her husband, challenging the G.O.Ms.No.125 issued by Environment and Forest, dated 31.8.2010 and to exclude the subject matter of survey numbers from the notification. Counter affidavit has been filed by the District Forest Officer, Nilgiris, in W.P.No.32689 and 32690 of 2013, wherein it was stated that as per the order, dated 1.12.2009 in W.P.Nos.32747 of 2007 and 28693 of 2008, passed by this Court, the first respondent in his letter No.WL5/24778/2008 dated 16.12.2009 has sent a detailed proposal to Government with justification for identification of the Elephant Corridor. The Government of India in their letter No.2-15/2002-PE dated 11.8.2006 have informed that 88 Elephant Corridors have been identified in the Book "Right of Passage-Elephant Corridors of India" and requested the State Government to take necessary action for notification and protection of the identified elephant corridors in the State. The Expert Committee constituted as per the orders of this Court, have examined the 5 elephant corridors, identified by various agencies and experts including the elephant corridors identified in the said book in the Sigur-Moyar Valley of Nilgiris District, finalized a single elephant corridor, and filed in the court. The following four corridors lies in the Nilgiris District, out of 19 elephant corridors identified in the book of "Right of

Passage" (i) Avarahalla - Sigur, (ii) Kalhatti - Sigur at Glencorin, (iii) Moyar - Avarahalla and (iv) Kalmalai - Singara and Avarahalla; The Expert Committee examined all the elephant corridors in Nilgiris District and identified a single elephant corridor comprising all the elephant corridors in the Sigur - Plateau in Nilgiris District. The Government of India in their letter No.2-15/2002-PE, dated 14.2.2009 has also requested the State Government to list and identify all the elephant corridors in the State based on the documents as stated therein, and provide the elephant corridors with legal protections. In compliance of the said orders of this Court, dated 3.12.2009, the Government have examined the matter in the light of the proposal of the first respondent and issued orders in Government D.O. Letter No.2805/FR-5/2009, dated 4.1.2010, to publish the map prepared by the expert Committee showing the Elephant Corridor on the cadastral map as per the directions of this Court.

8.1 In pursuance to the said orders of the Government, the District Forest Officer, Nilgiris North Division has published the map prepared by the Expert Committee showing the elephant corridor on the cadastral map as per the direction of this Court, in two local newspapers, one in The Hindu an english daily newspaper and another one in Daily Thanthi, Dinakaran, a vernacular tamil newspapers, giving the details of survey numbers of private lands, which are falling within the elephant corridor on 7.1.2010 edition. A copy of the elephant corridor along with the report of the expert committee was also made available to the local Panchayats. The public were requested to submit their objections within a time frame of one month.

8.2 As per the orders of this Court, dated 3.12.2009 and in pursuance to the public notification, dated 7.1.2010, representations from public were received. All the representations were examined by a team of officers and District Forest Officer, Nilgiris North Division, the third respondent herein. The Field Director and the Conservator of Forest, Mudumalai Tiger Reserve, Conservator of Forest, TAP-I, Chennai - 15, District Forest Officer, Gudalur, Assistant Conservator of Forests, FEMAS, Chennai - 15 along with the team of members, have examined all the points raised in the representations/objections and guided the District Forest officer, Nilgiris North Division in this matter. The District Forest Officer, Nilgiris North Division has sent his remarks on all the representation. The Principal Chief Conservator of Forests and Chief Wildlife Warden have also examined all the representations and the report of the District Forest Officer with the assistance of a team of officers. A comprehensive report was prepared and sent to the Government by the Principal Chief Conservator of Forest (Head of Forest Force) in

ref.No.24778/2008, dated 26.5.2010.

8.3 In compliance of the orders of this Court, the Government in G.O.No.125, Environment and Forest (FR-5) Department, dated 31.8.2010 passed orders on the representation of the petitioner and also on the publication of the elephant corridor. The operative portion of the Government order reads as follows:

"11. The Government have carefully and independently examined all the representations and objections made by the public along with the expert committee report and the original record with the relevant act and rules in detail and considered that all the representations and objections made by the applicants are without merit. The Government therefore, rejected the petitions and objections made by the public against the formation of elephant corridor.

12 The Government also confirm the elephant corridor map published in two local dailies one in english (i.e.) "The Hindu" and the other vernacular (i.e.) tamil "Dinathanthi" respectively on 6.1.2010 and 7.1.2010 in compliance with the orders of this Court, dated 3.12.2009. in W.P.No.10098 of 2008. The lands falling within the boundary description form the Elephant Corridor.

13 The Government direct the Principal Chief Conservator of Forest to publish the final Elephant Corridor in the cadastral map prepared by the expert Committee along with the survey numbers of the private lands which are falling within the proposed Elephant Corridor. The Principal Chief Conservator of Forest is also directed to communicate the Government orders to all the petitioners."

8.4 Thereafter, final notification of the Elephant Corridor was published in New Indian Express in english and Dinakaran, tamil daily newspaper on 20.10.2010. The Division Bench of this Court in the order, dated 7.4.2011 in W.P.No.10098 of 2008 and 27 other writ petitions, was pleased to dispose the W.P.Nos.10098 of 2008, 2762 of 2009 and 2839 of 2009 and dismissed all other writ petitions and review applications with certain directions. The operative portion of the directions issued by the Division Bench of this Court in the order, dated 7.4.2011 in W.P.No.10098 of 2008 and 27 other writ petitions are as follows:

".....The resort owners and other private land owners are directed to vacate and handover vacant possession of the land falling within the notified "Elephant Corridor" to the District Collector, Nilgiris within three months today. In the meanwhile, the Government of Tamilnadu is permitted to go on with the implementation of the project as has been notified in G.O.Ms.No.125, dated 31.8.2010, in the best interest of the wildlife, particularly, elephants so as to notify and improve the elephant corridor. With regard to the forest dwellers, whose interest are protected under the provisions of the Scheduled Tribe and other Traditional Forest dwellers (Recognition of a Forest Rights) Act, 2006, the State Government is directed to strictly adhere to and comply with the provisions of the Act while dealing with the forest dwellers, who fall within the ambit of this act and in case any forest dwellers is evicted from and out of the identified elephant corridor, they be provided with the best alternate and suitable accommodation. While dealing with the forest dwellers, the State Government is directed to strictly adhere to the various orders passed by this Court in this matter, the terms of G.O.Ms.No.125, dated 31.8.2010 and the assertions made by them before this Court as has been narrated in the preceding paragraphs.

8.5 The contention of the petitioner to exclude the petitioner's land bearing survey nos. 252/4, 254/3, 254/2, 254/4, 254/7, 254/5, 278, 266/1, 267/1, 268/2, 269/1, 270/1, 271/1, 263/1, 265/1, 267/3 of Masinagudi Village, Ootacamund Taluk, totally measuring 150.86 hectares from the notification bearing G.O.Ms.No.125, Environment and Forest (FR-5) Department, dated 31.8.2010, mainly on the following two grounds:

(i) The petitioner's abovesaid lands are almost completely above 1000 meters contour line and the Government order specified that boundaries of the elephant corridor run along with the 1000 meters contour line, as elephant cannot traverse high gradients.

(ii) The above survey numbers did not find place in the cadastral map or in the description of the boundaries of the said Government order and the revenue authorities have given reports to that effect.

8.6 In para 19 of the additional report of the expert

committee, it is stated as follows:

"19. After the field work and examination by the expert committee, the committee has prepared a corridor map duly making the predominant elephant corridor in a single lane, after ground truth verification, with a width varying from 1 K.M. To 1.5 K.M., considering reasonable movement, water source, forage and shelter for elephants in mind and further making a corridor value to ensure their future generation to move reasonable from one reserve forest to another. The baseline of corridor on the southern boundary was drawn at 1000 meter contour line bearing in mind that elephants move with little difficulty in the pleateau at this contour level. The size of the above said corridor was determined taking into consideration the existence of dense forest on either side of the proposed corridor and farm lands are Dodda linge tribal settlements which stretches to a distance of 1 K.M. Measuring about 22 ha, across the proposed corridor. The land of the petitioner is coming as per the said Expert Committee report thus included in the Elephant Corridor notification.

8.7 As far as the elephant corridor, it is notified by the Government in G.O.Ms.No.125, Environment and Forest department, dated 31.8.2010, duly following the procedures as submitted supra, in detail. Hence, the Government is the authority to pass orders duly following the procedures.

9. By an order, dated 27.6.2014, the Division Bench of this Court passed an order by directing the third respondent viz., District Collector, Nilgiris to consider and pass appropriate orders on the petitioner's representation, dated 12.9.2009 within a period of six weeks from the date of receipt of a copy of this order. Petitioner and her husband made representation to the District Collector, Nilgiris on 19.7.2014 to pass orders by deleting survey Nos.252/4, 254/3, 254/2, 254/4, 254/7, 254/5, 278, 266/1, 267/1, 268/2, 269/1, 270/1, 271/1, 263/1, 265/1, 267/3 and 252/5 on the basis of the report submitted by the Tahsildar, Udhagamandalam, dated 8.3.2012. In the light of the order passed by this Court in W.P.No.32689 and 32690 of 2013, the third respondent viz., District Collector, Nilgiris has sent a report to the Government vide Rc.U1.No.9340/2012, dated 29.12.2014, for necessary amendment to be issued in G.O.Ms.No.125 issued by Environment and Forest, dated 31.8.2010

by deleting the survey numbers mentioned by the petitioners from the Elephant Corridor notification. On receipt of the said communication, Government has sent a communication to the District Collector, Nilgiris on 30.12.2015 rejecting the request of the petitioner. By relying upon the said communication, the third respondent passed the impugned order rejecting the petitioner's representation by stating that till the disposal of the SLPs., pending before the Hon'ble Supreme Court, the request made by the petitioner cannot be considered.

10. A perusal of records shows that pursuant to the order passed by the Division Bench of this Court in W.P.No.10098 of 2008, dated 3.12.2009, an expert Committee was constituted by the Government. On the basis of the report submitted by the Expert Committee and as per the direction issued by this Court, Government passed G.O.Ms.No.125, Environment and Forest, dated 31.8.2010. On contrary, he made request to the Tahsildar, Udhagamandalam, who submitted a report vide No.A4/0118/2012, dated 8.3.2012 to the Revenue Divisional Officer, Coonoor and the same was forwarded to the third respondent by the Revenue Divisional Officer, Coonoor for deleting the survey nos. mentioned by the petitioners from the notification issued for Elephant Corridor. When the Expert Committee comprising high level authorities from the forest as well as wildlife department was constituted by the Government as per the directions issued by the Division Bench of this Court in W.P.No.10098 of 2009, dated 3.12.2009, the approach of the petitioner in making representation before the Tahsildar, Udhagamandalam for deleting his lands from the notification is improper and contrary to the directions of this Court in the aforesaid writ petitions.

11. This Court could not understand as to why the third respondent, being the party to the proceedings in the earlier writ petitions and aware of the fact that batch of SLPs, on the subject issue, are pending before the Hon'ble Supreme Court and also aware of the G.O.Ms.No.125, issued by Environment and Forest Department, dated 31.8.2010, on the basis of the recommendations of the expert committee, had recommended for excluding the lands at the instance of the petitioner and also on the basis of the report submitted by the Tahsildar. Even though the impugned order is passed by the third respondent, as rightly stated by the District Forest Officer, in the counter affidavit, dated 14.6.2014, the first respondent is the competent authority to pass orders as per the procedure. Without taking note of the report of the high level Committee, the recommendation made by the District Collector to the Government is highly impermissible, improper and without any justification. The third respondent in all fairness should have directed the petitioner to approach the first respondent. Therefore, this Court is of the view that the third respondent

has acted in a vested manner, for the reason best known to him. Hence, there is no prima facie case is made, to entertain the writ petition and the same is deserves to be dismissed.

12. In fine, writ petition is dismissed. No costs. This order will not stand in the way of the writ petitioner, approaching the appropriate forum seeking remedy, if so advised.

vaan

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary to Government,
State of Tamil Nadu, Environment and
Forest Department,
Fort St. George, Chennai,
Tamil Nadu - 600 009.
- 2 The Principal Chief Conservator
of Forests (Head of Forest Force),
Panagal Building, Saidapet,
Chennai, Tamil Nadu - 600 015.
- 3 The District Collector,
Nilgiris District, Udhagamandalam,
Tamil Nadu - 643 001.
- 4 The Deputy Director (Buffer),
Mudumalai Tiger Reserve,
Mount Steward Hill, Udhagamandalam,
The Nilgiris - 643 001.

+2cc to the Special Government Pleader,
(Forests), S.R.No.79235,79317

W.P.No.29610 of 2018

RJI (CO)
KAK(22/01/2019)