

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

C.M.S.A.NOS.34 AND 35 OF 2003

1.V.D.Varghese
2.Damodharanchetty ... Appellants in CMA.No.34/03

1.N.G.Velayudhan
2.A.Shanmugam
3.Chathukutty Chetty
4.P.Kesavan Chetty
5.Janardhanan
6.N.Krishnan Chetty
7.A.Krishnan Chetty
8.N.Madhavan Chetty ... Appellants in CMA.No.35/03

Vs

1.The District Forest Officer,
Gudalur Division, R.D.O's Office,
Gudalur, The Nilgiris.
2.The Forest Settlement Officer,
Gudalur, Office at R.D.O's Office,
Gudalur, The Nilgiris. ... Respondents in both appeals
3.V.V.Thankachan ... 3rd Respondent in CMA.No.34/03

Common Prayer :

Civil Miscellaneous Second Appeal are filed under Section 100 of the Civil Procedure Code against the judgments and decrees dated 13.02.2003 passed in C.M.A.Nos.21 and 16 of 1998, respectively, by the learned District Judge, Nilgiris @ Uthagamandalam, in reversing the well considered order of the Forest Settlement Officer, Gudalur, in R.C.A.No.36 of 1991, dated 29.04.1998 and A.No.73 of 1978, dated 13.05.1998, respectively.

For Appellants : Mr.V.Raghavachari

For R1&R2 : Ms.Thangavadhana Balakrishnan, AGP
in both CMSA.

For R3
in CMSA No.34/03: Not Ready and in notice

COMMON JUDGMENT

These two appeals are directed against the judgment and decree dated 13.02.2003 passed in C.M.A.Nos.21 and 16 of 1998 by the learned District Judge, The Nilgiris, reversing the orders dated 29.04.1998 and 13.05.1998 passed by the second respondent/the Forest Settlement Officer, Gudalur, The Nilgiris.

2. Since the facts involved in both the appeals are interconnected, they are disposed by this common judgment. In short, facts involved in C.M.S.A.No.34 of 2003 are stated below:-

It is averred that the land occupied by Mr.V.V.Thankachan, son of Mr.Varghese/third respondent in C.M.A.No.35 of 2003 in Survey No.354/1, measuring to an extent of 6.00 acres, was purchased by his brother/Mr.David in the year 1969. Thereafter, as per the oral partition, he was allotted 1.50 acres of land and in the said land, he constructed a house and paid house tax thereof in the years 1990, 1993 and 1996, besides, he has also planted tea plants after uprooting the coffee plants. The said lands are situated adjacent to the patta lands of his brother/Mr.David in S.No.354/2. Whiles, he had requested for issuance of patta to his land.

3. It is further averred that the second respondent/Forest Settlement Officer, Gudalur, under Section 10 of the Tamil Nadu Forest Act, 1882, declared the lands measuring 5.15.5 HA in S.No.354/1 of Cherangode Village as Reserve Forest (RF) and included in the proposed Ammankoil Forest Block Bit No.11. When there was an order declaring the lands in S.No.354/1 as Reserve Forest, the Forest Settlement Officer has excluded the lands of the appellants from the purview of Reserve Forest. The Government of Tamil Nadu issued a Notification in G.O.Ms.No.133, Environment and Forest Department, dated 30.03.1992, and the same was also published at page No.242, Part II Section 2, dated 29.04.1992 of the Tamil Nadu Gazette and Page No.44, dated 01.05.1992 of Nilgiris District Gazette, proposing to constitute the land within the boundaries specified in the schedule of property as Reserve Forest and thereby appointed the

Special Tahsildar (Forest Settlement), Gudalur, as Forest Settlement Officer. The learned District Judge, the Nilgiris, by taking note of the fact that the appellants are encroaches and that mere payment of penal charges cannot be sufficient for exclusion of the land in question from the above said Notification, has allowed the appeal setting aside the order passed by the Forest Settlement officer. As against that, the present appeals have been filed.

4. At the time of admission on 01.08.2003, this Court, while ordering notice to the respondents, framed the following substantial questions of law:-

"Is not the judgment of the District Court is vitiated in not taking into account the difference between the requirement of Section 3 of the Forest Act and the provisions of the Forest Conservation Act, which are operating totally in different spheres."

5. Learned counsel for the appellants submitted that when it is an admitted case of the Forest Department that they themselves have issued 'B' memo acknowledging and identifying their possession of the land in question, it is not open to them now to turn-back and say that the land in question is earmarked as Reserve Forest. Although the appellants have not produced the documents showing the ownership, 'B' memo issued in the years 1959, 1969, 1970 and 1973; another 'B' memo issued regarding claiming of fee for the years 1971, 1972, 1973; and issuance of Coffee pool payment bills from the years 1979-80 to 1992-93, would certainly depict that the appellants have been continuously in possession and enjoyment of the land in question, therefore, the learned District Judge, The Nilgiris, ought not to have reversed the order passed by the Forest Settlement Officer, who has excluded the land in question from the Reserve Forest area.

6. In reply, learned Additional Government Pleader appearing for the Forest Department submitted that after the Notification issued by the Government in G.O.Ms.No.133, Environment and Forest Department, dated 30.03.1992, published at page No.242, Part II Section 2, dated 29.04.1992 of the Tamil Nadu Gazette and Page No.44, dated 01.05.1992 of Nilgiris District Gazette, it is made known to all the public that the land in question has become Reserve Forest area. Based on the said Notification, Forest Settlement Officer was appointed, who, after hearing the

aggrieved parties, declared the lands in S.No.1354/1 of Cherangode Village as Reserve Forest area. But, the said Authority has excluded the lands situated at S.No.354/1 belongings to the appellants from the purview of Reserve Forest area, that too, without there-being any single document showing title of appellants and on this basis, it is further contended that the Forest Settlement Officer ought not to have excluded the lands of the appellants. Thereafter, when appeals were filed, the learned District Judge, The Nilgiris, after perusing the materials available, has rightly allowed the appeal holding that the appellants are encroachers and further observed that mere payment of penal charges cannot be sufficient for exclusion of the lands in question from Notification issued by the Government stated supra. With these submissions, learned Additional Government Pleader prayed for dismissal of these appeals.

7. I fully agree with the above said submissions of the learned Additional Government Pleader. It is seen that the Government of Tamil Nadu, with a view to curb deforestation, had issued a Notification in G.O.Ms.No.133, Environment and Forest Department, dated 30.03.1992, and the same was published at page No.242, Part II Section 2, dated 29.04.1992 of the Tamil Nadu Gazette and Page No.44, dated 01.05.1992 of Nilgiris District Gazette, and thereafter, the Special Tahsildar (Forest Department), Gudalur, was appointed as Forest Settlement Officer. After hearing all the aggrieved parties, although the Forest Settlement Officer, Gudalur, declared the lands measuring 8.15.5 HA in S.No.354/1 of Cherangode Village as Reserve Forest area, he has excluded the lands belongings to the appellants situated at S.No.354/1 of Cherangode Village from the purview of Reserve Forest area, that too, without there-being any valid document showing their ownership of the lands in question. Before the Forest Settlement Officer, they had relied on only 'B' memos to show that they are in possession of the lands in question. In my considered view, 'B' memo will not confer any right or title to the lands in question and therefore, they ought to have produced the patta issued by the appropriate authority.

8. Further, it is seen that when appeals were preferred, learned District Judge, The Nilgiris, has rightly held that mere payment of penal charges cannot be sufficient for exclusion from the Reserve Forest area and further termed the appellants as encroachers and by holding so, learned District Judge, The Nilgiris, reversed the order passed by the Forest Settlement Officer excluding the lands in question from the purview of Reserver Forest area.

9. In this context, it is apposite to refer to the ratio laid down by the Hon'ble Apex Court in T.N. Godavarman Thirumulpad v. Union of India reported in (1997) 2 SCC 267, wherein the Hon'ble Apex Court, while emphasizing the need to keep the forest free from encroachment and the necessity for keeping minimum forest cover, held as under in paragraph Nos.3 and 4:-

"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 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 Gujarat¹, 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 Authority³). The earlier decision of this Court in State of Bihar v. Bansi Ram Modi has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the 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."

In the above said case, the Hon'ble Apex Court made it clear that the Forest Conservation Act, 1980, was enacted only with a view to check further deforestation which ultimately results in ecological imbalance and therefore, the provisions made therein for the conservation of forests must apply to all forests irrespective of the nature of ownership or classification thereof. This description covers all statutorily recognized 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. Therefore, in the cases on hand, the claim of the appellants seeking possession of the forest lands in question cannot be sustained as they do not have any ownership document and patta obtained from the appropriate authorities. As highlighted above, the appellants have cited only 'B' memos in support of their ownership. But, in my considered view, the said 'B' memos will not confer any right or title to the lands in question. Therefore, as rightly held by the learned District Judge, The Nilgiris, mere showing of these documents cannot be sufficient to exclude the lands in question from the Reserve Forest area.

10. Thus, in such view of the matter, answering the substantial question of law against the appellants, the Civil Miscellaneous Second Appeals are dismissed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkm

To

1. The District Forest Officer,
Gudalur Division,
R.D.O's Office,
Gudalur, The Nilgiris.
2. The Forest Settlement Officer,
Gudalur, Office at R.D.O's Office,
Gudalur, The Nilgiris.
3. The District Judge,
The Nilgiris at Uthagamandalam.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104

+2cc to Mr.V.Raghavachari, Advocate, S.R.No.57252 & 27251
+1cc to the Special Government Pleader(F), S.R.No.57257

C.M.S.A.Nos.34 and
35 of 2003

SSV(CO)
CS/17/02/2020

WEB COPY