

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10-01-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15323 of 2005

And

W.P.M.P.No.16730 of 2005

1.S.Rangasamy (Deceased)

2.Tmt.Rajalakshmi

3.Mr.Nandakumar

4.Mr.Jagadheesan

(P-2 to P-4 are substituted as
LRs of P-1 vide order of Court
made in WMP No.23046 of 2018
dated 31.7.2018)

.... Petitioners

Vs

1.The Government of Tamil Nadu,
Represented by its Secretary,
Environment Forest Department,
Fort St. George,
Chennai-600 009.

2.The District Forest Officer,
Erode Range,
Mullaiagam,
Raja Nagar,
Periasemaor,
Erode - 638 004.

3.Indian Oil Corporation,
Represented by its Divisional Officer,
Marketing Division Coimbatore,
Indian Oil Bhavan,
8/1079, Avinashi Road,
Coimbatore-641 018.

(R-3 impleaded vide Court order dated

24.8.2018 made in WMP No.24144 of 2018)

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents ending with the order of the first respondent in G.O.Ms.No.34, Environment Forest (FR 10) Department, dated 15.3.2005 and the consequential order of the second respondent in Na.Ka.No.8104/96/Va dated 23.3.2005 and quash the same and direct the respondents to renew the lease in respect of the

petitioner's lease hold area of 50 cents in S.F.No.670/D of Chennimalai Village, Perundurai Taluk, Erode District.

For Petitioner : Mr.V.N.Mohan Raj

For Respondents-1&2 : Mr.Vijay Narayanan,
Advocate General Assisted by
Mr.S.V.Vijay Prashanth,
Additional Government
Pleader (Forest).

For Respondent-3 : Mr.P.N.Radhakrishnan

O R D E R

The order of rejection in respect of the claim of the writ petitioner for renewal of lease issued in G.O.Ms.No.34, Environment Forest (FR 10) Department, dated 15.3.2005 and the consequential order of the second respondent in Na.Ka.No.8104/96/Va dated 23.3.2005 are sought to be quashed in the present writ petition and a further direction is sought for to direct the respondents to renew the lease in respect of the petitioner's lease hold area of 50 cents in S.F.No.670/D of Chennimalai Village, Perundurai Taluk, Erode District.

2. The learned counsel for the writ petitioner made a submission that the writ petitioner is the dealer of Indian Oil Corporation Limited, running a Petrol Bunk as well as a Kerosene Bunk at Chennimalai Perundurai Taluk in S.F.No.670/D, Old S.F.No.741 and 746 of Chennimalai Village.

3. The lease was granted in favour of the writ petitioner by the second respondent with respect of the property situated at Chennimalai Village, Perundurai Taluk, Erode District and comprised in S.No.741 of Chennimalai Village measuring an extent of 25 cents to run a Petrol Bunk on 6.2.1969. The writ petitioner had installed a Petrol Bunk in the above leased out property and is running the same as of now.

4. Subsequently, the writ petitioner was granted with a lease by the second respondent with respect to the property comprised in S.No.746 of Chennimalai Village measuring an extent of 25 cents to run a Kerosene Bunk on 6.4.1971. Now both the lands measuring 50 cents are in possession and enjoyment of the writ petitioner and the writ petitioner is running a Petrol Bunk as well as a Kerosene Bunk.

5. The lease was extended till the year 1994. The writ petitioner was promptly paying the lease amount to the second respondent as per the terms and conditions. The people of that

locality are benefited from and out of the Petrol Bunk as well as the Kerosene Bunk.

6. Under these circumstances, the writ petitioner submitted an application for renewal of lease, which was recommended by the authorities concerned and the same was rejected by the Government in G.O.Ms.No.34, Environment Forest (FR 10) Department, dated 15.3.2005.

7. The learned counsel, appearing on behalf of the writ petitioner, states that the reasons furnished in the impugned order are neither candid nor convincing. The impugned order states that the leased out property is a Reserved Forest Area and therefore, it is prohibited by the State and hence the extension of lease cannot be granted in favour of the writ petitioner.

8. To rebut the said reasoning given in the impugned order, the learned counsel for the writ petitioner filed additional typed set of papers showing that in the land adjacent to the leased out area in favour of the writ petitioner, Chennimalai Panchayat Union Office building was constructed and the same is functioning as of now.

9. This being the factum, the reasons stated is improper and therefore, the writ petitioner alone cannot be discriminated from Panchayat Union Office, which is also functioning in the very same Survey Number, more specifically, adjacent to the Petrol Bunk of the writ petitioner.

10. The learned Advocate General, appearing on behalf of the respondents 1 and 2, disputed the contentions raised on behalf of the writ petitioner, by stating that admittedly, the property described in the present writ petition is a Reserve Forest Area and therefore, the same cannot be leased out in favour of the individuals, more specifically, for the purpose of running a Petrol Bunk and a Kerosene Bunk.

11. Selling of Kerosene or Petrol, which is noxious and will cause damage to the environment and therefore, the lease was not renewed and the writ petitioner was directed to vacate the premises and hand over the same to the Forest Department, enabling them to preserve the environment in that locality.

12. The learned Advocate General, relying on the judgment of the Supreme Court of India in the case of K.Balakrishnan Nambiar vs. State of Karnataka and Others [MANU/SC/0560/2011 - decided on 5.5.2011 in Civil Appeal No.4994 of 2004], contended that no habitation is permitted in the Reserved Forest Area and the Supreme Court has reiterated and

emphasised the legal principles. In this regard, the Apex Court in T.N.Godavarman Thirumulkpad vs. Union of India [AIR 1997 SC 1228], ruled that the Reserved Forest Areas are to be preserved and no lease or permission for construction of a building or habitation is to be allowed.

13. The relevant paragraphs 9 and 10, in the judgment of K.Balakrishnan Nambiar (cited supra), are extracted hereunder:-

"9. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment of this Court in Godavarman's case (supra), it is not necessary to dilate upon the matter at length, since all the issues raised by Mr. Vishwanathan have been elaborately considered and decided in the aforesaid judgment. We are unable to accept the submission of Mr. Vishwanathan that arecanut cultivation cannot be treated as a nonforestral activity, merely because it does not involve any cutting of the trees. On the other hand, the Government has given cogent and valid reasons for non-renewal of the lease. The order passed by the Government makes it clear that the leasehold land is surrounded by thick forest in East Aletty Reserved Forest land; this area is near to the boundary of Kerala and Karnataka State. It notices that extending the period of lease in respect of this area is likely to cause problems for the movement of men and vehicles. It is also noticed that lessees have already raised Areca, Coconut and Cashew trees on the leasehold lands and those trees are fully developed. Therefore, in the event of extending the lease period, it is likely that the lessee would commence fresh cultivation on the land in question. The intention of the Government is to develop naturally grown forests over the lands. This can only be done if the possession is taken by the Government. Addressing the similar issues, this Court in Godavarman's case (supra) has observed as follows:-

"The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the

conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.

This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat, Rural Litigation and Entitlement Kendra v. State of U.P. and recently in the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority). The earlier decision of this Court in State of Bihar v. Banshi 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."

10. After making these observations, a specific direction has been issued, to all the State Governments, to ensure that all ongoing non-forest activity within any forest, without the prior approval of the Central Government, must cease forthwith. It was emphasised that every State Government must ensure total cessation of all nonforestral activities forthwith. Mr. Vishwanathan had also submitted that since the lease has been granted prior to the operation of the 1980 Act and the land has been declared as dereserved at the time of the grant of the lease, the lease can not be automatically cancelled upon promulgation of the 1980 Act. In our opinion, the aforesaid submission of the learned counsel is also no longer res integra as it has been answered in the case of Nature Lovers Movement Vs. State of Kerala & Ors. MANU/SC/0486/2009 : (2009) 5 SCC 373."

14. Relying on the abovesaid judgment, the learned Advocate General is of an opinion that the rejection of the claim of the writ petitioner for renewal of lease is in accord with the provisions of the Statute and there is no infirmity, as such. The order passed by the Government categorically enumerates that the renewal of lease will not only cause environmental degradation but tell upon the conservation of forest permission also.

15. Accordingly, the Principal Chief Conservator of Forests has been requested to appraise the user agency suitably and advise them to seek some other place outside the Reserved Forest Area limits for running the Petrol Bunk. Under these

circumstances, the writ petition is to be rejected.

16. This Court is of an opinion that the Apex Court of India emphatically reiterated that no habitation or otherwise must be permitted in the Reserved Forest Area. It is mandatory on the part of the State to preserve the Reserved Forest Area as per the Forest Conservation Act, 1980. Various provisions of the Act stipulates protection of the Reserved Forest Area for the purpose of protecting the environment and maintaining ecological balances. Any violation in this regard must be viewed seriously. In several cases, this Court also directed for eviction of the unauthorised occupants and the encroachers in the Reserved Forest Area.

17. This Court is of an opinion that the grant of lease in favour of the writ petitioner itself was irregular. The lease at the first instance, ought not to have been granted by the Competent Authorities knowing to evict that area is a declared Reserved Forest Area. Knowing the consequences, the Authorities Competent had erroneously granted lease in favour of the writ petitioner. After few years, the authorities realised and refused the renewal of lease period sought for by the writ petitioner.

18. The reasons stated in the impugned order of rejection is certainly in accord with the law and there is no infirmity, as such. The question arises whether the Panchayat Union Office Building, which is constructed adjacent to the Petrol Bunk can be allowed to function in that locality. The answer is certainly negatived and that the Petrol and the Kerosene Bunks are to be evicted. Equally, the Panchayat Union Office is also to be shifted from that locality to any other place.

19. When this Court is not inclined to grant renewal of lease in favour of the writ petitioner or to consider the case of the writ petitioner for renewal of lease in the Reserved Forest Area, equally the Panchayat Union Office is also not entitled to continue their official business in the Reserved Forest Area and appropriate steps are to be taken to shift the Panchayat Union Office to any other suitable place and for the purpose of serving the people of that locality.

20. When no habituations are permitted, allowing the Panchayat Union Office will also cause damage to the environment and other commercial activities in and around the Panchayat Union Office. This being the practical situation, this Court has no hesitation to hold that neither the Petrol and Kerosene Bunks nor the Panchayat Union Office can be allowed to function in the Reserved Forest Area and the Forest Areas are to be protected

strictly in accordance with the provisions of the Forest Conservation Act, 1980 and any deviation in this regard must not only be viewed seriously but suitable actions are to be initiated against the officials who all are violating all such mandatory rules for the purpose of protecting the Reserved Forest Areas.

21. Under these circumstances, the following orders are passed:-

(i) The impugned order passed by the first respondent in G.O.Ms.No.34, Environment Forest (FR 10) Department, dated 15.3.2005, stands confirmed and the writ petition stands rejected;

(ii) The writ petitioner is directed to vacate the premises, within a period of 30 days from the date of receipt of a copy of this order;

(iii) If the writ petitioner is not vacated, within the period of 30 days, then the respondents are bound to evict the writ petitioner from the premises, if necessary with the assistance of the police;

(iv) The respondents are directed to initiate steps to shift the Panchayat union Office from the Reserved Forest Area to any other suitable place, within a reasonable period of time and it is made clear that there should not be any undue delay in shifting the Panchayat Union Office from the Reserved Forest Area;

(v) It is made clear that if any other constructions or any other building is constructed in the Reserved Forest Area, the same are to be removed and the Forest Area are to be preserved in accordance with the provisions of law;

(vi) The arrears of lease amount, if any, is to be paid by the writ petitioner, the respondents are at liberty to recover the same by following the procedures contemplated under law.

22. With the above directions, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary,
Government of Tamil Nadu,
Environment Forest Department,
Fort St. George,
Chennai-600 009.

2.The District Forest Officer,
Erode Range,
Mullaiagam,
Raja Nagar,
Periasemaor,
Erode - 638 004.

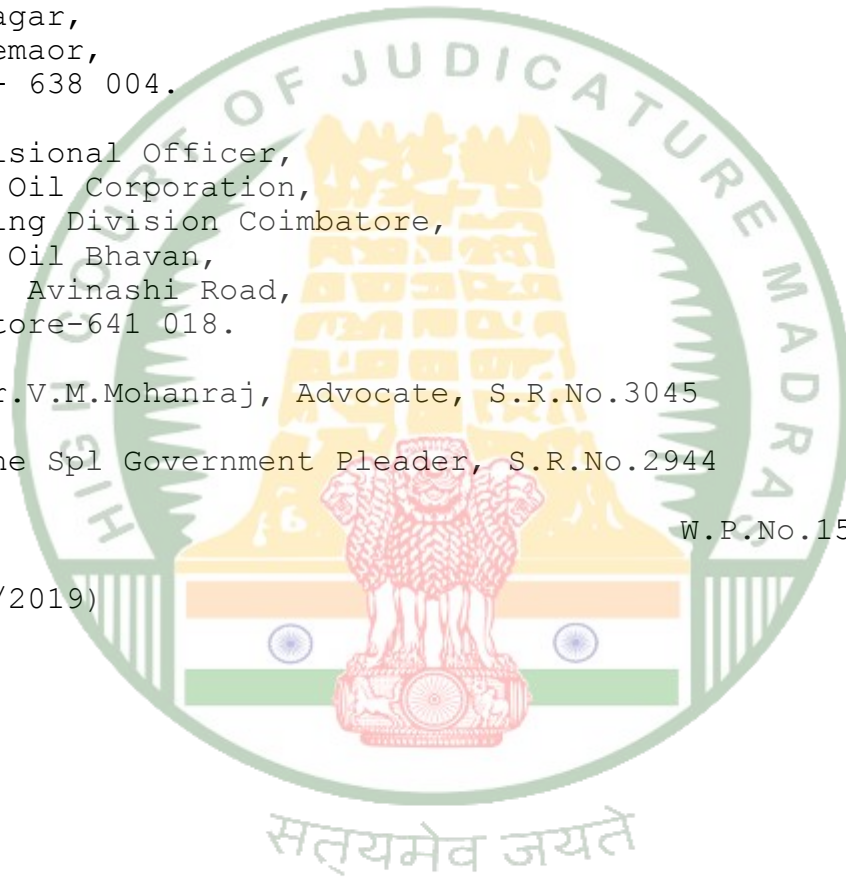
3.The Divisional Officer,
Indian Oil Corporation,
Marketing Division Coimbatore,
Indian Oil Bhavan,
8/1079, Avinashi Road,
Coimbatore-641 018.

+1cc to Mr.V.M.Mohanraj, Advocate, S.R.No.3045

+1cc to the Spl Government Pleader, S.R.No.2944

W.P.No.15323 of 2005

RSV(CO)
GSP(06/02/2019)



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