

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.24638 of 2010
and M.P.No.1 of 2010

1.M.Perumal Thevar

2.Pandiyan

3.R.Raja

4.Chinna Samy

...Petitioners

Versus

1.Union of India,
Rep. by its Secretary,
Ministry of Tribal Welfare,
New Delhi.

2.State of Tamil Nadu,
represented by its Secretary to Government,
Forest Department,
Fort St.George, Chennai-9.

3.The District Collector,
Theni District, Theni.

4.The District Forest Officer,
Theni District, Theni.

5.The Forest Ranger,
Gudalur Range,
Lower Camp,
Uttamapalayam Taluk,
Theni District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents herein from taking any steps to evict the petitioners herein from the land in his occupation in Pandikuzhi, 2nd Mile, Achari Pallam, Kumili Beat, Lower Camp Post, near Kerala-Tamilnadu Border, Uttamapalayam Taluk, Theni District, without complying with the orders passed in W.P.No.14174 of 1993 dated 04.09.2000 as well as W.P.No.46235 of 2002 dated 27.12.2002 and consequently direct the respondents to consider the case of the petitioner on the basis of the provisions contained in the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006, by conferring a right to hold and live in the forest land for habitation / for self cultivation for livelihood.

For Petitioner : Mr.A.Jenasenan

For Respondents : Mr.K.S.Jayaganesan for R1
Senior Panel counsel.

Mr.G.B.Rajesh for RR2,4 & 5
Government Advocate

Mr.J.Ramesh for R3
Additional Government Pleader

ORDER

This writ petition has been filed seeking to issue Mandamus forbearing the respondents herein from taking any steps to evict the petitioners herein from the land in his occupation in Pandikuzhi, 2nd Mile, Achari Pallam, Kumili Beat, Lower Camp Post, near Kerala-Tamilnadu Border, Uttamapalayam Taluk,

Theni District, without complying with the orders passed in W.P.No.14174 of 1993 dated 04.09.2000 as well as W.P.No.46235 of 2002 dated 27.12.2002 and consequently direct the respondents to consider the case of the petitioner on the basis of the provisions contained in the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006, by conferring a right to hold and live in the forest land for habitation / for self cultivation for livelihood.

2.The petitioners are landless poor. About 80 - 90 years before, the petitioner's forefathers had settled down in the hill area lying on the fringers of forest called Suranganar area near Kerala Border in Uttamapalayam Taluk. The said land is not fit for human inhabitation or cultivation and it was classified as waste land. The petitioner's forefather on their own hard work improved the said land and made it fit for cultivation and they also constructed small houses for residential purposes and started plantations in and around the area for their livelihood. While so, at the relevant point of time, the then Chief Minister of Tamil Nadu announced in the Assembly that the small landless poor, who were settled in the Suranganar will be granted patta for their small holdings. Therefore, the petitioner's forefathers applied for assignment in their favour. The State Government in the year 1984, issued

G.O.Ms.No.930 dated 07.08.1984 directed the Conservator of Forest and the Revenue Officials to have a joint inspection and send a report to the District Forest Officer in order to produce the same at the time of enquiry conducted by the Forest Settlement Officer, which would be followed by a report sent by the Chief Conservator of Forest to the State Government for the Government to take a decision. Thereby, the petitioner made a representation to the Tahsildar, Uttamapalayam and he in turn addressed the District Forest Officer by his letter dated 10.12.1990 and recommended the case of the petitioners and to allot the land at least by way of lease. As against the G.O as well as the recommendation of the Revenue Department, several writ petitions came to be filed before this Court seeking direction to the respondent to grant patta in favour of the petitioners. This Court by an order dated 04.09.2000, passed an order in those writ petitions directing the respondents to consider the representation of the petitioners and pass orders. In the meantime, the respondents initiated action to evict the petitioners and notices were issued. After disposal of these writ petitions, the petitioners as well as similarly placed petitioners requested the authorities concerned to comply with the order dated 04.09.2000 in terms of G.O.Ms.No.930 dated 07.08.1994. Since no fruitful orders have been passed, the petitioners are before this Court with the aforesaid prayer.

3. Already after hearing both sides, this writ petition was dismissed by this Court on 02.08.2019. Thereafter, the learned counsel appearing for the petitioner represented before this Court and submitted that some important points were left over while arguing the case on 02.08.2019 and sought permission to argue this matter on 06.08.2019. Accordingly, this matter was listed today i.e., 06.08.2019.

4. The learned counsel for the petitioner submitted that only a meager extent of land has been occupied by the petitioner's forefathers. He further submitted that even as per the Forest Act, the Scheduled Tribe people are entitled to get patta. Though, the Government of Tamil Nadu issued G.O.Ms.No.930 dated 07.08.1984 taking into account for the grant of patta in respect of a land which is being used for cultivation on the fringes of the forest on the plea of long enjoyment and cultivation and directed the Conservator of Forest and the Revenue Officials to have a joint inspection and the said inspection report should be sent to the District Forest Officer. So, as to produce the same at the enquiry conducted by the Forest settlement officer under Section 8 of the Tamilnadu forest Act which should be followed by a report to be sent by the Chief Conservator of Forest to the State Government

so as to enable the government to take a decision . The petitioner further submitted that the Tahsildar, Uttamapalayam by his letter dated 10.12.1990 addressed to the District Forest Officer, recommended the case of the petitioners to allot the land at least by way of a lease. Accordingly, the petitioners filed writ petitions in W.P.Nos.14174,17552,19711 & 18185 of 1993 and 46235 of 2002 and this Court by an order dated 04.09.2000 and 27.12.2002 issued direction to consider the petitioners representation and pass appropriate orders. Even thereafter, the respondent issued notices under 68(a) and thereafter, the respondent have taken steps to evict the petitioner. The learned counsel further submitted that over ruling the said G.O.930, the Government has taken steps to evict the petitioner. He further submitted that the Central Government has passed an Act viz., the Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006. Therefore, he seeks to consider the representation of the petitioner in view of the G.O.Ms.930 as well as the orders passed by this Court. The learned counsel for the petitioner further submitted that it would suffice if the petitioner is granted liberty to approach the appropriate forum in this regard.

5.Per Contra, the learned counsel appearing for the respondents would submit that the petitioners have illegally occupied the Reserve Forest Area. He

further submitted that out of 40 persons 30 were already evicted and the remaining persons are before this court. The G.O.No.930, dated 07.08.1984 is applicable only for the areas proposed to be notified under Section 16 of Tamil Nadu Forest Act 1882. Further the Forest Settlement Officer will consider the claims under Section 8 of Tamil Nadu Forest Act 1882 during the course of Forest settlement process i.e., before notification of areas as Reserved Forests under Section 16 of Tamil Nadu Forest Act 1882. Hence the contents of the above said Government Order will not be applicable in respect of this case as the said forest land (Suranganar RF) had already been notified as Reserve Forests under Tamil Nadu Forest Act 1882 vide G.O.No.1275 Revenue Dept. dated 11.10.1883 itself.

6. On a perusal of the records, it is seen on earlier occasion, similarly placed persons like the petitioners approached this Court by way of writ petition in W.P.Nos.14174 of 1993 etc., and W.P.No.46235 of 2002. In W.P.Nos.14174 of 1993 etc., this Court issued direction to the respondents therein to consider the representation made by the petitioners therein. In W.P.No.46235 of 2002, this Court directed the petitioner therein to file proper reply to the impugned show cause notice. Thereafter, the notice under Section 68-A of the Tamil Nadu Forest Act, 1882 came to be passed.

7. On a perusal of Section 68-A inserted by Act 41 of 1981 with effect from 03.07.1981 disclose that any person unauthorisedly occupying any land in reserved forest or any land at the disposal of Government may be summarily evicted by an Officer of Forest Department not below the rank of Forest Ranger or an Officer of the Revenue Department not below the rank of Tahsildar having jurisdiction over area in which such land is situated.

8. In the present case, the petitioners are occupying the forest land. Earlier Government Order cited by the petitioners is applicable to a person who occupy for cultivation at the fringes of the Forest. Enquiry has to be conducted by Forest Settlement Officer under Section 8 of the Tamil Nadu Forest Act and issue direction to the concerned District Forest Officer or Subordinate to consider and include certain points at the enquiry. The Said Government order has not given complete absolute right to the petitioners to claim the property as their own. In the present case, the petitioners are in occupation of the reserve forest land in which this Court cannot prevent the Authorities to take action under Section 68-A of the Tamil Nadu Forest Act.

9. This writ petition is accordingly dismissed. However, the respondents are directed to evict the petitioners after following due process of law. Consequently, connected miscellaneous petition is closed. No costs.

06.08.2019

Index : Yes/No

Internet : Yes/No

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To

1.The Secretary,
Union of India,
Ministry of Tribal Welfare,
New Delhi.

2.State of Tamil Nadu,
represented by its Secretary to Government,
Forest Department,
Fort St.George,
Chennai-9.

3.The District Collector,
Theni District, Theni.

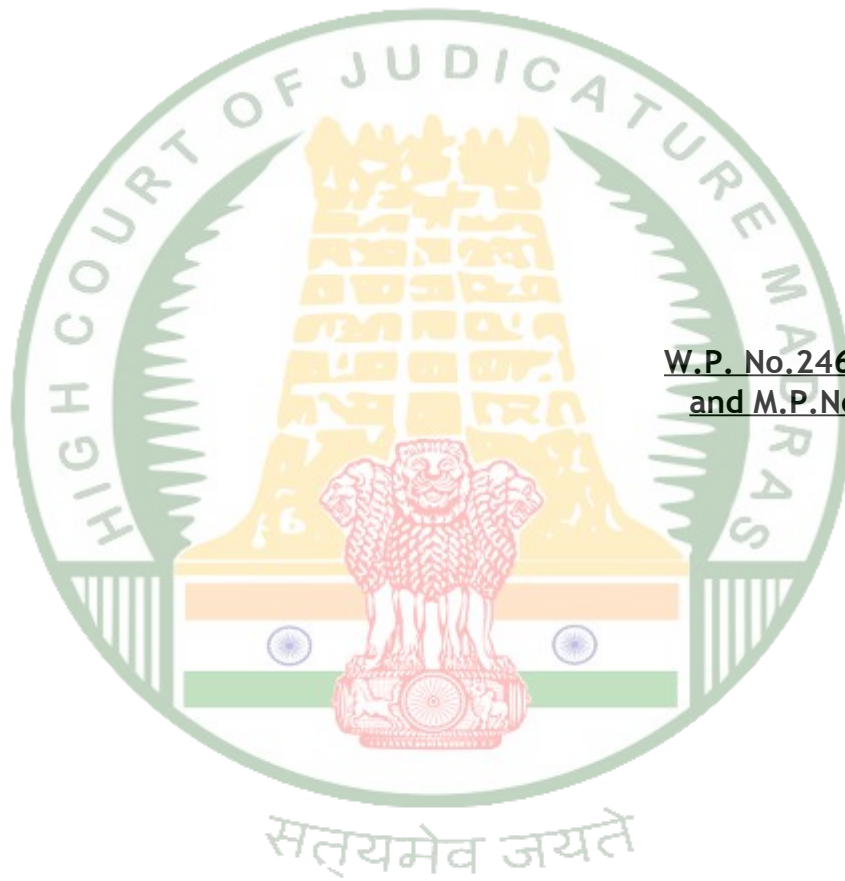
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