

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.03.2019
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.Nos.4447, 4448 & 68 of 2018
and
W.M.P.Nos.5456, 5457, 5458, 5459 & 67 of 2018

S.J.F.Coelho,
Proprietor, Naduvattam Village,
Silver Cloud Estates,
Gudalur, The Nilgiris District.

... Petitioner in W.P.No.4447/2018

Santhosh Kumar

... Petitioner in W.P.No.4448/2018

R.Suriya Vikas

... Petitioner in W.P.No.68/2018

Vs

1.The District Collector,
The Nilgiris District, Ooty.

2.The District Forest Officer and Member,
Gudalur, The Nilgiris District.

3.The Executive Engineer and Member,
Gudalur Division, Gudalur,
The Nilgiris District.

4.The Tahsildar,
Gudalur Taluk, Gudalur,
The Nilgiris District.

... Respondents
in W.P.No.4447/2018

1.The District Collector,
The Nilgiris District, Ooty.

2.The District Forest Officer and Member,
North Division, Udhagamandalam,
The Nilgiris District.

3.The Executive Engineer and Member,
North Division, Udhagamandalam,
The Nilgiris District.

4.The Tahsildar,
North Division, Udhagamandalam,
The Nilgiris District.

... Respondents
in W.P.No.4448/2018

1.The District Collector,
Nilgiris, The Nilgiris District.

2.The District Forest Officer and Member,
North Division, Udhagamandalam,
The Nilgiris District.

3.The Executive Engineer and Member,
North Division, Udhagamandalam,
The Nilgiris District.

4.The Tahsildar,
North Division, Udhagamandalam,
The Nilgiris District.

... Respondents
in W.P.No.68/2018

Prayer in W.P.No.4447 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Rc.No.A4/SR/41/2017, dated 10.02.2018 and quash the same as far imposing Rs.2,00,000/- for maintenance charge while permitting the felling of 500 silver oak trees from the field in S.No.1, Naduvattam Village, Udhagai Taluk, The Nilgiris District and further direct the 1st respondent to issue proceedings permitting the petitioner to fell 500 silver oak trees from the field in S.No.1, Naduvattam Village, Udhagai Taluk, The Nilgiris District.

Prayer in W.P.No.4448 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Rc.No.A4/SR/25/2017, dated 13.11.2017 and quash the same as far imposing Rs.2,58,800/- for maintenance charge while permitting the felling of 647 silver oak trees from the field in S.No.292, Kookal Village, Udhagai Taluk, The Nilgiris District and further direct the 1st respondent to issue proceedings permitting the petitioner to fell 647 silver oak trees from the field in S.No.292, Kookal Village, Udhagai Taluk, The Nilgiris District.

Prayer in W.P.No.68 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in proceedings Rc.A4/16364/2015, dated 06.11.2017 and quash the same as far imposing Rs.1,98,800/- for maintenance charge while permitting the felling of 497 silver oak trees from the field in Survey No.247/1 of Jakkanarai Village in Kothagiri Taluk for 2nd spell and further direct the

respondent to issue proceedings permitting the petitioner to fell 497 silver oak trees from the field in Survey No.247/1 of Jakkanarai Village in Kothagiri Taluk for 2nd spell.

For Petitioners : Mr.C.Prakasam
in W.P.Nos.4447 & 4448/2018 for M/s.L.Karthiga

For Petitioner : Mr.K.V.Sajeev Kumar
in W.P.No.68/2018

For Respondents : Mr.R.Govindasamy,
in all W.Ps. Special Government Pleader
for R1 & R4
Ms.Thangavadana Balakrishnan,
Additional Government Pleader (F)
for R2 & R3

COMMON ORDER

In all these writ petitions, the respective writ petitioners are aggrieved against the order passed by the District Collector, the Nilgiris, insofar as directing the petitioners to remit further sum towards maintenance charges, apart from paying the sum towards security deposit, for the purpose of granting permission to fell silver oak trees from their respective patta land.

2. Heard the learned counsels appearing for the petitioners and the learned Special Government Pleader appearing for the 1st and 4th respondents and the learned Additional Government Pleader (Forest) appearing for the 2nd and 3rd respondents.

3. There is no dispute to the fact that all these petitioners are holding their respective patta lands referred to in each impugned order and they sought permission to fell the certain number of silver oak trees referred to therein. While considering their applications for granting permission, the 1st respondent District Collector passed the impugned orders, wherein and whereby, the respective petitioners were informed that the District Committee resolved to grant permission to fell 497 silver oak trees in W.P.No.68 of 2018, 1832, 500 silver oak trees in W.P.No.4447 of 2018 and 647 silver oak trees in W.P.No.4448 of 2018 from their respective patta land. While intimating so, the 1st respondent directed the respective petitioners to remit a sum of Rs.49,700/- for security deposit and Rs.1,98,800/- for maintenance charges in W.P.No.68 of 2018; Rs.64,700/- towards security deposit and Rs.2,58,800/- for maintenance charges in W.P.No.4448 of 2018 and Rs.50,000/- towards security deposit and Rs.2,00,000/- for maintenance

charges for the first stretch (500 trees out of total number of 1832 trees) in W.P.No.4447 of 2018.

4. The petitioners are aggrieved only against the demand of maintenance charges in each case by contending that such demand is not supported by any statutory liability. In other words, it is their contention that as per Rule 9(2) of the Tamil Nadu Hill Area (Preservation of Trees) Rules, 1957, the 1st respondent is entitled to collect deposit as security either a sum of Rs.1,000/- per hectare or Rs.100/- for each tree proposed to be felled for the successful regeneration of tree and not any sum more than that under any head. Therefore, these petitioners are challenging the demand of the maintenance charges alone in each case.

5. The 1st respondent filed a counter affidavit, wherein it is stated that in the recent past, most of the persons to whom permits were granted have contravened the condition regarding regeneration of the felled area and therefore, as a measure of deterrent, the petitioner in each case was called upon to remit the maintenance charges in addition to the security deposit. It is further stated by the 1st respondent that the maintenance charges along with the security deposit are refundable to the permit holders, after ascertaining that the felled area is regenerated with an equal number of trees of the same species. Therefore, it is contended by the 1st respondent that the petitioner is not prejudiced in remitting the maintenance charges.

6. The learned counsels appearing for the petitioners reiterated the contentions raised in the writ petitions heavily by relying on the Rule 9 (2) of the said Rule.

7. On the other hand, the learned Additional Government Pleader (F) appearing for the 2nd and 3rd respondents submitted that the maintenance charges in each case was demanded only to ensure that the felled area is regenerated with equal number of trees, more particularly, when the said maintenance charges along with security deposit are refundable to the petitioners, after ascertaining such regeneration. Therefore, she contended that the petitioners are not going to be prejudiced in any manner by paying the maintenance charges.

8. Heard both sides.

9. As already pointed out, the petitioners are not disputing the collection of security deposit in each case. Their grievance is only against the collection of deposit towards maintenance charges. Rule 9 (1) of the Tamil Nadu Hill Areas (Preservation of Trees) Rules, 1957 stipulates that in case, where permission is granted by the Committee to cut a tree on the ground that it has silviculturally matured, the Committee shall besides requiring the person to whom the permission is granted to make the deposit also impose a condition that the felled area shall be regenerated with equal number of trees of

the same species. Sub Rule (2) of Rule - 9 specifically contemplates that the person to whom the permission is granted, shall deposit with the Committee as security, a sum of Rs.1,000/- per hectare or Rs.100/- for each tree proposed to be felled, whichever is less for the successful regeneration of the tree. Sub Rule (3) contemplates as to how the regeneration of the felled area will have to be done by the Forest Department at the cost of the permit holder, in the event of his failure to regenerate the area with a tree crop to the satisfaction of the Committee, within the time limit stipulated in the permit.

10. Therefore, perusal of the above said Rule 9, more particularly, Sub Clause (2) of the same would make it clear that the Committee is entitled to demand only the sum referred to under the Sub Rule 2 as security deposit and not more than that on any head. In these cases, the security deposit for each tree is calculated and demanded with which these petitioners are not having any quarrel. Therefore, it is evident that they are ready to comply with the requirement under Rule 9(2). In the absence of any provision empowering the Committee to collect any other charges than the one referred to under Rule 9(2), I am of the view that the 1st respondent is not entitled to collect maintenance charges, apart from the security deposit for each tree, based on mere apprehension the permit holders may contravene the condition regarding the regeneration. In fact, a careful perusal of the Sub Rule (3) of Rule 9 would show that Forest Department is entitled to recover excess amount from the permit holder over and above the security deposit, if they have to regenerate the trees. Therefore, I find that the demand towards maintenance charges is not supported by any statutory provision.

11. Therefore, all these Writ Petitions are allowed and the impugned orders insofar as demanding the maintenance charges alone are set aside. Consequently, the petitioners are directed to pay the security deposit as required under Rule 9(2), as claimed in each case, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such security deposit, the 1st respondent shall pass appropriate orders within a period of four weeks thereafter. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsi/vri

To

- 1.The District Collector,
The Nilgiris District, Ooty.
- 2.The District Forest Officer and Member,
Gudalur, The Nilgiris District.
- 3.The Executive Engineer and Member,
Gudalur Division, Gudalur,
The Nilgiris District.
- 4.The Tahsildar,
Gudalur Taluk, Gudalur,
The Nilgiris District.
- 5.The District Forest Officer and Member,
North Division, Udhagamandalam,
The Nilgiris District.
- 6.The Executive Engineer and Member,
North Division, Udhagamandalam,
The Nilgiris District.
- 7.The Tahsildar,
North Division, Udhagamandalam,
The Nilgiris District.

+2cc to Mr.L.Kathiga, Advocate, S.R.No. 21283

+1cc to the Government Pleader, S.R.No. 22034

+1cc to the Special Government Pleader(Forest), S.R.No. 21693

+1cc to Mr.K.V.Sajeev Kumar, Advocate, S.R.No. 21726(18/03/2019)

सत्यमेव जयते

W.P.Nos.4447, 4448 & 68 of 2018

GJ II(CO)

GN(14/03/2019)

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