

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM :

The Hon'ble THIRU.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4106 of 2019

H.Manish Chand Vaid
(Cause title accepted vide Order
dt.13.11.2019 in CMP.23497/2019) .. Appellant/Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Environment and Forest Dept., Fort St.
George, Chennai 600 009, Tamil Nadu.
 - 2.The Principal Chief conservator of
Forests (Head of Forest Force),
Panagal Building, Saidapet,
Chennai 600 015, Tamil Nadu.
 - 3.The District Collector,
Nilgiris District, Udhagamandalam
643 001, Tamil Nadu.
 - 4.The Deputy Director (Buffer),
Mount Steward Hill, Udhagamandalam
643 001, The Nilgiris, Tamil Nadu.
- .. Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 20.11.2018 made in W.P.No.29610 of 2018 on the
file of this Court.

WP.No.29610 of 2018: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 and pass such further or other orders that this Honble Court.

For Appellant : Mr.R.Sankaranarayanan
Sr. Counsel
for Mr.Pramodh Kumar

For Respondent : Mr.S.V.Vijay Prashanth
Addl.G.P. (F) for RR 1 & 2
: Mr.V.Jayaprakash Narayanan
Govt. Pleader for R-3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The contest and the grievance raised by the appellant is that the learned Single Judge, after taking notice of the directions issued by the High Court through its Division Bench judgment dated 27.06.2014 in W.P.Nos.32689 and 32690 of 2013 (N.Mangalchand Vaid and Anr. vs. State of Tamil Nadu and Ors.), came to the conclusion that the District Collector, Nilgiris, could not have made a proposal for deleting the Survey numbers as prayed for by the appellant from the purview of the impact of the declared Elephant Corridor. The learned Single Judge has further observed that the request of the Collector was returned by the State Government observing that the said recommendations made by the Collector cannot be accepted, inasmuch as the survey land was described by the Chief Conservator of Forests to be falling within the Elephant Corridor and more substantially because of the fact that there are 32 Special Leave Petitions filed and pending before the Apex Court relating to the notification of the Elephant Corridor. The letter dated 30.12.2015 is extracted hereinunder:

"I am directed to invite your attention to the reference first cited, wherein you have recommended to issue amendment to G.O. (Ms.) No.125, Environment and Forests (FR.5) Department, dated 31.08.2010 to exclude certain survey Nos. from the notified Elephant Corridor, in the Sigur Plateau, Nilgiris District.

2.The Principal Chief Conservator of Forests in his report has stated that irrespective of the legal status of the land all the S.No.of petitioners (i.e. Thiru.Mangalchand Vaid and Others) 252/4, 252/5, 254/2, 254/3, 254/4, 254/5, 254/7, 263/1, 265/1, 266/1, 267/1, 267/3, 268/2, 269/1, 270/1, 271/1, 278 (p) are falling in the notified Sigur Plateau Elephant Corridor. Further, as on today, there are 32 SLPs filed and pending in Hon'ble Supreme Court of India relating to the notification of Sigur Plateau Elephant Corridor.

3.Hence, your recommendation to issue amendment to G.O. (Ms.) No.125, Environment and Forests (FR5) Department, dated 31.08.2010, to exclude the S.No.252/4, 252/5, 254/2, 254/3, 254/4, 254/5, 254/7, 263/1, 265/1, 266/1, 267/1, 267/3, 268/2, 269/1, 270/1, 271/1, 278 (p) from the Sigur Plateau Elephant Corridor cannot be accepted."

2.The learned Single Judge has, therefore, dismissed the writ petition with the observation that this will not prevent the appellant from approaching the appropriate forum seeking remedy, if so advised.

3.Learned counsel for the appellant contends that the learned Single Judge has made observations with regard to the recommendations made by the District Collector to be not in conformity with the recommendations of the Expert Committee and therefore, it became imperative for the appellant to institute this appeal. It is also contended that unless the communication of the Government dated 30.12.2015 is not set aside and the observations made by the learned Single Judge are allowed to continue, the same would directly prejudice the rights of the appellant in relation to the exemption sought in respect of the land of the appellant, which, it is contended, is beyond the width of 1000 meters of the Corridor, which is the prescribed limit under the reports.

4.Learned counsel further submits that even otherwise there has not been an objective consideration of the representations of the appellant inasmuch as the survey land for which exemption

is sought by the appellant are situated on a steep rise of 1000 meters, which cannot be possibly traversed by any elephant and this practical aspect of the matter has also been ignored by the Expert Committee, thereby causing prejudice to the cause of the appellant.

5. Learned counsel, therefore, contends that the learned Single Judge ought to have tested the merits of the claim and should not have declined to exercise discretion merely because of the communication of the Chief Conservator of Forests or because of the pendency of the SLPs before the Apex Court.

6. It is for this reason that the only forum which was available to the appellant was to approach this Court by filing the writ petition seeking redressal of the grievance on the grounds so raised in the exercise of jurisdiction under Article 226 of the Constitution of India.

7. Learned counsel for the respondents/State have, however, opposed the appeal and urged that once the Expert Committee has made certain observations indicating that the survey numbers of the appellant form part of the buffer land, which, according to the Expert Committee, may be required for the moving of not only elephants, but also of other wild animals, the contention raised on behalf of the appellant to exclude the survey land of the appellant cannot be accepted and consequently, the learned Single Judge was justified in declining to interfere with the matter.

8. Learned counsel for the appellant has urged that in view of the demography of the area as explained by the appellant and in view of the requirement of the land for the Elephant Corridor, there does not appear to be any reason to deny the exemption to the appellant, for which he has relied on material placed on record.

9. From the allegations and counter allegations and after having gone through the findings recorded by the learned Single Judge, we are of the opinion that the adjudication of the exclusion of the survey numbers as prayed for by the appellant will have to ultimately abide by any directions or orders passed by the Apex Court in the pending SLPs. The question of excluding the survey numbers has also been avoided by the State Government in the communication dated 30.12.2015 primarily on the ground of pendency of SLPs and the subject matter being under consideration before the Apex Court itself.

10. In the given circumstances and the background aforesaid, the exercise of jurisdiction by this Court in order to examine the very same issues may, therefore, have to await any directions by the Apex Court and consequently, we see no reason to keep this writ appeal pending, with liberty to the appellant to seek any appropriate remedy before the Apex Court itself by moving an appropriate petition or application, as may be advised, in order to question the correctness or otherwise of the stand of the respondent Government as communicated through the above quoted communication dated 30.12.2015, as also the consequential order passed by the District Collector for grant of exemption/exclusion of the survey numbers insofar as it relates to the appellant.

11. We, therefore, observe that it shall be open to the appellant to seek remedy accordingly that shall be without prejudice to the proceedings undergone before this Court.

The Writ Appeal is, accordingly, disposed of. There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra

To

1. The State of Tamil Nadu,
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643 001, The Nilgiris, Tamil Nadu.

+1 cc to the Special Government Pleader (Forests) sr100158

W.A.No.4106 of 2019

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