



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.2278 of 2018
and
W.M.P. (MD) No.2492 of 2018

1.Yesudhas
2.Alexandar
3.Pramod
4.Rajan
5.Ramayan
6.Kanagaraj

... Petitioners

Vs

1.The Conservative Officer,
Forest Department,
Chennai.

2.The District Forest Officer,
Kanyakumari District,
Nagercoil.

3.The District Collector,
Kanyakumari District,
Nagercoil.

4.The Assistant Executive Engineer,
Agricultural Engineering Department (Public),
No.22-31/A, Dharga Road,
Meetukadai, Thackalay - 629 175,
Nagercoil, Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in M1/1135/2017, dated 12.11.2017 and quash the same and consequently direct the respondents to permit the petitioners to cut and remove the uprooted rubber, jack, mango, cashew nut trees and replant the rubber trees in S.No.3074, Surulcode Village R.S.Nos.126, 127, 128, 134, 133, 129 and 132 situated at present Pechiparai Village, Kalkulam Taluk, Kanyakumari District.

For Petitioner : Mr.T.Selvakumaran

For Respondents : Mr.M.Karuppasamy
Government Advocate

**ORDER**

Heard the learned counsel on either side.

2. The writ petitioners are having a dispute with the Government with regard to the title over the lands comprised in S.No.3074, Surulcode Village in Kanyakumari District measuring to an extent of 27.97 acres. The writ petitioner namely, Yesudhas filed O.S.No.322 of 1982 before the District Munsif Court, Padmanabhapuram seeking the relief of declaration and permanent injunction in respect of his 1.20 acres and the suit was dismissed. However, A.S.No.55 of 1994 filed by him was allowed by the Sub Court, Padmanabhapuram on 29.01.2002. Likewise the suits filed by the other petitioners for their predecessors title were likewise allowed at the appellate stage. The details are as follows:-

Sl. No	Name	Survey Numbers	Acres
1.	Yesudhas S/o.Kurusu	Old Survey No.3074 of Surulacode Village, Kanyakumar District.	1.20 cents
			7 acre
2.	Alexandar S/o.Manickam		8 acre
			2 acre
3.	Pramod S/o.SivasankaraNair	New Re-Survey Nos.126, 127, 128, 129, 130, 131, 132, 133 and 134 of Peachiparai Village, Kanyakumari District.	4.25 cents
4.	Rajan S/o.Ramayan		5.52 cents
5.	Ramayan S/o.Velayutham		
6.	Kanagaraaj S/o.Abel		
		Total Extent	27.97 acres

3. This Court posed a specific question to the learned Government Advocate appearing for the respondents as to whether the judgment and decree passed by the First Appellate Court in A.S.No.55 of 1994 etc., were challenged by way of Second Appeal. The learned Government Advocate appearing for the respondents stated that S.A.(MD)No.SR17845 of 2005 was filed. He further stated that the condone delay petition has been numbered. The fact remains that as on date the relief of declaration and permanent injunction granted in favour of the writ petitioners and against the respondents herein is holding good. The district of Kanyakumari was struck by Okhi cyclone. The trees standing on the lands in question had fallen down. Therefore the petitioners are seeking permission to remove the same and they also want permission to replant rubber trees. This Court again posed a specific question to the learned Government Advocate appearing for the respondents as to whether the trees in question were planted by the department or not. The answer was in



the negative. Therefore, the person who planted the trees must be permitted to remove the same. Since the department did not plant the trees in question, the petitioners are entitled to cut and remove the trees that have fallen on the lands in question. Therefore, the order impugned in this writ petition is quashed and the writ petition is partly allowed. As regards the right to plant the trees in the lands in question, the issue is left open and it is open to the writ petitioners to file a fresh writ petition on the same cause of action. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

// True Copy //

Sub Assistant Registrar(CS)

To:

- 1.The Conservative Officer,
Forest Department,
Chennai.
- 2.The District Forest Officer,
Kanyakumari District,
Nagercoil.
- 3.The District Collector,
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Agricultural Engineering Department (Public),
No.22-31/A, Dharga Road,
Meetukadai, Thackalay - 629 175,
Nagercoil, Kanyakumari District.

+1 CC to M/s.T.SELVAKUMARAN, Advocate in SR-59046
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.59297

W.P. (MD) No.2278 of 2018
04.04.2019

ias
PK/26.04.2019 : 3P/7C