



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.23167 of 2018

and

WMP(MD)Nos.21055 of 2018 & 1957 of 2019

B.Ravi Raja

... Petitioner

Vs.

1.The Ministry of Environment,
Forest and Climate Change,
Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi - 110 003
Rep.by its Secretary.

2.The Principal Chief Conservator of Forests,
Department of Forests, Government of Tamil Nadu,
No.1, Panagal Building, Jenis Road, Saidapet,
Chennai - 600 015.

3.The District Forest Officer,
Tirunelveli Division, NGO colony,
North Colony, North Main Road,
Tirunelveli - 627 009.

4.The Ranger, Puliyangudi Range,
Puliyangudi, Tirunelveli District.

5.The Forest Watcher,
Puliyangudi Range,
Puliyangudi, Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from denying the petitioner, his family members, servants or labourers from using vehicular transport along the existing mamool pathway or coupe mud road to gain access of the petitioner's own patta lands comprising of Cardaman estate known as Melthoppu at Survey Nos.930 and 932, admeasuring about 34 acres out of 51 acres of patta lands in Ullar Beat, Kallakadai (Ponparai), Sivagiri Part II Village, Sivagiri Taluk, Tirunelveli District through the reserved forest gate adjacent to forests tribals rehabilitation sheds in Puliyangudi and via the forest shelter promoted by the Tamil Nadu Biodiversity Greening Project



(Scheme 2013-14) at Naiparrai at Kallakadai Odai in Sivagiri Taluk, Tirunelveli District.

For Petitioner : Mr.T.N.Rajagopalan
for Ms.Sudharshana Sundar

For Respondents : Mr.S.Sivakumar for R1
Mr.M.Karuppasamy,
Government Advocate for R2 to R5

ORDER

Heard the learned counsel on either side.

2.The writ petitioner owns 34 acres of land in Ullar Beat, Kallakadai (ponparai), Sivagiri Part II Village, Sivagiri Taluk, Tirunelveli District. The said land forms part of total extent of 51 acres which was purchased by the petitioner's forefathers in the year 1951. Since this estate lies within the forest region, the Government issued an order dated 08.01.1980 conferring the right of pathway in favour of the then estate owners. Since such a right would run with the land, the petitioner is definitely entitled to the very same right of way. All that the petitioner wants is that he should not be restrained from using vehicle for reaching his estate via the forest pathway in question. The petitioner had submitted representations in this regard. Even though the same was received by the forest authorities, they have not chosen to respond. That necessitated the filing of this writ petition.

4.Heard Mr.T.N.Rajagopalan for Ms.Sudharshana Sundar for the writ petitioner and the learned standing counsel appearing for the first respondent and the learned Government Advocate appearing for the other official respondents.

5.The learned counsel appearing for the writ petitioner pointed out that the pre-existing rights of the estate owner cannot be effaced or taken away by the subsequent statutory enactments. It is true that the Forest (Conservation) Act, 1980 was enacted and it came into force with effect from 25.10.1980. But then, the petitioner's family has been enjoying the estate in question right from the year 1951. Their right of way have also been recognised by the Government by order dated 08.01.1980. When the petitioner's estate lies inside the forest, they ought to have a right of way. This right will have to be recognized atleast an easement of necessity.

6.The learned counsel appearing for the writ petitioner drew my attention to the order dated 15.10.2012 made in WA.No.1375 of 2012 etc,, batch passed by the Hon'ble First Bench. The Hon'ble First Bench held as follows :

<https://hcservices.ecourts.gov.in/hcservices/>

11.In terms of Section 2 of the Forest (Conservation) Act, 1890, there is a restriction on the reservation of



forest or use of forest land for non forest purpose. As per the said provision notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make except with the prior approval of the Central Government any order directing that any reserved forest shall cease to be reserved; any forest land may be used for any non forest purpose; any forest land may be assigned by way of lease to any private person or to authority, corporation, etc.; and any forest land may be cleared of trees which have grown naturally in that land, for the purpose of using it for deforestation. The explanation contained in Section 2 defines what is non forest purpose. Thus, in terms of the said provision, there appears to be an embargo on the use of forest land for non forest purpose except with the approval of the Central Government.

12. Rule 6 of the Forest Conservation Rules deals with submission of proposals seeking approval of the Central Government under Section 2 of the Act, and has provided a procedure to be followed for obtaining permission to use any forest land for non-forestry purpose. After having gone through Rule 6 of the said Rules and the directions issued by the learned single Judge, as quoted, it appears that the directions are in consonance with the procedure stipulated under Rule 6 of the said Rules.

13.....

14. On the second aspect that till the appropriate authority under the Act passes an order, the respondents/writ petitioners have been permitted to use the pathway for vehicular movement and access to their patta land, it is to be noted that the respondents/writ petitioners specifically asserted that the villagers and the respondents/writ petitioners were using the forest land for over 60 years to reach their patta lands. This averment has not been denied by the appellants in their counter affidavit. The fact that the stretch of the forest land has been used for more than 60 years as pathway having not been denied by the appellants/State, prima facie we are of the view that the State cannot be allowed to say that the said road cannot be used without the permission of the authority as contemplated under the Forest Conservation Act, 1980. Hence, while considering the application for grant of permission, the authority shall consider this aspect of the matter also. Reference may be made to the decision of the Supreme Court in the case of State of Bihar vs. Banshi Ram Modi reported in (1985) 3 S.C.C. 643.

15. In the facts and circumstances of the case, we find no error in paragraph 3(vii) of the order passed by the learned single Judge. It is needless to state that if the respondents/writ petitioners attempted to use the forest land for any other purpose other than for vehicular movement and access to their patta land, it would be well



within the powers of the appellants to take action against such of those persons, who use the forest land for any purposes other than what has been authorised in the order passed in the writ petition. For such purpose, it would be open to the appellants to have check points en route so as to prevent any person from violating the order."

7.The Hon'ble First Bench specifically sustained the order passed by the learned Single Judge recognising the right of the land owner for utilising the forest pathway. But then, it added a caveat to the effect that the utilisation would not be for any non forest purposes. Vehicular movement was specifically recognized for reaching their land. This decision of the Hon'ble First Bench was followed by a learned Single Judge while allowing WP(MD)No.20705 of 2016 on 25.01.2017. Few other such decisions have been enclosed by the petitioner in the typed set of papers.

8.I am inclined to respectfully follow the aforesaid orders passed by the Hon'ble First Bench as well as various learned Single Judges. The respondents have filed a detailed counter affidavit. The petitioner's ownership of the estate in question is not disputed. The right of the petitioner to access his estate cannot also be disputed. It is not in dispute that at present forest pathway is in existence which leads up to the estate. The only objection raised in the counter affidavit is that the pathway in question is not motorable. It also stated that the petitioner can only use it as a pathway. In other words, the petitioner and his family members, servants and labourers will have to tread the entire distance by foot. The respondents however claim if the vehicular movement is allowed that would cause great hardship and disturbance to the wildlife animals and cause interference with their natural habitat.

9.The learned counsel appearing for the writ petitioner states that the estate in question is at a distance of almost 11 kms from the foot hills. Covering the distance by foot would obviously pose a danger to life. The petitioner of course is not going to insist that a motorable road should be laid. He is only seeking to use the pathway in question and he wants to use his Mahindra vehicle.

10.I am of the view that this request of the petitioner is most reasonable and cannot be denied. The decisions referred to above have upheld the existence of such right. Therefore, respectfully following the aforesaid decisions, I am inclined to allow this writ petition. Accordingly, this writ petition stands allowed in the above terms. In paragraph No.11 of the counter affidavit filed by the respondents it has been admitted that the petitioner's right of way is starting from the western boundary of S.F No.265 of Village No.1 Thirumalapuram Village runs through the Ullar beat (via) Thalayanai Naiparai Kidai and Adheenammizhagi Ayyanar Kovil and reach the southern boundary of S.F.No.934 of Sivagiri Village. The writ petitioner is entitled to use the said pathway as described in Paragraph No.11 of the counter affidavit filed by the



third respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

WEB COPY

// True Copy //

Sub Assistant Registrar (CS)

TO

1. The Secretary, The Ministry of Environment,
Forest and Climate Change,
Indira Paryavaran Bhavan,
Jorbagh Road, New Delhi - 110 003.
2. The Principal Chief Conservator of Forests,
Department of Forests, Government of Tamil Nadu,
No.1, Panagal Building, Jenis Road,, Saidapet,
Chennai - 600 015.
3. The District Forest Officer, Tirunelveli Division, NGO colony,
North Colony, North Main Road, Tirunelveli - 627 009.
4. The Ranger, Puliyangudi Range, Puliyangudi, Tirunelveli District.
5. The Forest Watcher, Puliyangudi Range,
Puliyangudi, Tirunelveli District.

+4cc to Mr.R.R.KANNAN, Advocate, SR.No. 49118

+1cc to M/s.Special Government Pleader, SR.No.49166

WP (MD) No.23167 of 2018
and

WMP (MD) Nos.21055 of 2018 & 1957 of 2019

SKM

KK/SAR-/20.03.2019/5P-11C