



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **22.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P(MD)No.24809 of 2019

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V.Chockalingam

... Petitioner

/Vs./

1.The District Revenue Officer,
Madurai District, Madurai.

2.The Revenue Divisional Officer,
Melur, Office situated at Othakadai,
Madurai District.

3.The Tahsildar,
Melur Taluk,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to Call for the records relating to the impugned order passed by the 2nd respondent in Oo.Mu.No.3413/2019/C dated 08.08.2019 and to quash the same and to consequently direct the respondents to give permission to remove the 2C patta Tamarind trees planted and grown by the petitioner in Survey No.418/14 in Chokkampatty Village, Melur Taluk, Madurai District to prevent the damage being caused by these two trees to the petitioner's residential house, electricity connection.

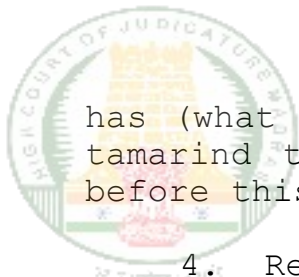
For Petitioner : Mr.V.Santhakumaresan
For Respondents : Ms.V.P.M.Vaishnavi
Government Advocate

ORDER

Mr.V.Santhakumaresan, learned counsel on record for writ petitioner and Ms.V.P.M.Vaishnavi, learned Government Advocate, who accepts notice on behalf of all the three respondents are before this Court.

2. With consent of learned counsel on both sides ie., learned counsel for writ petitioner and learned State counsel, main writ petition is taken up, heard out and is being disposed of.

3. It is the case of the writ petitioner that he sought permission to cut two tamarind trees situate in S.No.418/14 near his residence at 4/10, Puthuvalavu Theru via Kottampatti, Melur Taluk, Madurai District. Further case of the writ petitioner is that he



has (what according to him) is 2C patta for the land on which said tamarind trees stand, but copy of the patta has not been placed before this Court.

4. Reference to '2C patta' is obviously a reference to permission granted under 'Board Standing Order' ('BSO' for brevity) 18 captioned 'Scattered Trees and Topes'.

5. What is of relevance is, this Court is informed without any disputation or contestation that 2C patta being permission under BSO 18 is one which adumbrates a list of conditions and the conditions include one condition which stipulates that the person to whom permission is granted shall not remove even wind fallen trees. In any event what is referred to 2C patta is only pertaining to usufructs and that is also circumscribed by conditions adumbrated therein.

6. Learned counsel for writ petitioner drew the attention of this Court to Rule 2 (d) of BSO 18 as well as Rule 1 (ii) and (ix) of BSO 19-B which read as follows:

'18.2.Trees on unoccupied lands.-Collectors should exercise special care before assigning lands containing scattered trees or topes.

(a)....

(b)....

(c).....

(d) (i) Appeals.-From every original decision in the matter of grant of patta for trees under this standing orders whether it is passed by the Tahsildar, a Divisional Officer or the Collector, one appeal shall be allowed, provided that it is made within 30 days of the date on which the original decision was pronounced or communicated if the appeal is from the Tahsildar to the Divisional Officer or from the Divisional Officer to the Collector and within 45 days if it be from the Collector to the Board. In computing the period of limitation, the date on which the decision appealed against was pronounced or communicated and the time required to obtain a copy of a decision shall be excluded. On all copies issued shall be entered the date of the decision or communication, the date of the application for copy, the date on which the copy was ready for delivery and the date on which the appeal time expires. Any person interested in the matter may appeal. Appeals to the Revenue Divisional Officer and the Collector in the matter of grant of patta for trees should be stamped with a Court fee



label to the value of one rupee, while appeals to the Board of Revenue should be stamped with a Court-fee label to the value of rupees two.

(ii)Admission of time-barred Appeals.- Any appellate authority referred to above may admit an appeal after the expiry of the period of limitation laid down therein provided he is satisfied that the appellant had good and sufficient cause for not presenting the appeal within such period.

(iii)Procedure in hearing Appeals.- No appeal should be admitted unless accompanied by certified copies of the order or orders already passed in the case. No orders should be reversed or modified adversely to the interests of the respondent by the Collector or a Divisional Officer without giving the respondent a notice to show-cause against the action proposed to be taken adversely to his interests. The order in appeal should invariably be communicated in writing and free of charge to the parties concerned unless it was pronounced in their presence. Certified copies of the order should be furnished to the parties as a matter of course on their application which should be duly stamped and on their furnishing the requisite number of copy stamped papers.

(iv)Revision.-The order of the authority referred to above if no appeal is presented, or of the appellate authority if an appeal is presented, is final and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been material irregularity in the procedure or that the decision was grossly inequitable or that it exceeds the powers of the officer who passed it or that it was passed under mistake of fact or owing to fraud or misrepresentation, he may in case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Board of Revenue or the Government may set aside, cancel or in any way modify the decision of an authority subordinate to them within three years if they are satisfied that the decision was grossly inequitable. They may exercise similar powers within five years where there has been a material irregularity in the procedure or where



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a decision exceeds powers of the officer who passed it or where it was passed under mistake of fact or owing to fraud or misrepresentation. The authorities competent to pass orders in revision, under this paragraph may also grant stay pending their orders in revision. No application for revision will ordinarily be entertained under this paragraph if it is received after the expiry of thirty days from the date on which the decision or order is sought to be revised whether the revision is by the District Collector or the Board of Revenue or the Government. Revision petitions to the Collector in the matter of grant of patta for trees should be stamped with a Court-fee label to the value of 25 paise and those to the Board of Revenue with a Court-fee label to the value of Rs.1.50.

(v) Procedure if appellate or revising authority reverses an order refusing grant of patta for trees-A superior authority revising an order of a subordinate officer declining to grant patta for trees may-

(1)take original proceedings for grant of patta for trees.

or

(2)direct that the patta shall be granted under the rules by the officer whose order is set aside.

(e)that the trees stand on land other than that shown in the account not being private property, and

(iii)to confirm leases or annual sales of the usufruct of fruit trees belonging to Government on unreserved lands when the amount involved does not exceed Rs.100.

19.1.Conditions of licence.- Ryots will be permitted, subject to their obtaining licences, to plant trees on poramboke lands not being lands placed under the control of Panchayats established under Act X of 1950, in order to meet their requirements in regard to timber, fuel and leaf-manure. These licences will be subject to the following conditions:-

(i).....

(ii)The previous permission of the Tahsildar or Deputy Tahsildar should be obtained before trees are planted. In the case of



porambokes in charge of the Public Works Department, however, such permission should not be granted without the previous consent of that department, which may impose such additional restrictions as it may consider necessary.

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- (iii)....
- (iv)....
- (v)....
- (vi)....
- (vii)...
- (viii)...

(ix) The previous permission of the Tahsildar or Deputy Tahsildar will be required before cutting a tree, but such permission will ordinarily be granted.

In case of trees porambokes in charge of the Public Works Department, such permission should not be granted without the previous consent of the Assistant Engineer (P.W.D.) concerned.

(x)'

7. As mentioned above, writ Petitioner has made a representation to the revenue authorities for cutting two tamarind trees.

8. Learned State counsel submits that revenue authorities after going through their usual rigour, verified and came to the factual conclusion that the two trees sought to be cut are in good health and therefore, there is no necessity to cut the same.

9. In the aforesaid backdrop, an 'order dated 08.08.2019 bearing reference bearing Oo.Mu.No.3413/2019/C' (hereinafter referred to as 'impugned order' for the sake of brevity) came to be passed by the second respondent which is as follows:





10. Even if writ petitioner has 2C patta that is restricted to usufructs and it does not confer any rights of the writ petitioner to remove healthy trees. In any event, impugned order is predicated on a factual conclusion that the trees sought to be cut are healthy and nothing before this Court to demonstrate that the conclusion warrants interference.

11. In the light of the narrative thus far and observations set out supra, this Court is of the considered view that writ petitioner has not made out any case for interfering with impugned order. Writ Petition is devoid of merits, bereft of compelling grounds, the same fails and is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The District Revenue Officer,
Madurai District, Madurai.
- 2.The Revenue Divisional Officer,
Melur, Office situated at Othakadai,
Madurai District.
- 3.The Tahsildar,
Melur Taluk,
Madurai District.

+1 CC to SPL GP (SR-101137[F] dated 25/11/2019)

Order made in
W.P(MD)No.24809 of 2019
Dated:22.11.2019

MK (30.12.2019) 6P 5C