



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD)No.22133 of 2017

and

WMP (MD)Nos.18438 & 18439 of 2017

P.Gopi

... Petitioner

Vs.

1.District Forest Officer,
Velunachiar Compound,
Dindigul District,
Dindigul.

2.The Forest Range Officer,
Sirumalai Pudur,
Dindigul District,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent's impugned order dated 25.09.2017 passed in Na.Ka.order No.7292/2016/D as G.O.Ms.No.334, Environment and Forests (FR.III) Department, dated 16.11.1998 is not applicable to the petition lands in view of the Judgments of this Court rendered in W.P.No.3000 of 1977 dated 22.02.1980, W.P.No.4139 of 1980 dated 09.09.1986 and W.P.(MD)No.13192 of 2009 dated 21.11.2016 and the Government proceedings dated 01.09.1987 and quash the same and consequently direct the respondents to permit the petitioner remove and transport the cutting materials in respect of all non-schedule timbers, fire woods, saw timber, saw sizers, cottons and all kinds of logs, sizes and also standing of non-schedule items of shade trees lying on the land bearing S.No.753/1B in so far as to an extent of 98 acres at Poonjolai Estate, Sirumalai Puthur Village, Dindigul District in view of the Notification and Clarification issued by the Government of Tamil Nadu, Forest and Fisheries Department's letter No.6679/FRV/87-7, dated 01.09.1987 thereby enabling the petitioner to plant lemon, coffee, banana, orange, pepper including silver oak trees and mango trees and other agricultural products by issuing Form-II permit which are required in appropriate cases and not insist to obtain the Form-II permit in respect of exempted trees.



For Petitioner

: Mr.V.R.Venkatesan

For Respondents

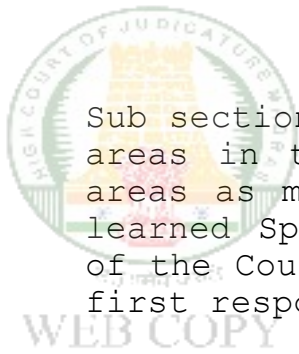
: Mrs.J.Padmavathi Devi
Special Government Pleader

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ORDER

The petitioner is the owner of the lands mentioned in the petition, in Sirumalai hill. When there was an attempt made to declare the lands in Survey Nos.753/1, 753/3, 851/3 and 817/1 as forest land, this Court in W.P.No.3000 of 1977, by order dated 22.02.1980 has declared that they were not forest lands, but ryotwari lands. Therefore, the declaration issued by the Government, classifying them as forest land was quashed. From then onwards, the petitioner is holding the land as ryotwari land. Thereafter, this Court in W.P.No.4139 of 1980, has quashed the Notification issued by the Collector of Madurai under Section 1(2)(iii) of the Tamil Nadu Preservation of Private Forest Act, 1949 declaring that Sirumalai as a private forest. This Court has also observed that the Act does not define what is 'hill station' or 'hill area'. Without classifying an area or place as 'hill station' or 'hill area', merely by notifying the area as a 'hill area' is void, and opportunity should be given to the petitioner to put forth their defence and thereafter only an order should be passed. On the basis of the order passed by this Court in W.P.No.4139 of 1980, dated 09.09.1986, the criminal prosecution initiated against the petitioner was withdrawn. Now, the petitioner has approached the respondents for permitting him to cut and remove the trees under Rule 4 of the Tamil Nadu Timber Transit Rules, 1968. The first respondent has passed the impugned order vide proceedings in Na.Ka.order No.7292/2016/D stating that for cutting and removal of trees, permission of the Hill Area Conservation Authority as per G.O.Ms.No.334, Environment and Forests (FR.III) Department, dated 16.11.1998 is required. The petitioner challenges the said order on the ground that this Court has already declared that Sirumalai is not a hill area and that his land is exempted from hill area and it cannot be treated as a land in hill area and therefore, no permission is required from the respondents. All he requires is only Form - II permit under the Tamil Nadu Timber Transit Rules, 1968.

2. Controverting the said contentions, the learned Special Government Pleader appearing for the respondents would contend that vide G.O.Ms.No.334, Environment and Forests (FR.III) Department, dated 16.11.1998, a notification was issued pursuant to the constitution of Theni District by bifurcating Madurai District. As per the Notification, Sirumalai in Dindigul District was added to the schedule as a hill station. This notification was issued as per sub section 2 of Section 1 of the Tamil Nadu Hill Areas (Preservation of Trees), Act, 1955, by the Governor of Tamil Nadu.



Sub section 2 of Section 1 of the said Act, clearly defines all hill areas in the State specified in the Schedule and such other hill areas as may, by notification, be specified by the Government. The learned Special Government Pleader has further drawn the attention of the Court to paragraph - 6 of the counter affidavit filed by the first respondent, which reads as follows:

"6.As per G.O.Ms.No.49, Housing and Urban Development (UD2-2) Department dated 24.03.2003, Sirumalai was brought under hill areas. The extract of the G.O. is hereunder.

"In order to develop the hills into an ecologically acceptable and environmentally desirable area, in G.O.Ms.No.44, Planning & Development (TCII) Department dated 22.4.90 the Government have constituted a high level committee namely Hill Area Conservation Authority (HACA). As per the orders issued in this Government order, all the Government and Quasi Government Departments shall consult the Hill Area Conservation Authority in respect of all development programmes undertaken by them as listed down in Annexure III of the said Government order in all Hill Taluks specified under Annexure I of the same Government order.

2.The question of exempting the villages which are located in the plains though they fall in the taluks notified as hill G.O. was discussed in the 22nd Hill Area Conservation Authority meeting held on 21.2.2001 and it was decided to obtain the details form the District Collectors regarding the villages which are actually located in the hill areas. The Director of Geology and Mining has scrutinized the same in consultation with the District Collectors and sent his proposals indicating the details of villages which should fall within the purview of Hill Area Conservation Authority.

3.Based on the reports received from the District Collectors concerned and in consultation with Director of Geology and Mining, the Special Commissioner of Town and Country Planning has sent amendment proposals to Annexure-I of Government Order first read above and to notify the names of villages which are actually located in hill areas of the hill taluks of the various Districts.

4.The Government have carefully considered the proposal of the Special Commissioner of Town and Country Planning and approved the list of villages sent by the District Collectors, which are actually located in the hill areas of the hill taluks. The names of the Districts and the names of the villages located in the hill taluks of the



respective districts are given in Annexure to this order.

5.The Government in partial modification of G.O.Ms.No.44, Planning and Development (TCII) Department dated 2.4.1900 direct that in respect of the villages identified as Hill villages in these Hill Taluks, indicated in the Annexure-I to this order, permission from HACA should be obtained for all activities specified in Annexure II of this Government Order before they are taken up for execution of grant of permission.

6.The Government also direct that for other villages lying in the plains of these Hill Taluks, obtaining permission from the Hill Area Conservation Authority is not necessary and the respective Departmental officials should pursue the activities specified in the Annexure II to this Government Order as per the existing Act, rules, and orders in force.

7.The Government further direct that, in respect of all villages in the Hill Taluks wherever Reserve Forest lands are available, the activities mentioned in Annexure-II of this Government Order in those lands have to be got cleared by the Hill Area Conservation Authority as required in the Government Order first read above."

3. Heard the submissions made by both parties.

4. It is not in dispute that Sirumalai is a hill area. Further, in view of the notification issued by the Government in the year 1998, Sirumalai hill should fall under the purview of the Tamil Nadu Hill Areas (Preservation of Trees), Act, 1955.

5. Sub Section 2 of Section 1 of the Tamil Nadu Hill Areas (Preservation of Trees), Act, 1955 defines that all hill areas are covered except those excluded by the Government by the notification. The word "Government" is defined as "State Government" and "notification" means notification published in the Tamil Nadu Government gazette.

6. As per Section 3 of the Tamil Nadu Hill Areas (Preservation of Trees), Act, 1955, no person without previous permission in writing of the Committee can cut the trees and remove them.

7. Section 12 of the Act confers power on the Government to make Rules by notification to carry out the purpose of the Act. When the power is conferred on the Government to make the Rules by issuing notification, the Governor, in exercise of his power, has issued notification, adding Sirumalai in the Schedule of the Act.



8. By the impugned order, the first respondent has imposed a condition that the petitioner shall obtain permission from the Hill Area Conservation Authority for cutting and removing the trees from the notified hill area namely Sirumalai.

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9. The reliance placed on by the learned counsel appearing for the petitioner is that this Court in W.P.No.4139 of 1980 by its order dated 09.09.1985 has quashed the notification including Sirumalai. Facts and circumstances of both the cases are different. The Tamil Nadu Hill Areas (Preservation of Trees), Act, 1955 clearly states that all hill areas in the State specified in the Schedule and to such other hill areas as may, by notification, be specified by the Government, fall under the purview of the Act. It is not in dispute that Sirumalai is a hill area. The Governor, in exercise of his power has issued a notification adding Sirumalai in the Schedule annexed to Act. The notification as such has statutory force. Whereas, in W.P.No.4139 of 1980 the notification issued by the Collector of Madurai under Section 1(2)(iii) of the Tamil Nadu Preservation of Private Forest Act, 1949 was challenged. Both the Acts are different and authority issuing notification are also different. In my considered opinion, the rule making power under Section 12 of Act, 1955 and the notification issued therein can not be compared with a notification issued by a District Collector. The Government is empowered to make Rules by issuing notification and the same is valid.

10. In the instant case, as discussed above, the Governor of Tamil Nadu by the power conferred under Section 12 of the Tamil Nadu Hill Areas (Preservation of Trees), Act, 1955 has issued notification which has statutory force, and as per the notification, Sirumalai is included in the Schedule by way of an amendment. In that event, any cutting of trees in that area should be with the permission of the Committee constituted under the Act. For the purpose of cutting and removing all the trees, the petitioner shall obtain permission from the Hill Area Conservation Authority which is mandatory. The claim of the petitioner under Form - II permit, under the Tamil Nadu Timber Transit Rules, 1968 is only to transport the timber which was cut and removed from the hill. Hence, the contention that issuance of permit under Form - II alone is sufficient. Only for transporting the timber, the Tamil Nadu Timber Transit Rules, 1968 Rules will apply and the same will not prevail over rules made under the Act, 1955. The condition imposed in the impugned order of obtaining permission for cutting and removing trees from the said committee is perfectly legal.

11. In view of the foregoing discussions, I find no illegality or infirmity in the impugned order passed by the first respondent in Na.Ka.order No.7292/2016/D, dated 25.09.2017. Accordingly, this writ petition is dismissed. If the petitioner



is open to him to challenge the Rule made by the Governor in G.O.Ms.No.334, Environment and Forests (FR.III) Department, dated 16.11.1998. No costs. Consequently, WMP(MD)Nos.18438 & 18439 of 2017 are closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.District Forest Officer,
Velunachiar Compound,
Dindigul District, Dindigul.

2.The Forest Range Officer,
Sirumalai Pudur,
Dindigul District,
Dindigul.

+1 CC to M/s.V.R. VENKATESAN, Advocate (SR-99763[F] dated
20/11/2019)

W.P. (MD) No.22133 of 2017
20.11.2019

JMN(20.12.2019) 6P : 4C