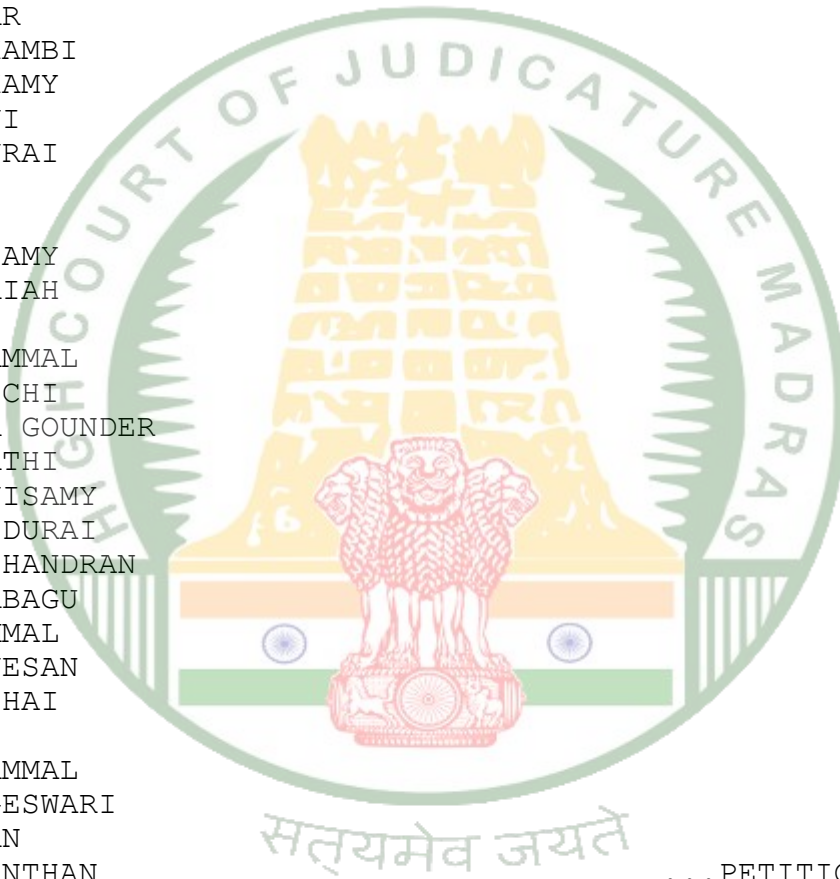


IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.6.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.18733 OF 2010 & MP.NO.2 OF 2010
(heard through video conferencing)

1.M.MAHARAJAN
2.M.MAYANDI
3.E.CHOKKAR
4.CHINNATHAMBI
5.E.BALUCHAMY
6.JOTHIMANI
7.CHINNADURAI
8.C.RAJA
9.KASTHURI
10.K.RAMASAMY
11.K.SUBBAIAH
12.M.RAMU
13.M.SUBBAMMAL
14.M.KAMATCHI
15.KEPPANA GOUNDER
16.R.PAPPATHI
17.K.PALANISAMY
18.T.PAUL DURAI
19.P.RAVICHANDRAN
20.P.VEERABAGU
21.M.ANGAMMAL
22.P.SIVANESAN
23.P.VELUTHAI
24.RAMAN
25.E.SUBBAMMAL
26.C.MURUGESWARI
27.VEERANAN
28.S.ANUMANTHAN



...PETITIONERS

Vs

1.THE PRINCIPAL SECRETARY
THE GOVERNMENT OF TAMILNADU
TO THE GOVERNMENT, ENVIRONMENT
AND FORESTS DEPARTMENT, FORT ST.
GEORGE, CHENNAI-9.

2.THE SPECIAL COMMISSIONER AND
COMMISSIONER OF LAND ADMINISTRATION,
CHEPAUK, CHENNAI-5.

3.THE COLLECTOR, DINDIGUL DISTRICT.

4.THE SPECIAL TAHSILDAR, FOREST
SETTLEMENT SCHEME, DINDIGUL DIST.

5.THE DISTRICT FOREST OFFICER,
DINDIGUL DIVISION, DINDIGUL.

(R5 impleaded as per order dated
28.2.2011 by SMKJ in MP.No.1 of 2011)

...RESPONDENTS

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Notification of the first respondent in G.O.Ms.No.62 Environment and Forest (FR-14) dated 24.6.2009 published in the Tamil Nadu Government Gazette Part-II Section-2 dated 23.9.2009, quash the same in so far as the lands in the petitioners' occupation in S.Nos.1825 and 1826 are concerned and direct the respondents to assign the said lands to the petitioners as per the orders of this Court in W.A.Nos.1125 to 1130 of 2005 dated 7.3.2008; W.P.Nos.28786 to 28790 of 2005 and 11395 of 2006 dated 11.11.2008; W.P.Nos.26909 to 26913, 26658 to 26662 and 35398 to 35404 of 2004 dated 26.6.2008 and W.P.Nos.8274 to 8276 of 2006 dated 18.6.2008.

For Petitioners : Mr.P.Rajendran
For Respondents : Mr.M.Elumalai, GA

ORDER

I have heard Mr.P.Rajendran, learned counsel for the petitioners and Mr.M.Elumalai, learned Government Advocate appearing for the respondents.

2. The petitioners, who are 28 in number, challenged a Notification issued by the first respondent in G.O.Ms.No.62 Environment and Forest Department dated 24.6.2009, published in the Tamil Nadu Government Gazette on 23.9.2009, which was in exercise of powers under Section 16 of the Tamil Nadu Forest Act (for short, the Act) declaring the area, the boundaries of which were specified in the schedule as reserve forest with effect from 24.3.2010.

3. The lands, which are the subject matter of this writ petition, are in Kannivadi Hills in Ayyampalayam Village. The petitioners claim that the lands were earmarked by the Government for being assigned to the landless poor pursuant to a decision taken by the Government in G.O.Ms.No.3150 Forest and Fisheries Department dated 04.12.1971.

4. It is pointed out that in so far as Kannivadi reserve forest is concerned, an extent of 2170 acres were earmarked for such a purpose. Though an extent of about 1616 acres, out of the total extent, was stated to have been assigned in favour of the landless poor, the remaining extent was not assigned, which prompted the Tamil Nadu Vivasayigal Sangam to file W.P.No.10578 of 1988 praying for a direction to the respondents to assign the remaining lands in Kannivadi Hills to the respective cultivators in accordance with the said Government Order namely G.O.Ms.No.3150 dated 04.12.1971. The said writ petition was disposed of by order dated 02.8.1991 directing the District Collector to find out as to whether all the lands allocated for the purpose of assignment have been assigned. It was further directed that if any land remained to be assigned, the third respondent herein should take immediate steps for assignment of the balance of lands in favour of persons, who are in occupation and are eligible for the purpose of assignment.

5. It is pointed out by the learned counsel for the petitioners that action was initiated by the Authorities at the lower level pursuant to the directions issued by this Court and four such proceedings are by (i) the Inspector of Survey, Dindigul dated 22.4.1999, (ii) the Assistant Commissioner of Land Administration, Chennai dated 16.12.1999, (iii) the Joint Commissioner of Land Administration addressed to the District Revenue Officer, Dindigul dated 07.6.2000 and (iv) the Tahsildar, Dindigul dated 07.8.2001 to the Village Administrative Officer, Old Kannivadi Village, to conduct an enquiry in terms of the memo.

6. It is submitted that though such was the state of affairs, no further action was initiated and therefore, a batch of writ petitions was filed by the petitioners herein in their individual capacity. It is also submitted that in the said batch of writ petitions, one such writ petition was dismissed whereas the other writ petitions were admitted and an order of interim stay was granted. Consequently, the unsuccessful writ petitioners had to file appeals and the writ appeals in W.A.Nos.1125 to 1130 of 2005 were heard by the Hon'ble Division Bench of this Court and by a common judgment dated 07.3.2008, the Hon'ble Division Bench held that the petitioners were similarly situated, whose case were not considered even though particulars were submitted by the District Revenue Officer as

required by the Special Commissioner and Commissioner of Land Administration, which were pending from 1999 by conducting survey of the land, fixing boundaries and allotting re-survey numbers, directed the respondents to take appropriate steps to assign the lands to the petitioners, who are in occupation of the said extent of lands as stated in the writ petitions and fixed a time limit for assignment of the said lands.

7. Thereafter, a few other persons filed writ petitions in W.P.Nos. 8274 to 8276 of 2006 and 26909 to 26913 of 2004 etc. cases, 28786 to 28790 of 2005 and 11395 of 2006 and they were disposed of by orders dated 18.6.2008, 26.6.2008 and 11.11.2008 respectively. The sum and substance of the directions issued was in tune with the directions issued by the Hon'ble Division Bench in W.A.Nos.1125 to 1130 of 2005 dated 07.3.2008.

8. Thus, it is the case of the petitioners that when they were with the fond hope for the assignment of the lands in question, to their shock and surprise, the impugned Notification was issued by the Government declaring the area, the boundaries of the which were specified in the schedule as reserve forest with effect from 24.3.2010. Therefore, the petitioners are before this Court challenging the said Notification and seeking a consequential direction to assign the lands in terms of the judgment of the Hon'ble Division Bench and the orders passed in various other writ petitions.

9. Chain of events clearly show that the Government took a policy decision in the year 1971 to allot certain lands, which were, admittedly, forest lands, to be given to the landless poor. The Government Order, which was issued in the year 1971, covered 11 districts in the State, one among which is Madurai District where the lands in question are situated. It is not denied by the respondents that some of the extent of the lands was already assigned.

10. The question would be as to whether the petitioners, if similarly placed as that of the beneficiaries of the Government Order of the year 1971, can be denied the similar relief.

11. The fifth respondent, in his counter affidavit, termed the petitioners as trespassers/encroachers of the land as they came to be in possession of the land after the statutory notification was issued under the Act and more particularly the petitioners did not make any claim under Section 4 nor under Section 6 for exemption. The second objection taken in the counter affidavit is that on account of the orders passed by the Hon'ble Supreme Court in the decision in the case of T.N.Godhavarman Thirumalpad Vs. Union of India [W.P.(Civil). No.202 of 1995 dated 12.12.1996], the Government or any Authority or Tribunal, including the High Court, is prohibited

from regularizing any encroachment in a forest land and that issuance of patta is banned.

12. Though such a stand has been taken by the fifth respondent in the counter, in paragraph 8 of the counter, the following statements were made :

"It is submitted that the writ petitioners have mentioned an executive instruction given by the Special Commissioner and Commissioner of Land Administration, Chennai to the District Revenue Officer, Dindigul, which is no way concerned with their claims of assignment. However, the petitioners' grievances have been under consideration by the Government. The Government have issued direction to their officers to send proposals to the Government under Section 24 of the Tamil Nadu Forest Act, 1882. The course of action is on-going. This will be concluded after getting the prior approval of the Central Government as per the provision of the Forest (Conservation) Act, 1980."

13. A reading of the above extracted portion would show that in the understanding of the fifth respondent, the matter is under consideration of the Government, that the Government issued directions to the officers to send proposal under Section 24 of the Act and that the matter will attain finality after getting prior approval of the Central Government as per the Forest Conservation Act, 1980.

14. Mr.M.Elumalai, learned Government Advocate, by referring to paragraph 5 of the counter affidavit, submits that wherever there was a genuine claim, the same was considered by the Forest Settlement Officer, that the petitioners never made a claim and that their case cannot be treated as a genuine case as they are encroachers of forest lands.

15. At this juncture, this Court cannot adjudicate as to whether the petitioners are encroachers of land having come into possession after the Notification was issued under the Act declaring the lands as a reserve forest. However, taking note of the chain of events and the fact that the petitioners were parties to the earlier round of litigation initiated through an association and thereafter individually, this Court would be justified in issuing appropriate directions to the State Government to pursue further action in terms of the decision taken by them as mentioned in paragraph 8 of the counter of the fifth respondent.

16. So far as the challenge to the Notification is concerned, the same cannot be entertained at this juncture and more particularly when the petitioners had not raised objections at appropriate time. However, in Government Letter No.5852/14/2010 Environment and Forest Department dated 25.3.2010, there is an observation that the petitioners did not have adequate opportunity to place their objections. In any event, without the approval of the Central Government, which, in turn, has to obtain permission of the Hon'ble Supreme Court, the question of assignment of the forest land would not arise at this juncture. When the Government took a decision and issued a Government Order in the year 1971, the thought process was entirely different when compared to the thought process, which commenced in the early 1990s i.e. to preserve forest as it is and the Government directed every State to endeavour to increase its forest land. This is so because the environment needs to be protected and preserved for posterity. Therefore, while declining to interfere with the impugned Government Order, this Court is inclined to issue appropriate directions to the Government to pursue the matter and take it to the logical end.

17. Accordingly, the writ petition is disposed of by directing the first respondent to take expeditious further course of action pursuant to the proposal, which was called for from the officers under Section 24 of the Act as mentioned in the counter affidavit of the fifth respondent and submit papers to the Central Government for appropriate orders. This direction shall be complied with within 8 months from the date of receipt of a copy of this order. It is seen that at the time when the writ petition was entertained, an order of interim stay of the impugned Notification has been granted. According to the petitioners, they are in possession of the lands and according to the fifth respondent, the petitioners are encroachers, which would go to show that the petitioners are in possession. Therefore, status quo, which was prevailing on the date when the writ petition was entertained i.e. 17.8.2010 shall continue. It is made clear that no further persons shall be inducted into the lands and if at all the Forest Department finds that there are unauthorized persons entering into the lands other than the petitioners, action shall be taken against them for eviction. The connected MP is closed with the above direction. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

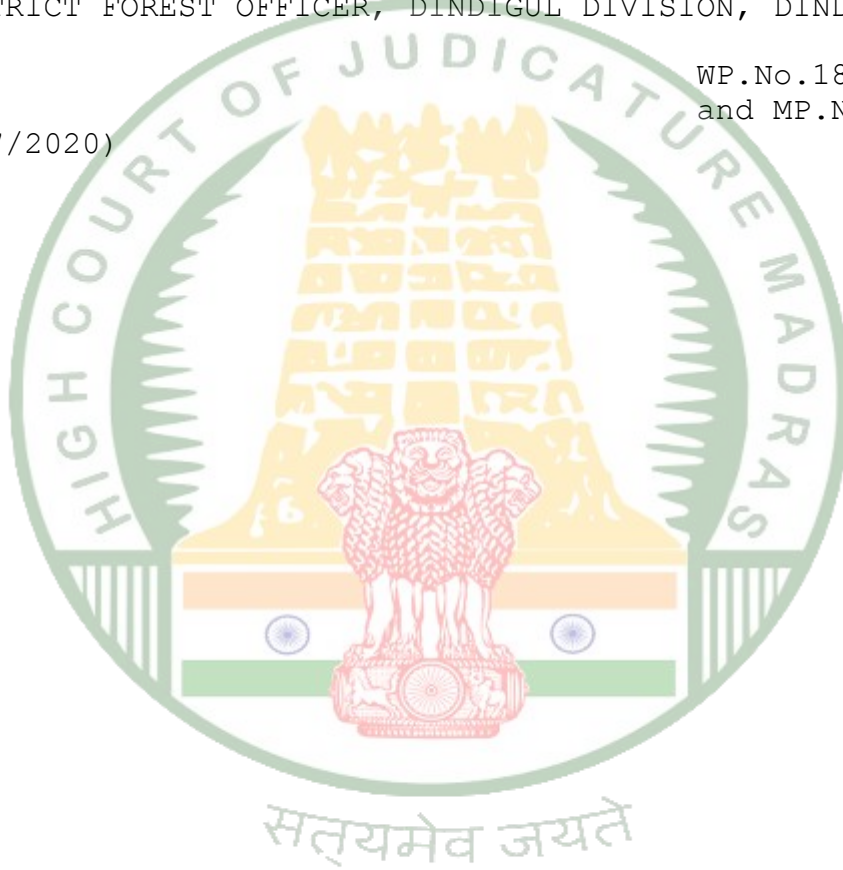
RS

To

- 1.THE PRINCIPAL SECRETARY TO GOVERNMENT OF TAMILNADU,
ENVIRONMENT AND FORESTS DEPARTMENT, FORT ST.GEORGE,
CHENNAI-9.
- 2.THE SPECIAL COMMISSIONER & COMMISSIONER OF LAND
ADMINISTRATION, CHEPAUK, CHENNAI-5.
- 3.THE COLLECTOR, DINDIGUL DISTRICT.
- 4.THE SPECIAL TAHSILDAR, FOREST SETTLEMENT SCHEME, DINDIGUL
DIST.
- 5.THE DISTRICT FOREST OFFICER, DINDIGUL DIVISION, DINDIGUL.

WP.No.18733 of 2010
and MP.No.2 of 2010

A.SK(20/07/2020)



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