

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No. 6388 of 2020

and

W.M.P.No.7588 of 2020

1.A.C.Murugesan

2.G.Periyasamy

3.V.S.Manickam

4.P.Kandasamy

5.Maadhu

6.Amudha

7.Madhesu

8.Manivannan

9.Palaniammal

10.Subramani

11.Anbu Rajendran

12.Arumugam

13.Vijayalakshmi

14.Subramani

15.Subramanian

16.Thangavel

17.Govindan

18.Shanmugam

19.Veerappan

20.Gopal

21.T.Chithra

22.Saradhamani @ Saradhambal

23.Manickam

24.Settu

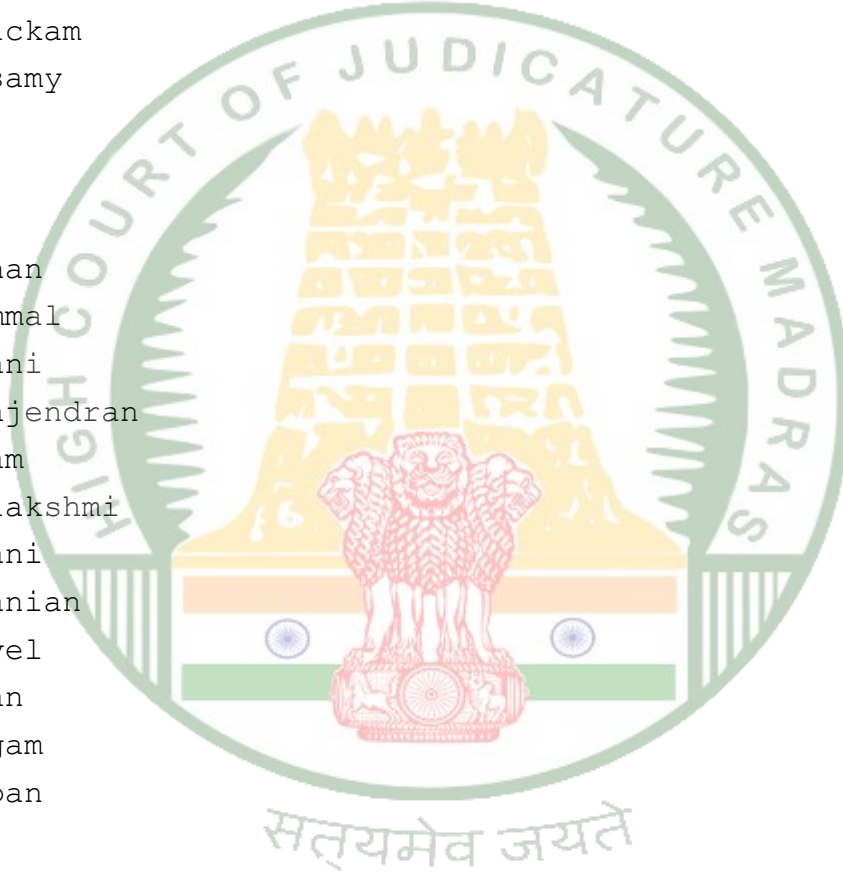
25.Natesan

26.Kaali @ Sevathakaali

27.Kulandhaivel

28.Chinnamuthu

29.Ramasamy



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30.C.Ayyanar

31.S.Valli

32.S.V.Anbukarasan

...Petitioners

Vs

1.District Collector,
Collectorate, Salem.

2.District Forest Officer,
Bretts Road, Vincents, Salem - 7.

3.Sub Divisional Committee,
Chaired by RDO,
Collectorate, Salem - 1.

4.Special Tahsildar,
Collectorate,
Salem - 1.

5.Forest Ranger,
Forest Range Office,
Shevroy South Range,
Hasthampatti, Salem - 7.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of mandamus, to declare the illegal eviction drive conducted on 27.01.2020 without considering the claim petition filed by us under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights Act, 2006, its rules and guidelines as Unconstitutional consequently to restore our possession and enjoyment of properties comprised in Survey No.1/1, 1/2 & 1/3 inmated at Suriyur Village Salem District with all our statutory Rights.

For petitioner : Mr.Vineeth Subramani
for S.S.V.Pavel

For respondents: Mr.K.Parameswaran
Government Advocate
for R1 & R4
Mr.S.Prabhu,
Additional Government Pleader
for R2 & R5
No appearance for R3

ORDER

This writ petition has been filed challenging the process of eviction initiated under the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights Act) (hereinafter called as 'the Act'), and for a consequential direction to the respondents not to evict the petitioners unless otherwise by due process of law.

2. The case of the petitioner is that their ancestors have been in occupation of the forest land and the petitioners also continued to occupy the forest land and they are carrying on with the agricultural activities. The petitioners and similarly placed persons were originally claiming ownership over the land and they were also seeking for patta and other reliefs before the appropriate Authority. The claim made by the Petitioners was rejected by this Court and ultimately the matter ended before the Hon'ble Supreme Court. It will be relevant to extract the relevant portion of the order passed by the Supreme Court of India in S.L.P. No. 18974 of 2018, dated 03.08.2018:

"However, it is made clear that the rights, if any, under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, are left open to be agitated in the appropriate Forum."

3. Pursuant to the orders passed by the Hon'ble Supreme Court, the petitioners have submitted applications under Section 4 of the Act to recognize them as Forest Dwellers. The submission of the application by the Petitioners cannot be disputed since the same has been acknowledged by the Special Tahsildar namely the 4th Respondent in his proceedings dated 10.12.2018. The Special Tahsildar had directed the Revenue Inspector, Panamarathupatti Village to submit a report in order to consider the application submitted by the Petitioners.

4. The grievance of the petitioners is that without considering the application submitted by the Petitioners, the Respondents are proceeding to initiate eviction under Section 68(A) of the Tamil Nadu Forest Act, 1882. Therefore, the present Writ Petition has been filed challenging the same.

5. The learned counsel for the Petitioners submitted that even though the Petitioners were originally claiming right as the owners of the lands, that claim no more survives in view of the orders passed by the Hon'ble Supreme Court. The learned

counsel submitted that the only remedy that is available to the Petitioners is to get themselves declared as Forest Dwellers. For this purpose, an application has been submitted by all the Petitioners and without considering the same, the Respondents cannot proceed further with the eviction drive. The learned counsel brought to the notice of this Court Section 6 of Act, which prescribes the procedure for dealing with such claims to declare a person as a Forest Dweller.

6. The learned counsel for the Petitioners in order to substantiate his submission relied upon the Division Bench judgment of this Court reported in 2009 5 LW Page 714. The learned counsel specifically placed reliance upon Para 27 and 29 and the same is extracted hereunder:

"27. In view of the aforesaid Act, 2006 and the Rules, 2007 framed thereunder, if one or other member of the appellant-Association can show that he or she is a forest dwelling Scheduled Tribe or any other traditional forest dweller, primarily residing and is depending on the forest or forest land(s) for bona-fide livelihood needs, can bring such evidence on record, they have a right to consider their case of vesting of the "forest rights" as provided under Section 3 of the Act, 2006 and cannot be evicted from the land(s) till such rights are determined.

29. Therefore, it will be also evident that under the Act, 2006, the members of the appellant-Association have a right for consideration of their cases for "forest rights" conferred under Section 3 of the Act, 2006 and till the claim is finalised, they have a right to hold the land in their possession and till such a decision is given, in terms of the said interim order of this Court, the claim as made by the members of the appellant-Association, is required to be verified in terms of the Act, 2006, but for issuance of patta or certificate of title, order is required to be obtained from this Court, in view of the interim order aforesaid passed in M.P.No.1 of 2008 in W.P.No.4533 of 2008, dated 30.4.2008."

7. The learned counsel for the Petitioners concluded his arguments by submitting that even though a counter affidavit has been filed by the 2nd and 5th Respondents, the same is completely silent with regard to the status of the applications submitted by the Petitioners under Section 4 of the Act and therefore, the Respondents must be directed to take a decision on the

application filed by the Petitioners and till then the eviction drive must be put on hold.

8. Per contra Mr.S.Prabhu, learned Additional Government Pleader appearing on behalf of Respondents 2 & 5 placed heavy reliance upon the counter affidavit filed by those Respondents. The relevant portions in the counter affidavit is extracted hereunder:

"It is further submitted that as per the above order, the petitioners should have sent their claims on or before 25.10.2018. The Block Development Officer, Panamarathupatti in his letter No.182/2017/P3 dated 21.12.2018 has reported that the Grama Sabha meeting for Kuralnatham panchayat has been held on 15th August 2018 and 2nd October 2018. While enclosing the minutes of the meeting has reported that no proposal has been received under Forest Rights Act, 2006.

4. It is respectfully submitted that the petitioners with the mala-fide intention to grab the fertile forest land in the Jalluthu Reserve Forests and Jarugumalai Reserve Forests has often encroaching the forest land. They are not the local residents because they have not produced any proof of address in the particular panchayat. They have no documentary evidences to call them as Scheduled Tribes. They are also not the forest dwellers. They are belongs to backward and most backward class communities. Therefore, the Forest Right Act 2006 and the relevant provisions cannot be entertained.

5. It is submitted that the area of Jalluthu Reserve Forests and Jarugumalai Reserve Forests is the catchment area for the Panamarathupatty water tank. The map showing the catchment area of Panamarathupatty lake has furnished by the Assistant Executive Engineer, Salem Municipal Corporation, Salem, is enclosed for kind perusal by this Hon'ble High Court. The encroachments playing in this catchment area (in Jallathu and Jarugumalai RF) have been evicted on 27.01.2020 and the natural water course and the forest area made free from encroachment.

The petitioner has filed a criminal case against the 4th respondent before the Judicial Magistrate Court No.1 contending that the eviction operation carried out on 27.01.2020 in Jarugumalai Reserved Forest and Jalluthu Reserve Forest is unlawful. Consequent to this it was apprised to the Magistrate accordingly and the commission appointed by the Court has inspected the area where eviction operation carried out and the Magistrate No.1 himself has also inspected the area on

31.01.2020. The Magistrate No.1 in C.M.P.No.356 of 2020 dated 30.01.2020 has ordered that in as much as eviction has been carried out in the area, the rehabilitations activity become a criminal trespass and therefore, the Panamarathupatti Police Inspector with protection by Forest Official should go to the evicted area and the encroachers should be prevented from re-encroachment by construction of huts etc in the area. They should be evicted from the disputed area if such attempt is made.

6. It is respectfully submitted that the Jalluthu Reserved Forests and the Jarugumalai Reserved Forests have been notified under Section 16 of the Madras (Tamil Nadu) Forest Act 1882 as early during 1889 and 1926 respectively. And the disputed land is within these Forests. These two Reserve Forests are having lot of tributaries and forms a catchment area for the Panamarathupatti lake being controlled by the Municipal Corporation of Salem. To make use of potentiality of the Forest area, with an intention to grab the wealthy forest land in the lower reaches of the hillock the petitioners are encroaching the land.

Under shade of writ petitions, Contempt Petition, Special Leave Petitions the petitioners without any bonafide residential proof at Kuralnatham village with a mala-fide intention to grab the fertile forest land encroaching again and again because it is the water shed area of Panamarathupatti lake and being a valley between Jallathu and Jarugumalai Reserve Forest it is one of the best wild life habitate for local fanual species like Spotted Dear, Barking Dear, Indian Bison, Wild Dog, Wild Boar, etc. They are not forest dwellers as per the basic report furnished by the Revenue Inspector, Panamarathupatti dated 04.02.2019 (Copy enclosed) in his report the Revenue Inspector has stated that the petitioner A.C.Murugesan and others had encroached the forest land which is a catchment area (water resources area) they have not made application to any panchayat for seeking patta under Forest Rights Act 2006, further there is no proof of evidence of their living in this area from the very beginning and there is no chance to assign individual patta under Forest Rights Act 2006. Moreover, as per the Hon'ble Supreme Court order in force vide I.A.No.418 in W.P.No.202/1995 dated 07.05.1999 no encroachments in Forest area can be regularised nor assigned patta.

7. The petitioners are not adhering to various courts order in various writ petitions, contempt

petitions, Special Leave Petition etc. They are not abiding by the rules and regulations and as also Rural Development Panchayat Raj Department. In total their activities are against all laws."

9. The learned Additional Government Pleader by placing reliance upon the counter affidavit submitted that repeated writ petitions are filed before this Court by persons who are none other than encroachers who want to grab the forest lands. The learned counsel further submitted that the Petitioners do not satisfy the requirements of a Forest Dweller as defined under the Act. It was further submitted that all the petitioners are residing at Salem and the particulars of their address is also given in the counter affidavit and therefore, it is clear that the Petitioners are only attempting to encroach upon the forest lands.

10. The learned Additional Government Pleader heavily placed reliance upon the order of the Hon'ble Division Bench made in W.P.No. 15348 of 2018, dated 05.12.2018. For better appreciation, the relevant portions of the order is extracted hereunder:

"6. On a perusal of the order passed in W.P.No.1963 of 2006, it could be seen that the petitioners themselves has stated that the land is not a forest land. When the petitioners claim that it is not a forest land, they cannot be termed as forest dwellers. The relevant portion of the order passed in W.P.No.1963 of 2006 dated 19.10.2012 is extracted below:

"...

20. The learned Senior Counsel for the petitioners invited my attention to the detailed report submitted by the National Commission for Scheduled Castes and Scheduled Tribes, after visiting the area in question. I have gone through the said report. The said report, cannot be relied upon for a variety of reasons. The report records the fact that persons who are affected by the stand taken by the respondents, are not only those belonging to the Scheduled Castes, but also those belonging to Backward Classes. At the same time, the Commission has referred to the provisions of the Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act, 2006. But the said Act, does not apply to persons belonging to Backward Communities. Moreover, the said Act, applies

only to a person who is a Forest Dweller. The petitioners have not come up with a claim that they are forest dwellers. Obviously they cannot claim to be so. If the petitioners claim that they are forest dwellers, then there should be a forest. In other words, if the petitioners are to be recognized as forest dwellers, then the land should necessarily be a forest land. The petitioners claim that it is not a forest land. Therefore, they cannot be termed as forest dwellers. But the report of the National Commission for Scheduled Castes and Scheduled Tribes, overlooks these aspects and makes a simple recommendation for the grant of patta on humanitarian grounds. Therefore, the report of the National Commission, cannot be accepted.

21. The contention that the District Collector did not make an inspection, does not appear to be factually correct. At least after the interim direction issued by this Court, an inspection had been carried out.

22. The learned Senior Counsel for the petitioners drew my attention to Page - 10 of the re-survey and resettlement register of the village and pointed out that wherever a land is classified as a reserve forest, the register also contained a foot note mentioning the particulars of the notification under which the classification was made. But in respect of the land in question, there was no foot note in the relevant page, where the land is shown to be a Reserve Forest. Therefore, the learned Senior Counsel contended that the entry in the "A" Register cannot be relied upon.

23. I do not think that the absence of a foot note containing the details of the notification under which the classification was made, can be a ground to hold the entry in the register to be not reliable. All entries in the official records are presumed to be validly made, till they are set aside. Therefore, I have no reason to suspect the entry in the village register.

24. In view of the above, I see not merits in the writ petition and hence it is dismissed. There will be no order as to costs. Consequently, connected miscellaneous petition is also dismissed."

6.1. As against the order passed by the learned Single judge, the petitioners have filed an Appeal in W.A.No.2467 of 2012 and the Division Bench of this Court, by order dated 19.03.2018, dismissed the Writ Appeal, finding that the petitioners have not proved that the lands were not included in the "Reserved Forest". When the burden lies on the petitioners they have not discharged the said burdens. Further, the entries made in resettlement records also stare at them. In the records, it is specifically mentioned that the lands are Reserve Forest. While approaching the first respondent, the District Collector, for issuance of patta, the petitioners claimed that it is not a reserve forest and therefore, they are entitled to get patta. But now they have taken a U-turn and claimed that the lands are in Reserve Forest and that they are forest dwellers. The petitioners cannot be allowed to take inconsistent and contrary stand now in the present proceedings. As already stated, the petitioners themselves have stated that the land is not a forest land, they cannot be construed as forest dwellers.

7. From the contrary stand taken by the petitioners, it is clear that the petitioners have not approached the Court with clean hands. Even while disposing of the Writ Appeal in W.A.No.2467 of 2012, the Division Bench of this Court, observed that the petitioners should be evicted only under due process of law. Accordingly, the 4th respondent had issued the impugned eviction notice dated 13.06.2018 under Section 68-A of the Tamil Nadu Forest Act for evicting the petitioners. Since the 4th respondent had initiated action following due process of law, we do not find any ground to interfere with the same. The writ petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed."

11. The learned Additional Government Pleader by placing reliance upon the above order, submitted that the Petitioners are blowing hot and cold and the attitude of the Petitioners was deprecated by the Division Bench and it was found that they did not come to Court with clean hands.

12. The learned counsel further submitted that the Division Bench itself had taken note of the eviction proceedings initiated by the Forest Range Officer under Section 68(A) of the

Tamil Nadu Forest Act and specifically held that there is no ground to interfere with the same. Therefore, the learned Additional Government Pleader submitted that the Petitioners cannot be permitted to question the eviction drive, which has already been upheld by the Division Bench of this Court.

13. Mr. Parameswaran, learned Government Advocate appearing on behalf of Respondents 1 & 4 adopted the arguments made by the learned Additional Government Pleader. He further submitted that there are absolutely no merits in the present Writ Petition, more particularly since the Division Bench has already rejected the challenge made to the eviction proceedings and the Petitioners cannot be allowed to get over the same by approaching this Court with a different prayer. Therefore, the learned counsel sought for the dismissal of the Writ Petition.

14. The learned counsel for the Petitioners in reply to the said submissions stated that the submission of the application under Section 4 of the Act was not brought to the notice of the Division Bench and in any case, the Petitioners are only exercising the right available to them and for which liberty was granted by the Hon'ble Supreme Court of India.

15. This Court has carefully considered the submissions made on either side and the materials available on record.

16. The Petitioners had earlier approached the District Collector for issuance of patta on the ground that the lands in question do not fall within the reserved forests and it belongs to them. This claim made by the Petitioners was negatived and it was confirmed by the Hon'ble Supreme Court, while dismissing the Special Leave Petition by order dated 03.08.2018. While dismissing the Special leave Petition, liberty was given to the Petitioners to work out their rights under the Act, if it is available to them.

17. When the Division Bench of this Court disposed of the Writ Petition on 05.12.2018, unfortunately ***The application filed by the Petitioners under Section 4 of the Act** was neither brought to the notice of this Court by the Petitioners nor by the Respondents. The Division Bench of this Court took into consideration, two different stands taken by the Petitioners and found that they are inconsistent and contrary and therefore held that the Petitioners did not approach the Court with clean hands. The Division Bench, therefore, proceeded to reject the

claim made by the Petitioners and did not interfere with the eviction notice that was issued under Section 68 (A) of Tamil Nadu Forest Act. In view of this finding, this Court cannot again venture and test the legality of the eviction drive initiated by the Respondents.

18. It would have been more appropriate, if the attention of the Division bench had been drawn with regard to the applications submitted by the Petitioners to recognize them as Forest Dwellers. Atleast a Review Petition should have been filed at a later point of time by inviting the attention of the Division Bench about the subsequent developments. Unfortunately, that was also not done. **

19. This Court can only enter into a very narrow sphere and see if the application submitted by the Petitioners, in view of the liberty granted by the Hon'ble Supreme Court, has been considered under the Act. Only to that extent, this Court can exercise its jurisdiction in the present Writ Petition.

20. The counter affidavit filed by the Respondents 2 & 5 clearly states that there was a Grama Sabha meeting of the Panchayat held on 15.08.2018 and 02.10.2018. Under Section 6 of the Act, it is the Grama Sabha which shall be the authority to initiate the process for determining the Forest Dweller. Only after a decision is taken by the Grama Sabha and a resolution is passed, the person concerned can submit the application. On receipt of such application, the State Government has to constitute a Sub-Divisional Level Committee to examine the resolution passed by the Grama Sabha and prepare the record of forest rights and forward it to the District Level Committee for a final decision. There is no dispute with regard to the resolution passed by the Grama Sabha and there is also no dispute with regard to the fact that applications have been submitted by the Petitioners to declare them as Forest Dwellers and receipt of the application has been acknowledged by the Special Thasildar in his proceedings dated 10.12.2018. This application has not been processed further in accordance with the procedure stipulated under Section 6 of the Act. It is nearly two years since the application was submitted and by now a decision could have been taken. The act itself contemplates time limits for the completion of this process.

21. In view of the above, there shall be a direction to the Respondents to take up the claim petition filed by the Petitioners and deal with the same in accordance with the Provisions of the Act and final orders shall be passed within a period of eight weeks from the date of receipt of a copy of

this order. It is made clear that this Court did not consciously go into the merits of the case and the Authorities shall independently consider the application submitted by the Petitioners without being influenced by the orders passed by this Court in the present Writ Petition.

22. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

***Deleted and Substitued**

****Deleted**

Sd/-

Assistant Registrar(CS III)

***corrected as per the order of this court dated 04-09-2020 and made in WP.No.6388 of 2020 and WMP.7588 of 2020.**

Sd/-

Assistant Registrar(CS III)
(15/09/2020)

//True Copy//

Sub Assistant Registrar

Pns
To

1.District Collector,
Collectorate, Salem.

To be Substituted for the
Order already despatched
on 28.08.2020

2.District Forest Officer,
Bretts Road, Vincents, Salem - 7.

3.Sub Divisional Committee,
Chaired by RDO,
Collectorate, Salem - 1.

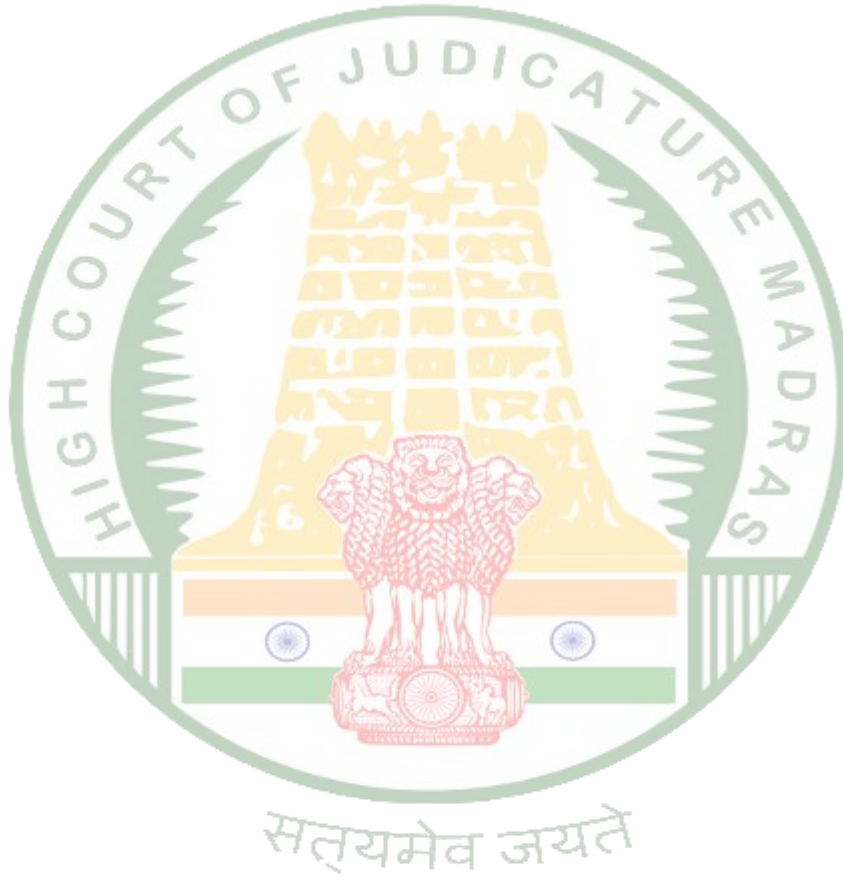
4.Special Tahsildar,
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Salem - 1.

5.Forest Ranger,
Forest Range Office,
Shevroy South Range,
Hasthampatti, Salem - 7.

+1cc to Special Government Pleader, S.R.No.25781

W.P.No.6388 of 2020

VS (CO)
KKV/25/08/2020
CB(15/09/2020)



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