

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3861 of 2013

1. Muthusamy
2. Kandasamy
3. Nadagounden
4. Ponnusamy
5. Murugan
6. Kannupaiyan
7. Selvi
8. Selvi
9. Kunchupaiyan
10. Selvi
11. Alagammal
12. Radha
13. Nataraj
14. Chellammal
15. Marimuthu

....Petitioners

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Environment & Forests, F/14,
Fort St. George,
Chennai.

2. The Forest Settlement Officer,
Attur, Salem District.

... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the Notification in G.O.Ms.No.117, Environment and Forests (FR.14) dated 17.04.2012 on the file of the 1st respondent and the consequential Salem District Gazette publication in No.61 dated 14.12.2012 (Na.Ka.No.795/81 (A), dated 14.11.2012) on the file of the 2nd respondent quash the same.

For Petitioners : Mr.V. Elangovan
For Respondents : Mr.M. Elumalai
Government Advocate

ORDER

Heard Mr.V.Elangovan, learned counsel for petitioners and Mr.M. Elumalai, learned Government Advocate for respondents.

2. With the consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed challenging the notification issued by the Government in G.O.Ms.No.117, Environment and Forests (FR.14) dated 17.04.2012 and for a consequential direction to quash the notification published in Salem District Gazette No.61 dated 14.12.2012.

4. The case of the petitioners as submitted by Mr.V.Elangovan, learned counsel for the petitioners is that the petitioners were 15 in numbers and they were residing at Porasamarathoor Hamlet, Kannamoochi Village, Salem District for over 50 years and they belong to Scheduled Tribe community and they were residing in Hill area and they have sufficient proof of their residence as they have Family Card, Voter I.D. and their houses were provided with Electricity Service connection. Apart from that local Village Panchayat provided electricity connection, water supply connection, concrete road etc., Therefore, the petitioners would state that the impugned notification declaring the area as a Reserve Forest is illegal and affects the fundamental right enshrined under Article 19(1) of the Constitution of India to which enjoins a duty on the state to provide shelter. In this regard, the learned counsel has referred to the decision of the Hon'ble Supreme Court in State of Karnataka Vs. Narasimhamurthy and Ors.[reported in AIR 1996 SC 90]. Further, the learned counsel has argued that the areas which have been declared as a reserve forest has been done without conducting any enquiry and the same cannot be sustained and liable to be quashed.

5. Mr.M.Elumalai, learned Government Advocate appearing for the respondent referred to the counter affidavit filed by the 2nd respondent and submitted that the petitioners are rank trespassers, who have entered into the land in question after notification was issued under Section 4 of the Act. It is submitted that the Government of Tamil Nadu decided to set apart

forest block in survey No. 251, Kannamoochi Village, Mettur Taluk, Salem District as per G.O.Ms.No.1434, Forest & Fisheries Department dated 22.12.1984 by issuing a notification under Section 4 of the Act stating that an extent of 769.08 hectares in the said survey number is proposed to be converted as "reserve forest". The said notification issued under Section 4 of the Act was published in the Tamil Nadu Government Gazette, dated 10.04.1985 in English language and in the Salem District Gazette, dated 21.04.1985 in Tamil Language.

6. Further it is submitted that notification under Section 6 of the Act was published in Salem District Gazette on 21.06.1985. Subsequently, the survey No.251 was resurveyed and subdivided into survey No.264/5 measuring 0.29.0 Hects as Kallankuthu and survey No.265 measuring 768.88.5 Hects as Karadu. Subsequently revised notification under Section 4 of the Act was published in Tamil Nadu Government Gazette No.31 dated 14.08.1991 and in Salem District Gazette No.1 dated 21.11.1991 in English and Tamil languages respectively. In respect of the aforementioned two survey numbers subsequently proclamation under Section 6 of the Act was published in the Salem District Gazette No.8 dated 10.2.1992 and wide publicity of the same was made by beat of "Tom Tom". It is further stated that pursuant to such notification two claims were received within the time stipulated i.e., 90 days and the said two claims were processed in accordance with law and finalised. Thereafter adopting required procedure an extent of 768.88.5 hecets in survey No.265 and 0.29.0 hecets in survey No.264/5 totalling 769.17.5 hecets in Kannamoochi Village of Mettur Taluk has been declared as "Reserve Forest" under Section 16 of the Act in terms of the Government Order and as a final step notification under Section 16(2) was published by the Forest Settlement Officer in the Salem District Gazette dated 14.12.2012.

7. Thus, it is submitted by Mr.M.Elumalai, learned Government Advocate that process of converting the lands commenced in the year 1984 and due opportunity was given to all persons, who are interested and the petitioners, who are encroachers of the area, after issuance of the notification have absolutely no right to seek the relief as sought for in this writ petition. Further, merely because, the Panchayat Authorities have provided certain common amenities cannot be a ground to quash the impugned notification.

8. Further, it is submitted that survey No.265 is classified as a Hill and survey No.264/5 is mentioned as Kallankuthu in the revenue records, but the Hill was notified during the year 1991 itself under Section 4 of the Act and the lands were classified as "Reserve Forest" and the same was published in the Tamil Nadu Government Gazette dated 14.08.1991

as well as in the Salem District Gazette on 21.11.1991. Thus, it is submitted that proper procedure was followed by the authorities and the land has been declared as a "Reserve Forest" and therefore, no patta can be issued.

9. Furthermore, the Hon'ble Supreme Court has issued directions that request for grant of patta made by encroaching the area classified as a forest cannot be considered. Further, it is submitted that in terms of G.O.Ms.No.426, Forests and Fisheries Department dated 25.4.1997, no patta should be issued for forest lands at any cost without concurrence of the Chief Conservator of Forests and as per clarification issued during 1991, no patta can be issued over the land where the Forest Department has raised plantation in the past years and the vegetative growth is very good at present.

10. Further, with regard to the objections, which can be raised pursuant to notification under Section 4 of the Act, a time limit is prescribed under the Act by giving 90 days and within such period two claims were received and both claims were considered, enquiry has been conducted under Section 8 of the Act and order has been passed under Section 10 of the Act on 07.04.1997. Thus, it is submitted by the learned Government Advocate that the above facts would clearly show that the petitioners are not in possession as claimed by them for 50 years. Furthermore, they have not come forth with any claim within the time stipulated, which will clearly show that they are trespassers into forest land.

11. Heard the learned counsel for the parties and perused the materials on record. The petitioners having failed to raise any objection at the appropriate time, cannot now unsettle a settled issue i.e., where the land has been declared as forest land even in the year 1991.

12. In the considered view of this Court, the present claim of the petitioners is not maintainable, more so, when the petitioners are encroachers of the forest land after notification was issued under Section 4 of the Act.

13. That apart, in the light of the various orders passed by the Hon'ble Supreme Court, the petitioners have absolutely no right to seek for reclassifying or declassifying any land, which has been declared as a Reserve Forest. Therefore, the challenge to the impugned order is frivolous, more particularly, in the light of the factual matrix, which has been placed before this Court by the 2nd respondent, which has not been denied by the petitioners.

For all the above reasons, the writ petitioners are not entitled for the relief sought for. Accordingly, the writ petition fails and stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Environment & Forests, F/14,
Fort St. George,
Chennai.
2. The Forest Settlement Officer,
Attur, Salem District.

+1cc to M/s.S.Doraisamy, Advocate, S.R.No.4295
+1cc to the Special Government Pleader, S.R.No.4297

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