

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.24302 of 2018
and
W.M.P.Nos.28316 & 28317 of 2018

T. Kullan

... Petitioner

Vs.

1.The District Collector,
Villupuram District,
Villupuram.

2.The District Forest Officer,
Office of the District Forest Officer,
Villupuram District.

3.The Project Officer – Tribal Welfare,
Kallakurichi,
Villupuram District.

4.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

5.The Special Tahsildar,
Adidravidar and Tribal Welfare,
Kallakurichi, Villupuram District.

6.The Tahsildar,
Sankarapuram Taluk Office,
Villupuram District.

7.K. Periasamy

8.K. Elumalai

9.K. Ramar

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus, directing the respondents 1 to 3 to provide certificate of individual right for using the forest land under Rule 8(h) of The Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008, to the balance extent of 0.68 Cents out of 1.00 Acre of lands, in the petitioner's name, comprised in Survey No.144, Thuroor Village, Kalvarayan Hills, Mattapparai Post, Sankarapuram Taluk, Villupuram District, based on the Adangal maintained by the Revenue Officials, by considering the petitioner's representation dated 14.06.2018 within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.M.Vijayaragavan

For Respondents : Mr.V.Jayaprakash Narayanan, for RR1, 3, 4 to 6
Special Government Pleader
Mr. Elumalai, for R2
Government Advocate

ORDER

This writ petition has been filed for the issue of writ of mandamus directing the respondents 1 to 3 to provide certificate of individual right for using the forest land to an extent of 68 cents in the name of the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner is in possession of one acre of land and he is doing agricultural work in the said land and the same is a forest land. The learned counsel further submitted that while considering the request of the petitioner for occupation certificate, the Village Administrative Officer had given a report only for 32 cents out of one acre and for the balance 68 cents, the authority refused to issue certificate on the ground that respondents 7 to 9 are claiming right of occupancy for the said extent of land. The learned counsel submitted that the respondents 7 to 9 are not in possession of the property and they have absolutely no right to claim for the occupancy certificate for the remaining 68 cents of land.

3. Mr. Elumalai, learned Government Advocate appearing on behalf of the Forest Department by placing reliance upon the counter affidavit filed by the third respondent submitted that the allotment of land was conducted as per the provisions of the Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The learned counsel further submitted that Rule 6 of the said Act provides for a detailed procedure and it was found that the petitioner was entitled for occupation certificate only to an extent of 32 cents. The learned counsel further submitted that a redressal mechanism is provided under the said Rule and the petitioner without exhausting such an alternative remedy, has rushed to this Court by filing the above writ petition.

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

5. It will be relevant to extract Rule 6 of the Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 hereunder:

“Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.-

(1) *The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.*

(2) *Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition: Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha: Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.*

(3) *The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional*

Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition: Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub Divisional Level Committee: Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.”

6. The third respondent has taken a very categorical stand in the counter affidavit that only after taking into consideration, the reports from the Tahsildar and Village Administrative Officer, the petitioner was granted possessory rights over 32 cents of land. This Court exercising its jurisdiction under Article 226 of the Constitution of India cannot conduct a roving enquiry into the *inter se* rights between the petitioner and respondents 7 to 9 and it cannot be decided by this Court. If, the petitioner has any grievance, he has to necessarily workout his remedy in

accordance with the redressal mechanism provided under Rule 6. This Rule provides for a detailed procedure to determine the rights. In the light of the alternative remedy, this Court is not inclined to entertain this writ petition and decide the same on merits.

7. In view of the above, this writ petition is disposed of by giving liberty to the petitioner to workout his alternative remedy in accordance with the scheme provided under Rule 6 of the Traditional Forest Dwellers (Recognition of Forest Rights) Act. As and when a representation is made by the petitioner in this regard, the authorities shall consider the same strictly in accordance with law and after giving sufficient opportunity to respondents 7 to 9. The proceedings shall also be concluded as expeditiously as possible.

8. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

01.06.2020

Index:yes/no
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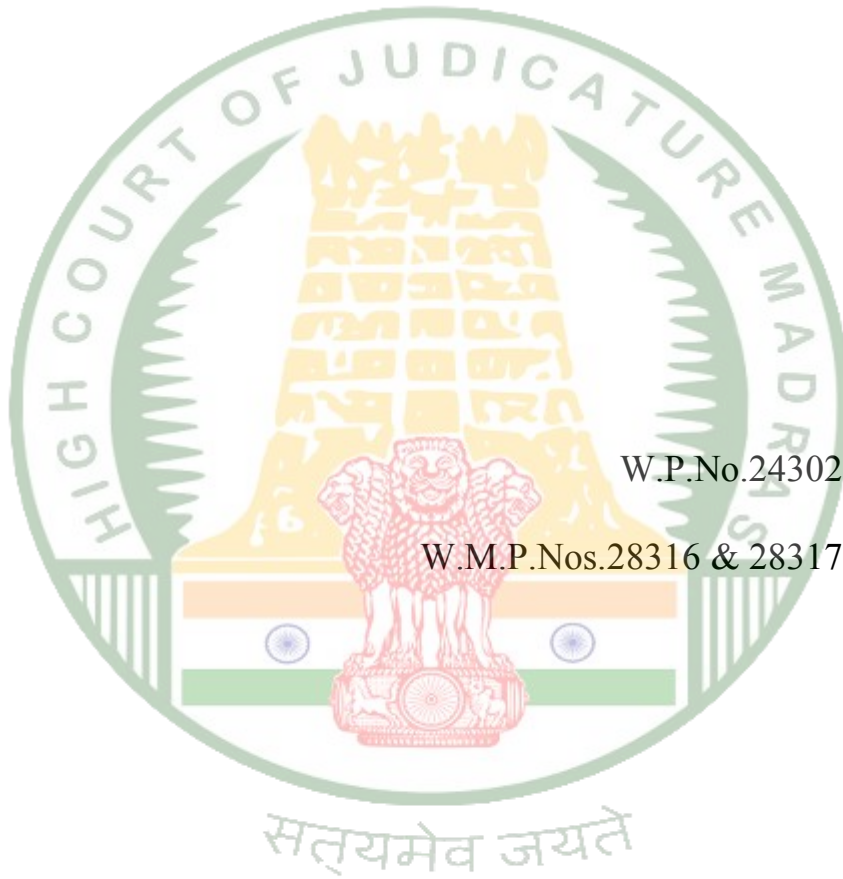
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