



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.13932 of 2017

and

W.M.P. (MD)No.10882 of 2017

WEB COPY

Murugesan

... Petitioner

Vs.

1.The District Collector,
District Collectorate,
Tuticorin District.

2.The District Forest Officer,
State District Forest Office,
Tuticorin District.

... Respondents

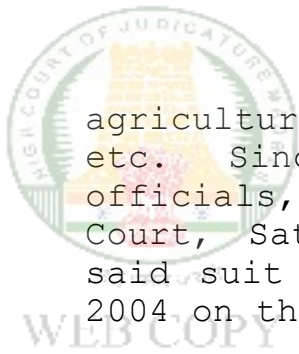
Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus challenging the Impugned order passed by the second respondent herein in his proceedings in Se.Mu.Aa.No.Va/3691/2011 dated 16.06.2017 and quash the same and further Mandamus directing the 2nd respondent herein to pass necessary orders recognizing the petitioner's right and possession in Survey No.203/2, to an extent of 37 Acres 21 Cents, Arasur Village, Sathankulam Taluk, Tuticorin District as per the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 within the time stipulated by this Court.

For Petitioner : Mr.V.Meenakshisundaram
For Respondents : Mr.K.Chellapandian
Additional Advocate General
Assisted by,
Mr.M.Rajarajan,
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General appearing for the respondents.

2.The petitioner's contention is that the petition mentioned lands are their ancestral property. The petitioner would state that his grandfather Thangaiah Nadar had inherited 28 Acres 21 cents from one Sudalaimada Nadar and that he purchased the remaining 9 acres from one Valliammai Nadachi and Manickamuthu Ammal and Kathirvel Nadar through registered sale deeds dated 06.11.1950 and 07.11.1950. These all are registered documents. The petitioner's family has been in possession and enjoyment of



agricultural activities and also planting valuable trees like Teak etc. Since the petitioner was faced with interference from the officials, they filed O.S.No.13 of 2002 before the District Munsif Court, Sathankulam, seeking permanent injunction. Though, the said suit was dismissed, it came to be decreed in A.S.No.143 of 2004 on the file of Sub Court, Thoothukudi.

3.Ofcourse, questioning the said First Appeal Judgement and Decree, the Government had filed Second Appeal in S.A.No.806 of 2008. In the intervening period, the second respondent herein attempted to evict the petitioner. Therefore, the petitioner was constrained to move this Court by filing this W.P.(MD)No.5178 of 2016. The said writ petition was allowed in favour of the writ petitioner and the matter was remitted to the file of the second respondent to pass orders afresh and in accordance with law. Following the remand order, the second respondent held an enquiry and by the impugned order dated 16.06.2017, held that the petitioner is not entitled to claim any right under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Questioning the same this writ petition has been filed.

4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and wanted this Court to allow this writ petition.

5.Per contra, the learned Additional Advocate General submitted that the impugned order does not warrant any interference.

6.I carefully considered the rival contentions and went through the materials on record.

7.The learned counsel for the petitioner submitted that the petitioner ought to be considered as an "Other Traditional Forest Dwellers" as defined under Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. He pointed out that the materials on record clearly indicate that the petitioner's family has been in possession and enjoyment of the land in question for at least three generations prior to the cut off date that is 13.12.2005. Though the possessory claim of the petitioner appears to be quite justified, I am of the view that the petitioner may not fall within the aforesaid definition. Section 2(o) of the Act Reads as follows:

"2.(o)"other traditional forest dwellers" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or



forests land for bona fide livelihood needs".

8.The definition stipulates two requirements. The claimant must primarily reside in the forest land. He must be dependent on it for bonafide livelihood needs. In the case on hand, it is beyond dispute that the petitioner or his family members were not dwelling or residing in the land in question. The definitional clause employs the expression "and". Ofcourse, the expression "and" can sometimes be construed as "or" also. To construe so, some compelling reasons must be there. In the case on hand, such reasons are wholly absent. The expression "and" will have to be considered as a conjunctive expression.

9.The petitioner has to fulfil both the requirements vis: residence as well as dependence. In this case, the petitioner has admittedly not been dwelling in the forest. The petitioner has failed to fulfil the definitional requirement. Hence, it is not possible to fault the order impugned in the writ petition. It is sustained. But I cannot stop with this. The petitioner contends that their family has planted several valuable trees in the land in question. If that be so, the right of the petitioner to remove the same, subject to other statutory requirements cannot be denied.

10.Therefore, even though I hold that in view of the declaration of the land as a forest land, the order impugned in this writ petition cannot be interfered with, I permit the petitioner to apply to the respondents / the jurisdictional authorities, seeking permission to remove those trees such as Teak, planted by the petitioner. The petitioner can ofcourse rely on the evidence adduced in O.S.No.13 of 2002 on the file of the District Munsif Court, Sathankulam. The respondents are directed to consider such an application on merits and in accordance with law. If such an application is filed, the respondent shall dispose of the same on merits and in accordance with law within a period of eight weeks thereafter.

11.Accordingly, this Writ Petition is disposed of with this directions and liberty. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
District Collectorate,
Tuticorin District.

2.The District Forest Officer,
State District Forest Office,
Tuticorin District.

+1 CC to Mr.D. NALLATHAMBI, Advocate (SR-16980[F] dated
15/09/2020)

+1 CC to SPL GP (SR-17129[F] dated 16/09/2020)

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