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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.Nos.1, 2, 3, 4, 5, 6 of 2006
and
C.M.S.A.No.51 of 2008 and
C.M.S.A.No.16 of 2005

1	SARAMMA	... PETITIONER in CMSA No.1 of 2006
1	VARGHESE	... PETITIONER in CMSA No.2 of 2006
1	SKARIA	... PETITIONER in CMSA No.3 of 2006
1	MOHAMED RASHERTH	... PETITIONER in CMSA No.4 of 2006
1	EASWARI	... PETITIONER in CMSA No.5 of 2006
1	JEYARAMAN	... PETITIONER in CMSA No.6 of 2006
1	C.P.GEORGE	
2	R.VIJAYAKUMAR	... PETITIONERS in CMSA No.51 of 2008
1	BEEYUTTY	
2	ANDI CHETTY	
3	MIOHAMMED PULIAMPARAI	
4	ANANDAN	... PETITIONERS in CMSA No.16 of 2005

-Vs-

1 THE DISTRICT FOREST OFFICER,
GUDALAR THE NILGIRIS.

2 THE FOREST SETTLEMENT OFFICER
GUDALAR THE NILGIRIS.

... RESPONDENTS in CMSA No.1,2,3,4,5 & 6 of 2006

1 THE DISTRICT FOREST OFFICER,
GUDALUR DIVISION GUDALUR.

2 THE FOREST SETTLEMENT OFFICER
GUDALUR.



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3 P. P. YACOB
4 MOHANDASS
5 SALU
6 M. P. THOMAS
7 PARVATHY
8 BABU
9 P. E. VERGHESE
10 RAVI
11 AMMINI
12 SASIKALA
13 CHANDRIKA
14 LALJI
15 R. LAKSHMANAN
16 MARUTHI
17 MALAYAPPAN
18 THOMAS @ JOHNY
19 AHMEDKUTTY ... RESPONDENT in CMSA No.51 of 2008

1 THE DIST FOREST OFFICER,
GUDALUR DIVISION,
GUDALUR NILGIRIS.

2 THE FOREST SETTLEMENT
OFFICER GUDALUR NILGIRIS.

3 THE TAHSILDAR,
TK OFFICE OFFICER GUDALUR NILGIRIS.

4 NARAYANAN

5 KRISHNAN

6 KUNHI BAPPU ... RESPONDENTS in CMSA No.16 of 2005

Prayer in C.M.S.A.No.1 to 6 of 2006: Civil Miscellaneous Second Appeal filed under Section 10(2) of T.N.Forest Act, 1882 r/w. Sec. 100 of C.P.C., against the order dated 04.01.2005 made in C.M.A.No.22, 24, 25, 26, 28, 30 of 2004 on the file of the District Judge, The Nilgiris at Uthagamandalam, by confirming the order of the second respondent made in R.C.A.No.318 of 1983 dated 31.03.2004, on the file of the Forest Settlement Officer, Gudalur in so far as the claim of the petitioner is partly disallowed in R.C.A.No.318 of 1983.

CMSA.No. 51/2008 Prayer: Against the Judgment and Decree dated 13/12/2005 passed in CMA.No. 23/2005 on the file of the Learned District Judge of Nilgiris at Uthagamandalam, reversing the well consideration order dated 20.05.2003 passed in RCA.No. 810/98 on the file of the Learned Forest Settlement Officer, Gudalur.



CMSA.No. 16/2005 Prayer: Against the Judgment and Decree dated 28/09/2004 passed in CMA.No 59/2003 on the file of the Learned District Judge and Appellate Authority of Nilgiris Ootacamund, Reversing the order dated 06/06/2002 passed in RCF No. 166/1984 on the file of the Learned Forest Settlement Officer, Gudalur.

In C.M.S.A.No.1 of 2006

For Appellant : Mr.M.Venkateswaran
in All CMSA

For Respondents : Mr.S.Prabhu, AGP (Forest)
in all CMSA

C O M M O N J U D G M E N T

The orders made in C.M.A.Nos.22, 24, 25 26, 28, 30 of 2004 dated 04.01.2005, C.M.A.No.59 of 2003 dated 28.09.2004 and C.M.A.No.23 of 2005 dated 13.12.2005 are under challenge in the present civil miscellaneous second appeals.

2. Interestingly, the questions of law raised in these appeals are:

1. whether the Lower Appellate Court, on consideration of oral and documental evidence, arrived at a just conclusion?

2. whether the appellant is entitled to get patta for the land under occupation instead of partly allowed by the authorities below, in view of his continued occupation for more than 28 years?

Both the questions are related to the facts and cannot be considered as substantial questions of law which deserves further adjudication under Section 100 of C.P.C.

3. The Forest Settlement Officer, Gudalur, The Nilgiris, adjudicated the issues under Section 4 of the Tamil Nadu Forest Act. The Settlement Officer conducted an enquiry under Section 8 of the Tamil Nadu Forest Act and an award was passed. The Settlement Officer held that some of the lands were excluded with reference to some claimants. The petitions were dismissed in toto. In other words, the claim of few claimants were allowed in part. In respect of other claimants, the petitions were rejected totally.



4. In respect of the claimants whose petitions were partly allowed, preferred civil miscellaneous appeals before the District Court, Nilgiris, Uthagamandalam. The learned District Judge elaborately adjudicated the facts and circumstances as well as the grounds raised by the appellants and arrived a finding that as per the orders passed by this Court in W.P.Nos.13624 to 13628 of 1999, the lands occupied are belonged to the Government and such lands occupied by encroachment cannot be treated as occupied lands and payment of penal levy will not regularize their occupation. In an appeal before the Division Bench of this Court in W.A.No.641 of 1996, the Hon'ble Division Bench of this Court passed the following order:

"We are of the view that in the District of Ooty, encroachment of forest land is increasing day by day. We cannot appreciate the apathy of the Government officers and the Government in taking action against such encroachers. It is the safety and security of the forest that ensure the ecological balance in the District of Ooty. Therefore, we direct that State Government to take appropriate action in accordance with law for eviction of the encroachers. "

5. The Hon'ble Division Bench directed that the Government should take action in respect of such encroachment in accordance with law in the District of Uthagamandalam. Further, the Hon'ble Supreme Court in its decision in W.P.(C).202 of 1995 dated 07.05.1999, has passed a general order in I.A.No.400 etc., that no patta with regard to any forest land shall be granted nor shall any encroachment be regularized. It is further directed that both the Hon'ble Division Bench of this Court as well as by the Hon'ble Supreme Court of India held that the encroachment should not be regularized and no patta should be granted for encroachers. Relying on the judgment of the Hon'ble Supreme Court and this Court, the first appellate Court dismissed all the appeals filed by the claimants.

6. As far as the present civil miscellaneous second appeals are concerned, the appellants have not raised any substantial question of law which deserves any further adjudication on the issues. This apart, the first Appellate Court relying on the judgment of the Hon'ble Division Bench of this Court as well as the Hon'ble Supreme Court of India, dismissed the appeals by disallowing the claim of the claimants for grant of patta and regularize their occupation.



7. In this view of the matter, the appeals deserve no merit and consideration and consequently, orders passed in C.M.A.Nos.22, 24, 25 26, 28, 30 of 2004 dated 04.01.2005, C.M.A.No.59 of 2003 dated 28.09.2004 and C.M.A.No.23 of 2005 dated 13.12.2005 stands confirmed and C.M.S.A.Nos.1, 2, 3, 4, 5, 6 of 2006, C.M.S.A.No.51 of 2008 and C.M.S.A.No.16 of 2005, stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The District Judge,
The Nilgiris at Uthagamandalam.
- 2.The Forest Settlement Officer, Gudalur.
- 3.The District Forest Officer,
Gudalur Division,
Gudalur,
The Nilgiris.
- 4.The Tahsildar,
Taluk Office,
Gudalur, The Nilgiris.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to the Special Government Pleader(Forest), S.R.No. 5539, 5538, 5537, 5536, 5533, 5534.

+1cc to Special Government Pleader (Forest), SR. No. 5535 (30/05/2022)

C.M.S.A.Nos.1, 2, 3, 4, 5, 6 of 2006 and
C.M.S.A.No.51 of 2008 and
C.M.S.A.No.16 of 2005

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GN(14/07/2021)