



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.10.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.NO.20691 OF 2021
AND W.M.P.NO.21953 OF 2021

K.V.Saji

... Petitioner

-vs-

1.State of Tamilnadu
rep. By the Secretary to Government
Forest Department
Madras.

2.The District Forest Officer,
Gudalur Division
Gudallur Bazzar Post, Gudallur
The Nilgris.

3.The Forest Range Officer
Bitherkad Range
Bitherkad Post,
The Nilgris 643 240.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to forbear from interfering with or otherwise disturbing petitioner's possession and destroying the plantation crops of Arecunut, Tea, Coffee, Coconut, Pepper etc., raised in an extent of 5 acres of land at No.7/14E-1, Vattakolli, Cherangode 1 Village, Survey No.367/5, Thattambarai FB-VI in Pandalur Taluk of Nilgris District, except due process of law.

For petitioner : Mr.P.Prakash Paul

For respondents : Mr.T.N.C.Kaushik, GA



ORDER

(Order of the Court was made by V.SIVAGNANAM, J.,)

The prayer in this writ petition is to issue a writ of mandamus, forbearing the respondents from interfering with the possession of the petitioner and destroying the plantation crops of Arecunut, Tea, Coffee, Coconut, Pepper etc., raised in an extent of 5 acres of land at No.7/14E-1, Vattakolli, Cherangode 1 Village, Survey No.367/5, Thattambarai FB-VI in Pandalur Taluk of Nilgris District, except due process of law.

2.The learned counsel for the petitioner would submit that his father-K.P.Varghese is in possession and enjoyment of 5 acres of land at No.7/14E-1, Vattakolli, Cherangode 1 Village, Survey No.367/5, Thattambarai FB-VI in Pandalur Taluk of Nilgris District, and he cultivated cash crops like coffee, tea, coconut, arecunut etc.,. Besides, his father constructed a tiled house in the above said land during the year 1980 and since then, he is peaceful possession and enjoyment of the subject property. In the year 1988, the 3rd respondent had issued a notice under Section 68A of the Tamil Nadu Forest Act, to evict them from the subject property. Against the order of the 3rd respondent, father of the petitioner filed a writ petition in W.P.No.9756 of 1988 before this Court, with a prayer, not to evict them from the subject property, without following due process of law. Which was allowed on 13.06.1991.

3.Again now, the 3rd respondent affixed a notice on the door frame of the petitioner's house and started to cut the trees, tea plantations and other crops which is violation of principles of natural justice. Hence, the petitioner is before this Court and pleaded to issue a writ of mandamus with a direction to the respondents not to interfere with the petitioner's possession and thus pleaded to allow the writ petition.

4.The learned Government Advocate appearing for the respondents contended the allegation that the petitioner's father is in possession of 5 acres of land is false. Further, the petitioner's father-Varghese was an encroacher in the forest land to an extent of 3.50 acres. He made a claim to the Forest Settlement Officer, Gudalur for an extent of 3.50 acres at Thattamparai Bit VI Forest block in Rc.A.No.318 of 1983. The Forest Settlement Officer, who conducted an enquiry on the claims under Section 8 of the Tamil Nadu Forest Act, 1882 excluded 1.50 acres of land from the proposed forest block in favour of the petitioner's father-Varghese as against the claim of 3.50 acres on 31.03.2004.



5. Aggrieved by the above order of disallowing of 2.00 acres of land, the said Varghese preferred an appeal before the learned District Judge, Udthagamandalam in C.M.A.No.32 of 2004 and the same was dismissed on 14.10.2004. Again, he filed a second appeal in C.M.S.A.No.10 of 2005, before this Court and the same was also dismissed on 28.04.2018, thereby confirming the order of the Forest Settlement Officer, Gudalur dated 31.03.2004 in Rc.A.No.318 of 1983. Thereafter, on 17.08.2021, in the presence of the Revenue authorities, petitioner's encroachment was removed and the Forest Department has taken over possession of the land.

6. We have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents and on perusal of the records would show that the petitioner's father-Varghese made claim to the Forest Settlement Officer, Gudalur for an extent of 3.50 acres of land. The Forest Settlement Officer, conducted enquiry under Section 8 of the Tamil Nadu Forest Act and excluded 1.50 acres of land from the proposed forest block in favour of the petitioner's father-Varghese and the efforts made by the said Varghese in the form of appeals ended in receiving dismissal order. Thereafter, the petitioner's father has not preferred any appeal before the Supreme Court. Apart from this, on 17.08.2021, in the presence of the Revenue authorities, the encroached portion by the petitioner was taken into possession by the Forest Department. In such circumstances, nothing survives in this writ petition and we find that there is no violation of principles of natural justice. The writ petition fails and liable to be dismissed.

7. In the result, this writ petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary to Government
Government of Tamilnadu
Forest Department,
Madras.



2.The District Forest Officer,
Gudallur Division
Gudallur Bazzar Post, Gudallur
The Nilgris.

3.The Forest Range Officer
Bitherkad Range
Bitherkad Post,
The Nilgris 643 240.

+1CC to Mr.Government Pleader, Sr.No.56199

+1CC to Mr.Special Government Pleader(Forest), Sr.No.56374
(14/12/2021)

W.P.No.20691 of 2021

KSM (CO)

K.RK. (22.11.2021)

RLP(14/12/2021)