



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 27347 of 2021

PRJ Infrax,
Represented by its Proprietor,
Jitendra Kumar M Bafna,
No.218/3B, T.V.Swamy Road,
R.S.Puram, Coimbatore - 641 002. ...Petitioner

-Vs-

The Divisional Forest Officer
Coimbatore Division,
Tamil Nadu Forest Academy Campus,
R.S.Puram, Coimbatore - 641 002. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus forbearing the respondent or his men or agents or his subordinate officers from interfering with the movement of the petitioner's vehicles carrying construction materials through the Mangarai Checkpost to 24 Veerapandi Village, Coimbatore North Taluk, Coimbatore District thereby preventing the respondent and his men or agents or his subordinate officers from committing acts of unlawful prevention of the petitioner's vehicles without issuance of proper documents for such preventive acts as part of due process of law.

For Petitioner : Mr.A.Ravichandran
For Respondent : Mr.E.Vijay Anand
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus forbearing the respondent or his men or agents or his subordinate officers from interfering with the movement of the petitioner's vehicles carrying construction materials through the Mangarai Checkpost to 24 Veerapandi Village, Coimbatore North Taluk, Coimbatore District thereby preventing the respondent and his men or agents or his subordinate officers from committing acts of unlawful prevention of the petitioner's vehicles without issuance of proper documents for such preventive acts as part of due process of law.



2. It is the case of the petitioner that, the petitioner is having his patta land at a village called 'Veerapandi' in Coimbatore North Taluk, Coimbatore District. In that land, since he decided to construct some house buildings, he wants to take the building materials to the said land. While taking the building materials, the vehicles have to pass through the forest land, where there is a Checkpost called 'Mangarai Checkpost'. In that Checkpost, the respondent Forest Department preventing the ingress and egress of the petitioner, as they directed the petitioner not to take any building materials crossing the Checkpost. Because of this action, according to the petitioner, the move of the petitioner to have a construction of building in his patta land at Veerapandi Village since is hindered, he has already given a representation to the respondent to consider his request and to pass suitable orders and since the said representation by way of an advocate notice dated 22.10.2021 has not been considered and despite the said notice, the respondent has not come forward to permit the petitioner's vehicles to carry the building materials through the said Checkpost, the petitioner has moved this Writ Petition with the aforesaid prayer.

3. Heard Mr.A.Ravichandran, learned counsel appearing for the petitioner who would submit that, even though the Veerapandi Village has been included as one of the village under the Hill Areas Conservation Authority Control by issuance of Government Order in G.O.MS.No.44, Planning and Development (TC II) Department dated 02.04.1990, the land belongs to the petitioner is located in a plain area of the said Veerapandi Village, which is not in a hilly area. Therefore, first of all, the land of the petitioner is concerned, it cannot be treated as a land comes within the zone of Hill Areas Conservation Authority.

4. Moreover, the petitioner is not going to have any major development or infrastructure development except to have a small dwelling house. Therefore, for the said purpose, due to the subsequent annexure issued in G.O.Ms.No.49, Housing and Urban Development (UD2.2) Department dated 24.03.2003 certain activities were permitted, under which, if at all, any building construction is made more than 300 sq.mt. area alone, such kind of permission has to be obtained from the Hill Areas Conservation Authority (in short 'the Authority'). However, the proposal for construction of building by the petitioner is only less than 300 sq.mt., therefore, even that kind of permission need not be obtained. When that being so, the present action on the part of the respondent preventing the petitioner vehicles from taking the building materials to his land is not only high-handed, but also against the law and also against the aforesaid GOs'. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court to issue a suitable direction to the respondent.



5. Per contra, Mr.E.Vijay Anand, learned Additional Government Pleader appearing for the respondent on instructions would submit that, the vast extent of area in Nilgris and Coimbatore District as well as some areas in Dindugal and Kanyakumari District, that is most of the areas covering the hilly region and the abutting plain region since have been declared to be the Ecological Sensitive Zone under the said G.O.Ms.No.44 referred to above it comes within the control of the Hill Areas Conservation Authority. Whatever the developments to be made as enumerated therein shall be regulated only by the said authorities to whom necessary application to be submitted by any person who wants to make development of any kind mentioned in the said G.O.

6. In this context, if at all, the petitioner wants to make any development by putting up some construction in his land at Veerapandi Village, since it is one of the Village has already been included in the notification as a Hill Areas Conservation Authority Control as Ecological Sensitive Zone, necessarily, the petitioner has to make an application to the respondent and once such application is made, the authority consisting of various officials of State Government which is a high power authority would look into the same and after getting necessary input from the various departments, especially from the Forest Department, ultimate decision would be taken, as to whether such development can be permitted to be taken place or not.

7. Without resorting the method which should be adopted by the petitioner as per the procedure in vogue as contemplated under GOs' referred to above, since the petitioner wants to take the building materials through the forest land, especially the Checkpost under the control of the Forest Department, that was not permitted, as necessarily the petitioner has to get approval or permission from the authority concerned.

8. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

9. Even though, it was claimed by the petitioner that, the land belongs to the petitioner located in Veerapandi Village is only in plain area, that argument cannot be accepted by this Court, because, the entire Village of Veerapandi has already been included as one of the Village under the Ecological Sensitive Zone under the G.O.Ms.No.44 referred to above.

10. When that being so, if any developmental activities have to be undertaken, the person who wants to make such development has to be necessarily routed through only the procedure established by the said authority by making an application to the said authority.



11. In this case, admittedly, there has been no application submitted by the petitioner to the said authority. The reason for non submission of the application, according to the learned counsel appearing for the petitioner is that, since he is going to develop only the property less than 300 sq.mt., therefore, as per the GO, if it is more than 300 sq.mt. alone, that kind of application has to be made for getting a permission and if it is less than 300 mts, no such permission is required, he contended.

12. Be that as it may, what type of development is going to make is not known to this Court. Therefore, whether the development proposed by the petitioner is to be regulated by the authority or can be exempted under the provisions of the GO referred to above can best be decided only by the said authority, for whom, the petitioner can make an application and if at all, any necessity arises to consider the application to grant approval within the parameters of the G.O.Ms.No.44 referred to above, it is open to the said authority to decide the same on merits, otherwise if the authority comes forward to clear the proposal by saying that, no such prior permission or approval need to be obtained from the authority in view of the limited development that the petitioner going to make, then such kind of orders can also be passed by the said authority.

13. In any way, the issue can be decided only by the authority namely Hill Areas Conservation Authority, where a very senior IAS Officer to be appointed by the State Government in this regard would act as a Chairman and there will be a Member Secretary and lot of Ex-office Members, most of them are Secretary to Government of various Departments of Government of Tamil Nadu apart from the Chairman of Electricity Board, Director of Town and Country Planning, Director of Agriculture, The collector of Nilgiris and the Principal Chief Conservative of Forest etc. are members.

14. When that being the position, it cannot be easily stated that, the proposed development to be made by the petitioner is only lesser than 300 sq.mt., therefore, he need not get any permission from the authority, as that issue can be gone into and decided only by the authority. Therefore, since the petitioner's land comes within the purview of the Ecological Sensitive Zone as the entire Veerapandi Village has already been included as stated above, necessarily the petitioner has to make an application.

15. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"It is open to the petitioner to make an application to the authority called 'Hill Areas Conservation Authority' constituted under G.O.M.S.No.44, Planning and Development (TC II) Department dated 02.04.1990. If any such application



is made by the petitioner, the same shall be considered by the said authority in accordance with law as early as possible."

16. In view of the aforesaid direction, the prayer sought for in this Writ Petition cannot be granted, therefore, it is rejected. Accordingly, this Writ Petition is disposed of. However, there shall be no order as to costs.

17. The Registry is directed to forward the copy of this order to the Hill Areas Conservation Authority with regard to the Coimbatore District, where the copy can be forwarded to the District Collector, Coimbatore who in turn forward the copy of the same to the said authority for needful action as indicated above in case the petitioner comes forward with any application as stated above.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rap / vji

To

1.The Divisional Forest Officer
Coimbatore Division,
Tamilnadu Forest Academy Campus,
R.S.Puram,
Coimbatore - 641 002.

2.The District Collector,
Coimbatore.

+lcc to Mr.A.Ravichandran, Advocate SR. No.68804
+lcc to Government Pleader (Forest) SR. No.68543

W.P. No. 27347 of 2021

KSM (CO)
PR (14/02/2022)