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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.S.A.NO.27 OF 2018

AND

C.M.P.NO.22171 OF 2018

1. M/s.Prabha Enterprises Ltd.,
Rep.by its Managing Director,
Vivekanandan (Died)
39/11, Kandasamy Koil Street,
Ayothiyapattinam Post,
Salem District.
2. Mrs.S.Tamilselvi,
Chief Executive Officer of
M/s.Prabha Enterprises Limited.

(R2 substituted vide court order
dated 26.03.2021 made in CMP.No.22173
of 2018 in C.M.S.A.No.27 of 2018)

..Appellants/
Claimants

.Vs.

1. The District Forest Officer,
District Forest Office,
Salem.
2. The Principal Chief Conservator of Forests,
(Head of Department),
Panagal Maaligai, 1, Jeenis Road,
Saidapet, Chennai - 600 015.

(Suo-Motu impleaded as Respondent R2
as per Court order dated 26.03.2021
in C.M.S.A.No.27 of 2018)

..Respondents/
..Respondents

Prayer :

Civil Miscellaneous Second Appeal filed under Section 100 of
C.P.C., Read with Section 10(2) of Tamil Nadu Forest Act,
against the judgment and decree made in C.M.A.No.61/2008 on the
file of the II Additional District Judge at Salem dated



08.01.2018, reversing the order passed by Forest Settlement Officer, Attur, in F.S.C.No.839/2002 dated 27.06.2002, seeking set aside the same.

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For Appellants : Mr.P.Thiagarajan
For Respondents : Mr.M.Elumalai
Additional Government Pleader

J U D G M E N T

The Fair and Decreetal order passed in C.M.A.No.61 of 2008 dated 08.01.2018, reversing the order of the Forest Settlement Officer, Attur, passed in F.S.C.No.839 of 2002 dated 27.06.2002 is under challenge in the present Civil Miscellaneous Second Appeal.

2. The appellant claims leasehold rights over the property bearing S.No.356 of Keeripatti Village, Attur Taluk, Salem District to an extent of 19.24.0 Hectares (47.52 Acres) from the Government. The appellant states that on 12.05.1954, the Tamil Nadu State Government issued G.O.Ms.324 under Section 4 of the Madras Forest Act (Madras Act V of 1882) notifies that it is proposed to constitute as "Reserved Forest" under the said Act. In the said notification, the properties of the Salem District was proposed to be reserved forest in two blocks. The property claimed by the appellant comes under Naraikinaru North Block No.II. On 19.05.1955, Proclamation under Section 6 of Forest Act has been issued. The Claim Petitions were invited on or before 18.08.1955. However, the enquiry was not completed and the declaration under Section 16 of the Forest Act also was not issued. On 04.10.1976, the State of Tamil Nadu had issued a G.O.Ms.1334, Industries, granting leasehold rights in favour of the appellant for 20 years till 25.03.1997 to an extent of 6.29.0 Hectares (18.50 acres). On 26.03.1977, the lease deed was entered into an extent of 18.50 acres for 20 years. On 21.03.1996, before expiry of the the leasehold right, the appellant submitted an application for renewal of lease. Another application was filed, seeking leasehold right to an extent of 12.95.0 hectares for the purpose of mining. On 08.10.1998, the Forest Range Officer had issued a show cause notice, asking the appellant to submit explanations, why the quarry operations should not be stopped. On 07.12.1998, the appellant submitted an application. On 08.12.1998, the District Collector, Salem, had intimated to the appellant that the appellant is alleged to continue the mining operation. During the year 1999, the Forest officials interfered with the transporting the minerals by the appellant. The appellant filed W.P.No.19826 of 1998 and the writ petition ended not in favour of the appellant. The appellant filed W.A.No.611 of 1999 and an interim order was granted. On



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25.08.1999, the Chief Conservator of Forest recommended to the State Government to proceed further based on the inspection conducted in the year 1991 to declare the said 2222 acres of land under Section 16 of the Forest Act. On 07.10.1999, Review Application No.68 of 1999 was filed by the appellant and the land at that point of time was not declared as Forest Land. The interim order was also vacated thereafter in the year 2002. The Forest Settlement Officer conducted enquiry under Sections 8 and 10 of the Forest Act. On 27.06.2002, the Forest Settlement Officer passed an order in Case.No.839 of 2002. The Hon'ble Division Bench of this Court passed an order on 09.08.2007 in W.A.No.611 of 1999, directing the authorities to dispose of the renewal application. Meanwhile, the Forest Department has filed appeal in C.M.A.No.61 of 2008, challenging the order passed by the Forest Settlement Officer. The District Collector, Salem, permitted the appellant to continue mine and transport until the renewal application filed by the appellant was disposed of. Thereafter, on 08.01.2018, the C.M.A.No.61 of 2008 was disposed of in favour of the District Forest Officer and challenging the said order, the present Civil Miscellaneous Second Appeal is filed.

3. The learned counsel for the appellant reiterated that the order of the Forest Settlement Officer was well considered order and passed in accordance with the provisions of the Statute. An enquiry was conducted elaborately and facts as well as other circumstances were also considered by the Forest Settlement Officer. The exemption was granted in respect of 19.24.0 Hectares (47.52 Acres) and the Forest Settlement Officer held that the concerned land not come under the Notification and therefore, the findings of the First Appellate Court that the Forest Settlement Officer has no jurisdiction, is perverse.

4. The learned Additional Government Pleader appearing on behalf of the respondent / District Forest Officer objected the said contentions by stating that the entire Forest land was being abused by the private persons. The claim made by the appellant before the Forest Settlement Officer on 22.02.2002 was barred by limitation. The First Appellate Court found that the appellant was guilty of playing fraud and he was only a lessee in the properties and have mining operations and the appellant is not the owner of the property and therefore, the very claim is not maintainable. Thus, the appeal is to be dismissed.

5. The Substantial Question of Law raised by the appellant reads as under:

"1) Whether the Lower Appellate Court is right in passed an order in the appeal filed under Section



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10(iii) of the Tamil Nadu Forest Act without considering the petition, as contemplated in the said Section 10 of the Tamil Nadu Forest Act 1882, by holding that the Forest Settlement Officer has no jurisdiction etc.,?

2) Whether the Lower Appellate Court is correct in came to a conclusion on the basis of the claimant averments only without perusing the Forest Department Averments and records and without give any finding on the issue, especially in the statutory appeal?

3) Whether the Lower Appellate Court is correct in allowing the appeal stating that the claimant was not filed it's objection within stipulated time, without considering the relevant provision of Section 17 of the Tamil Nadu Forest Act 1882, which provides right to the claimant till the issuance of notification under Section 16 of the Act?

4) Whether the Lower Appellate Court is right in set-aside the order of Forest Settlement Officer while the claimant was issued with License for mining under Section 9 of the Mines and Minerals (Development & Regulation) Act, 1957 by the State Government and renewal of license also been pending consideration of State Government and without verifying any notifications under Section 33 of the Tamil Nadu Forest Act and any proceedings under Section 68-A of the Tamil Nadu Forest Act?

5) Whether the Lower Appellate Court is right in passing order before the compliance of the direction issued by the Hon'ble High Court in Writ Appeal?"

6. The Substantial question of law raised are relatable to the facts and circumstances, which were already adjudicated by the Forest Settlement Officer and by the Additional District Court. Section 3 of the Act provides power to the State Government to constitute any land at the disposal of Government reserved forest in the manner prescribed in the succeeding sections. Section 4 contemplates that when it has been decided to constitute any land a reserved forest, the Government shall publish a notification in the official gazette in the official Gazette District, specifying the situation and limits of such lands, declaring that it is proposed to constitute a reserve forest and appointing an officer to inquire into and determine the existence, nature and extent of any rights claimed by any person and to deal with the same as provided. Section 5 provides that no civil court shall entertain any suit in respect of any land between the date of publication of the notification under Section 4 and the notification to be issued under Section 16. Section 6 denotes that when a notification has been issued under Section 4, the Forest Settlement Officer shall publish in the



official gazette of the District and at the Head quarters of each Taluk in which any portion of the land included in such notification is situated, specifying the situation and limits of the land proposed to be included, setting forth the substance of the provisions of Section 7, explaining the consequence and fixing a period not less than 3 months from the date of publishing such proclamation in the official gazette of the District requiring every person claiming right referred to in Section 4 either to present to such officer within such period to appeal and produce all the documents. Section 8 enumerates for the Forest Settlement Officer to take tune in writing all statements made under Section 6 and also to inquire into all claims duly preferred under the Section.

7. Section 8 provides to the Forest Settlement Officer, the powers of a Civil Court in the trial Court of the suits. Section 12 provides that the Forest Settlement Officer, in case, he admits in whole or in part any claim under Section 11 shall also record the extent which is to be excluded, by recording an order. Under Section 16 provides that when the period fixed under Section 6 for preparing a claim has elapsed and all claims, if any, made under that Section. Have been disposed of by the Forest Settlement Officer if any such claims have been made, the period limited by Section 10 and 14 for appeal from the orders passed on such claims has elapsed and all appeals, if any, to be included in the proposed forest, which the Forest Settlement Officer has, Section 10, elected to acquire under the Land Acquisition Act 1870 have become wested in the Government under Section 16 of that Act, the State Government shall publish a notification in the official gazette, specifying definitely, according to the boundary marks erected or other otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification. It is from the date so fixed that such forest shall be deemed to be a reserved forest.

8. In the present case, based on the recommendations, the Government of Tamil Nadu passed an order, proposing to constitute reserve forest with an area of 1179 acres with specific boundaries in Naraikinaru Block I and II of Keeripatti Village, Attur Taluk, Salem District and notification in Tamil Nadu Gazette was issued on 12.05.1954 as contemplated under Section 4 of the Tamil Nadu Forest Act 1882. Besides a notification in the gazette of the District was also made and publication was also issued as per Section 6 of the said Act. The Forest Settlement Officer was also appointed in the notification. The Revenue Divisional Officer, Namakkal was appointed as Forest Settlement Officer. Proclamation under Section 6 of Tamil Nadu Forest Act has been published on 19.05.1955. Notices were also issued to the encroachers and



adjacent land owners. Time was given to file any claim on or before 18.08.1955. The Principal Chief Conservator of Forest recommended through this letter dated 25.05.1999, to notify an area of 2222 acres of encroached land and also recovered the settlement officer to forward his report under Section 16 of the above Act. The appellant / Mrs.Prappa Enterprises Limited, submitted its claim on 22.02.2002, with respect to an extent of 19.24.0 hectares, equivalent to 47.52 acres in S.No.356 of Keeripatti Village, Naraikinaru Zone, Attur Taluk and enquiry was commenced on 06.06.2002 and completed on the same day and the impugned order was passed by the Forest Settlement Officer on 27.06.2002.

9. It is pertinent to note that pursuant to the proclamation issued under Section 6 on 19.05.1955, notices were issued to the encroachers and time was given to file claim on or before 18.08.1955. However, the appellant / Mrs.Prappa Enterprises Limited in the present case submitted its claim on 22.02.2002 after a lapse of many years.

10. With this, the First appellant Court considered the deposition of witnesses and as per P.W.1, who states that the appellant was doing mining operation for 20 years as per the lease deed dated 26.03.1977 and the said lease deed expired on 25.03.1997. Admittedly, the lease period was not renewed. The writ petition as well as the writ appeal filed were not ended in favour of the appellant. Considering the deposition of the Village Administrative Officer and based on the fact that the lease period expired on 25.03.1997 itself and the appellant filed the claim petition only during 2002, long after the proclamation issued on 19.05.1955, the order passed by the Forest Settlement Officer was found to be infirm and perverse. The First Appellate Court, in clear terms, held that the Forest Settlement Officer exceeded his jurisdiction by entertaining lapsed claim and granted exemption, which is in violation of the provisions of the Forest Act and even otherwise also, the appellant was a leaseholder and the lease period expired on 25.03.1997 and there was no reason to grant such an exemption in favour of the appellant by the Forest Settlement Officer.

11. The categorical findings of the First Appellate Court in Paragraph 22, which reads as under:

"22. Bearing in mind, submissions made on either side, while going to the records, this court is able to find that Section 6 proclamation was issued on 19.05.1955. Time was granted till 18.08.1955 to file any claim or objection to the Forest Settlement Officer. The particulars in the order passed by the Forest Settlement Officer show that Section 4 of the notification was issued on 12.05.1954 and Section 6



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proclamation was issued on 19.05.1955. The 1st respondent has submitted its claim only on 22.02.2002. When there is a specific time limit till 18.08.1955, the 1st respondent has not filed any objection or claim before the officer as required in Section 6 proclamation. Hence this Court has no hesitation to hold that the claim made by the 1st respondent before the Forest Settlement Officer on 22.02.2002 is clearly barred by limitation."

12. In view of the facts, circumstances as well as the findings, this Court is of the opinion that the substantial question of law raised are relatable to the facts and circumstances, which were adjudicated elaborately by the Courts. However, admittedly, the appellant was a leaseholder and not an owner. The lease period admittedly expired on 25.03.1997 itself and thereafter, for all purposes, the appellant is to be construed as an encroacher and further, he submitted an application long after the proclamation published under Section 6 of the Forest Act, time was granted to file claim on or before 18.08.1955. Lease period expired on 25.03.1997 and the appellant submitted its claim on 22.02.2002 and thereafter, the appellant had no right at all. Further, the appellant has not raised any acceptable substantial question of law, warranting further interference by this Court with reference to the facts, circumstances as well as the evidences appreciated by the First Appellate Court and thus, there is no infirmity or perversity in respect of the order passed by the First Appellate Court in C.M.A.No.61 of 2008.

13. Article 51-A(g), one of the fundamental duty enunciated under the Constitution of India contemplates "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

14. The spirit of the fundamental duty is to protect the life of all living creatures in the world. Of course, without protecting the other living creatures, human cannot live in this globe. Even for peaceful and healthy human life, protection of forests, water bodies including lakes and rivers, wildlife are imminent and therefore, anybody causing damage to the Environment, Ecology and Forests must be punished and there cannot be any misplaced sympathy in this regard. Article 21 of the Constitution provides Right to Life. When Right to Life is guaranteed to the citizen of our great Nation, then protection of Environment including forests, lakes, rivers and wildlife are of paramount importance and without protecting the same, the Government cannot protect the peaceful living of the citizen in the country. Thus, the Right to Life and protection of environment including forests, lakes, rivers and wildlife are



integral part and peaceful happy life depends on the protection of these aspects and therefore, the authorities competent are bound to ensure that the fundamental duty enshrined under the Constitution is brought to the notice of the citizen, who all are indulging in such illegal practices of causing damage to the forests, water body and to the wildlife. Each living creature is important for maintenance of food cycle, protection of environment, air, water etc., Unless the human allowed to run the nature's cycle in a proper manner, then the entire system will get collapsed, resulting agony to the human life. Therefore, the fundamental duty casted upon the citizen must be taught at the beginning even in the Primary Schools and the children must be taught not to kill insects, butterflies, wildlife animals, bee, etc., Once such practice is developed and a mindset is created amongst the children, then they will understand the importance of protection of such living creatures in this world, so as to protect the natural environment including forests, lakes, rivers and wildlife.

15. The wealth of the Nation are swindled by few greedy men of this Nation by indulging in illegal mining activities, illegal killing of wildlife animals for personal gains etc., It is painful to pen down that the Forests Department as well as the Head of the Forest Department, Chief Conservator of Forests are not maintaining expected level of sensitivity in such issues and they are bound to understand that protection of natural environments including forests, water body, etc., are the constitutional perspectives. Various enactments are in force to deal with the offenders. However, day-by-day, such offences are increasing largely and knowingly with the collusion of the forests officials, which is to be dealt with seriously. Abuse of Forests lands and killing of wildlife are frequently noticed now-a-days. Day-in and day-out, people are hearing such informations through news providers. Thus, the authorities are bound to keep in mind that the failure on their part to protect the wildlife, natural environment in forests lands are mandatory and they are expected to perform their duties with utmost devotion by prosecuting the offenders without providing any further scope for commission of offences or illegalities. Prevention is far more important than the prosecution of persons. Preventive measures would be much helpful to protect the natural environment and forest lands than prosecuting few persons and keeping the cases pending for years together without conducting any trial. These offenders, knowing the long delay in disposal of forest cases, are repeatedly indulging in the commission of such offences. Offenders are not serious enough to understand the stringency of law. Thus, the authorities are expected to act in consonance with the constitutional mandates and in accordance with the Statutes and Rules in force.



16. Recently, Elephants are dying day-in and day-out in Forest areas. Though some actions are initiated by the Forest Department and other Department officials, certainly, it is insufficient to protect the well being of the wildlife. The responsibility and accountability must be fixed on the forest officials and in the event of such instances, the Chief Conservator of Forests and the competent authority are bound to institute action against the subordinate officials and the field level officials, who all are responsible and accountable for the protection of natural environment and forest lands wild life including the water bodies inside the forest areas. Contrarily, these Forest officials are visibly colluding with many private sectors for running resorts, hotels, by allowing them to enter into the forest area without any permission. All such illegalities, if not dealt with properly, then the citizen of this great Nation is denied the Right to life under Article 21 of the Constitution of India as interpreted by the Constitutional Courts, which includes healthy and happy life. Right to life is not mere life. Life with dignity and health are integral. Thus, the Forest Department is expected to act swiftly, so as to ensure the illegalities are minimized and controlled to the expected level for improving the nature's environment and Forest land in the State.

17. Considering the facts and circumstances, this Court Suo-motu impleaded the Principal Chief Conservator of Forests, (Head of Department), Panagal Maaligai, 1, Jeenis Road, Saidapet, Chennai - 600 015 as Respondent R2 in this Civil Miscellaneous Second Appeal and the following directions are issued:

(1) The Principal Chief Conservator of Forests is directed to constitute Flying Squads and Special teams in a strategical areas in the forest across the State of Tamil Nadu to monitor the functioning of Forest officials at all levels and to control the forests offences and illegalities. Such flying squad or special teams must be rotated, so as to ensure that the officials deputed to flying squad are not allowed to acquaint with the other field level forest officials. The special flying squad must be constituted with the men of integrity and they must directly report to the Principal Chief Conservator of Forests, who in turn, shall monitor the activities at the State level by utilizing the digital technology.

(2) The Fair and Decreetal order passed in C.M.A.No.61 of 2008 dated 08.01.2018, reversing the order of the Forest Settlement Officer, Attur, passed in F.S.C.No.839 of 2002 dated 27.06.2002 stands confirmed and consequently, the Civil Miscellaneous Second Appeal in C.M.S.A.No.27 of 2018 is dismissed.



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No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The II Additional District Judge,
Salem.
2. The Forest Settlement Officer, Attur.
3. The Principal Chief Conservator of Forests,
(Head of Department),
Panagal Maaligai, 1, Jeenis Road,
Saidapet, Chennai - 600 015.

+1cc to the Special Government Pleader (Forest) S.R.No.20399

C.M.S.A.No.27 of 2018

PA(CO)
PM/11/11/2021
PM/22/11/2021