



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.06.2021
DELIVERED ON : 17.09.2021

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.733 of 2021
and
W.M.P.(MD) .No.607 of 2021

M.P.Ramaswamy

... Petitioner

vs.

1)The District Forest Officer,
Office of the District Forest Officer,
Collector Complex,
Koram Pallam,
Thoothukudi-628 101.

2)The Ranger / Range Officer,
Office of the Range Officer,
Vallanadu Range,
Tuticorin.

3)National Board for Wild Life,
Rep by its Member Secretary, Ministry of Environment,
Forest and Climate Change, Indira Paroyavaran Bhavan,
Jorbagh Road, New Delhi 110 003.

... Respondents

(R3 is suo motu impleaded vide Court order dated 31.03.2021)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents or their subordinates from in any way obstructing or preventing the petitioner from developing his lands in Survey Nos.187 p, 188 p, 192, 193, 195/1, 195/2, 198, 199/1AB, 200/1A and 2, 201/2A, 3A, 1B, 2B, 3B, 202/1A, 1B, 2 to 5 and 203/1 to 5, Keelavallanadu Village, Srivaikuntam Taluk, Tuticorin District for residential purpose.

For petitioner

: Mr.M.Mahaboob Athiff for
M/s.Ajmal Associates

For R1 & R2

: Mr.P.Thilak Kumar
Government Advocate

For R3

: Mrs.L.Victoria Gowri
Assistant Solicitor General of India

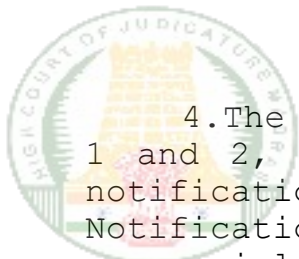


ORDER

This writ petition has been filed by the petitioner for issuance of a Writ of Mandamus, forbearing the respondents or their subordinates from in any way obstructing or preventing the petitioner from developing his lands in Survey Nos.187 p, 188 p, 192, 193, 195/1, 195/2, 198, 199/1AB, 200/1A and 2, 201/2A, 3A, 1B, 2B, 3B, 202/1A, 1B, 2 to 5 and 203/1 to 5, Keelavallanadu Village, Srivaikuntam Taluk, Tuticorin District, for residential purpose.

2.The learned counsel for the petitioner would state that the petitioner is the owner of the lands in the above said survey numbers and in order to develop the abovesaid lands and effect construction for residential purpose, he made an application to the planning authority under the Tamil Nadu Town and Country Planning Act and his layout for residential construction had been approved by the Director of Town and Country Planning, Chennai, by proceedings dated 31.10.2005. He would further state that the said lands are located close to the Vallanadu Blackbuck Sanctuary, falling within the jurisdiction of the respondents. The reserved forest/sanctuary was notified to be a sanctuary by the Government of Tamil Nadu vide G.O.Ms.No.1028, dated 28.09.1987, and in the Thoothukudi District gazette on 08.08.1996. According to the petitioner, until the eco-sensitive zone was to be notified by the Government of India, Ministry of Environment, the eco-sensitive zone for the Vallanadu Blackbuck Sanctuary was not established, but the forest officials without any authority of law, did not permit the petitioner to effect construction in his lands.

3.The learned counsel for the petitioner would further state that the Ministry of Environment and Forest conducted a detailed study, as to the notification of eco-sensitive zone, for Vallanadu Blackbuck Sanctuary and issued a notification dated 08.11.2019, specifying the eco-protective zone from being zero in certain cases to two kilometers around the boundary of the said sanctuary. It is further contended that the said notification provides various prohibited and regulated activities within the eco-sensitive zone. The learned counsel for the petitioner would state that even if the petitioner's lands fall within the eco-sensitive zone, construction of residential houses is permitted in the notification and the petitioner had obtained necessary permission under the Tamil Nadu Town and Country Planning Act and other developmental laws from the Director of Town and Country Planning, Chennai, for the purpose of effecting residential construction. The learned counsel would state that when the statutory notification permits construction activities for residential purpose, the action on the part of the respondents in preventing such development purpose is illegal and therefore, would call for interference of this Court.



4.The learned Government Advocate appearing for the respondents 1 and 2, would state that eco sensitive zone was demarcated and notification was published in the Gazettee on 11.11.2019, vide Notification No.3662, dated 08.11.2019 stating that all the commercial construction need to be approved by the National Board for Wildlife before commencement, as the said construction falls in the regulated activity. According to him, the petitioner's lands in the above survey numbers fall within the eco-sensitive zone and therefore, necessarily, the petitioner has to obtain approval from the National Board for Wildlife, as per the notification dated 08.11.2019.

5.The learned Assistant Solicitor General of India appearing for the 3rd respondent, would state that the eco-sensitive zone around Vallanadu Blackbuck Sanctuary was finally notified vide Government of India, Ministry of Environment, Forest and Climate Change notification No.S.O. 4075(E) dated 08.11.2019(Annexure I) and according to the above notification, the eco-sensitive zone around Vallanadu Blackbuck Sanctuary extends from Zero to two kilometers and in the notification, it has been mentioned under the head, 'regulated activities', as follows:-

'a.No new commercial construction of any kind shall be permitted within one kilometre from the boundary of the protected area or up to extent of the Eco-sensitive Zone whichever is nearer.

b.Provided that, local people shall be permitted to undertake construction in their land for their use including the activities listed in sub paragraph (1) of paragraph 6 as per building byelaws to meet the residential needs of the local residents. Provided that the construction activity related to small scale industries not causing pollution shall be regulated and kept at the minimum, with the prior permission from the competent authority as per applicable rules and regulations if any.

c.Beyond one kilometre it shall be regulated as per the Zonal Master Plan.'

6.Therefore, construction activities both for residential and commercial purposes are not permitted within one kilometer from the boundary of the Vallanadu Blackbuck Sanctuary or upto extent of the eco-sensitive zone, whichever is nearer. According to the 3rd respondent, Vallanadu Blackbuck Sanctuary was declared as sanctuary by G.O.Ms.No.1028, dated 28.09.1987, and Blackbuck is an endangered species endemic to Indian subcontinent and is listed in Schedule I of the Wild Life (Protection) Act, 1972 and therefore, it requires highest degree of protection. The eco-sensitive zone around the protected areas act as shock absorbers for these areas. They provide a transition zone between National Parks and Sanctuaries, which require a high degree of protection and outside areas. The Ministry vide O.M.F.No.22-43/2018- IA III, dated 08.08.2019 and F.No.6-60/WL Part (1) dated 16.07.2020 (Annexure



IV), has laid out the detailed procedure to be adopted for consideration of developmental projects located within the eco-sensitive zones (notified or default) of National Parks/Wildlife Sanctuaries and as per the above proceedings, the petitioner has to get prior clearance from the 3rd respondent.

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7. Heard the learned counsel for the petitioner as well as the respondents.

8. Admittedly, as contended by the learned counsel for the 3rd respondent, blackbuck which is found in the Vallanadu Blackbuck Sanctuary, is an endangered species endemic to Indian subcontinent and listed in Schedule I of the Wild Life (Protection) Act, 1972, and it is stated that it requires highest degree of protection and necessarily, the eco-sensitive zones around the protected areas act as shock absorbers for these areas. Admittedly, the petitioner has sought for commercial construction of houses for the residents who are residing in that locality and therefore, necessarily the procedure contemplated by the Ministry vide O.M.F.No.22-43/2018- IA III dated 08.08.2019 (Annexure III) and F.No.6-60/WL Part (1) dated 16.07.2020 (Annexure IV), has to be followed and in my considered opinion, necessarily, prior clearance from the Standing Committee of the 3rd respondent, is required and therefore, the petitioner is directed to approach the 3rd respondent even if it is commercial construction of houses for the welfare of the residents and if approached, the 3rd respondent shall consider and pass orders on the application of the petitioner for clearance within a period of twelve weeks from the date of receipt of the application.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Ad-II)

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/ /2021

Sub Assistant Registrar (CS)

bala

To

1) The District Forest Officer,
Office of the District Forest Officer,
Collector Complex,
Koram Pallam,
Thoothukudi-628 101.



2)The Ranger / Range Officer,
Office of the Range Officer,
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Tuticorin.

3)National Board for Wild Life,
Rep by its Member Secretary, Ministry of Environment,
Forest and Climate Change, Indira Paroyavaran Bhavan,
Jorbagh Road, New Delhi 110 003.

W.P(MD)No.733 of 2021
Dated : 17.09.2021

NSN(CO)
KB(12.10.2021) 5P 4C