



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P. [MD]No.1436 of 2013

and

M.P. [MD]Nos.2 to 4 of 2013

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C.Vellaichamy

... Petitioner

Vs.

- 1.The Secretary,
Department of Forest,
St. George Fort,
Chennai.
- 2.The District Collector,
Madurai District,
Madurai.
- 3.The District Revenue Officer,
Madurai District,
Madurai.
- 4.The District Forest Officer,
District Forest Office,
Madurai - 2

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the orders of R.O.C.No.80557/2010/Y1 dated 04.05.2011 issued by third respondent and in R.O.C.No.80557/2010/Y1 in Madurai District Gazette dated 08.07.2011 issued by second respondent and quash the same and direct the respondents from forbearing the respondents from evicting the petitioner from his respective land, comprised in Survey No.1/1 at Ramagowndanpatty Village, Vadipatti Taluk, Madurai District except due process of law.

For Petitioner : Mr.R.Ramasamy

For Respondents : Mr.A.Baskaran

Additional Government Pleader

O R D E R

This common order will govern the captioned main writ petition and the captioned three miscellaneous petitions [M.Ps. therein].



2.The nucleus of the captioned main writ petition is land admeasuring four acres or thereabouts situate in 74 Ramagoundanpatti Village, Vadipatti Taluk, Madurai District [hereinafter 'said land' for the sake of convenience and clarity]. To be noted, there is no disputation that said land forms part of a larger extent of land comprised in S.F.No.1/1 admeasuring 20.03.0 hectares [49 acres and 49 cents] in Ramagoundanpatti Village, Vadipatti Taluk, Madurai District [hereinafter 'entire land' for the sake of convenience and clarity].

3.Sometime in 2010 a Notification was issued notifying applications for grant of quarrying lease in entire land. This notification was challenged by one E.S.Raja Gopal, by way of a Public Interest Litigation [PIL] in this Court vide W.P.[MD] No.12697 of 2010 and a Hon'ble Division Bench of this Court disposed of this PIL in and by an order dated 29.10.2010. Suffice to say that in and by this order Hon'ble Division Bench quashed the notification inviting applications for grant of quarry lease primarily on the ground that quarrying operation would adversely affect ecology and would be a hindrance to wild animals besides natural herbs, plants and trees. Besides quashing the notification inviting applications for grant of quarry, Hon'ble Division Bench had categorically directed the District Collector, Madurai to forward the recommendation of the District Forest Officer [DFO, Madurai] dated 03.08.2010 addressed to the District Revenue Officer, Madurai [DRO, Madurai] and has further directed the Government to consider the same.

4.The above appears to be the genesis of the matter. Pursuant to aforementioned 29.10.2010 order, the DRO [third respondent] made proceedings bearing Reference Roc.No.80557/2010/Y1 dated 04.05.2011, appending a notification to be published in the Madurai District Gazette. Thereafter, the notification was filed in the Madurai District Gazette on 08.07.2011 by the second respondent [District Collector]. In and by this notification it was notified that it is proposed to constitute entire land as reserved forest.

5.Before I proceed further, it is necessary to set out that this 04.05.2011 proceedings made by the third respondent [DRO] and the District Gazette Notification dated 08.07.2011 made by the second respondent [District Collector] have been assailed in the captioned main writ petition and they shall be referred to as first impugned order and second impugned order respectively, for the sake of convenience and clarity.

6.To be noted, the first and second impugned orders say that they have been made under Section 26 of Tamil Nadu Forest Act, 1982 [hereinafter 'said Act' for the sake of convenience and



clarity]. To my mind this appears to be a case of quoting a wrong provision of law as Section 26 of said Act is 'Power to Make Rules' and it talks about the powers delegated to the Government to make subordinate legislation ie., Rules to regulate the pasturage or of the natural produce of land at the disposal of the Government not included in a reserved Forest.

7. Be that as it may, mere quoting of wrong provision of law will not vitiate an order if the authority / entity concerned otherwise has powers under the Statute. It would not only not vitiate the orders, it will not be construed as the authorities being denuded of the powers to do so. In the case on hand there is no disputation or disagreement that the Government does have powers to constitute any land at the disposal of the Government as reserved forest. The only rider is it has to be done in manner provided under the Statute. This is ingrained in Section 6 of the said Act which reads as follows:

'6. Proclamation by Forest Settlement Officer:-

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 headquarters of each taluk in which any portion of the land included in such notification is situated and in every town and village in the neighbourhood or such land a proclamation.

(a) specifying, as nearly as possible, the situation and limits of the land proposed to be included within the reserved forests;

(b) setting forth the substance of the provisions of section 7;

(c) Explaining the consequences which, as hereinafter provided, will ensure on the reservation of such forest; and

(d) fixing a period not less than three months from the date of publishing such proclamation in the Official Gazette of the district and requiring every person claiming any right referred to in section 4 either to present to such officer, within such period, a written notice specifying, or to appear before him within such period and state the nature of such right and in either case to produce all documents in support thereof.

The Forest Settlement Officer shall also serve a notice to the same effect on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be constituted a reserved forest, or on his recognized agent or

Such notice may be sent by registered post



to persons residing beyond the limits of the district in which such land is situated.'

8. In this regard, it is deemed appropriate to extract and reproduce Section 4 which reads as follows:

'4. Notification by the Government:- Whenever it is proposed to constitute any land a reserved forest, the Government shall publish a notification in the Official Gazette and in the Official Gazette of the District.

(a) Specifying, as nearly as possible, the situation and limits of such lands;

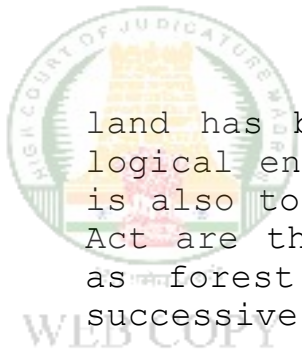
(b) declaring that it is proposed to constitute such land a reserved forest;

(c) appointing an officer (hereinafter called the "Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits or to any forest produce of such land, and to deal with the same as provided in this chapter.

The officer appointed under clause (c) of this section shall ordinarily be a person other than a Forest Officer, but a Forest Officer may be appointed by the Government to attend on behalf of the Government at the inquiry prescribed by this chapter.'

9. A careful perusal of Sections 3 and 4 and a careful conjoint reading of the same with Section 6 makes it clear that the Government has powers under said Act ie., Statute to constitute any land at the disposal of the Government as reserved forest and the first step in this regard is the Government should publish a notification in a) official gazette b) official gazette of the district. The second impugned order is clearly the publication in the official gazette of the district which is the second notification adumbrated in Section 4 of said Act. Therefore, I proceed by construing the second impugned order as one of the two notifications under Section 4 of said Act.

10. To be noted, it is more than obvious that the second impugned order is one of the two notifications contemplated in Section 4 of said Act (albeit quoting wrong provisions of law), as it had been repeatedly averred in the counter affidavit that the



land has been kick started and the same will be carried to its logical end and concluded in accordance with the said Statute. It is also to be noted that two notifications under Section 4 of said Act are the first step in the direction of constituting any land as forest land and thereafter, a mechanism is adumbrated in successive provisions in said Act.

11. I now proceed to examine the case of the writ petitioner. The writ petitioner submits that he has been doing agricultural activities for more than 25 years but four stray kist receipts two in Fasli 1412, one in Fasli 1420 and another in Fasli 1421 alone have been placed before me. To be noted, 1412 Fasli translates to year 2002 in the Gregorian Calendar. Likewise Fasli 1420 and 1421 translate to years 2010 & 2011 in the Gregorian Calendar / English Calender. Therefore there is no record to demonstrate that the writ petitioner and/or his father has been continuously doing agricultural activities in the said land.

12. In this regard, it is to be noted that in the counter affidavit the State has taken a categoric stand that the writ petitioner is not living in said land and he is living in another property in Ramagoundanpatti Village. It has also been averred in the counter affidavit that the writ petitioner has put up a small mud hut only as a make-believe affair as if he is dwelling in said land. I propose not to express any view or opinion on this aspect of the matter at this stage for two reasons. First I am exercising powers in the writ jurisdiction and testing first impugned order and second impugned order. Therefore, it would not be appropriate to go into such factual disputations. The second reason is, I propose to leave it open to the State to proceed with the first of the two notifications under Section 4 and carry it to its logical end in accordance with said Act and the statutory Scheme of the said Act (which has been adumbrated in various provisions) when the Government wants to constitute land at the disposal of the Government as reserved forest.

13. Before I proceed further, it is also to be noticed that the terms 'Government', 'Collector' besides 'Forest Officer' and 'District Forest Officer' are defined terms vide interpretation clause being Section 2 of said Act and the same read as follows:

''2. Interpretation Clause: In this Act, and in all Rules made here under unless there is something repugnant in the subject or context:-

Government: "Government" means the State Government.

Collector: "Collector" means the Chief Executive Revenue Officer of a District.



Forest Officer: "Forest Officer" means any person appointed by name or as holding an office by, or under the orders of the Government to be a Conservator, Deputy Conservator, Assistant Conservator [Extra Assistant Conservator] Forest Ranger, Forester, Forest Guard; or to discharge any function of a Forest Officer under this Act or any rule made thereunder:

District Forest Officer: "District Forest Officer" means the Chief Forest Officer of a District or of a portion of a district, if in independent charge of such portion. ''

14. After the first of the two notifications under Section 4, a proclamation should be made by the Forest Settlement Officer under Section 6 followed by an enquiry by the Forest Settlement Officer and there is also a provision for claimants to rights of occupancy and ownership under Section 10. To be noted, there is also provision for statutory appeal for orders made under Sections 11, 12 & 13. This is vide Section 14 of said Act. Suffice to say that there is a self contained mechanism qua said Act regarding a procedure for the Government to constitute land as reserved forest. In the case on hand the first step in that regard ie., one of the two notifications under Section 4 has been made albeit quoting a wrong provision of law.

15. This takes us to the complaint of the writ petitioner. The crux and gravamen of the complaint of the writ petitioner or in other words going by the case file before me, the writ affidavit and the submissions of Mr.R.Ramasamy, learned Counsel for writ petitioner, it is clear that the burden of the song qua writ petitioner is the procedure adumbrated under said Act for the Government to constitute any land at its disposal as reserved forest has not been followed. This being the burden of the song of the writ petitioner if the second impugned order is the first notification under Section 4, if the remaining procedure follows that would douse the writ petitioner's complaint. When the remaining procedure follows, it is well open to the writ petitioner to canvass his rights if any in accordance with the said Statute.

16. The burden of the song qua State is that proceedings have been initiated pursuant to earlier order of Hon'ble Division Bench, entire land is adjacent to the foot hills of Sirumalai hills, the writ petitioner has encroached the foot hills of Paliyankaradu which is adjacent to a branch of the Odai Sathayaru where wild animals in Sirumalai hills come here for drinking water



in the Odai and the ecology is at stake.

17. This takes me to the trajectory the captioned writ petition has taken. At the time of inception of the writ petition a Hon'ble Single Judge of this Court has made an interim order which reads as follows:

'Notice returnable in three weeks. Private notice is also permitted.'

2. The petitioner claims to have inhabited the land in question for the past 30 years. This is also borne out by the proposals sent by the District Forest Officer, to the District Collector. Though the petitioner has not taken a specific point, the petitioner appears to be entitled to protection under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Therefore, there will be an interim injunction restraining the respondents from interfering with the possession of the petitioner.'

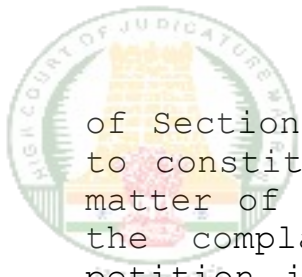
18. To be noted aforementioned interim order is operating. Another proceedings made by another Hon'ble Single Judge on 07.08.2019 reads as follows:

'Despite a specific direction to produce the records, neither records nor officials with instructions are available in Court today.'

2. At joint request, also to enable Mr. Ramasamy to obtain instructions in regard to W.P. (MD) No. 1119 of 2013, list on 20.08.2019.'

19. Pursuant to the aforementioned order, today the revenue records as well as the records of the Forest Department were placed before me and the learned State Counsel ie., Mr. A. Baskaran, learned Additional Government Pleader was duly instructed by a Ranger from the fourth respondent's office and a Deputy Tahsildar on behalf of respondents 2 & 3.

20. I carefully perused the records. The revenue records more particularly the 'A' Register for 76 Ramagoundanpatti was placed before me. This revenue record, shows that entire land has been classified as 'Karadu. I am informed that this necessarily means that it is தீர்வை ஏற்படாத தரிசு காடு [unassessed waste land]. It is not necessary to dilate further on these factual aspects of the matter as there is no disputation or disagreement that entire land is



of Section 3 of said Act. To be noted the power of the Government to constitute entire land as reserved forest is also not subject matter of dispute in the captioned writ petition. The crux of the complaint of the writ petitioner in the captioned writ petition ie., burden of the song of the writ petitioner is that the procedure under the said Statute has not been followed. I have dealt with this aspect of the matter and I have also made it clear that the second impugned order [preceded by the first impugned order] is effectively the first of the two notifications under Section 4 of the said Act which means the rest of the mechanism *qua* said Act for constituting entire land as reserved forest should follow.

21. Learned State Counsel submits that in deference to the pendency of captioned writ petition in this Court the next step forward or the next foot forward was not placed and the matter has remained in abeyance for all these years.

22. The aforementioned interim order dated 28.01.2013 only protects the possession of the writ petitioner *qua* said land. Now the respondents will do well to continue the process from the second impugned order and conclude the same as expeditiously as the business of the respondents would permit and in any event within six [6] months from today ie., on or before **15.06.2022**. Though obvious it is made clear that all these proceedings will continue and will be concluded uninfluenced by the observations made in this order which are for the limited purpose of disposal of the captioned main writ petition.

23. Captioned Writ Petition is disposed of in aforesaid manner ie., with the aforementioned directives. Consequently, the interim order dated 28.01.2013 which is limited to protecting the possession of the writ petitioner *qua* said land will continue to operate till conclusion of these proceedings, ie., up to **15.06.2022**. This is vide M.P.No.3/13. With regard to other captioned W.M.Ps. the same are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

MR



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To

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- 4.The District Forest Officer,
District Forest Office,
Madurai - 2.

+1 CC to M/s.R.RAMASAMY, Advocate (SR-39419[F] dated 17/12/2021)
+1 CC to M/s.SPL GP (SR-39287[F] dated 17/12/2021)

W.P. [MD]No.1436 of 2013
15.12.2021

SK(CO)
SB(05.01.2022) 9P 7C