



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.04.2021

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CORAM :
The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM
AND
The Hon'ble Mrs.JUSTICE S.ANANTHI

W.P(MD).No.7682 of 2021

and WMP(MD) Nos.5837 & 5838 of 2021

I. Andi ... Petitioner

Vs

1. The Secretary to Government,
The Ministry of Environment,
Forest and Climate Change,
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi.
2. The National Tiger Conservation Authority,
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi.
3. The Additional Chief Secretary to Government,
Environment and Forest (FR.5) Department,
Secretariat, Fort Saint George,
Chennai.
4. The Additional Principal Chief Conservator of
Forest (Project Tiger)
No.9, Pangal Maaligai,
Saidapet, Chennai.
5. The District Forest Officer,
Housing Board Colony,
KRR Nagar, Theni,
Theni District. ...1 to 5th respondents
6. S. Pandi ... 6th proposed respondent

[6th proposed respondent is added as R-6 as per Order of this Court, dated 17.04.2021]

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari and Mandamus to call for the

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records from the third respondent in G.O(MS) No.14 dated 08.02.2021 and quash the same as illegal and direct the respondents to resurvey the villages to confirm tiger population.

For Petitioner : Mrs.Chamundi Bose

For R-1 & R-2 : M/s.. Victorial Gowry,
Assistant Solicitor General of India

For R-3 to R-5 : Mr.K.P. Krishnadoss,
Special Government Pleader

For R-6 : Mr.T. Lajapathi Roy

ORDER

[Order of the Court was made by **T.S. SIVAGNANAM, J.**]

We have heard Mrs.Chamundi Bose, learned counsel appearing for the petitioner, Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India appearing for the respondents 1 and 2, Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents 3 to 5 and Mr.T. Lajapathi Roy, learned counsel appearing for the sixth respondent.

2. This writ petition has been filed praying for issuance of a writ of Certiorarified Mandamus to quash the G.O(MS) No.14, dated 08.02.2021, as illegal and direct the official respondents to resurvey the villages to confirm Tiger population.

3. This writ peititon is styled as a Public Interst Litigation filed on behalf of the villagers of Gandhigramam and fourteen other nearby villages.

4. The petitioner is stated to be an agriculturist and living in the said village located in Aandipatti Taluk, Theni District, geographically situated in the southern range of Western Ghats. According to the petitioner, their families are residing there for three generations, carrying on agricultural activities and they have been issued with Family Card, Votor ID and Adhaar Card. Further, it is stated that there are totally 25 villages located in Aandipatti Taluk and all of them jointly and severally have cultivated Cereals, Cotton and Millets and that they do not have any road facility to reach the village. They have to tread up the hills for several kilometers to reach the residential area, Gandhigramam from Thumbakundu village. Further, it is submitted that Mayladumparai village was declared as Reserved Forst Area covering an extent of 4,252.08 hectares and Gandhigramam was declared as one of the buffer zones of 71.346 hectares, vide G.O(MS) No.14 dated 08.02.2021.

5. It is submitted that, in that Forest, there are totally 15



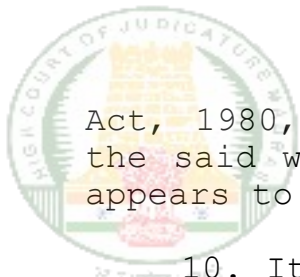
villages, in which, approximately, 7,000 people are living and they are Tribals belonging to the Paliyar Tribals Community. It is further submitted that the Government has issued Patta for the villagers and they cannot be termed as illegal occupants. Further, the petitioner, who is aged about 68 years, would state that during his life he has never seen Tiger attack on any of the villagers in that area, he has never seen any foot prints. These averments are made to justify the prayer sought for in the writ petition to quash the impugned Government Order.

6. Mrs. Chamundi Bose, learned counsel appearing for the petitioner would submit that, without any Tiger habitat in Gandhigramam village, which has been declared as a buffer zone to an extent of 71.346 hectares to include the village as a tiger reserve (buffer area), is not tenable and it would cause great prejudice to the villagers, who are residing in these villages. Further, it is submitted that there is no proper survey conducted before passing the impugned Government Order and the Government should prioritize development and welfare of humans not other living creatures. The learned counsel has also invited our attention to the Patta granted to the various villagers and certain photographs of the area to show that agricultural activities are being carried out by the occupants etc.

7. The learned Assistant Solicitor General of India appearing for the respondents 1 and 2 submitted that detailed parameters have been laid down by the Central Government to determine as to how an area should be classified as a Reserved Forest and such exercise has been done by the State Government and the impugned order has been issued and if at all, the petitioner and other villagers claimed that they are residing in the villages for the prescribed length of time, it is for them to establish such fact before the competent authority in terms of the notification and that may not be a ground to quash the impugned Government Order or on other grounds raised by the petitioner.

8. The learned Special Government Pleader appearing for the respondents 3 to 5 would seek to sustain the impugned Government Order stating that it is in Public Interest to safeguard the wild life flora and fauna in the forest the impugned Government Order was passed and unless the petitioner establishes his alleged rights in the manner known to law, they have to be treated as encroachers of forest lands.

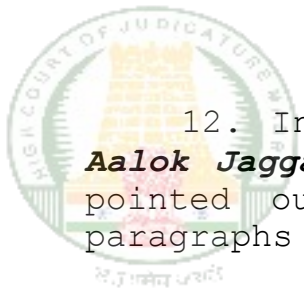
9. The 6th respondent, who is a wild life enthusiastic, who has earlier come to this Court by filing writ petition in W.P(MD) No.22146 of 2017, which was a Public Interest Litigation to direct the official respondents to restore the wild life habitat in Megamalai Wild life Sanctuary and conduct enquiry and initiate appropriate action under Section 38 of the Forest (Conservation)



Act, 1980, against those who encroached into the forest land. In the said writ petition, directions have been issued and the matter appears to be pending before this Court.

10. It is further stated that Theni District has a forest cover of 33.7% hectares which is much higher than that of the Tamil Nadu State average of 17.4% and distinguished as two forests, namely, Megamalai Wild Life Sanctuary and Theni Forest Sanctuary. Out of the two, Megamalai Wild Life Sanctuary is a critically eco sensitive and this is a place where River Vaigai originates, which is a major water source for Southern Districts. The sixth respondent has also set out the other salient features of the Megamalai Forest Reserve. It is further submitted that the Government issued G.O.Ms.118, dated 09.09.2009, declared 24655.75.5 hectares of land in Megamalai forest block, as a Reserved Forest with effect from 31.05.2010, which Notification was challenged by one of the former Members of the Legislative Assembly in W.P.(MD) No.5945 of 2010 and the writ petition was dismissed, by order, dated 29.10.2018. Further, the 6th respondent would state that he has filed another writ petition in W.P(MD) No. 22146 of 2017 to direct the official respondents to conduct the enquiry and initiate appropriate action under Section 3 (V) of the Forest (Conservation) Act, 1980. Though interim directions were issued, the same have not been obeyed by the official respondents and the sixth respondent has filed a Contempt Petition in Cont.P(MD) No.1124 of 2019 and the same is pending before this Court. Thus, the sixth respondent would state that the Notification has been issued in the interest of preserving forest and maintaining the flora, fauna and wild life in the forest.

11. After elaborately hearing the learned counsel for the parties and carefully considering the materials placed on record, we find that, on the grounds raised by the petitioner, the Notification cannot be set aside. The Notification impugned in the writ petition has been issued after following a detailed procedure. The procedure followed has been spelt out in the impugned Notification as well. Therefore, it would be incorrect on the part of the petitioner to state that there was no proper survey conducted before issuing the impugned Notification. In any event, it is for the experts to determine as to whether the area has to be declared as a Reserved Forest so as to protect the environment not only for the present, but for the posterity as well. We do not agree with the petitioner, who states that the people should be prioritised over wild life. In the food cycle, Wild life plays an important role and none should do anything to make wild life extinct. Conservation is not an act of charity towards nature, but an essential necessity. By conserving nature we protect creatures from termite to tigers. At this juncture, it would be beneficial to take note by the following decisions of the Hon'ble Supreme Court, stressing the need to protect forests.



12. In the case of **TATA Housing Development Company Ltd. Vs. Aalok Jagga reported in 2020(3) MLJ 274**, the Hon'ble Supreme Court pointed out the need to protect the wild life, the relevant paragraphs are extracted hereunder:

.....

"25. The most potent threat faced by the earth and human civilization as a whole which is confronted with, today, is environmental degradation and wildlife degeneration. The need to protect flora and fauna which constitutes a major portion of our ecosystem is immediate.

26. The human as well as the wildlife are completely dependent upon environment for their survival. Human is completely dependent on the environment. Like the human, the wildlife is also dependent on the environment for it's survival and also get effected by the environment. The relationship between the human and animal can be understood by the food-chain and food-web".

13. In the above case the Hon'ble Supreme Court has referred various Judgment and the cases which are relevant to the present case are extracted below:

29. In the case of **Animal and Environment Legal Defence Fund Vs. Union of India reported in AIR 1997 SC 1071 : (1997) 3 SCC 549**, this Court has made the following observations :

"Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration. Undoubtedly, every effort should be made to ensure that the tribals, when resettled, are in a position to earn their livelihood".

In the case of **Pradeep Krishen V. Union of India (1996) 8 SCC 599**, this Court had pointed out that the total forest cover in our country is far less than the ideal minimum of $1/3^{\text{rd}}$ of the total land. We cannot, therefore, afford any further shrinkage in the forest cover in our country. If one of the reasons for this shrinkage is entry of villagers and tribals living in and around the sanctuaries and the National Park there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora



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and fauna and wildlife in those areas. The State Government is, therefore, expected to act with a sense of urgency in matters enjoined by Article 48A of the Constitution keeping in mind the duty enshrined in Article 51(A) (g). We, therefore, direct that the State Government of the State of Madhya Pradesh shall expeditiously issue the final notification under Section 35(4) of the Wild Life (Protection) Act, 1972 in respect of the area of the Pench National Park falling within the State of Madhya Pradesh.

35. In Indian Council for Enviro Legal Action V. Union of India and Others AIR 1995 SC 2252 : (1996) 5 SCC 281 : LNIND 1996 SC 353, this Court has made the following observations:

"The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby seeking to protect the fundamental rights of the citizens is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental related issues, is to see that the enforcement agencies, whether it be the State or any enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights".

Therefore, on the grounds raised before us, we are not inclined to grant the prayer sought for in the writ petition.

14. After hearing the arguments of the learned counsel appearing for the petitioner, we are able to ascertain that the actual reason for the petitioner to approach this Court is only to recognise their possession of the land, which they claim to be in occupation for several decades.

15. The petitioner need not have any apprehension, if they have valid documents in support of their claim they can approach the Forest Department and follow the procedure stipulated to be recognized as a lawful occupant.

16. Thus, for the above reasons, this writ petition stands dismissed. However, we grant liberty to the petitioner and the similarly placed persons to approach the appropriate authority of the Forest Department to establish their rights to cultivate and carry on other activities in the place where they currently reside, by submitting appropriate application in the proper form duly supported with records and on receipt of the same, the competent authority shall enquire into the same and do the needful in the matter in accordance with law. No costs. Consequently, connected



miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

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.

To

1. The Secretary to Government,
The Ministry of Environment,
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Forest (Project Tiger)
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Saidapet, Chennai.
5. The District Forest Officer,
Housing Board Colony,
KRR Nagar, Theni,
Theni District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-16398[F] dated 19/04/2021)

+1 CC to M/s.SPL GP (SR-16494[F] dated 19/04/2021)

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