



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.8596 of 2020

and

W.M.P. (MD)No.7961 of 2020

M.Rajprakash

... Petitioner

Vs.

1. The District Collector, Theni,
Theni District.

2. The District Forest Officer,
Theni Forest Range Division,
Theni.

3. The Tahsildar,
Bodinayakanur,
Theni District.

4. The Executive Engineer,
Agricultural Engineering Department,
Theni.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in Na.Ka.No.34545/2018/G7, dated 05.02.2020 issued by the first respondent and quash the same and consequently direct the first respondent to reconsider the request submitted by the writ petitioner for cutting down 173 Silver Oaks trees and 10 Jack Fruit trees situated in Survey No.535/2B comprised in Patta No.702, measuring 1.96 Hectares, situated at Kottakudi Village, Bodinayakanur Taluk, Theni District which are standing hindrance agriculture plantation activities and to pass appropriate orders within the time limit fixed by this Court.

For Petitioner	: Mr.AL.Kannan
For Respondents	: Mr.S.Angappan, Government Advocate.

* * *

**ORDER**

Heard the learned counsel on either side.

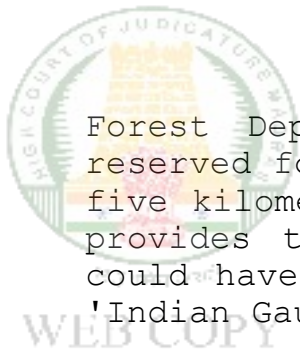
2. The petitioner is the owner of the petition mentioned lands. He had purchased it a few years ago through a registered sale deed. There is no dispute that they are his patta lands. On the said lands, as many as 683 trees such as Silver Oak, Jackfruit etc. are standing. The petitioner identified 173 Silver Oak trees and 10 Jackfruit trees for the purpose of cutting. According to the petitioner, they are more than 25 years old and are hindering his plantation activities. The petitioner therefore submitted an application in terms of the Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955 seeking permission from the competent authority for permission to cut the said trees. The petitioner's request was rejected by the impugned order dated 05.02.2020. Questioning the same, this writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. He highlighted the fact that the trees are standing only on his patta land and not on any poramboke land. He also pointed out that spot inspection was conducted and the minutes drawn during the spot inspection are clearly supporting his stand. The jurisdictional Tahsildar as well as the authorised ranger have recommended in favour of the petitioner. The Executive Engineer from the Agricultural Engineering Department has also noted that by cutting the trees, there won't be any soil erosion.

4. The stand of the petitioner's counsel is that it is only the authority from the Agricultural Engineering Department who can competently speak about soil erosion and related aspects. However in the impugned order, the petitioner's request has been rejected on the ground that since the trees are standing on a steep slope, there would be soil erosion. According to him, it is not open to the first respondent to overrule the stand taken by the expert. He would point out that the forest ranger had also recommended the case of the petitioner. He also submitted that whenever such requests were made on the earlier occasions, the authorities granted permission and the reasons set out in the impugned order have never been projected earlier occasions.

5. The second respondent has filed a detailed counter affidavit. The learned Government Advocate reiterated all the contentions set out therein and wanted this Court to sustain the impugned order and dismiss this writ petition.

6. I carefully considered all the contentions and went through the materials on record. In fact, I made spot inspection also in the presence of the writ petitioner and the officials from the



Forest Department. The land in question is contiguous to a reserved forest. The nearest village is at a distance of more than five kilometers from this place. A narrow and rough mountain path provides the access. I really wonder how the revenue authorities could have granted patta for such a land. I saw the footmarks of 'Indian Gaur' on the land in question.

7. Section 3 of Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955, mandates that without permission of the Hill Area Committee, no person can cut any tree standing in the notified hill area. However, if a tree has 1.83 metres in girth at a height of 1.37 metres, grant of permission will be a matter of course. The only issue that has to be gone into is as to whether the trees in question are having the girth of 1.83 meters at a height of 1.37 meters. Except one tree, all the other 182 trees sought to be felled by the petitioner are having girth of less than 1.83 metres. Therefore, the committee was justified in rejecting the petitioner's request. This Court cannot issue any mandamus contrary to law. Unless this Court can render a finding that the impugned order is not in consonance with the statutory requirements, this Court will not be justified in interfering with the impugned order. In fact the girth measurement on each tree was made in the presence of the writ petitioner. The petitioner also is not in a position to challenge the measurements made by the Forest Department. Therefore, I am of the view that no interference is called for.

8. I want to make one more observation. Any order passed by an administrative authority is amenable to judicial review. However, there are various levels of judicial review depending on the subject matter. For instance, legislations which impinge upon individual autonomy deserve deeper and heightened judicial scrutiny. Strict scrutiny test should be applied to such legislations. [**Anuj Garg and Ors. vs. Hotel Association of India and Ors., (2008) 3 SCC 1**]. In the privacy judgment, the Hon'ble Judges had to deal with the question as to whether the court is to apply strict scrutiny standard or "just or the fair and reasonable standard". Jurists talk about "hard look approach or kid-glove approach. In matters concerning environment, if the executive takes a stand that in the view of the court is likely to affect ecology, then the court will take a hard look and probe the matter deeply. If the executive or the administrator herself takes a decision that is eco-friendly, unless it suffers from illegality, Courts will be reluctant to interfere.

9. The learned counsel for the petitioner would insist that the stand of the authorities elsewhere is that if the trees are causing obstruction to coffee plantation, then they can be felled. He asserted that he is in a position to produce scores of such orders granting permission for felling trees even if the girth is less than the prescribed limit. I am not in a position to take



cognizance of the practice that is said to be generally prevalent. So long as the statutory provision remains what it is, I would not be justified in directing the authorities to act contrary to the same. If as claimed by the petitioner there is discrepancy between the statutory position and the prevalent practice, then it is the duty of the authorities to ensure that the statutory provision is implemented and the contrary practice discontinued. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

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 District Collector,
Theni,
Theni District.
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Theni.
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+1 CC to M/s.SPL GP (SR-10553[F] dated 11/03/2021)

W.P. (MD)No.8596 of 2020

10.03.2021

AK(26/02/2021) 4P 6C