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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.9592 of 2020

and

W.M.P(MD) .Nos.8644 and 8647 of 2020

(Through Video Conference)

M.Venislas

... Petitioner

Vs.

- 1.The Secretary to the Government of Tamilnadu,
Land Administration,
St.George fort, Secretariat,
Chennai.
- 2.The Commissioner of Land Revenue Administration,
St.George fort, Secretariat,
Chennai.
- 3.The Director of Survey and Land Records,
Ezhilagam, Cheppauk,
Chennai.
- 4.The District Collector cum The President,
District Forest Organisation,
Kanyakumari District,
Nagercoil.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records relating to the impugned notification in 134/0 Col.1-16-9-39-30-35 and in Mu.Mu.M1/43121/2017, dated 06.06.2020, passed by the 4th respondent, quash the same and consequently, direct the respondents to remove the petitioner's property item serial No.334 from the Gazette notification.

For Petitioner : Mr.R.Jenifir Bibin
For Respondents : Mr.R.Suresh Kumar
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for records relating to the impugned notification in 134/0 Col.1-16-9-39-30-35 and in Mu.Mu.M1/43121/2017, dated 06.06.2020, passed by the 4th respondent, quash the same and consequently, direct the respondents to remove the petitioner's property item serial No.334 from the Gazette notification.



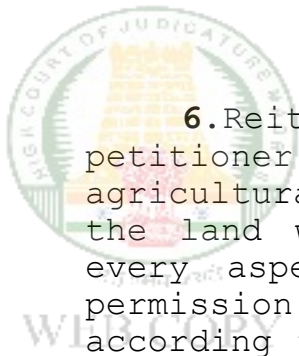
2. That the petitioner purchased a private patta land at S.No.809 at Kalkulam Village, Kanyakumari District in the year 2010 by way of valid sale deed, since then, he had been in possession and enjoyment of the property.

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3. In this regard, it is the case of the petitioner that, though the said land is primarily an agricultural land, and for the said purpose alone, it had been purchased, subsequently, the petitioner came to know that the land in question has been included as one of the item in the notification issued by the fourth respondent on 31.07.1980, under Section 1(2)(iii) of the Tamilnadu Preservation of Private Forest Act, 1949, as amended by the Tamilnadu Act, 28 of 1979. (in short 'the Act').

4. Because of the insertion of the property in question, belongs to the petitioner in the said notification, dated 31.07.1980, the petitioner eventhough, is having absolute right over the property, but cannot enjoy such rights, as each and every aspect, to encumber the property or otherwise to develop the property, he has to approach the District Forest Committee headed by the fourth respondent, constituted under the said Act. Moreover, the very adjacent lands, that is, adjacent survey numbers had been not included in the said notification, however, the petitioner's land in S.No.809 alone was included, therefore, on these grounds, the petitioner, in order to release the land from the clutches of the said notification under the Act, had given a detailed application, dated 26.10.2017, to the fourth respondent, that is, the District Forest Committee. The prayer sought for in the said application of the petitioner is to remove the land at S.No.809, Kalkulam Village, Kalkulam Taluk, Kanyakumari District, from the Private Forest Preservation Gazette Notification, dated 31.07.1980. Though such an application was submitted by the petitioner for the consideration of the fourth respondent, that is, the District Forest Committee, completely deviating from the said issue raised by the petitioner and against the petitioner's prayer, the fourth respondent District Committee, by order, dated 06.06.2020 has passed an order permitting the petitioner to alienate the land in question, if he wishes to make it within a period of one year, that is, within 27.11.2019 to 26.11.2020.

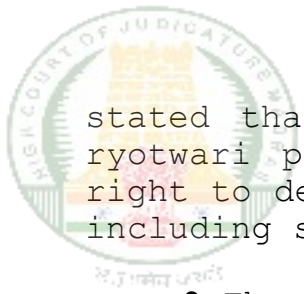
5. Aggrieved over the said order dated 06.06.2020, where though such permission for alienation was not asked for, that was considered and granted, whereas the actual prayer sought for by the petitioner to remove the land in question from the purview of the notification issued in this regard by the fourth respondent dated 31.07.1980 under the said Act, was not granted, the petitioner has preferred this writ petition with the aforesaid prayer.



6.Reiterating the aforesaid facts, learned counsel for the petitioner would submit that, the petitioner's land is an agricultural land and in order to develop the agriculture further the land was purchased by the petitioner, however, for each and every aspect since the petitioner has to approach for getting permission from the fourth respondent District Committee which, according to the petitioner, is absolutely unnecessary, because the land in question should not have been or ought not to have been included as one of the land in the notification, dated 31.07.1980, therefore, the petitioner had made an application to remove the said land from the clutches of the said notification made under the Act. However, without considering the said aspect, completely in deviation of the prayer sought for by the petitioner, the fourth respondent District Committee has passed the impugned order dated 06.06.2020, giving alienation permission to the petitioner in respect of the land in question within one year period, the learned counsel, in this context, would submit that the petitioner has never asked for any permission for alienation of the land at present, and his only endeavour is to remove the land in question from the notification issued in this regard as referred to above. Therefore, the learned counsel for the petitioner would contend that, the impugned order dated 06.06.2020 passed by the fourth respondent District Forest Committee is absolutely out of non-application of mind, and therefore, on that ground itself, the impugned order is liable to be quashed and suitable direction can be given to the respondents, especially, the fourth respondent, to consider the request of the petitioner for removal of the land in question from the purview of the notification, dated 31.07.1980.

7.Per contra, Mr.R.Suresh Kumar, learned Government Advocate, appearing for the respondents, has submitted that, insofar as the notification, dated 31.07.1980 is concerned, where, number of lands in Kanyakumari District, including the land in question belongs to the petitioner, had been included. The said notification had already been challenged in a batch of writ petitions, where, ultimately, the matter has been decided by a Division Bench of this Court in the matter of **Kanyakumari District Planters Association v. State of Tamilnadu, Rep. by the Commissioner and Secretary to Government, Forest and Fisheries Department, Chennai-9 and others** reported in **2016 SCC Online Mad 1548: (2016) 2 LW 289(DB): 2016 (2) Mad LJ 513.**

8.Relying upon the said Division Bench Judgment, the learned Government Advocate would submit that, the very provisions of the Private Forest Act were declared to be *intra vires* and when the impugned notification therein, dated 31.07.1980, which is also the notification herein, under which the land of the petitioner also had been included, had been questioned, the Division Bench has stated that, the District Collector is competent to issue a declaration for declaring the land as a Private Forest land, since the provisions of the Act are regulatory in nature. The Division Bench has further



stated that, no prohibition to hold the land as a patta land or ryotwari patta holders/owners as they are entitled to have every right to develop the property for having any agricultural activities including seasonal agricultural operations.

9. Therefore, heavily relied upon the Division Bench Judgement, the learned Government Advocate would submit that, the issue, since have been concluded, where the very same notification dated 31.07.1980 has been upheld, the question of revisiting the same does not arise. Therefore, the prayer primarily made by the petitioner to remove the land in question from the purview of the notification, dated 31.07.1980, does not arise, therefore, while considering the application of the petitioner with the said prayer, atleast the alienation permission has been granted, which is one of the functions to be undertaken by the fourth respondent where permission has been granted to the petitioner by way of impugned order dated 06.06.2020, under which, it is open to the petitioner, if he wishes to alienate the land, to do it within one year. After lapse of that one year, he can get a further time by making a fresh application and if the petitioner does not want to alienate the land, it is open to him to develop the land for doing any agricultural activities, hence the learned Government Advocate would submit that the impugned order is fully sustainable and justifiable, hence, it does not requires any interference.

10. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. Insofar as the validity of the notification dated 31.07.1980 and also the provisions of the Act are concerned, the issue has been given a quietus by the said decision of the Division Bench in the Kanyakumari District Planters Association case cited supra, where exactly, the same notification was under challenge, which has been negated by the Division Bench stating that such power is always vested with the District Collector concerned to issue such a notification, where the Private Forest Lands can very well be included, in order to preserve the forestry, which are already available or going on in the said lands, as that kind of indiscriminate destruction, since have to be protected or prevented, that was the prime object of the Act, with such an object, since the said Act has been brought in, the validity of the Act has been declared as *intra vires* and a consequential notification issued therein, dated 31.07.1980, has also been declared as valid. Therefore, in the teeth of the said decision of the Division Bench, what is the further persuasive effect available to the petitioner in having to consider his grievance to remove the land in question from the purview of the said notification itself is a question. Be that as it may, now the grievance of the petitioner is that, the petitioner has not asked for permission for alienating the land in



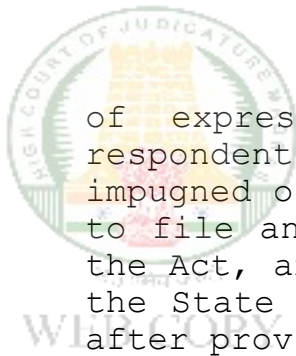
question, and the application submitted by the petitioner dated 26.10.2017 is for only seeking a prayer for removal of the land from the purview of the notification dated 31.07.1980, where one of the reasons cited by the petitioner is that, some adjacent lands at various Survey numbers, that is, Survey Nos.811, 812, 813 and 825, which are very adjacent to the petitioner's land, since had not been included under the notification dated 31.07.1980, why the petitioner's land alone had been picked up and had been included and in this regard, either it may be discriminated or there could be no plausible reasons on the part of the fourth respondent for including the land of the petitioner by issuing the notification dated 31.07.1980. Therefore, only in that context, such a prayer was sought for, however, when such prayer is sought for, the same ought to have been considered in proper perspective, however, without having considered the prayer sought for by the petitioner, now different permission has been granted through the impugned order dated 06.06.2020, as if the petitioner has sought for such a permission to alienate the land. Therefore, according to the learned counsel for the petitioner, the impugned order itself showed the non application of mind on the part of the respondent, and on that ground, the impugned order is liable to be quashed.

12.The arguments advanced by the learned counsel for the petitioner on the particular point, may be appealing. However, insofar as the reason given in the impugned order, for giving only alienation permission for the petitioner, instead of deciding the plea raised by the petitioner, has been supported by the reasons stated in the counter affidavit.

13.However, on going through the said counter affidavit filed by the respondents, this Court feel that, if at all, any grievance is available to the petitioner, that is, against the order passed by the fourth respondent like the one impugned herein dated 06.06.2020 as against the said order, appeal would lie before the State Government under Section 4 of the Act, which reads thus:

"4. Any person aggrieved by an order under clause (a) of sub section (1) of section 3 or under sub-section (2) of that section in regard to the sanction or permission referred to in that clause or sub-section may, within two months of the receipt of such order, prefer an appeal in writing to the [State] Government. The [State] Government, shall pass such orders on the appeal as they may think fit."

14.Therefore, it is ultimately, the State Government, to take a decision or take a call, as to whether the reasons given by the fourth respondent or its Committee, to include the land in question belongs to the petitioner within the purview of the notification, is justifiable or not. Therefore, at this juncture, this Court, instead



of expressing any opinion about the reasoning given by the respondents in the counter affidavit filed in support of the impugned order, is of the view that, the petitioner can be relegated to file an appeal before the State Government, under Section 4 of the Act, and if any such appeal is filed, the same can be decided by the State Government on merits and in accordance with law, ofcourse after providing an opportunity of being heard the petitioner.

15.In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

'that the validity of the impugned order, in view of the petitioner being relegated to prefer an appeal to the State Government under Section 4 of the Act, need not be gone into, and therefore, the petitioner is hereby given liberty to prefer an appeal against the impugned order to the State Government under Section 4 of the Act, within a period of two weeks from the date of receipt of a copy of this order, where the specific ground raised by the petitioner with regard to the alleged discrimination by including the petitioner's land in the notification dated 31.07.1980, by leaving the adjacent lands in various survey numbers, as referred to above, from the purview of the said notification, can also be agitated. If any such appeal is filed within the time frame as indicated above, the same shall be considered by the State Government after affording an opportunity of being heard to the petitioner, and thereafter decide the same, on merits and in accordance with law, within a period of three months from the date of receipt of such appeal from the petitioner.

16.With these directions, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

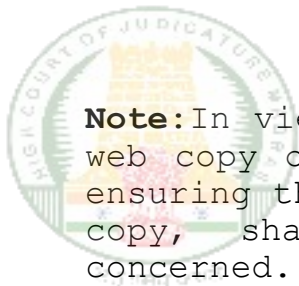
Assistant Registrar (CRL)

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Sub Assistant Registrar (CS)

PJL



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.

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+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-26799[F] dated 19/08/2021)

+1 CC to M/s.GP (SR-26915[F] dated 23/08/2021)

W.P. (MD)No.9592 of 2020
18.08.2021

SRR(CO)/RS (22.10.2021) 7P 7C