



W.P.(MD) Nos.11978, 11979, 11980, 11981, 11982, 11983, 11984, 11985, 11986, 11987, 11988, 11989, 11990, 11991, 11992 & 11993 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
19.07.2021	27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.(MD) Nos.11978, 11979, 11980, 11981, 11982, 11983, 11984, 11985, 11986, 11987, 11988, 11989, 11990, 11991, 11992 & 11993 of 2021

and

W.M.P.(MD) Nos.9396, 9397, 9398, 9399, 9400, 9401, 9402, 9403, 9404, 9405, 9406, 9407, 9408, 9409, 9410, 9411, 9412, 9413, 9414, 9415, 9416, 9417, 9418, 9419, 9420, 9421, 9422, 9423, 9424, 9425, 9426, 9427, 9429, 9430, 9431, 9432, 9433, 9434, 9435, 9436, 9438, 9440, 9442, 9443, 9444, 9445, 9446 & 9447 of 2021

Chinniah.P	... Petitioner(s) in WP(MD). 11978/ 2021
Vijayaraj.M	... Petitioner(s) in WP(MD). 11979/ 2021
S.Prema	... Petitioner(s) in WP(MD). 11980/ 2021
Jeyasankar.M	... Petitioner(s) in WP(MD). 11981/ 2021
A.Annadurai	... Petitioner(s) in WP(MD). 11982/ 2021
Singamugam.M	... Petitioner(s) in WP(MD). 11983/ 2021
Subramani.S	... Petitioner(s) in WP(MD). 11984/ 2021
Neelavathi.S	... Petitioner(s) in WP(MD). 11985/ 2021
Manikam.A	... Petitioner(s) in WP(MD). 11986/ 2021
Packiam.R	... Petitioner(s) in WP(MD). 11987/ 2021
Marimuthu.C	... Petitioner(s) in WP(MD). 11988/ 2021
Selvam.C	... Petitioner(s) in WP(MD). 11989/ 2021
Perumal.P	... Petitioner(s) in WP(MD). 11990/ 2021
Subramani.C	... Petitioner(s) in WP(MD). 11991/ 2021
Vijaya.Ma	... Petitioner(s) in WP(MD). 11992/ 2021
P.Singamugam	... Petitioner(s) in WP(MD). 11993/ 2021

-vs-

1.State of Tamil Nadu Rep.by Secretary
Department of Environment and Forests
Secretariat, Fort St.George, Chennai-9.



2.The District Collector, O/o District Collector
Sivagangai District, Sivagangai.

3.The District Forest Officer, O/o.District Forest Office
Sivagangai Wildlife Division, Sivagangai

4.The District Level Forest Right Committee,
(Constituted under the Scheduled Tribes and
other Traditional Forest Dwellers (Recognized
of Forest Rights) Rules 2007, Rep.by its Chairman
Sivagangai District,
Sivagangai

... Respondents

Common Prayer in WP(MD) .Nos.11978 to 11993 of 2021 :

Writ Petition are filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No. 117/2013/Va dt. 11.05.2021 on the file of the respondent No. 3 and quash the same as illegal and consequently forbear the respondents from evicting the Petitioner from the land in Survey No.79, Located at Kappalur Group, Devakottai Taluk, Sivagangai District in an extent of 2 acres.

For Petitioner : Mr.T.Lajapathi Roy
(in all cases)

For Respondents : Mr.Veera Kathiravan
(in all cases) Senior Counsel for State Government
for Mr.A.K.Manickam, Government Counsel

C O M M O N O R D E R

T.S.SIVAGNANAM, J.

In all these writ petitions, the petitioners claim to be the similarly placed persons and the relief sought for by them is also identical. Therefore, with the consent of the learned counsel for the parties, W.P.(MD) No.11978 of 2021 is taken as a lead case and it would suffice to note the facts stated therein.

2. The petitioner claims to be a resident of Mithiravayal in Devakottai Taluk, Kannangudi Post, Sivagangai District and traditionally cultivating and living in forest land and he belongs to a Scheduled Caste community and ekes his livelihood by agricultural activities. The petitioner would state that he along with about 300 people are living in the Mithiravayal and Monnani Villages with 55 fields. The petitioner would further state that the lives of the people, who are residing there, are closely



associated with agricultural activities and that is the only source of their sustenance and therefore, they applied for Patta, for each of them to an extent of 2 Acres. The petitioner would further state that he and his forefathers have been tilling the lands for more than 75 years. The earliest request for grant of Patta was during 1976. But, such request was refused on the ground that the land is under the control of the Forest Department.

3. The petitioner claims that he has been continuously approaching the Revenue Department and numerous representations have been given for grant of Patta. While so, during 2008, notices dated 25.01.2008 were issued by the respondents to about 40 persons in the Village stating that the land comprised in Survey No.79, located at Kappalur Group, Devakottai Taluk, measuring an extent of 106 Acres, will come under the control of the District Forest Officer, Sivagangai Wild Life Division. The petitioner claims that on 02.02.2008, they submitted a detailed representation to the fourth respondent / District Level Forest Right Committee and explained their position. The petitioner claims that the fourth respondent gave certain oral assurances on taking note of the representation, dated 02.02.2008. However, on 27.11.2012, the petitioner and others were informed that the land would come under the control of the Forest Department, which lead to the filing of W.P.(MD) No.16976 of 2012 praying for issuance of a writ of certiorarified mandamus to quash the proceedings of the Forest Settlement Officer, dated 29.07.2011 as being illegal and for a consequential direction to forbear the officials of the Forest Department from evicting the petitioners therein from the lands in Survey Nos.1244 of No.22, Mayiladumparai Village, Mayiladumparai Forest Block, Andipatti Taluk, Theni District, without following due process of law as per the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules 2007 (hereinafter, referred to as "the Act" and "the Rules" for brevity).

4. The said writ petition was tagged along with five other writ petitions in W.P.(MD) Nos.15324 of 2012 and W.P.(MD) Nos.349 to 352 of 2017 and there were totally 47 petitioners. Sofar as the challenge to the notice, dated 16.07.2016, the Honourable Division Bench, while passing a common order dated 15.11.2018, observed that no interference is called for on the said notice, because it is more than in the nature of intimation that certain encroachments have been removed. Further, referring to the said notice issued by the Wild Life Warden, it was observed that if the trees belong to the category of invasive species and would otherwise affect the eco-system of the forest, then they will have to be necessarily removed. But, then if they are native trees, their removal may not be warranted. Further, the Court noted that the petitioners had given representations to the respondents and it appears that they are in



possession of the lands in question for very long time. Further, it was observed that the Authorities cannot resort to any arbitrary measure and have to follow due process of law. The argument made on behalf of the petitioners in the said writ petitions that they would invoke the provisions of the Act and the Rules was noted and the Honourable Division Bench observed that they do not make any observations as to whether the said statute is applicable to the cases on hand and directed the respondents to take recourse to the procedure established by law, while dealing with the writ petitioners therein. After which, the fifth respondent herein has passed the proceedings, dated 11.05.2021, stating that the petitioners have not produced any proof to show that they are in occupation of the lands for the past three generations and rejected the claim for grant of patta. Challenging the same, the present writ petitions have been filed.

5. Mr.T.Lajapathi Roy, learned counsel for the petitioners would contend that the impugned proceedings issued by the third respondent / District Forest Officer is vitiated on account of total lack of jurisdiction as in terms of Section 6 of the Act, the Authority is vested with Grama Sabha and detailed procedure is to be followed while considering the said request and the power is vested only with the fourth respondent / District Level Forest Right Committee, who is competent to consider such claims.

6. Further, it is submitted that in terms of the Rules, the District Level Forest Right Committee / fourth respondent had to adjudicate the claim of the petitioner and act upon it and the District Forest Officer has no jurisdiction to adjudicate the claim. Further, it is submitted that the third respondent failed to take note of the purpose and intention for enacting the law to recognize and vest forest rights and occupation in forest land in forest scheduled tribes and other traditional forest dwellers, who have been residing in such forests for generations. On the above grounds, the learned counsel would contend that the impugned proceedings are liable to be quashed and the matter needs to be considered by the District Level Forest Right Committee / fourth respondent.

7. We have heard Mr.Veera Kathiravan, learned Senior Counsel appearing for Mr.A.K.Manickam, learned Government Counsel for the respondents.

8. The challenge to the impugned proceedings is primarily on the ground that it has been passed by the District Forest Officer, who does not have jurisdiction to do so. As noted above, the claim of the petitioner is that he and his forefathers for a period of 75 years have been doing agricultural activities in a



land, which is indisputably a reserved forest land. Though such tall claims have been made by the petitioners, there is no a single scrap of paper produced before this Court at least to *prima facie* show that the petitioner and his forefathers have been cultivating the land for a period of 75 years. Thus, we can reject the prayer sought for in the writ petitions by upholding the impugned proceedings, which was rejected precisely for such reason as no document was produced by the petitioner and others to establish such rights. The reason why the petitioner would contend that he and his forefathers have been cultivating the land for 75 years is to bring themselves within the definition of "other traditional forest dweller" as defined under Section 2(O) of the Act.

9. The "other traditional forest dweller" has been defined to mean any member or community who has for at least three generations prior to 13.12.2005, primarily resided in and who depend on the forest or forests land for *bona fide* livelihood needs. In the explanation, "generation" has been defined to mean a period comprising of 25 years. Therefore, the first embargo that a claimant, who claims that he is other traditional forest dweller, has to be fulfilled, is to establish that he or his community for at least three generations prior to the crucial date i.e.13.12.2005, have primarily resided in and depends on the forest or forests land for *bona fide* livelihood needs. Therefore, not only the claimant has to establish that he or his community for the three generations prior to the crucial date has primarily resided and is dependant on the forest land for *bona fide* livelihood needs. Thus, unless and until this bundle of rights are proved, the question of considering a claim in terms of Section 4 of the Act falling under Chapter-III would not arise. The said Chapter deals with recognition, restoration and vesting of forest rights and other related matters.

10. Chapter-IV deals with the Authorities and procedure for vesting of forest lands. Thus, the claim made by the petitioner that their rights have to be dealt with by the District Forest Committee in terms of Section 6 of the Act is misconceived as unless and until the petitioner is able to establish that he is the other traditional forest dweller, the rights which will enure in favour of scheduled tribes and other traditional forest dwellers as adumbrated in Section 3 of the Act would not arise. Only if such rights accrue, procedure for recognition under Section 4 of the Act would follow coupled with duties of the holders of the forest rights and thereafter only, the Authorities will have to take steps to vest forest rights in forest dwelling scheduled tribes and other traditional forest dwellers, whereunder the procedure has been described. Thus, the attempt of the petitioner is not only misconceived, but also not sustainable.



11. That apart, claims for grant of Patta in a land, which is a wild life sanctuary, is also a thoroughly misconceived claim. In fact, when the petitioners approached this Court earlier and filed W.P.(MD) No.16976 of 2012 etc. batch, their claim was for grant of Patta and consequently, they claimed that the provisions of the Act and Rules will apply. The Honourable Division Bench, by order dated 15.11.2018, refused to quash the proceedings, which were impugned before it nor did it make any observations as to the applicability of the rules *qua* the petitioners and all that was granted to the petitioners was a small reprieve by directing the respondents to take recourse to the procedure established by law while dealing with the writ petitions. It is not known why the Forest Department has not taken any action thereafter even after the writ petition was disposed of on 15.11.2018. In any event, the approach of the Forest Department is reasonable and they have understood the scope of the direction issued by the Honourable Division Bench, dated 15.11.2018 and have not initiated any arbitrary action. But, took note of the order in the said writ petition, more particularly, the direction issued by the Honourable Supreme Court in W.R.No.202 of 1995, dated 12.12.1996, considered the claims made by the petitioner and others and rejected the same stating that they have not established themselves to be the other traditional forest dwellers.

12. The third respondent has rightly observed in the impugned order that if the area has been classified as Forest as per the direction of the Honourable Supreme Court, no patta can be granted and if there is an encroachment, the same has to be removed. That apart, the lands, which have been classified as forest poromboke, have to be used only for forestry purpose and not for any other purpose. If such is the mandate of law, the claim made by the petitioner and others that they have been cultivating for three generations in the land and therefore, their occupation has to be recognized is not sustainable more particularly as they have miserably failed to bring themselves within the definition of "other traditional forest dweller" for being entitled to consideration of the alleged rights under the provisions of the Act and Rules.

13. Thus, for all the above reasons, we find that there is no ground to interfere with the impugned proceedings or interdict the further steps that may be taken by the Forest Department to preserve the forest. As pointed out by the Honourable Division Bench in its order dated 15.11.2018, if the petitioners have planted certain crops in the forest, they may be granted reasonable time to reap the crops and thereafter, relocated by following the proper procedure, which should be fair and reasonable.



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14. In the result, the writ petitions are dismissed with the aforementioned observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
Department of Environment and Forests,
State of Tamil Nadu,
Secretariat, Fort St.George, Chennai-9.
- 2.The District Collector,
Office of District Collector,
Sivagangai District, Sivagangai.
- 3.The District Forest Officer,
O/o.District Forest Office,
Sivagangai Wildlife Division, Sivagangai.
- 4.The Chairman,
The District Level Forest Right Committee,
(Constituted under the Scheduled Tribes and
other Traditional Forest Dwellers (Recognized
of Forest Rights) Rules, 2007,
Sivagangai District, Sivagangai.

+3 CC to M/s.T.LAJAPATHI ROY, Advocate(SR-23933[F] dated 27/07/2021)
+1 CC to M/s.SPL GP (SR-24364[F] dated 29/07/2021)

COMMON ORDER IN

W.P. (MD) Nos.11978, 11979, 11980, 11981, 11982, 11983, 11984, 11985, 11986, 11987, 11988, 11989, 11990, 11991, 11992 & 11993 of 2021

27.07.2021

RD(4.08.2021) 7P 9C