



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
27.07.2021	09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD) Nos.13017, 13018, 13019, 13020, 13021, 13022, 13023, 13024, 13025, 13026, 13027, 13028, 13029, 13030 & 13031 of 2021

and

W.M.P. (MD) No.10085, 10086, 10087, 10088, 10089, 10090, 10091, 10092, 10093, 10094, 10095, 10096, 10097, 10098 & 10099 of 2021

W.P. (MD) No.13017 of 2021:

Thangavelu ... Petitioner(s) in WP(MD). 13017/ 2021
Nagarajan.S ... Petitioner(s) in WP(MD). 13018/ 2021
Palaniammal ... Petitioner(s) in WP(MD). 13019/ 2021
Raja @ Rajendran ... Petitioner(s) in WP(MD). 13020/ 2021
Thatchinamoorthy ... Petitioner(s) in WP(MD). 13021/ 2021
Dharmar, ... Petitioner(s) in WP(MD). 13022/ 2021
Murugan @ Balamurugan ... Petitioner(s) in WP(MD). 13023/ 2021
Natarajan ... Petitioner(s) in WP(MD). 13024/ 2021
Ramachandran ... Petitioner(s) in WP(MD). 13025/ 2021
Muniyasamy, ... Petitioner(s) in WP(MD). 13026/ 2021
Chelladurai ... Petitioner(s) in WP(MD). 13027/ 2021
Saravanan ... Petitioner(s) in WP(MD). 13028/ 2021
Ramalingam ... Petitioner(s) in WP(MD). 13029/ 2021
Ramanathan ... Petitioner(s) in WP(MD). 13030/ 2021



... Petitioner(s) in WP(MD) . 13031/ 2021

-vs-

1.The Additional Chief Secretary cum
Land Survey & Land Administration Director
Land Survey & Land Administration Directorate
Chennai-5

2.The Secretary to the Government
Revenue Department
Fort St.George, Secretariat
Chennai-9

3.The District Collector
Ramanathapuram District
Ramanathapuram

4.The Forest Ranger
Ramanathapuram Forest
Ranger Office at
Thangimadam
Ramanathapuram District

5.Gnanapalam
Ramanathapuram Forest Ranger Officer
Ramanathapuram Forest Ranger Office at
Thangachimadam
Ramanathapuram District

... Respondents in all WPs

PRAYER in WP(MS.)No.13017 to 13031 of 2021 Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the record of the impugned proceeding of the fourth respondent in செ.மு.ஆ.என்.141/2021-21, 2021-27, 2021-24, 2021-9, 2021-18, 2021-31, 2021-19, 2021-13, 2021-25, 2021-14, 2021-20, 2021-17, 2021-12, 2021-28, 2021-22 dated 20.07.2021 and quash the same and consequently forbearing the fourth respondent from interfering petitioner's possession and occupation of the land respectively.

For Petitioner :Mr.K.K.Ramakrishnan in all Wps.

For Respondents :Mr.Veera Kathiravan

Senior Counsel for State Government

for Mr.A.K.Manickam, Government Counsel

for R1 to R4in all Wps



C O M M O N O R D E R

T.S.SIVAGNANAM, J.

The prayer sought for in all these Writ Petitions being identical, they have been heard together and are disposed of by this common order.

2.With the consent of the learned counsel on either side W.P. (MD) No.13017 of 2021 has been taken as the lead case and it would suffice to note the facts therein.

3.The petitioner one Thangavelu S/o. Neelamegam claims to be in occupation to an extent of 25 cents of dry land in S.No.1026/5A of Rameswaram and has been paying 2C charges from 1970 to 2015. The petitioner claims to have developed the dry lands into a coconut grove and also erected a borewell and in the centre of the land, the petitioner constructed a house and has been residing there and also obtained electricity service connection for the said house. The petitioner would state that there are several persons, similarly placed like him, who have developed the vast extent of unutilized and unused land by planting coconut trees, which would protect the area from land sliding. The petitioner and other farmers are stated to have formed an association in the name of Rameshwaram Island Coconut Farmer's Development Association of Ramanad District and submitted a representation to the District Collector for grant of patta. The said request was rejected and the petitioner and others challenged the same by filing W.P.No.2380 of 1989, which was allowed and the matter was remanded to the authorities for fresh consideration. Thereafter, the Revenue Divisional Officer, Rameshwaram by communication dated 20.05.1999, informed that there is a ban for issuance of patta till the Sethu Channel Project is implemented. Thereafter, another Writ Petition was filed in W.P.No.20391 of 2002, in which, a direction is said to have been issued to the Government. The second respondent directed the President of the Association to appear in person and during the said personal hearing, the President of the association submitted records and requested for grant of patta. It is further submitted that the Forest Settlement Officer, Sivagangai in an application filed under Section 10 of the Tamil Nadu Forest Act, claiming right of occupancy and ownership, passed order dated 10.06.2003 excluding Survey Nos.1206/1, 1026/10, 1026/5, 1026/21 from the limits of the forest area and the said order has attained finality and the forest boundary was fixed excluding the said lands. The petitioner claims that the land, which is in his occupation and enjoyment measuring an extent of 25 cents is situated beyond the survey stones, which demarcate the forest land and at no point of time the forest department claimed any right over the occupation of the petitioner. Whiles, a notice dated 25.06.2021, was issued under Section 68(A) of the Tamil Nadu Forest Act, calling the petitioner to show cause



as to why he should not be evicted for being in occupation of forest land. The petitioner submitted his reply on 07.07.2021, wherein he stated about his continuous possession and enjoyment of the land and the Forest Settlement Officer had passed an order dated 10.06.2003, excluding the lands mentioned in the four survey numbers and the land in occupation of the petitioner is beyond the forest boundary and therefore, the proposal to evict the petitioner by invoking the provisions of the Tamil Nadur Forest Act is without jurisdiction. It is thereafter, order dated 20.07.2021, was passed holding that the petitioner is in occupation of forest land and he is liable to be evicted within five days. Aggrieved by the same, the petitioner has filed W.P.(MD) No.13017 of 2021.

4.Mr.K.K.Ramakrishnan, learned counsel appearing for the petitioners submitted that the Forest Department had no jurisdiction to issue show cause notice under Section 68(A) of the Tamil Nadu Forest Act, 1882 as the lands in question are Government dry lands and not forest lands. Further, it is submitted that Forest Settlement Officer, Sivagangai has specifically excluded larger extent of lands, which would include the lands in occupation of the petitioners and the said order dated 10.06.2003, having become final, the impugned order is liable to be set aside. Further, it is submitted that the Forest Range Officer, who has been impleaded in his personal capacity is acting in *malafide* manner and has passed eviction orders only against certain persons and one Pancharam and others, who are in occupation of the lands in S.Nos.1026/1, 5, 5A have not been issued any notice and no steps have been taken to evict them and therefore, the impugned order is unreasonable and violative of Article 14 of the Constitution of India. Further, notices were issued to one Chithiravelu, Sugubar Aisha, Saravanan, Balamurugan, Muthuramalingam and Velayutham and they placed reliance on the order passed by the Forest Settlement Officer and thereafter, the fourth respondent has not passed any orders of eviction against them. Further, the petitioners, who have developed the property by attributing their physical labour and their resources have not been dealt with in an orderly manner by the forest department. Further, it is submitted that the request made by the petitioners for grant of patta by representations dated 23.07.2021 is also pending with the revenue officials and in the meantime, the impugned orders have been passed. Therefore, it is submitted that the impugned orders are liable to be set aside and the fourth respondent should be refrained from interfering with the petitioners' possession and occupation of the said lands.

5.Mr.Veera Kathiravan, learned Senior Counsel for the State Government submitted that the petitioners are encroachers in the forest lands and only after affording adequate opportunity and considering their submissions, the impugned orders have been passed and the orders do not suffer from any error and it is well within the jurisdiction of the fourth respondent to pass the impugned



order. Further, it is submitted that a similarly placed person as that of the petitioners filed W.P.(MD) No.5556 of 2021 for issuance of Writ Mandamus, forbearing the respondents therein from evicting the petitioner from peaceful possession and enjoyment in S.F.No.1026/5A, measuring an extent of 3 acres, situated at Natarajapuram Village, Puthu Road, Rameshwaram Taluk and the Writ Petition was filed on the strength of B memo issued by the Government officials. The Hon'ble Division Bench of this Court found that the said B memo was cancelled by the proceedings of the Tahsildar dated 21.03.2015, and also noted the statements made in the counter affidavit filed by the forest department and that the suit, which was filed by one Saravanakumar in O.S.No.14 of 2015, on the file of the Principal District Judge, Ramanathapuram was dismissed and taking note of the facts, the Writ Petition was dismissed on 19.03.2021 holding that land in question was forest land and deliberately suppressing the filing and dismissal of the suit, the Writ Petition was filed and there is no merit in that Writ Petition.

6.We have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record.

7.The petitioners claimed to be in possession of the lands in Survey Nos.1206/1, 1026/10, 1026/5, 1026/21 and claim that the lands are classified as dry lands and not forest lands and there is no jurisdiction for the fourth respondent to initiate eviction proceedings. The second ground raised by the petitioners is that forest settlement officer has passed an order excluding the above lands from the purview of the rigor of the Tamil Nadu Forest Act, 1882 and the survey numbers situate outside the boundary of the forest lands and therefore, the impugned orders are without jurisdiction. The third ground is that the petitioners alone have been targeted and there is discrimination and others, who were also similarly placed that of the petitioners, have not been proceeded against and no order of eviction has been passed. Lastly, the petitioners would state that no enquiry was conducted and adequate opportunity was not provided to the petitioners and therefore, the impugned orders of eviction are not tenable.

8.As noticed above, W.P.(MD) No.5556 of 2021 was filed by one R.B.Kannan, who is similarly placed as that of the petitioners herein. He claimed that he was in possession of the land in S.No.1025/5, which is the same land, where the petitioners before us claimed to be in possession and enjoyment. As mentioned above, the said Writ Petition was dismissed by order dated 19.03.2021. In the said order, the Hon'ble Division Bench took note of the submissions made by the forest department. It is seen that the land available in S.No.1026/5 was notified under Section 26 of the Tamil Nadu Forest Act, 1882 and published in Ramanathapuram District Gazette No.2, dated 14.02.1988 and on and after such notification, provisions of the Forest Conservation Act, 1980 would stand attracted as the lands



were declared as reserved forest. Further, as per Section 2 of the Forest Conservation Act, 1980 no land can be diverted for non forestry purpose without the prior approval of the Government of India and the land is belonging to Forest Department and the above said land is recorded as belonging to forest department in the 'A' Register and "Adangal". The said Writ Petitioner Mr.R.B.Kannan claimed that he has been issued with B Memo by the Village Administrative Officer of Rameshwaram Village. It was pointed out that action of the Village Administrative Officer in issuing B Memo in respect of Reserved Forest land is wrongful act and it was brought to the notice of the District Collector, Ramanathapuram by the District Forest Officer, Ramanathapuram vide letter No.2945 of 2012 dated 25.12.2014. This was taken note of by the Tahsildar, Rameshwaram vide proceedings K.Dis.No.m1/66/15 dated 21.03.2015 and cancelled the B memo issued to 46 persons in various survey numbers. Further, in the said proceedings, while cancelling the B memos, illegally issued by the Village Administrative Officer, it has been specifically mentioned that the lands have been transferred to the Forest Department. Further, it was pointed out that similarly placed person filed O.S.No.14 of 2015 before the learned Principal District Judge, Ramanathapuram, claiming ownership of the lands comprised in S.Nos.1017/2, 1026 and 1026/5A and the said suit was dismissed by judgment dated 28.07.2017. Taking note of these facts, the Writ Petition has been dismissed. The said decision of the Hon'ble Division Bench dated 19.03.2021, would apply with full force to the case of the petitioners as well.

9.A person, who raised a contention that the impugned order is without jurisdiction and principles of natural justice had been violated and there has been discrimination has to establish how he lawfully continues to remain in possession of the land in question. Though the petitioners would state that 2C charges have been collected from them, no such document has been produced to establish the said claim. Though in paragraph 2 of the affidavit filed in support of the Writ Petitions, the petitioners would say they have been paying the 2C charges and in the representation given by some of the petitioners and one R.Natarajan, it has been stated that for every year, they have been paying the 2C charges to the Village Administrative Officer, who has issued B Memos, have failed to produce the same. These B memos, which were issued by the Village Administrative Officer were found to be illegal and without jurisdiction and those have been cancelled by the Tahsildar by proceeding dated 21.03.2015, which proceedings have attained finality. Assuming that some petitioners are still holding B memo receipts, those receipts in no manner can advance the case of the petitioners to establish their stand that they are in lawful occupation of the property in question. So far as the allegation that there has been violation of principles of natural justice, we find that show cause notices were issued on 25.06.2021 to all the Writ Petitioners and they have submitted replies dated 05.07.2021



and after considering the replies, the impugned orders dated 27.07.2021, have been passed. Thus, it is seen that the petitioners had reasonable opportunity of being heard. It is settled legal proposition that opportunity of hearing does not necessarily mean opportunity of personal hearing. In the instant case, show cause notice is an opportunity granted to the petitioners to explain as to why they should not be evicted. In fact, the replies of the petitioners have placed reliance on B Memo receipts issued by the Village Administrative Officer to show that they are occupation of the lands close to half a century and the lands are not belonging to forest department. This objection was considered by the forest department and speaking and reasoned orders have been passed, which are impugned in these Writ Petitions.

10.It is clearly brought out that the petitioners are encroachers of reserved forest lands, which have been notified in G.O.Ms.No.419, Environment and Forest (Forest III) Department, dated 13.12.1993, and published in the Ramanathapuram District Gazette No.1 dated 24.01.1994 and that the petitioners are encroachers of such forest lands and therefore, notice under Section 68-A was issued. After noting the contention raised by the petitioner, the fourth respondent has held that the lands have already been notified as reserved forest as early as in 1993 and the notification has been duly published in the District Gazette. In such circumstances, the plea raised by the petitioners are wholly untenable.

11.The allegations that the Forest Settlement Officer has excluded certain lands from the purview of the forest land is a plea which has to be rejected because the petitioners' case is based upon B Memos issued by the Village Administrative Officer. This fact though has not been specifically stated in the affidavit filed in support of the Writ Petition, it has been so admitted in the replies to the show cause notices dated 25.06.2021. As long as the lands stand declared as reserved forest, the plea raised by the petitioners cannot be entertained and they have to be necessarily treated as encroachers of forest lands. Therefore, we find that there is no error in the decision taken by the fourth respondent, directing the petitioners to remove the encroachments. In our considered view, there is no error in the decision making process and the petitioners were afforded reasonable opportunity to submit their replies to the show cause notices. Further more, the plea of discrimination remains unsubstantiated and even if it is admitted, it goes without saying that all encroachments of forest lands have to be necessarily removed by the concerned officials even without the orders of the Court. As long as the lands continue to remain notified as forest lands, the plea raised by the petitioners have to be necessarily rejected as devoid of any substance.

12.In the result, these Writ Petitions are dismissed. The petitioners are directed to remove the encroachments within 15 days



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from the date of receipt of a copy of this order, failing which, forest department shall evict the petitioners and recover the cost of such eviction proceedings from them. Consequently, connected Miscellaneous Petition are also dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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 Additional Chief Secretary-cum-
Land Survey & Land Administration Director,
Land Survey & Land Administration Directorate,
Chennai-5.
- 2.The Secretary to the Government,
Revenue Department,
Fort St.George, Secretariat,
Chennai-9.
- 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 4.The Forest Ranger,
Ramanathapuram Forest,
Ranger Office at
Thangachimadam,
Ramanathapuram District.

+15 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-25909[F],
25910,25911,25912,25913,25914,25915,25916,25917,25918,25919,25920,25
921,25922,25923 dated 11/08/2021)

W.P. (MD) Nos.13017, 13018, 13019,
13020, 13021, 13022, 13023, 13024,
13025, 13026, 13027, 13028, 13029,
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KS (CO)

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