



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **10.08.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.13829 of 2021

(Through Video Conference)

WEB COPY

- 1.Ganesan
- 2.Vanathai
- 3.Songusamy
- 4.Nagaraj
- 5.Murugan
- 6.Vellaiyammal
- 7.Velusamy
- 8.Singaraj
- 9.Balamurugan
- 10.Pandi
- 11.Perumal
- 12.Rakkammal
- 13.Jeeva
- 14.Jaisankar

... Petitioners

-Vs-

- 1.The Government of Tamilnadu,
Rep. by its Secretary to Government,
Forest Department,
Fort St.George,
Chennai.
- 2.The Director,
Schedule Tribes Welfare Department,
(Schedule Tribes and other Traditional Forest Dwellers,
Recognition of Forest Rights Department),
Adi Dravidar and Schedule Tribes Welfare Directorate,
Chepauk,
Chennai-600 005.
- 3.The District Collector,
Theni District,
Theni.
- 4.The Tahsildar,
Andipatti Taluk,
Andipatti,
Theni District.
- 5.The Revenue Divisional Officer,
Periyakulam,
Theni District.



6.The Divisional Forest Officer,
Collectorate Building,
Theni,
Theni District.

7.The Forest Settlement Officer,
Collectorate Building,
Theni,
Theni District.

... Respondents

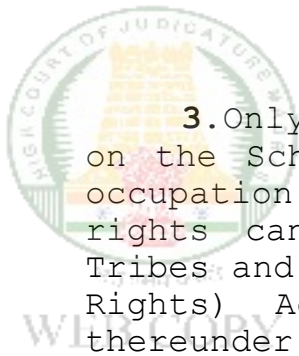
Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to proceed on the basis of the Gram Sabha resolutions dated 15.08.2019 and 06.03.2020 in accordance with law particularly under Chapter IV of the Schedule Tribes and other Forest Traditional Dwellers (Recognition of Forest Rights) Act, 2006 insofar as the petitioners' rights under Chapter III delineating the recognition of and vesting of forest rights are concerned.

For Petitioners	: Mr.M.Joseph Thatheus Jerome for M/s.P.Venkatesan
For Respondents	: Mr.R.Suresh Kumar Government Advocate

ORDER

Prayer sought for herein is for a Writ of Mandamus, directing the respondents to proceed on the basis of the Gram Sabha resolutions dated 15.08.2019 and 06.03.2020 in accordance with law, particularly, under Chapter IV of the Schedule Tribes and other Forest Traditional Dwellers (Recognition of Forest Rights) Act, 2006, insofar as the petitioners' rights under Chapter III delineating the recognition of and vesting of forest rights are concerned.

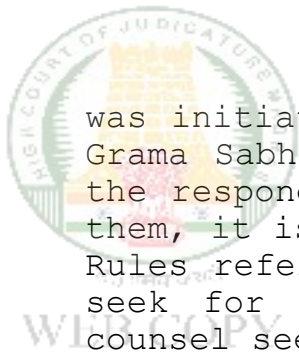
2.As per the affidavit averment made by these petitioners, who claim that, from the forefather atleast for three generations and more, they had been residing in forest land, which had been infact subsequently categorised as forest lands, where they have been not only residing but also have been undertaking agricultural activities. In this context, though it is the claim of the petitioners that they had approached the revenue authorities to get patta for the land, which are in occupation of these petitioners or their forefathers, those attempts had been failed because the said land in question, where the petitioners claimed to have been residing or doing agricultural activities, had already been categorised as reserved forest land, therefore, in this context, the revenue authorities do not have any rights to give patta.



3.Only at this juncture, in view of the rights to be conferred on the Scheduled Tribes and other persons, who had been in long occupation of the forest land that is for 75 years and more, their rights can be recognised under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition and Forest Rights) Act, 2006 (in short 'the Act') and the Rules made thereunder. Under the said Act, the rights of the dwellers in the forest land to get patta shall infact be initiated by the Grama Sabha concerned. As per the resolution to be passed in the Grama Sabha, the same would be forwarded to the Sub Divisional Level Committee constituted in this regard by the State Government, which would be headed by a Sub Divisional Officer or equivalent Officer as a Chair Person and other members belongs to Forest Department and Block Level Panchayat could be nominated and the said committee can decide the claim to be made by the dwellers in the forest land as initiated by the Grama Sabha concerned and subsequently, the matter can be referred to the District Level Committee headed by the District Collector and other Officials and if any decision is taken, firstly, at the Sub Divisional Level Committee and secondly, at the District Level Committee, that would become final.

4.Therefore, under the said procedure as has been contemplated under the said Act as well as the Rule made thereunder, the issue was initiated by the Grama Sabha of the village panchayat concerned, through Grama Sabha resolution, dated 15.08.2019 and 06.03.2020. After the Grama Sabha passed the resolution, according to the petitioners, it has been forwarded to the Forest ranger and District Forest Officer as well as the District Collector for necessary action and in this regard, the request of the petitioner since had been given to the Director of Scheduled Tribes, Chennai, who, in turn forwarded the same to the District Aadi Dravidar and Tribal Welfare Officer for needful action. Despite this kind of attempts have been made by the petitioners, the grievance of the petitioners is that, nothing was forthcoming from the respondents, especially, the District Collector and other officials belongs to the Forest and Revenue Department of the District concerned. Therefore, at this juncture, the petitioners joined together and filed this writ petition to seek for a writ of mandamus to give a direction to the respondents to proceed on the basis of the Grama Sabha resolution dated 15.08.2019 and 16.06.2020 in accordance with the provisions of the said Act.

5.Heard Mr.M.Joseph Thatheus Jerome, learned Senior counsel appearing for the petitioner, who having reiterated the same would submit that, the rights of the petitioners for issuance of patta for the dwelling house as well as the agricultural land, which they have been in occupation and have been doing their agricultural activities for several years or several decades, atleast for 75 years and more, have to be recognised under the provisions of the Act and in this regard, as per the provisions of the Act, the action



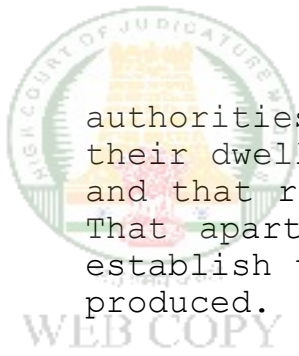
was initiated by the Grama Panchayat by passing a resolution in the Grama Sabha as stated supra, and the same having been forwarded to the respondents herein, no positive action since have been taken by them, it is in violation of the provisions of the Act as well as the Rules referred to above. Therefore, the petitioners are entitled to seek for a writ of mandamus as prayed for, hence, the learned counsel seeks indulgence of this Court in this regard.

6. Heard Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondents, who relied upon a latest communication, that is, instructions given by the Wild Life Warden, Megamalai Wild Life Division, Theni District, wherein, he has stated that, insofar as these petitioners are concerned, *prima facie*, the enquiry reveals that, they do not belonged to Scheduled Tribes community. Therefore, this can be brought to the notice of this Court during the hearing. Relying upon the said written instructions, learned Government Advocate would submit that, if they are not the Scheduled Tribes, they are not entitled to get the benefits under the Act, and in this regard, the learned Government Advocate relied upon a recent Division Bench Judgment of this court made in a Batch of cases in W.P.(MD)Nos.11978 of 2021 etc., batch dated 27.07.2021 and would submit that, as per the said judgment, if at all, the petitioners are not the Scheduled Tribe community people, the benefits cannot be conferred under the said Act and they can only be treated as encroachers of the forest land. Therefore, action can be initiated against them for removal of the encroachment, after cultivating the agriculture, if any, they have already undertaken in the land concerned.

7. By making these submissions, learned Government Advocate would submit that, the request of the petitioners, since, according to the *prima facie* view expressed by way of the instructions given by the officials concerned of the Forest Department, cannot be worthy to be considered, therefore, the mere initiation of the proceedings by the Grama Sabha would not *ipso facto* confer any rights on the petitioners' to recognise their dwelling right under the Act. Hence, such a mandamus as prayed for in this writ petition does not require to be granted, hence, he seeks for dismissal of this writ petition.

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

9. It is the claim of the petitioners that, they have been residing in the Forest land for more than 7 or 8 decades, that is, for three generations and more. It is the further claim of the petitioners that they have been doing agricultural activities also in such land. In the typeset of documents, all these petitioners have filed the family card provided by the State Civil Supplies



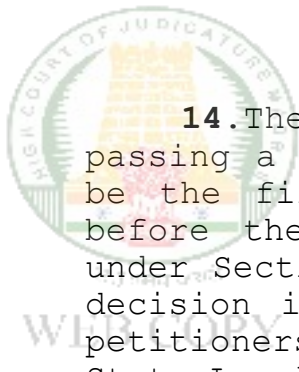
authorities to each of these petitioners, and also in respect of their dwelling houses, the local bodies have collected property tax, and that receipts also had been submitted in the typeset of papers. That apart, the Voter Identity Card and other identifications to establish that they have been residing in the forest land, were also produced.

10.With that strength, the petitioners already approached the village panchayat concerned, that is, the Grama Sabha of the Village Panchayat, in which, the petitioners have been residing or living, to initiate action within the provisions of the said Act.

11.In this context, if we look at the provisions of the Act, under Section 6, it has been provided that, the Grama Sabha shall be the authority to initiate the process for determining the nature and extend of the individual's or community's forest rights, etc. Therefore, as per Section 6, first, the initiation must be made by the Grama Sabha and once a resolution is passed by the Grama Sabha, it shall be placed before a Sub Divisional Level Committee under Section 6(3) of the Act and thereafter to be placed before the District Level Committee under Section 6(5) of the Act.

12.The Government of India framed rules under the said Act called Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (in short 'the Rules'). Under the Rules, Rule 3 states about Grama Sabha and Rule 4 speaks about functions of the Grama Sabha. Once, the resolution is passed by the Grama Sabha, that shall be placed before the Sub Divisional Level Committee, which shall be constituted under Rule 5, by the State Government, to be headed by Sub Divisional Officer or equivalent Officer as Chair Person. Functions of the Sub Divisional Committee are given in Rule 6. Like that, the state shall also constitute a District Level Committee under Rule 7, and the functions of the District Level Committee also have been enumerated under Rule 8. That apart, the State Level Monitoring Committee constituted under Rule 9 of the State Government in this regard headed by the Chief Secretary of the State as Chair Person, can monitor the overall action in this regard throughout the State.

13.Therefore, as per the exhaustive procedure as has been contemplated under the Rule, the initiation made by the Grama Sabha shall be placed before the Sub Divisional Committee and once the Sub Divisional Committee makes any decision, the aggrieved persons over the said decisions of the Sub Divisional Committee, can prefer a petition to the District Level Committee within 60 days and thereafter, the District Level Committee shall decide it, and the decision of the District Level Committee, on the record of forest rights, shall be final and binding.



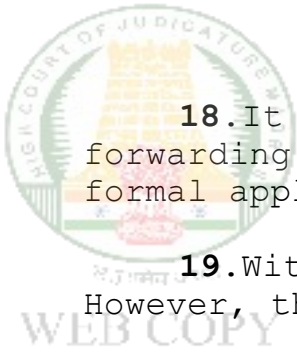
14.Therefore, the initiation now made by the Grama Sabha by passing a resolution on two dates as referred to above, shall only be the first step, pursuant to which, the same shall be placed before the Sub Divisional Committee constituted in this regard under Section 6 of the Act and the Rule made thereunder, and once a decision is taken by the Sub Divisional Committee, if at all the petitioners get aggrieved, they can prefer further appeal to the State Level Committee for final decision.

15.In that view of the matter, since the procedure has been clearly contemplated under the Act as well as the Rule as referred to above, this Court feel that, the claim made by the petitioners through Grama Sabha resolutions, dated 15.08.2019 and 06.03.2020, can very well be placed before the Sub Divisional Committee for their decision as the next step and thereafter, aggrieved party can prefer appeal to the District Level Committee.

16.In view of the said legal position and having considered the factual matrix of this case, this Court is inclined to dispose of this writ petition with the following order:

"that there shall be a direction to the fifth respondent Revenue Divisional Officer to take up the copy of the resolution passed by the Grama Sabha concerned, in respect of the petitioners' claim under the Act, dated 15.08.2019 and 06.03.2020, and place it before the Sub Divisional Committee constituted in this regard for their decision. Before the Sub Divisional Committee, after giving an opportunity of being heard to the petitioners by permitting them to file further input, if any, in support of their claim, that they have been dwelling in that forest land and doing agricultural activities for more than 75 years, for seeking recognition of their rights in the forest land under the provisions of the Act and accordingly, decide the same on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order."

17.It is made clear that, the petitioners shall send a copy of the Grama Sabha resolutions dated 15.08.2019 and 06.03.2020 to the fifth respondent, who in turn, shall act upon as indicated above, that is, placing the same before the Sub Divisional Committee and take action thereon, within the time frame as indicated above. The petitioners shall forward the copy of the Grama Sabha resolutions within a period of two weeks from the date of receipt of a copy of this order and thereafter, the needful as indicated above shall be undertaken by the fifth respondent and the Committee within a period of three months.



18.It is made clear that while making the application by forwarding the Grama Sabha resolution, the petitioners shall send a formal application as contemplated under Rule 11 of the said Rule.

19.With these directions, this writ petition is disposed of. However, there shall be no orders as to costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

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.

To

- 1.The Secretary to Government
Government of Tamilnadu,
Forest Department,
Fort St.George, Chennai.
- 2.The Director,
Schedule Tribes Welfare Department,
(Schedule Tribes and other Traditional Forest Dwellers,
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+1 CC to M/s.P.VENKATESAN, Advocate (SR-25851[F] dated
11/08/2021)

W.P. (MD) No.13829 of 2021
10.08.2021

NSN(CO)/RS (21.10.2021) 8P 9C