



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.18246 of 2019

and

W.M.P. (MD)No.13773 of 2019

WEB COPY

1.Yesudhas

2.Alexandar

3.Pramod

4.Rajan

5.Ramayan

6.Kanagaraj

... Petitioners

-Vs-

1.The Conservative Officer,
Forest Department,
Chennai.

2.The District Forest Officer,
Kanyakumari District,
Nagercoil.

3.The District Collector,
Kanyakumari District,
Nagercoil.

4.The Assistant Executive Engineer,
Agricultural Engineering Department (Public),
No.22-31/A, Dharga Road,
Mettukadai, Thackalay-629 175,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to permit the petitioners to cut and remove the uprooted rubber, jack, mango, cashew nut trees, broken trees and replant the rubber trees in S.No.3074, Surulcode Village R.S.No.126, 127, 128, 134, 133, 129, 132 situated at present Pechiparai Village, Kalkulam Taluk, Kanyakumari District.

For Petitioners

: Mr.T.Selvakumaran

For Respondents

: Mr.M.Rajarajan

Additional Government Pleader



ORDER

Heard the learned counsel on either side.

2.The prayer sought for by the petitioners is in two parts. The first prayer is for cutting and removing the uprooted and broken trees lying in the petition mentioned lands. The second relief is for planting rubber trees in their place.

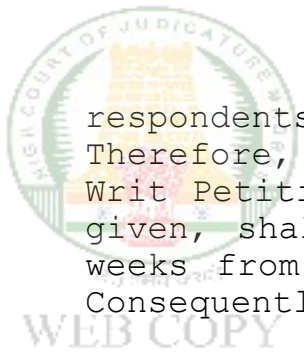
3.There is a serious title dispute between the petitioners on the one hand and the Government on the other. A number of suits were filed way back in the year 1982 before the Additional District Munsif Court, Padmanabhapuram in this regard. The suits were dismissed. However, A.S.No.55 of 1994 filed by the first petitioner before the Sub Court, Padmanabhapuram, was allowed on 29.01.2002. The petitioners seek relief in this writ petition on the strength of the civil court's decree.

4.The respondents have filed a detailed counter affidavit. They would point out that the appellate decrees passed by the Sub Court, Padmanabhapuram in A.S.No.55 of 1994 etc. on 29.01.2002 have been challenged before the Madurai Bench of Madras High Court and they are pending at the SR stage. It is also contended that the land in question is a part of the reserve forest. The learned Government Advocate took me through all the averments set out in the counter affidavit. He would in particular stress the fact that except some B-Memo receipts obtained between 1976 -78, no document has been filed by the petitioners before the Court below.

5.Though the contention of the learned Government Advocate is persuasive, I am not in a position to ignore the decree passed in favour of the petitioners way back on 29.01.2002. Though more than 19 years have elapsed, till date, the respondents have not been able to obtain any stay of the said decree.

6.The learned counsel appearing for the petitioner draws my attention to the order dated 27.10.1992 in I.A.No.1212 of 1992 in O.S.No.308 of 1982, whereby, permission to cut and remove the rubber trees was given.

7.It is obvious from a reading of the said order that the rubber trees in question were planted only by the petitioners. Therefore, they are definitely entitled to remove the same. That apart, the petitioners are enjoying decree from the competent Civil Court declaring right over the property. It is for this reason that I direct the respondents to permit the petitioners to cut and remove the rubber trees standing on the petition mentioned lands. It is also stated that due to cyclone, quite a few trees had fallen and the fallen and the uprooted trees can also be cut and removed by the petitioners. However, the petitioners cannot be permitted to plant rubber trees afresh. This is because, the title dispute between the



respondents that the land in question is a part of reserve forest. Therefore, the petitioners are entitled to only limited relief. The Writ Petition is partly allowed. The permission, as directed to be given, shall be issued by the respondents within a period of five weeks from the date of receipt a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

8.Registry is directed to list SASR.Nos.17845/2005, 17849/2005, 17854/2005, 17859/2005, 17863/2005, 17868/2005, 17870/2005, 17873/2005 & 17875/2005 on 06.04.2021.

Sd/-

Assistant Registrar ()

// 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 Conservative Officer,
Forest Department,Chennai.

2.The District Forest Officer,
Kanyakumari District,
Nagercoil.

3.The District Collector,
Kanyakumari District,
Nagercoil.

4.The Assistant Executive Engineer,
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No.22-31/A, Dharga Road,
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Nagercoil,
Kanyakumari District.

+1 CC to M/s.SPL GP (SR-12495[F] dated 19/03/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-12564[F] dated 19/03/2021
W.P. (MD)No.18246 of 2019 and
W.M.P. (MD)No.13773 of 2019
18.03.2021

SRK(CO)