



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2021

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 19739 of 2020 and

W.M.P. (MD) No. 16457 of 2020

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P.T. Sugumaran,
S/o. Parameswaran,
President,
Pathukani Vivasayikal Pathukappu Sangam,
Pathukani Post-629 101,
Kanyakumari District.

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District.
2. The Superintendent of Police,
Kanyakumari District.
3. The District Forest Officer cum Wild Life Warden,
Kanyakumari Division,
Nagercoil,
Kanyakumari District.
4. The Tahsildar,
Vilvancode Taluk,
Kuzhithurai,
Kanyakumari District.
5. The Village Administrative Officer,
Kaliyal Village,
Kanyakumari District.
6. The Forest Range Officer,
Kaliyal Village,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents and their men claiming under them not to interfere in the cutting of the tree, namely, Albizia Falcataria(L.) Fosberg by insisting to get report from the fifth respondent, forcing to pay the fee to the sixth respondent, and further forcing to obtain cutting order from the third respondent as the same does not fall under the category of the scheduled trees of the forest under the Forest Act.



For Petitioner : Mr.F.Deepak
For Respondents : Mr.C.Ramar,
Additional Government Pleader.

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O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The case of the writ petitioner is that the members of the petitioner Sangam have planted Albizia Falcataria (L.) Fosberg trees in their respective patta lands. The trees are now mature and according to the petitioner Sangam, they can be cut and removed. The petitioner however states that the Sangam members are facing interference from the forest officials.

3. Therefore, the present writ petition has been filed for restraining the respondents from interfering with the cutting of the petition mentioned trees. According to the petitioner's counsel, the Sangam members do not require any cutting order from the Forest Department.

4. The respondents have filed a detailed counter affidavit and Thiru.Ashok Kumar, District Forest Officer, Kanyakumari District, appeared through Video Conferencing and assisted this Court.

5. The stand of the petitioner is that the petition mentioned trees fall outside the ambit of the regulatory regime set out in the relevant statutes.

6. The respondents have clearly demonstrated that this is an incorrect assertion. Section 35 of the Tamil Nadu Forest Act, 1882, enables the Government to make rules to regulate the transit of all timber or of certain classes of timber within local limits as may appear to be necessary. In exercise of powers conferred by the said provision, Tamil Nadu Timber Transit Rules, 1968 was enacted. Rule 2 (3) of the said Rules defines that "Timber" includes all classes of timber as defined in the Act. Trees falling under Rule 2(3) (b) to (m) stand exempted. However, the petition mentioned trees do not fall under the said exempted categories. On the other hand, Rule 2 (a) states that no person shall move timber into or from, or within the State by land, water or air unless such timber is accompanied by a permit prescribed therefor under Rule 4. In other words, unless a timber falls under the exempted category for transport, Timber Permit under Rule 4 has to be mandatorily obtained.



7. It is informed by the District Forest Officer that the Government of Tamil Nadu has issued orders exempting as many as 36 categories of timber from the applicability of the Timber Transit Rules, 1968. The petition mentioned trees do not fall under those 36 categories also. Therefore, the net result is that for cutting and removing the petition mentioned trees, permission under Rule 4 has to be necessarily obtained from the competent authority.

8. Therefore, I am not in a position to grant relief sought for in this writ petition.

9. However, the petitioner's counsel states that the issue concerns the livelihood of the members of the petitioner Sangam. Therefore, whenever the Sangam members want to cut and remove the petition mentioned trees, they are at liberty to move the third respondent by submitting a proper application as contemplated under the Act and Rules framed thereunder. The third respondent will decide as to whether he is competent to issue permit orders or it has to be issued by the jurisdictional authority which may even be a chief conservator of forests.

10. I express the hope that as and when such applications are submitted, appropriate orders in accordance with law would be passed as expeditiously as possible. It is of course open to the writ petitioner herein to move the Government of Tamil Nadu for obtaining exemption for the petition mentioned trees from the applicability of the Timber Transit Rules, 1968 and if such application is submitted, it will be considered on merits and in accordance with law by the Government. Till such exemption is obtained, the petitioner Sangam have to necessarily obtain permits from the competent authority.

11. With this liberty and direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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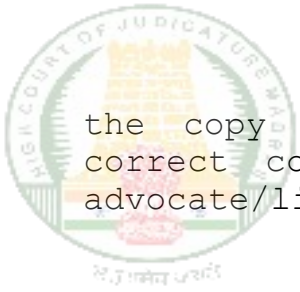
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Sub Assistant Registrar(CS)

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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

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the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Government of Tamil Nadu,
Forest Department, Secretariat,
Fort St. George, Chennai-2.
2. The District Collector,
Kanyakumari District.
3. The Superintendent of Police,
Kanyakumari District.
4. The District Forest Officer cum Wild Life Warden,
Kanyakumari Division,
Nagercoil,
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Vilvancode Taluk,
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Kanyakumari District.
6. The Village Administrative Officer,
Kaliyal Village,
Kanyakumari District.
7. The Forest Range Officer,
Kaliyal Village,
Kanyakumari District.

+1 CC to M/s.F.DEEPAAK, Advocate (SR-9851[F] dated 10/03/2021)

+1 CC to M/s.SPL GP (SR-10110[F] dated 10/03/2021)
(SR-10150[F] dated 10/03/2021)

W.P. (MD) No.19739 of 2020
09.03.2021

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