



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.32702 OF 2014

K.Kumar

... Petitioner

Vs.

1. The State of Tamilnadu
Rep. by the Secretary to the Government
Revenue Department
Fort. St. George,
Chennai - 600 009.
2. The State of Tamil Nadu
Rep. by the Secretary to Government
Environment and Forest Department
Fort.St. George,
Chennai - 600 009.
3. The District Collector
Namakkal,
Namakkal District.
4. The Tahsildar
Rasipuram Taluk
Namakkal District.
5. The District Forest Officer
Namakkal,
Namakkal District.

... Respondents

PRAYER: Writ petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the third respondent in Na.Ka.No.8916/2014/L-1 (3-68) dated 31.07.2014 and quash the same and thereby direct the respondents to reconsider the case of the petitioner in terms of the provisions of the scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, read with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, for issuance of patta to the petitioner.



WEB COPY

For Petitioner : Mr.Muthukumaran
for Mr.V.Thirupathi

For R1 to R4 : Mr.M.Rajendiran,
Additional Government Pleader

For R5 : Mr.T.Arun Kumar,
Additional Government Pleader (Forest)

O R D E R

Challenging the order dated 31.07.2014 passed by the third respondent / District Collector, rejecting the claim for issuance of patta, the petitioner has preferred the present writ petition.

2.According to the petitioner, he was in absolute and continuous possession and enjoyment of the lands comprised in unsurvey Block No.2, Naraikinar, Rasipuram Taluk, Namakkal District. In Revenue Records, his lands and the lands adjacent to his lands were shown as Hill poramboke. The properties situated in Naraikinar were irregular in shape, barren and uncultivable and abutting the small hills. He has converted the barren and uncultivable lands into cultivatable lands and is doing agriculture. In the year 1950, a Notification under Section 4 of the Madras Forest Act, 1882 was issued by the Government to declare the above lands in unsurvey block No.2 to a total extent of 3583.62 Hectares (8855 acres) as "Reserve forest". Thereafter, it was not pursued. Again in the year 1990, it was identified that out of the total extent of 3583.62 Hectares (8855 acres) as per the theodolite survey, about 2253.85.0 Hectares (5578.20 acres) were encroached and for the remaining 899 Hectares (2222.49 acres) there was no encroachment. As per the said measurement, the Forest Settlement Officer was directed to send a report under Section 10 of the Madras Forest Act. Accordingly, the fifth respondent has conducted an enquiry under Section 8 of the Madras Forest Act and sent a report stating that the said extent of lands were exempted from reserve forest and also confirmed the petitioner's long and continuous possession as early as in the year 2002. Thereafter, the petitioner made a representation to the authorities concerned for issuance of patta for the above lands. In the year 2006, the Central Government has made an enactment viz., The Scheduled Caste and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, in and by which, the rights of the petitioner as well as similarly placed traditional dwellers were protected. In the meantime, the fifth respondent informed that the question of issuing patta will be decided by the Revenue Department after getting appropriate orders from the Government.



3. In the meanwhile, similarly situated persons belonging to the Salem Mavatta Ezhpulli Malaivaizh Makkal Nala Sangam, Puzuthikuttai, Salem District, filed a writ petition in W.P.No.10954 of 2005 seeking to forbear the respondents from issuing declaration under Section 16 of the Tamilnadu Forest Act and to grant patta to the members of the Sangam and the same was by this Court dismissed on 01.04.2005. Against which, Writ Appeal in W.A.No.376 of 2008 was preferred. A Division Bench of this Court, by an order dated 20.10.2009 has directed the respondents therein to consider the case of the Members of the appellant - Sangam as per the provisions of the Scheduled Caste and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and to pass appropriate orders. Even thereafter, the respondents did not pass any order. Finally, on 20.12.2012, the petitioner has made a representation to the respondents for issuance of patta to an extent of two acres, but, it was rejected on 31.07.2014, which is contrary to the judgment of this Court in W.A.No.376 of 2008, dated 20.10.2009. The respondents have failed to consider the rights of the forest dwellers under Section 2 of the Act 2007. The petitioner is entitled to Patta to his lands, which is in his long and continuous possession as per the Section 2 of the Act 2007 and the Rules framed therein.

4. Heard the submissions made on either side.

5. Upon the perusal of the impugned order dated 31.07.2014, it is noted that on 12.05.1954 itself, the lands were notified as "Reserve forest" under Section 4 of the Tamil Nadu Forest Act, 1882 and the same was published in the Government Gazette vide No.40669/C-IV/54-2 dated 12.05.1954. Thereafter, on 19.05.1955, a declaration was issued under Section 6 of the Tamil Nadu Forest Act, 1882, in the Government Gazette, Salem District, by giving three months time for consideration of claims, if any, till 18.08.1955. However, no claims were made. Thereafter, the lands were declared as "Reserve forest". Further, as per the orders of the Hon'ble Supreme Court in W.P.No.202 of 1995 dated 07.05.1999, no patta with regard to any forest land shall be granted nor shall any encroachment be regularized.

6. The fact remains that the petitioner has clearly averred in his affidavit filed in support of the writ petition that he encroached upon the property situated in unsurvey block - 2, Naraikinar, Rasipuram Taluk, Namakkal District, which were irregular in shape, barren and uncultivable and abutting the small hills and that he had spent huge amount for reclamation of the above mentioned property and he modified the nature of the lands into agriculture lands and he has been paying charges to the Government regularly.



7. It is well settled that the forest dwellers totally depend upon the forest produce for their livelihood. As stated by the petitioner, he cannot be said to be a forest dweller for the reason that he encroached the lands and converted them into cultivable one and was also paying charges to the Government. As per Section 2(c) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, "forest dwelling Scheduled Tribe" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forest or forest lands for bona fide livelihood needs and includes the Schedule Tribes pastoralist communities. Section 2 (o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines "other traditional forest dweller" that 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 forest land for bonafide livelihood needs". The generation is explained as a period comprising of 25 years.

8. As per above definitions, either the person should be a permanent resident of the forest bonafidely depending on the forest produce for his livelihood or a traditional forest dweller, who lives for more than 75 years inside the forest. The petitioner does not satisfy the requirements either under Section 2(c) or 2(o) of Act, 2006 and he was not dependent on the forest produce and on the other hand, he converted the uncultivable lands into agricultural lands and he eke out his livelihood from the cultivation of agricultural lands.

9. From the above, it can be safely inferred that the petitioner is not dependent upon the forest produce to eke out his livelihood. He claims to be in possession from the year 1990. In that event, he will not satisfy the requirements of dwelling inside the forest for the three generations, which means for 75 years. Therefore, a person, who is not depending on the forest produce for his bonafide livelihood or not residing inside the forest for 75 years, cannot claim himself as a forest dweller and claim rights, which is available under the Act especially made for the Schedule Tribes living inside the forest.

10. Furthermore, as declared in Government Memo No.40669/C-IV/54-2, dated 12.05.1954 under Section 4 of the Tamil Nadu Forest Act, 1882 and the publication made on 19.05.1955 under Section 6 of the Tamil Nadu Forest Act, 1882, the lands of the petitioner falls under the purview of "reserve forest". The petitioner had an opportunity to make his representation to get exemption upto three months i.e., from the date of declaration viz., 19.05.1955 to 18.08.1955. There is no averment made in the affidavit filed in support of the writ



petition that he came into possession and dwelling inside the forest from the ancestral period nor given any date from which he converted the uncultivable land into cultivable agricultural land. Without specifying the period of his possession and enjoyment of the property, he cannot claim any right over the forest land, much less under Section 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. I do not find any discrepancy in the order passed by the third respondent rejecting the petitioner's claim for issuance of patta.

11. Accordingly, the impugned order passed in Na.Ka.No.8916/2014/L-1 (3-68), dated 31.07.2014, by the third respondent / District Collector is hereby confirmed. It is open to the respondents to take further action in accordance with law.

12. In fine, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Dua/tk

To

1. The Secretary to the Government
State of Tamilnadu
Revenue Department
Fort. St.George,
Chennai - 600 009.
2. The Secretary to Government
State of Tamil Nadu
Environment and Forest Department
Fort. St.George,
Chennai - 600 009.
3. The District Collector
Namakkal,
Namakkal District.
4. The Tahsildar
Rasipuram Taluk
Namakkal District.



5. The District Forest Officer
Namakkal,
Namakkal District.

WEB COPY

+1cc to the Special Government Pleader, (Forest) S.R.No.14250

+1cc to the Government Pleader, S.R.No.14154

W.P.NO.32702 OF 2014

NR (CO)
CT 31/03/2022