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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2022

DELIVERED ON : 17.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP(MD) NOS.6994, 6998, 10566 OF 2021
AND 22146 OF 2017

AND

W.M.P.(MD) NOS.5370, 5372, 8226 OF 2021
1839 OF 2022 AND 13360 OF 2021

W.P. (MD) No.6994/2021

P.Raman

.. Petitioner

Vs.

1. The Chief Secretary,
State of Tamil Nadu,
Secretariat, Chennai.
2. The Principal Secretary to Government,
Department of Forest and Environment,
Secretariat, Chennai.
3. The Chief Conservator of Forest,
No.1, Geenis Road, Panagal Palace,
Saidapet, Chennai.
4. The District Collector,
Theni District,
Theni.
5. The District Forest Officer,
Theni District.
6. The Sub Collector,
Periyakulam,
Theni District.



7. The Forest Ranger,
Megamalai Forest Block,
Andipetti Taluk,
Theni District.

8. The Forest Rights Committee,
Thummakundu Panchayat,
Thummakundu,
Aandipatti Taluk,
Theni District.

9. S.Pandi

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus forbearing the respondents No.1 to 7 in anyway dispossessing the petitioner from his cultivation in 2 ½ Acres in Oyamparai Area, Valiparai Village of Thummakundu Panchayat, Megamalai, Aandipatti Taluk, Theni District, without completing the enquiry and passing order thereon as to right of the petitioner in terms of Section 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, within the period stipulated by this Court.

For Petitioner	:	Mr.M.Ajmal Khan, Senior Counsel for Mr.A.Haja Mohideen
For Respondents 1 to 3, 5, 7 and 8	:	Mr.J.Ravindran, AAG Asst. by Mr.T.Seenivasan SGP(Forest)
For Respondents 4 & 6	:	Mr.A.Selvendran, Spl. Govt. Pleader
For Respondent 9	:	Mr.T.Lajapathi Roy

W.P. (MD) No.6998/2021

S.Pandeeshwari

.. Petitioner

Vs.

1. The Chief Secretary,
State of Tamil Nadu,
Secretariat, Chennai.



2. The Principal Secretary to Government,
Department of Forest and Environment,
Secretariat, Chennai.
3. The Chief Conservator of Forest,
No.1, Geenis Road, Panagal Palace,
Saidapet, Chennai.
4. The District Collector,
Theni District,
Theni.
5. The District Forest Officer,
Theni District.
6. The Sub Collector,
Periyakulam,
Theni District.
7. The Forest Ranger,
Megamalai Forest Block,
Andipetti Taluk,
Theni District.
8. The Forest Rights Committee,
Megamalai Panchayat,
Megamalai,
Aandipatti Taluk,
Theni District.
9. The Forest Rights Committee,
Thummakundu Panchayat,
Thummakundu,
Aandipatti Taluk,
Theni District.
10. The Forest Rights Committee,
Varushanaadu Panchayat,
Varushanaadu,
Aandipatti Taluk,
Theni District.
11. The Forest Rights Committee,
Murukoodai Panchayat,
Murukoodai,
Aandipatti Taluk,
Theni District.
12. S.Pandi

.. Respondents



Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents No.8 to 11 to complete the process of identifying the eligible persons of traditional forest dwellers of Megamalai forest area as per the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and place the same before the 6th respondent and consequently directing the 6th respondent to complete the enquiry and place his recommendation before the 4th respondent for proper consideration under Section 6 the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, within the period stipulated by this Court and till then not to disturb the Traditional Forest Dwellers of schedule persons and other unidentified traditional forest dwellers, within the period stipulated by this Court.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel for
Mr.A.Haja Mohideen

For Respondents : Mr.J.Ravindran, AAG
1 to 3, 5 and 7 to 11 Asst. by Mr.T.Seenivasan
SGP(Forest)

For Respondents : Mr.A.Selvendran,
4 & 6 Spl. Govt. Pleader

For Respondent 12 : Mr.T.Lajapathi Roy

W.P. (MD)No.10566/2021

T.Kannan

.. Petitioner

Vs.

1. The Principal Secretary to Government,
Department of Forest and Environment,
Secretariat, Chennai.
2. The Chief Conservator of Forest,
No.1, Geenis Road, Panagal Palace,
Saidapet, Chennai.
3. The Secretary,
The State Level Monitoring Committee,
Schedule Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Rules, 2008,



Adi Dravidar and Tribal Welfare (TD2) Department,
Chennai.

4. The District Collector,
Theni District,
Theni.
5. The District Forest Officer,
Theni District.
6. The Forest Ranger,
Megamalai Forest Block,
Andipetti Taluk,
Theni District.
7. The Secretary,
The District Level Committee,
Schedule Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Rules, 2008,
Theni District, Theni.
8. The Secretary,
The Sub-Divisional Level Committee,
Schedule Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Rules, 2008,
Theni District, Theni.
9. The President,
Megamalai Panchayat,
Megamalai,
Aandipatti Taluk,
Theni District.
10. The President,
Thummakundu Panchayat,
Thummakundu,
Aandipatti Taluk,
Theni District.
11. The President,
Varushanaadu Panchayat,
Varushanaadu, Aandipatti Taluk,
Theni District.
12. The President,
Murukoodai Panchayat,
Murukoodai,
Aandipatti Taluk,
Theni District.



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13. The President,
Singarajapuram Panchayat,
Singarajapuram,
Aandipatti Taluk,
Theni District.
14. The President,
Ponnampadugai Panchayat,
Ponnampadugai,
Aandipatti Taluk,
Theni District.
15. The President,
Muthalamparai Panchayat,
Muthalamparai,
Aandipatti Taluk,
Theni District.
16. The President,
Thangamalpuram Panchayat,
Thangamalpuram,
Aandipatti Taluk,
Theni District.
17. S.Pandi

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the 4th respondent to take effective steps to conduct Gram Sabha by the respondents No.9 to 16 under Rule 3 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rule, 2007 and to perform all the statutory duties under Rules 4 and 11 of the said Rules and to form Forest Rights Committee and to take all effective steps under Rules 12 and 13 of the said Rules to receive the applications from other Traditional Forest Dwellers as defined in Section 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and verify the same and complete the process and place all the records of eligible persons of identified Traditional Forest Dwellers of Megamalai Forest area before the 8th respondent and consequently directing the 8th respondent to pass suitable orders under Rule 14(5) of the said Rules, consequentially directing the 7th respondent to pass suitable orders under Rule 15(5) and send the same to the 4th respondent to effect suitable corrections in the revenue records and do all the needful to protect the Traditional Forest Dwellers, by considering the petitioner's representation dated 29.04.2021, within the period stipulated by this Court.



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For Petitioner	:	Mr.M.Ajmal Khan, Senior Counsel for Mr.A.Haja Mohideen
For Respondents 1 to 3, and 6 to 8	:	Mr.J.Ravindran, AAG Asst. by Mr.T.Seenivasan SGP(Forest)
For Respondents 4 and 5	:	Mr.A.Selvendran, Spl. Govt. Pleader
For Respondent 17	:	Mr.T.Lajapathi Roy

W.P. (MD)No.22146/2017

S.Pandi

.. Petitioner

Vs.

1. Government of India,
Rep.by the Principal Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi - 110 003.
2. The State of Tamil Nadu,
The Department of Environment and Forest,
Rep by its Secretary,
Fort St George, Chennai - 09.
3. The Principal Chief Conservator of Forest
and Chief Wildlife Warden of Tamil Nadu,
Panagal Maligai,
Saidapet, Chennai.
4. Additional Principal Chief Conservator of Forest (C),
Ministry of Environment, Forest and Climate Change,
Regional Office (SEZ),
1st and IInd Floor, Handloom Export Promotion Council,
34, Cathedral Garden Road, Nungambakkam,
Chennai - 34.
5. The District Collector,
Theni District, Theni.
6. Mr.M.Anandhakumar,



7. Mr.N.V.Nagiah,

8. Mr.Kaja Mohaideen,

9. Mr.A.Iqbal

10. C.Manikandan

(R10 impleaded as per order of this
Court dated 21.02.2022 in W.M.P. (MD)
No.2958 of 2022)

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents 1 to 5 to restore the Wildlife habitat in Megamalai Wildlife Sanctuary and to conduct enquiry and initiate appropriate action under Section 3B of The Forest (Conservation) Act, 1980 against the respondents 6, 7 and 8 within the time frame stipulated by this Court.

For Petitioner	:	Mr.T.Lajapathi Roy
For Respondent 1	:	Mrs.L.Victoriya Gowri, ASGI Asst. by Mr.S.Jeyasingh
For Respondents 2 to 4	:	Mr.J.Ravindran, AAG Asst. by Mr.T.Seenivasan SGP(Forest)
For Respondent 5	:	Mr.Mr.K.Tippusultan, G.A.
For Respondent 6	:	Mr.M.Anadhakumar
For Respondent 7	:	Mr.B.Saravanan
For Respondent 8	:	Mrs.M.Padmavathy
For Respondent 9	:	Mr.Alagusunder
For impleading Respondent 10	:	Mr.S.Manuraj Shanmuga Sundaram
Amicus Curiae (In all W.Ps)	:	Mr.T.Mohan



COMMON ORDER

(Order of the Court was made by N.SATHISH KUMAR, J.)

W.P.(MD)No.6994 of 2021 has been filed for the issue of Writ of Mandamus forbearing the respondents No.1 to 7 in anyway dispossessing the petitioner from his cultivation in 2 ½ Acres in Oyamparai Area, Valiparai Village of Thummakundu Panchayat, Megamalai, Aandipatti Taluk, Theni District, without completing the enquiry and passing order thereon as to right of the petitioner in terms of Section 6 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, within the period stipulated by this Court.

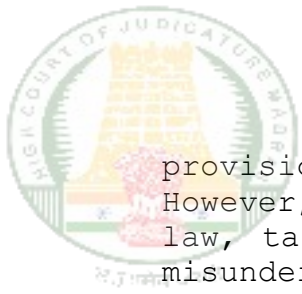
2. In this writ petition, the petitioner stated that he is the native of Valiparai Village of Thummakundu Panchayat, Megamalai, Aandipatti Taluk, Theni District, wherein he is in possession of 2.5 acres of lands for more than three generations. It is further stated that he belongs to Piramalai Kallar community and that Megamalai was originally under the administration of Gandamanur Zamin, which issued patta to several persons and collected kist. It is stated that only after the British regime, the 'Tamil Nadu Forest Act, 1882' (hereinafter referred to as 'Forest Act') was enacted and the area was classified as Western Ghats. It is the case of the petitioner that without considering the 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' (hereinafter referred to as 'said Act'), the Government issued notification in G.O.(MS)No.118 Environment and Forest (FR-14) Department, dated 09.09.2009 under Section 16 of the Forest Act, declaring Village No.23 of Aandipatti Taluk, Theni District as "Reserved Forest" to an extent of 24655.75.5 Hectares. As against the said notification, several writ petitions have been filed viz., W.P.(MD)No.5945 of 2010 etc., batch. Those writ petitions were not prosecuted responsibly. Due to that, the writ petitions were dismissed on 29.10.2018. Challenging the said order, SLP was filed before the Hon'ble Supreme Court and the same was dismissed with liberty to file a review petition. Thereafter, review application has been filed and the same is pending. It is stated that "Forest Rights Committee" was formed in Thummakundu Village, which conducted Grama Shabha Meeting on 24.08.2019. The said Committee identified the actual person who are all cultivating and residing in the notified areas for more than three generations prior to 13.12.2005. The petitioner filed an application before the eighth respondent-Forest Rights Committee seeking for patta along with necessary documents and also recognizing him as Forest Dwellers, but the authorities did not proceed further. The action of the authorities not identifying the traditional



forest dwellers are in violation of the fundamental rights of the forest dwellers guaranteed by the Constitution of India and in violation of the Act. Hence, sought for a direction, forbearing the respondents 1 to 7 from dispossessing the petitioner from his 205 acres in Oyamparai Area, Valiparai Village of Thummakundu Panchayat, Megamalai, Aandipatti Taluk, Theni District.

3. W.P.(MD)No.6998 of 2021 has been filed as a Public Interest Litigation for the issue of Writ of Mandamus directing the respondents No.8 to 11 to complete the process of identifying the eligible persons of traditional forest dwellers of Megamalai forest area as per the provisions of the said Act, and place the same before the 6th respondent and consequently directing the 6th respondent to complete the enquiry and place his recommendation before the 4th respondent for proper consideration under Section 6 of the said Act, within the period stipulated by this Court and till then not to disturb the Traditional Forest Dwellers of schedule persons and other unidentified traditional forest dwellers, within the period stipulated by this Court.

4. In this writ petition, it is stated by the petitioner that he is the native of Maelvaliparai Village and he belongs to Piraimalai Kallar community. It is further stated that for more than three generations, they are in occupation, possession and enjoyment of 3 acres of land in Maelvaliparai Village of Thummakundu Panchayat, Megamalai, Aandipatti Taluk, Theni District. They used to raise cashew nuts crops, and their livelihood depends on the forest lands by cultivation of lemon grass, cashew, silk cotton etc. They are all depending upon the forest lands for their bonafide livelihood needs. They are not having patta, but several persons, holding patta, were also doing cultivation in the said Megamalai Village. It is further stated that the Megamalai Panchayat consists of 18 villages, Thumakundu Panchayat consists of 25 villages, the Varusanadu Panchayat consists of 7 villages, Murukodai Panchayat consists of 6 villages, Singarajapuram Panchayat consists of 12 villages, Poonampadugai Panchayat consists of 7 villages, Muthaalamparai Panchayat consists of 16 villages and Thangamapuram Panchayat consists of 6 villages. It is stated that the population in the villages consists of tribal families and traditional forest dwellers. The persons, who are residing in the forest area for the purpose of cultivating of silk tress, mango trees, cardamo, collecting materials in and around the forest area. There are several schools and public utilities in the Megamalai forest area. It is also stated that the villages are provided with water facilitates and transport facilities. Megalami was originally under the administration of Gandamanur Zamin, which



provisions contemplated under the said Act and the said Rules. However, the authorities without following the due process of law, taking coercive steps to throw away the forest dwellers by misunderstanding the order dated 01.11.2018 passed by this Court in W.P.(MD)No.22146 of 2017, in which removal of encroachments was allowed. The actions of the authorities are in violation of the Fundamental rights of the Forest dwellers and in violation of the said Act. It is further stated that there are no danger to Flora and Fauna by these forest dwellers. It is stated that Gram Sabha meeting was held on 01.05.2010 and from February 2020, no such meeting were conducted due to COVID 19. Hence, the petitioner has filed this writ petition seeking for a direction to the fourth respondent to take steps to conduct Gram Sabha meeting by respondents 9 to 16 and to protect the forest dwellers as per the provisions contemplated under the Act and the Rules.

8. W.P.(MD)No.22146 of 2017 has been filed for the issue of Writ of Mandamus directing the respondents 1 to 5 to restore the Wildlife habitat in Megamalai Wildlife Sanctuary and to conduct enquiry and initiate appropriate action under Section 3B of The Forest (Conservation) Act, 1980 against the respondents 6, 7 and 8 within the time frame stipulated by this Court.

9. It is stated in the writ petition that Megamalai wildlife division is a crucial ecosystem as this is the place of origin of River Vaigai which takes care of the water need of about 90 lakh people in the five Districts of Theni, Dindigul, Madurai, Sivaganga and Ramnad. The 4 dams of High wavys Mountains are depending on these forests for water and these water find its way to the holy Suruli falls, an important ecotourism spot of Meghamalai wildlife division. Megamalai is home to all the animals of the mighty Western Ghats. These forest have a good population of about 350 Lion Tailed Macaques, an endangered species listed under Schedule 1 of the Wildlife Protection Act, 1972. It is further stated that there are encroachments numbering 2292 involving 10% of total forest as per record, but the reality is the tune of about 20-25%. It is stated that 300 natural trees have been felled in the estates for forming of the road. The above area is closed to Periyar Tiger reserve might signal the end of Bommaraja stream, a tributary of river Vaigai. It is further stated that despite the ban on felling of trees, the respondents 6 to 8 are encouraging the illegal felling of valuable trees. Therefore, the petitioner has filed this writ petition sought for a direction to the respondents 1 to 5 to restore wildlife habitat in Megamalai Wildlife Sanctuary and to conduct proper enquiry and to initiate actions under Section 3B of the Forest Conservation Act, 1980 against respondents 6 to 8.



10. The District Forest Officer, Theni District-5th respondent in W.P.(MD)Nos.6994, 6998 and 10556 of 2021 has filed the counter affidavit, wherein it is stated that the petitioners are encroachers without any patta they unauthorizedly occupied the lands and therefore, there is no public interest involved in this petition. It is also stated that to recognise the person as a "Traditional Forest Dwellers", the person has to be there for more than three generations which is equivalent to 75 years prior to 13.12.2005, whereas the writ petitioners are only encroachers and unauthorizedly occupied the forest lands. The petitioners are not belonging to any tribal community. It is the further stand of the fifth respondent that as per G.O.Ms.No.118, the village mentioned in the writ petitions are neither mentioned as enclosure or forest villages. Merely because, the villages are situated outside the forest and certain basic needs were provided to them, that will not confer the rights on the writ petitioners to continue the illegal cultivation and encroaching the forest lands. It is stated that only the persons, who are in occupation of the land prior to the notification of Estate Abolition Act, 1948, were issued Ryotwari Patta, wherein the petitioners were encroachers and they have not holding any patta. It is also stated that Megamalai was notified as "Reserved Forest" under notification issued in G.O.Ms.No.141, Forest and Fisheries Department, dated 28.02.1978, after following the procedure. During the above proceedings, Forest Settlement Officer scrutinized the claim as per Section 6 of the Forest Act. During the process of Forest settlement, field survey was conducted and Megamalai village was resurveyed and sub-divided with new survey numbers and the total extent of Megamalai Forest was arrived at 27875.38 hectares.

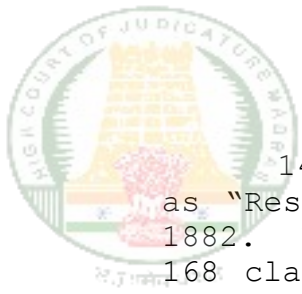
11. It is further stated in the counter affidavit that only after a detailed enquiry, deduction of patta lands, assessed waste lands and other communal lands, the impugned notification was passed without any violation to the rights of the people. The Forest Settlement Officer received 167 claims in respect of the notification and enquiry was conducted during 1979. Hence, it cannot be said that no opportunity was given to any one. It is further stated that only Nochioidai hamlet in Megamalai Panchayat and Paliyankudisai in Muthalamparai Panchayat are the tribal village falling under the ambit of Forest Rights Act, 2006 and all other villages are not entitled to the benefit under Forest Rights Act, 2006 as they are purely encroachers on the forest lands. It is stated that challenging G.O.Ms.No.118, Environment and Forest (FR 14) Department, dated 09.09.2009, several writ petitions were filed and the same were dismissed by this Court vide order dated 29.10.2018. It is also stated that as per the orders of the Apex Court in I.A.No.418 in W.P.(C)No.205/95, no patta can be granted in forest lands. To



recognize them as "forest dwellers", they have to establish their dwelling rights over the forest lands for three generations with substantial evidence. It is stated that the petitioners claiming to be forest dwellers are recent encroachers between one or two decades, who ventured into commercial activities, which leads to soil erosion of biodiversity.

12. It is further stated by the fifth respondent in the counter affidavit that after a detailed enquiry, the notification was issued in G.O.Ms.No.141, Forests and Fisheries Department, dated 28.02.1978. It is further stated that except 20 true tribal families in Nochioidai hamlet, others are encroachers and therefore, they have no right to claim any rights under the said Act. It is stated that under G.O.Ms.No.118, Environment and Forest (FR 14) Department, dated 09.09.2009, the total extent of 1609.75 hectares of patta lands have been treated as enclosure free from reservation under note-1. It is further stated that an extent of 417.38 hectares of lands are covered under Court cases which has been temporarily excluded under notes-4 and 5 from reservation of forest and these kinds of action on the part of the writ petitioners to usurp the forest lands are violative of the orders of Apex Court in W.P.(C)No.202 of 1995. The petitioners are encroachers who cultivate the lands illegally and they failed to claim any rights over the encroached property during the settlement process from 1978 to 2009 and therefore, they cannot take a shelter under the said Act. The petitioners are illegal encroachers and therefore, sought to dismiss the writ petitions.

13. In the additional counter affidavit filed by the Deputy Director, Megamalai Division, Sirivlliputhur Megamalai Tiger Reserve, Theni, as per the direction of this Court, it is stated that the area of 1070.89.50 hectares, listed as "encroachments temporarily excluded - other than court cases" is located scattered within the larger block of Megamalai Reserve Forests. These areas are not demarcated on ground and it is complex to locate them as these areas are "forests in effect". The reason for temporary exclusion is due to expediently complete the process of reservation of the larger landmass of Vaigai catchment as such an important and herculean task was hurdled for over nearly 25 years, due to complexities of the encroachments that had swarmed in the forest areas. It is stated that the petitioners are not identified any patta number or otherwise have been listed. The petitioners are taking advantage of the mentions in the reserved forest notification. The petitioners have not been produced their actual extent.



14. It is further stated that the entire area was notified as "Reserved Lands" under Section 26 of Tamil Nadu Forest Act, 1882. During the enquiry by the Forest Settlement Officer, only 168 claims were received and all the claims were dealt with as per law. Further, an area of 417.38 hectares (listed as "areas under Court cases that are temporarily excluded" in the Megamalai reserved forest notification) appealed before the competent Court were pending, but these encroachers did not make any claims or litigate the matters. The petitioners had encroached the forest lands in due course of time. It is reported that only 94 encroachments were reported by the Karnam, Megamalai Village to the Special Tahsildar, Settlements. But the list of those 94 encroachments were not mentioned in the report of the Karnam, Megamalai Village. Therefore, except 94 encroachments, all other encroachments had occurred subsequent to the settlement proceedings. It is stated that as per Section 3 of the Forest Act, the land which is vested with the Government has to be notified under Section 4 of the Forest Act for declaration as "Reserve Forest". Therefore, the land is vested with the Government and hence, the encroachers are liable to be evicted. Hence, prays for dismissal of these writ petitions.

15. The learned Senior Counsel appearing for the petitioners in W.P.(MD)Nos.6694, 6698 and 10556 of 2021 would submit that the petitioners and others were residing in the forest for more than three generations. During the notification issued in the year 1978, there was no proper enquiry, the notification also indicate that an extent of 1070.89.50 hectares were excluded. The above fact itself clearly shows that the petitioners and others were residing in the forest for more than three generations even prior to 1978 settlement proceedings. The documents filed in the typed set of papers clearly shows that the people are residing inside the forest for more than three generations. The patta has been issued by the then Zamin. Therefore, the petitioners are come within the definition of the "other traditional forest dwellers" as per the said Act. According to him, only the Gram Sabha shall be the authority to initiate the process for determining the nature of the extent of the individual for community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under the said Act.

16. It is his further contention that the village level committee of "Forest Rights Committee" was formed in Thummakundu Village by the fourth respondent by conducting Grama Sabha meeting on 24.08.2019. The said committee identified the actual persons who are all cultivating and residing in the notified



areas for more than three generations prior to 13.12.2005. When the rights have been accrued under the said Act protecting the other traditional forest dwellers, the procedure contemplated under the said Act has to be followed before taking any action against the persons, who are cultivating and residing in the notified areas for more than three generations. Therefore, merely on the basis of the notification of the State Government, declaring the Megamalai as "Reserved Forest", the authorities cannot overlook the rights guaranteed under the said Act and throw away all the persons residing for more than three generations and totally depends on the forest lands for their bonafide livelihood needs. It is his further contention that merely because some other writ petitions, challenging the notification, were already dismissed by this Court, that will not take away the rights of the persons, who claim their guaranteed rights under the said Act.

17. It is his further contention that the nature of the cultivations and the documents filed in the typed set of papers clearly proved the fact that the petitioners are residing from time memorial. Therefore, the authorities cannot decide merely to evict them without following the procedure contemplated under the said Act. During the submissions, he has also placed much reliance on the notification of the year 1978, which excluded 1070.89.50 hectares as encroachment submitted that the notification itself clearly shows that the petitioners are in possession of the forest lands for more than three generations even prior to 1978. Therefore, the learned Senior Counsel appearing for the petitioners submitted that the rights of the petitioners cannot be curtailed merely on the basis of the earlier writ petitions, challenging the notification declaring the Megamalai as "Reserved Forest" were dismissed. Hence, prays that the petitioners are entitled to claim their rights as "other traditional forest dwellers" as per the said Act.

18. The learned Additional Advocate General appearing for the respondents submitted that the petitioners have encroached the forest lands after the settlement proceedings in the year 1978. They are neither the schedule tribes nor other traditional forest dwellers. There is no other claim whatsoever has been made in the year 1978. If the petitioners were really in possession of the forest land during the enquiry in the year 1978, they would have made a claim before the Forest Settlement Officers. But, no papers have been filed by the petitioners to show that they have made any claims before the Forest Settlement Officer. Hence, no one has any right to continue in the forest lands and submitted that the authorities are taking action to remove all the encroachments. It is his further contention that now the Megamalai is also declared as "Tiger Sanctuary" for



protection of endanger species, all the encroachment to be removed. Hence, prays for dismissal of these writ petitions.

19. Mr.T.Mohan, learned counsel appearing for Amicus Curiae and Mr.T.Lajapathiroy, learned counsel appearing for the petitioner in W.P.(MD)No.22146 of 2017 submitted that the contention of the writ petitioners that they are residing in the forest for more than three generations is absolutely incorrect and not logical for the reason that in the year 1978, there was a settlement pertaining to the very same forest lands, which is the subject matter of these writ petitions. There were totally 168 claims, out of which 153 claims were already rejected and only one claim was allowed in favour of one Thalaku Thevar. It is their further contention that as on 20.07.1978, there were 94 encroachments, but none of the writ petitioners before this Court were found as encroachers at the relevant time. Hence, these writ petitioners would have encroached the forest lands only after the settlement proceedings is over. Therefore, to claim a right under the said Act as on 13.12.2005, which is the cutoff date, the person must have been in possession for about 75 years. Therefore, at no stretch of imagination, it can be said that the petitioners are entitled to any right under the said Act. It is also their further contention that to claim a right as "other traditional forest dwellers", the persons should depend on the forest lands for their bonafide livelihood needs. "Bonafide livelihood needs" means fulfilment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the said Act and include sale of surplus produce arising out of exercise of such rights. Whereas, in the present cases, the petitioners' affidavit clearly shows that the petitioners are cultivating lemon grass, cashew, silk cotton etc for commercial purposes. In the typed set of papers, it is indicated that all the commercial crops have been planted by encroaching the forest lands. Therefore, it cannot be said that these petitioners are depending on forest lands for their bonafide livelihood needs.

20. It is their further contention that the self-styled Forest Rights Committee said to have issued certificates in favour of the petitioners, which is not supported by the Forest and Revenue Officials. Therefore, it is submitted that the cultivations for commercial crops have been indiscriminately done in the forest land, which was declared the Megamalai as "Reserve Forest" by G.O.Ms.No.118, Environment and Forest (FR 14) Department, dated 09.09.2009. Now the entire Srivilliputhur Grizzled squirrel sanctuary and Megamalai Reserve Forest is declared as Tiger Sanctuary which is contiguous to Periyar Tiger Reserve in Kerala. It is their further contention that the reserve forest is the rainfall catchment area, where the Vaigai



River is originating small streams, which are destroyed by these forest encroachments. Vaigai River is flowing in a reduced form through these forests, where substantial portions of the land are encroached by the encroachers to the tune of about 3905 Hectares as per the status report of the Wildlife Warden, Megamalai Wildlife Division, Theni dated 06.03.2019. Therefore, the petitioner is neither "other traditional forest dwellers" nor residing in the forests. The petitioners are rank encroachers of the forest area, which caused delay in removing these people from the encroachment.

21. It is also stated that the Megamalai area is a critical habitat for several endangered wild animals, mammals, amphibians and reptiles which are endemic to Megamalai Forest. Due to un-controlled encroachment, the entire ecosystem and biodiversity is in peril. It is further submitted that already similar writ petitions in W.P.(MD)No.5945, 6874, 6615 and 6597 of 2010, challenging the notification declaring the Megamalai as "Reserve Forest", were dismissed by this Court. Even after the above dismissal and after the Division Bench has passed series of order for removing the encroachment, still the Forest Department are facing difficulties for removing the encroachment. Hence, these petitions are nothing but abuse of process of law and only in order to stall the removal of all encroachments, these writ petitions have been filed, which are deserve to be dismissed. In support of their contention, they placed the judgment of the Hon'ble Supreme Court in M.K.Ranjitsinh and others Vs. Union of India and others reported in (2021) 6 JT 137 and also the judgment of the Division Bench of this Court in W.P.(MD)Nos.11978 of 2021 etc., batch [P.Chinniah vs. The State of Tamil Nadu] dated 27.07.2021.

22. We have considered the submissions of the learned counsel appearing for the petitioner in all the writ petitions, learned counsel for the respondents and learned Amicus Curiae Mr.T.Mohan.

23. It is the case of the writ petitioners in the three writ petitions viz., W.P.(MD)Nos.6994, 6998 and 10566 of 2021, that, they are cultivating the forest lands for three generations. Therefore, they are entitled to claim right as forest dwellers guaranteed under the said Act. Whereas it is the specific case of the respondents-Forest Department that the petitioners are encroachers. As per the proceedings initiated under the Forest Act, an enquiry was conducted in the year 1978 itself. Though 168 claims were received, only one claim was allowed and all the claims were dealt as per procedure. These petitioners never filed objections in the year 1978 and 1979 during settlement proceedings to contend that they are residing



in the forest area and doing cultivation prior to 1978. As the issue revolving around the right of the petitioners vis-a-vis the respondents forest department, we have to first deal with the submission of the petitioners whether petitioner are entitled the right as guaranteed under the said Act. Admittedly, the petitioners are not Scheduled Tribe. With regard to the petitioners claim as "other traditional forest dwellers", it is relevant to refer Section 2(o) of the said Act and the same is extracted hereunder:

"Section 2: Definitions.-

(a)

to

(n)

(o) "'other traditional forest dweller'" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs."

24. The above definition of Section 2(o) of the said Act, falls within the "other traditional forest dwellers", makes it clear that one has to show that at least three generations prior to 13th December 2005, primarily resided in the forest and would depend on the forest or forest land for bonofide livelihood needs. The explanation appended to Section 2(o) of the said Act reads as follows:

"Explanation.-For the purpose of this clause, "generation" means a period comprising of twenty-five years;"

Therefore, to claim the benefit as "other traditional forest dwellers" one should show that at least 75 years prior to the cut off date i.e., 13th December 2005, they are residing in the forest and would depend on the forest or forest lands for bonofide livelihood needs. Rules 2(b) of the said Rules reads as follows:

"Rule 2: Definitions.-

(a)

(b) "bonafide livelihood needs" means fulfillment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the Act and includes sale of surplus produce arising out of exercise of such rights;"



The above definition makes it very clear that "bonafide livelihood needs" means fulfilment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the said Act and include sale of surplus produce arising out of exercise of such rights. It is relevant to extract sub-Section 1 of Section (3) of the said Act and the same is extracted hereunder:

"Section 3. Forest rights of forest dwelling, Schedule Tribes and other traditional forest dwellers.-

(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

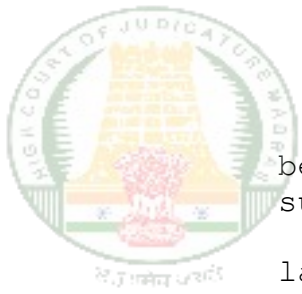
(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have



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been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005. "

25. Section 3(1) of the said Act deals with the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. The word used is cultivation. Therefore, cultivating for bonafide livelihood purposes, in our view, would only mean that ploughing, irrigation and planting for the purpose of livelihood, but not for commercial exploitation of the land offending Forest Conservation Act, 1980. Though it is urged by the writ petitioners that there are several families in the Megamalai area, it is stated in the counter affidavit and additional counter affidavit that the villages and the schools are outside the forest area. Therefore, when the cultivation itself is not for bonafide livelihood needs and exploitation being done by using the forest lands, such activities never be construed to mean that the petitioners are totally depend upon the fulfilment of livelihood needs. Except contending that petitioners are cultivating the lands for livelihood, it is not the case of the petitioners that they are depending on the community rights or depending on the minor forest produce which has been traditionally collected within or outside the village



boundaries. The main contention is that they are cultivating the lands for livelihood for many years. As indicated by us that, a person to be "other traditional forest dwellers" they should depend the forest lands for their livelihood needs and not for commercial exploitation of the land.

26. Further, the averments in the writ petitions clearly indicate that only commercial crops like cotton, cashew, lemon grass are cultivated in the forest lands. Page No.63 of the typed set of papers filed in W.P.(MD)No.10566 of 2012 clearly shows that they are manufacturing the essential oil of lemon grass oil and selling it in Kerala. The certificate issued by the Tahsildar are also found place in page Nos.63 and 64 of the typed set of papers. Therefore, we are of the view that the petitioners certainly will not come under the purview of "other traditional forest dwellers" for two reasons. Firstly, admittedly there were enquiry conducted by the Forest Settlement Officer in the year 1978 to an extent of 21930.47 hectares. The gazette notification issued in this regard is also available in typed set of papers.

27. It is not the case of the writ petitioners that they have also made a claim, but their claims have been rejected. Whereas the counter affidavit and the additional counter affidavit filed by the respondents makes it very clear that only 167 claims have been received and the same have been properly dealt with and one claim has been allowed. As these petitioners were never made any claim during the settlement proceedings under the Forest Act, it can be easily concluded that the petitioners were never residing in the forest land at the time of settlement proceedings and they have encroached the forest lands at the latter point of time. In the interregnum period, G.O.Ms.No.118, Environment and Forest (FR 14) Department, dated 09.09.2009, declaring the extent of 24655.75.5 hectares of land in Megamalai Forest, Theni District as "Reserved Forest" came into effect from 31.05.2010.

28. During the argument, Mr.M.Ajmal Khan, learned Senior Counsel has developed his argument with usual skill contending that in the above notification, an extent of 1070.89.50 hectares, which are under encroachments, are admittedly excluded. For this submission, we also called for an additional counter affidavit from the 6th respondent and he has stated that the temporary exclusion is only to expediently complete the process of reservation of the larger landmass of Vaigai catchments, as such an important and herculean task was hurdled for nearly 25 years due to the complexities of the encroachments that had swarmed in the forest areas. It is also stated that it is complex to locate the individual encroachers over the vast



scattered area of 1070.89.50 hectares, as these encroachers are not identified by any patta number or otherwise have been listed. From the additional counter affidavit of the sixth respondent, as the petitioners have not able to show any piece of papers to show that they were in forest lands for generations together as they claimed, we only conclude that the learned Senior Counsel appearing for the petitioners has exploited the advantage of such temporary exclusion in the reserved forest notification. We say so, because, when we pose a question to the learned Senior Counsel appearing for the writ petitioners that what is the actual list of claims and the actual extent of land, which are stated to be in possession of writ petitioners. No details could be given by the writ petitioners. The petitioners have not produced the actual list of claims and their actual extent, which would clearly show that the argument is without any documents and only advanced during the submissions. There is not even any averments in the writ petitions with regard to the above temporary exclusion in the notification. Therefore, as the petitioners have failed to establish their possession over the 75 years prior to the cut off date as referred above, they are certainly not entitled to any right to claim as "other traditional forest dwellers".

29. As per Section 17 of the Forest Act if the right in which no claim has been preferred under Section 6 shall thereupon, be extinguished. Section 18 of the Forest Act stated that no right would be acquired over the reserved forest.

30. Secondly, they are not also satisfied the criteria of bonafide livelihood needs. Whereas all the writ petitioners and other encroachers in the forest lands are cultivating the commercial crops like cotton, cashew, lemon grass and silk and do it as commercial exploitation. Hence, the petitioners' claim that they are other traditional forest dwellers has no leg to stand. It is also relevant to note that claiming right under the other forest dwellers under the said Act, several writ petitions in W.P.(MD)Nos.11978 of 2021 etc. batch, filed claiming the right under the Act as other forest dwellers. The Division Bench of this Court by order dated 27.07.2021 dismissed the writ petitions and in paragraphs 9 and 10, the Division Bench of this Court has held as follows:

"9. The "other traditional forest dweller" has been defined to mean 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 forests land for bona fide livelihood needs. In the explanation, "generation" has been defined to mean a period comprising of 25 years. Therefore, the first embargo that a claimant, who claims that he is other

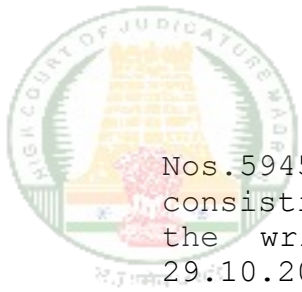


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traditional forest dweller, has to be fulfilled, is to establish that he or his community for at least three generations prior to the crucial date i.e.13.12.2005, have primarily resided in and depends on the forest or forests land for bona fide livelihood needs. Therefore, not only the claimant has to establish that he or his community for the three generations prior to the crucial date has primarily resided and is dependant on the forest land for bona fide livelihood needs. Thus, unless and until this bundle of rights are proved, the question of considering a claim in terms of Section 4 of the Act falling under Chapter-III would not arise. The said Chapter deals with recognition, restoration and vesting of forest rights and other related matters.

10. Chapter-IV deals with the Authorities and procedure for vesting of forest lands. Thus, the claim made by the petitioner that their rights have to be dealt with by the District Forest Committee in terms of Section 6 of the Act is misconceived as unless and until the petitioner is able to establish that he is the other traditional forest dweller, the rights which will enure in favour of scheduled tribes and other traditional forest dwellers as adumbrated in Section 3 of the Act would not arise. Only if such rights accrue, procedure for recognition under Section 4 of the Act would follow coupled with duties of the holders of the forest rights and thereafter only, the Authorities will have to take steps to vest forest rights in forest dwelling scheduled tribes and other traditional forest dwellers, whereunder the procedure has been described. Thus, the attempt of the petitioner is not only misconceived, but also not sustainable."

31. It is an admitted fact that now the entire Srivilliputhur Grizzled squirrel sanctuary and Megamalai Reserved Forest is declared as Tiger Sanctuary which is contiguous to Periyar Tiger Reserve in Kerala. This fact is not disputed. Therefore, the protection of the Tiger is a paramount importance, which is already an endanger species of India and that cannot be taken lightly. There are only around 3000 Tigers in entire country. Now, after declaring the Megamalai area as "Tiger Sanctuary", there is a sign of improvement in Tiger population also. It is also relevant to note that challenging the G.O.Ms.No.118, Environment and Forest (FR-14), dated 09.09.2009 declaring the Megamalai as Reserved Forest, several writ petitions have been filed before this Court in W.P.(MD)



Nos.5945 of 2010 etc., batch. A Division Bench of this Court consisting one among us by order dated 29.10.2018 dismissed all the writ petitions. In paragraph 7 of the order dated 29.10.2018, the Division Bench of this Court has held as follows:

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"7. It appears that the score of others have encroached upon the forest area and started doing cultivation by encroaching illegally with silk cotton, cashew nut trees and other commercial crops. Resultantly, for the above said cultivation, forest has been cleared by cutting the standing trees. Apart from the same, the prohibited Narcotics like Kanja are being cultivated. This area is the head of Vaigai river. Vaigai river gets its source from this area. Therefore, it is a strategical place with respect to water catchment and catering to the larger part of the southern part of the State apart from housing animals including Tigers. Encroachment results in cutting of trees and poaching. Though cases have been registered, the illegality could not be controlled, in view of the existence of the interim orders granted in these writ petitions. The so called encroachers, who are the petitioners in other cases other than W.P.(MD).No.5945 of 2010 have not gone under the Tamil Nadu Forest Act, seeking entitlement of their rights. In cases, where some of the encroachers sought for relief, they have been accordingly rejected. Now, pursuant to the notification issued under the Tamil Nadu Forest Act, 1882, in view of G.O.Ms.No.141 dated 28.02.1998, the consequential notification was issued in G.O.Ms.No.118 on 09.09.2009. Unfortunately, these encroachers are in continued occupation of the forest area illegally and continuing with their activities in the guise of the interim orders obtained."

32. It is also relevant to note that one of the writ petitioner in the above writ petitions viz., W.P.(MD)No.5945 of 2010, is none other than the former Legislative Assembly Member, who filed the writ petition as a public interest litigation on behalf of the forest dwellers and persons doing cultivation in Megamalai, Varusanadu Panchayat and Thumakadu Panchayat. A Special Leave Petition has also been filed as against the said order and the same was also dismissed by the Hon'ble Apex Court. Thereafter, series of orders have been passed by this Court. In Cont.P.(MD)No.1124 of 2019, the same Division Bench consisting one among us by order dated 23.02.2021, directed the respondents to remove all the encroachments. Paragraph 6 of the said order, the Division Bench of this Court has held as follows:



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"6. Taking note of the above and with a view to give effect to the order, the respondents are hereby directed to remove all unauthorized diesel engines along with the pipelines facilitating water from being taken directly from the river Vaigai to the lands cultivated by them, if not done already. There is no need for issuing notice as aforesaid act is totally unauthorized and their very occupation itself is contrary to law as declared by us in the order passed. The order was passed only in the writ petitions filed by the encroachers."

33. After series of orders passed by this Court and the eviction commenced by the Department pursuant to the orders of this Court, the present writ petitions have been filed claiming right as "other traditional forest dwellers". For the similar relief, writ petitions have been filed before this Court in W.P. (MD)Nos.8028 of 2007 etc., batch, claiming right as "other traditional forest dwellers". The Hon'ble Single Judge of this Court by order dated 17.09.2014, dismissed all the writ petitions. In paragraphs 13 to 16, the Hon'ble Single Judge has held as follows:

"13. A reading of the above said Government Order would go to show that the Government was informed that there were large number of agricultural families including tribals and hill tribes who have encroached upon the forest lands in the West Vali, Gudalur, Suranganar, Kumuli and other areas in Cumbum Valley of Uthamapalayam Taluk, in erstwhile Madurai District. There were lot of representations to the Government to evict these encroachers. The Government called for report, including the data from the forest authorities, in respect of the length of the period of such encroachments and soil conservation measures undertaken by the Forest Department in that areas, together with a sketch indicating boundaries of the reserve forest lands. The Chief Conservator of Forests, had submitted such a report, after holding a detailed inspection and enquiry. According to the said report, it was reported to the Government that the petitioners herein were all encroachers only from the year 1971 and there were not forest dwellers. It was also reported that even Kumri cultivation leases given in these areas were not successful, inasmuch as Kumridars went in for cultivation of crops and not for planting trees. It was also reported that they destroyed the tree plantations raised by the Forest



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Department. The Kumridars refused to vacate the lands even after the expiry of the lease period. All the efforts made by the Forest Department to evict them could not succeed. The total extent of encroachment was 650 hectares. Over an area of 555.50 hectares, the encroachments were gradually removed and the possession was restored to the Forest Department. As on the date there were encroachments only in the rest of the areas, measuring 94.50 hectares. Out of 94.50 hectares, an extent of 55.50 hectares had been encroached upon by the people from this State, while remaining extent of 39 hectares had been encroached by the people from across the border. Having considered the said report and after considering all the other reliable factors, the Government issued G.O.Ms.No.11, Forest and Fisheries Department, dated 03.01.1984, directing the forest officers to evict all these encroachments. The said G.O. has been filed before this Court by way of typed set of papers.

14.It is stated by the District Forest Officer that based on the above Government Order and the directions issued thereunder, the petitioners were all removed from the encroachment in 1994 itself. It is stated by him that the petitioners were in occupation as encroachers only for a short period i.e., from 1971 to 1994, and they were not at all in occupation of the forest lands for more than three generations, as it is claimed by them. Therefore, according to the District Forest Officer, the petitioners are not the traditional forest dwellers.

15.The learned counsel for the petitioners is not in a position to show any material in order to substantiate his contention that the petitioners are ? other traditional forest dwellers? as defined in sub Section (o) of [Section 2](#) of the Act. Above all, as on the date of coming into force of the Act, the petitioners were not in occupation of these lands.

16.From the above narration of the facts, it could be seen that absolutely there is no material even to infer that the petitioners satisfy the definition of "other traditional forest dwellers" as defined in Sub section (o) of [Section 2](#) of the Act. Therefore, I have to necessarily hold that the



petitioners, who were only encroachers, are not entitled for any benefit under the Act. Above all, the petitioners do not rely on forest lands for their livelihood. No material has been placed to prove the same."

34. As the writ petitions have been dismissed challenging the notification, the present writ petitions have been filed claiming to recognize them "as other traditional forest dwellers". As we already discussed above, the petitioners are neither schedule tribes nor other traditional forest dwellers. Therefore, merely on the basis of some self-styled Forest Rights Committee and Grama Sabha constituted by the writ petitioners and the other encroachers, the one cannot claim a right as a matter of right. Though it is pleaded that there are several schools and villages inside the forest, it is the specific case of the Forest Department that the villages and the schools are outside the boundaries of the Reserved Forest. Therefore, merely the nearby area is notified as Panchayats, the same cannot be taken advantage by the writ petitioners to contend that the entire schools and others are within the declared area or to claim right. Section 2 of the Forest Conservation Act restricts on the reservation of forests or use of forest land for non-forest purpose other than reafforestation. Therefore, the cultivation of commercial crops like cashew, lemon grass and silk cotton are absolutely illegal and hence, the petitioners are not entitled to claim any right under the said Act.

35. In M.K.Ranjitshinh and others Vs. Union of India and others reported in (2021) 6 JT 137, the Hon'ble Supreme Court has held as follows:

"4. But, this Court while considering IA Nos.1433 and 1477 of 2005 in the case of T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2012) 3 SCC 277 has observed as hereunder:

"17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that nonhuman has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism



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least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focussed thinking that non human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to nonhuman are based on benefits to humans. Ecocentrism is nature centred, where humans are part of nature and nonhumans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is, therefore, lifecentred, nature centred where nature includes both humans and nonhumans.

48. [Article 21](#) of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part of right to life. In [M.C. Mehta v. Kamal Nath](#) [(1997) 1 SCC 388] , this Court enunciated the doctrine of "public trust", the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of "public trust" has to be addressed in that perspective.

49. We, as human beings, have a duty to prevent the species from going extinct and have to advocate for an effective species protection regimes. NWAP 20022016 and the Centrally sponsored scheme, 2009 indicate that there are many animal species which are close enough to extinction and some of the other species have already disappeared from this



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earth. No species can survive on the brink of extinction indefinitely and that the continued existence of any species depends upon various factors like humananimal conflict, epidemics, forest fire and other natural calamities, etc."

The State as well as the Central Government therefore, have a duty cast to preserve the endangered species and as such the expenses incurred will have to be provided by them either under the schemes available or by earmarking the same in such manner. Needless to mention that in the instant case the preservation is by undergrounding the powerlines and in that context if cost is incurred, it would also be permissible to pass on a portion of such expenses to the ultimate consumer subject to approval of the Competent Regulatory Authority."

Therefore, it is the duty of the State to protect at least the remaining forest for the future generations. It is also relevant to note that a Division Bench of this Court consisting one among us in W.P.(MD)No.19771 of 2018, dated 10.02.2021 has observed as follows:

"Man is the most insane species. He worships an invisible God and destroys a visible Nature, unaware that this Nature he's destroying is this God he's worshipping."

... Hubert Reeves

2.About 2000 years ago, the Great Thinker, Saint Thiruvalluvar emphasized the primary function and duty of a human being stating that a Man, who shares his belongings with fellow living beings and takes care of them is more virtuous endowed, with wisdom than what the greatest Literatures would teach.

'பகுத்துண்டு பல்லுயிழ ஒம்ப,தல் நுலோர்
தொகுத்தவற்றுள் எல்லாந் தலை. -

To share your food with and cherish all that woes,
is the list of precepts in the Books of the World."



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3.The Universe is sustained by the role being played by living beings and nature. It is the co-existence, which makes the World a beautiful place to live. The same logic applies with more vigour to a Forest. Each specie contributes for the subsistence and development of the Forest. Any interference with the chain of biodiversity would visit dire consequence. Such consequence would not only be felt on the forest, but the World as a whole. The Forest is not only the lung space, but provider of rain water.

4.Man in his wisdom brought forth by his folly, continues to turn furtive look, refusing to acknowledge the implication of selfish adventurism. Any activity in the name of development sans environmental concern, having a narrow view from the perspective of one specie, certainly would have its own cascading effect."

36. Encroachment and conversion of forests is a major land use change in recent years. India, being one of the most densely populated country and having diminishing forestland, has one of the lowest per capita forestland holdings. The forest encroachment is nothing but it is the spread of humans, transportation system, utilities, buildings and other development into natural areas. The encroachment had adverse effects not only on the habitant of animals and also changing the natural biodiversity of forests. Such encroachments destroyed the corridors, which are used by the animals to move from one forest area to another place. Besides, it will affect the river flow and also cause erosion and endemic species are also threatened. The Hon'ble Apex court as a guardian of the forest land in W.P.(C)No.202 of 1995 [T.N. Godavarman Thirumulpad vs Union Of India & Ors, reported in (2012) 3 SCC 277] has held that all encroachments from the lands in reserved forests should be evicted and it should be preserved as forest. A Division Bench of this court in W.P.No.12517 of 2021 [S.Prabakaran Vs. The District Collector, Nilgiris District, Udthagamandalam] has held that the State to monitor all the forest lands to ensure that every bit of encroachment was removed from whatever little forest was left in this State. It is necessary that these forest lands be preserved, if only for the benefit of the human progeny. Encroachment of forest land is made only for agricultural practices where inorganic fertilizers are used to get better yield. Nobody has understood that the use of such inorganic fertilizers will lead to the suppression of beneficial soil microbes and the soil ecosystem becomes degraded. These chemicals are carried and drained into



the nearby water bodies and rivers and thereby polluting them and making the water toxic which lead to serious consequences for the existence of the wildlife inside the forest.

37. Article 48A of the Indian Constitution deals with the protection and improvement of environment and safeguarding of forests and wild life. It is the duty of every State to protect and improve the environment and to safeguard the forests and wild life of the country. Similarly, Article 51 deals with the fundamental duties of every citizens to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Though it is the constitution duty of the State Government to protect and improve the environment and to safeguard the forests and wild life of the country, the area in which the subject matter of the writ petitions was declared as Tiger Sanctuary, the poor Forest Officials are battling with mass encroachment every day. If it is allowed to continue the same without removal, the same will lead to consequences of destruction of forests and wildlife habitat and also it affects the flow of Vaigai river. Despite series of orders passed by this Court as indicated above, still the authorities are finding very difficult to evict all the encroachers. The reason is mere vote bank politics, irrespective of any affiliation to any of the political parties. As already indicated above, in an earlier occasion, one writ petition has been filed by a former Legislative Assembly Member as public interest litigation, which was also dismissed. Therefore, we are expressing our displeasure, the manner in which the encroachers are protected all these years with the connivance of the mighty people in power. Therefore, at least, hereafter, the State Government should take sincere efforts to evict all the encroachers. Therefore, all the writ petitions claiming right under the said Act has necessarily to fail and the same deserve to be dismissed.

38. Accordingly, W.P.(MD)Nos.6994, 6998 and 10566 of 2021 are dismissed and W.P.(MD)No.22146 of 2017 is closed with a direction to the authorities to evict all the encroachments and if any violation in felling of trees is found, they shall take appropriate action against the violators for restoring the wildlife habitat.

39. It is to be noted that, this Court by order dated 01.11.2018, directed the authorities to remove all the encroachments within a period of eight weeks from the date of receipt of a copy of that order. However, still the same has not been carried out because of one reason or the other. Therefore, we direct the State Government to constitute a Special Police Team to assist the WildLife Warden of Megamalai Range and other



Forest Officials and Megamalai Tiger Reserve for carrying out the eviction exercises and such Special Police Team to be constituted within a period of one month from the date of receipt of a copy of this order and thereafter all the encroachments should be removed within a period of four months. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Chief Secretary,
State of Tamil Nadu,
Secretariat, Chennai.
2. The Principal Secretary to Government,
Department of Forest and Environment,
Secretariat, Chennai.
3. The Chief Conservator of Forest,
No.1, Geenis Road, Panagal Palace,
Saidapet, Chennai.
4. The District Collector,
Theni District, Theni.
5. The District Forest Officer,
Theni District.
6. The Sub Collector,
Periyakulam,
Theni District.
7. The Forest Ranger,
Megamalai Forest Block,
Andipetti Taluk, Theni District.
8. The Forest Rights Committee,
Thummakundu Panchayat,
Thummakundu,
Aandipatti Taluk,
Theni District.



9. The Forest Rights Committee,
Megamalai Panchayat,
Megamalai, Aandipatti Taluk,
Theni District.

WEB COPY

10. The Forest Rights Committee,
Thummakundu Panchayat,
Thummakundu,
Aandipatti Taluk,
Theni District.

11. The Forest Rights Committee,
Varushanaadu Panchayat,
Varushanaadu,
Aandipatti Taluk,
Theni District.

12. The Forest Rights Committee,
Murukoodai Panchayat,
Murukoodai,
Aandipatti Taluk,
Theni District.

13. The Secretary,
The State Level Monitoring Committee,
Schedule Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Rules, 2008,
Adi Dravidar and Tribal Welfare (TD2) Department,
Chennai.

14. The Secretary,
The District Level Committee,
Schedule Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Rules, 2008,
Theni District, Theni.

15. The Secretary,
The Sub-Divisional Level Committee,
Schedule Tribes and Other Traditional Forest
Dwellers (Recognition of Forest Rights) Rules, 2008,
Theni District, Theni.

16. The President,
Megamalai Panchayat,
Megamalai,
Aandipatti Taluk,
Theni District.



WEB COPY

17. The President,
Thummakundu Panchayat,
Thummakundu,
Aandipatti Taluk,
Theni District.
18. The President,
Varushanaadu Panchayat,
Varushanaadu,
Aandipatti Taluk,
Theni District.
19. The President,
Murukoodai Panchayat,
Murukoodai,
Aandipatti Taluk,
Theni District.
20. The President,
Singarajapuram Panchayat,
Singarajapuram,
Aandipatti Taluk,
Theni District.
21. The President,
Ponnampadugai Panchayat,
Ponnampadugai,
Aandipatti Taluk,
Theni District.
22. The President,
Muthalamparai Panchayat,
Muthalamparai,
Aandipatti Taluk,
Theni District.
23. The President,
Thangamalpuram Panchayat,
Thangamalpuram,
Aandipatti Taluk,
Theni District.
24. The Principal Secretary,
Government of India,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi - 110 003.



WEB COPY

25. The Principal Chief Conservator of Forest
and Chief Wildlife Warden of Tamil Nadu,
Panagal Maligai,
Saidapet,
Chennai.

26. Additional Principal Chief Conservator of Forest (C),
Ministry of Environment, Forest and Climate Change,
Regional Office (SEZ),
1st and IInd Floor, Handloom Export Promotion Council,
34, Cathedral Garden Road, Nungambakkam,
Chennai - 34.

27. The Secretary,
The Department of Environment and Forest,
Fort St George, Chennai - 09.

WP(MD) Nos.6994, 6998, 10566 of 2021
& 22146 of 2017 and
W.M.P.(MD) Nos.5370, 5372, 8226 of 2021
1839 of 2022 and 13360 of 2021

BR(CO)
RLP(21/04/2022)