



W.P(MD)No.10146 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.08.2022
PRONOUNCED ON : 29.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD)No.10146 of 2019 and
W.M.P(MD)No.7877 of 2019

K.R.Ramachandran Raja,
Secretary,
Megamalai Farmers Association,
No.194/177, K.R.R.Nagar,
Theni

... Petitioner

Vs.

- 1.The Principal Chief Conservator of Forest,
Panagalmaligai, Saidapet,
Chennai-15.
- 2.The Chief Conservator of Forest,
Madurai Religion,
Madurai-02.
- 3.The Forest Settlement Officer,
Bodinayakkanur at Andipatty,
Theni District.
- 4.The District Forrest Officer,
Theni Forest Division,
Theni.



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5.The Wild Life Warden,
Manamalai Wild Life Warden,
Theni.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to permit the petitioners to use the pathway No.9 starting from S.No.1228 to S.No.230 from Vellimalai road in Megamalai Panchayat as permanent pathway in the light of G.O.Ms.No.126, dated 16.09.1988 passed by the government by plying the vehicles for transporting men and materials for agricultural purposed without any hindrance.

For Petitioner : Mr.R.Senthil Kumar

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

The petitioner, Secretary, Megamalai Farmers Association, Theni, has filed this Writ Petition seeking direction to the respondents to permit the petitioners to use pathway No.9 starting from survey Nos.226 to 230 from Vellimalai road in Megamalai Panchayat as permanent pathway in the light of G.O.Ms.No.126, dated 16.09.1988 passed by the Government.



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2.The case of the petitioner is that the petitioner is the Secretary of Megamalai Farmers Association, Theni, which is a registered society in No.35 of 2003, dated 24.01.2003. The petitioner's Association is formed to improve the welfare of the farmers in and around Megamalai area. There are 15 members in the said Association, all of them are patta holders having property in Megamalai village. The petitioner is having a property in survey No.220 at Megamalai Revenue Village, Andipatti Taluk, Theni District to the extent of 4 hectares in patta No.2190. The petitioner is cultivating coffee seeds, cardamom and clove trees and tea plantation in his land. Nearby the land of petitioner, the other farmers, the Association members properties are situated in survey Nos.226 to 230 and they are cultivating the same coffee seeds and cardamom. There are more than 15 families, who have been residing and their livelihood is totally depended upon the income derived from the cultivation of coffee seeds and cardamom. The petitioner's Association needs to provide grocery items and other day to day necessary household articles to the families, who are staying there. The petitioner and others have been enjoying the pathway No.9 starting from Vellimalai road in survey Nos. 226 to 230 approximately 7 kms. It is used by the patta holders for more



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than 100 years from the period of Jaminthars. The respondents and the forest authorities are aware about the pathway is an oldest pathway and existing even prior to the enactment of the Forest Conservation Act, 1980.

3.The learned counsel for the petitioner submitted that the Government issued orders in G.O(Ms)No.126, dated 16.09.1988 giving some exemptions to the patta holders who are using the pathway for more than 50 years with restrictions. The petitioner's Association are permitted to use the pathway only after getting prior permission from forest authorities. During the period from 1993 to 2001, the petitioner's Association got permission from the respondents to use the pathway No. 9 without any hindrance. Now, the forest authorities are unnecessarily restraining the Association members and their vehicles to reach their patta lands using the way. Hence, the petitioner sent a representation to the 1st respondent on 18.03.2014 requesting forest officials not to restrain free movement of vehicles, thereafter, the 1st respondent conducted survey with the 3rd respondent and the 3rd respondent has passed a detailed order in Na.Ka.No.VA/2753/2012, dated 17.02.2014 finding that



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the pathway No.9 is used by the farmers even prior to the enactment of the Forest Conservation Act, 1980. Other than this pathway No.9, there is no alternative road to approach the patta lands situated in survey Nos. 226 to 230. Each time temporary permission is required to carry the fuel wood, seeds and agricultural equipments. From the month of February 2018, the forest official unnecessarily restrained the movement of the vehicles for the reason that Megamalai forest now become a Reserve Forest and there is no permission to ply vehicles in survey Nos.226 to 230 from Vellimalai road in Megamalai Panchayat. The petitioner and his association members are cultivating coffee seeds, cloves and cardamom. Usually, the monsoon starts from the month of August to November. During the monsoon season nearly around 200 kilograms of cardamom ought to be transported to other major cities. In case of any failure, in transportation, all the farmers situated in survey Nos.226 to 230, will incur huge loss of income.

4.He further submitted that earlier, the Association made a representation on 08.06.2018 seeking permission to use the pathway No. 9. Since the respondents failed to consider the same, the Association



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filed W.P(MD)No.12930 of 2018, this Court, by order, dated 19.06.2018 directed the 1st respondent to take decision on the representation presented by the petitioner Association within a period of two months. Till such time, the farmers were permitted to use the existing pathway for transporting agricultural products. On 04.02.2019, a modified order to the earlier conditions was passed again restraining the usage of vehicles to transport agricultural products. Hence, the petitioner again sent a representation on 06.02.2019 for usage of pathway No.9. The respondents citing G.O.Ms.No.126, dated 16.09.1988 restrained the plying of vehicles and transportation of materials is not proper. The petitioner submitted that G.O.Ms.No.126, dated 16.09.1988 had been passed following the provisions under the Forest Conservation Act, 1980. The Association also made a representation to the Forest Authorities to take over the lands of the association members, since Megamalai forest has been declared a Reserved Forest area and the Association is ready to receive compensation. Despite several representations, no action taken. On the other hand, the petitioner's association is restrained and not allowed to carry out their agricultural activities. Hence, he prayed for appropriate direction of this Court.



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5.Mr.R.Suresh Kumar, Additional Government Pleader appearing for the respondents filed counter and submitted that G.O.Ms.No.118, Environment and Forest (FR-14) Department, dated 09.09.2009, II(2) EF/611/2009 under Section 16 of the Tamil Nadu Forest Act, 1882 had been issued declaring 24655.75.5 Hectares of land in Megamalai Forest Block, Theni District, as Reserved Forest. The said notification issued after duly following the provisions of the Tamil Nadu Forest Act, 1882. The Tamil Nadu Government Gazette Notification No.9, dated 25.11.2009, notified the said land as Reserved Forest under Section 16 of the Tamil Nadu Forest Act, 1882. As per the Tamil Nadu Government Gazette Notification No.9, dated 25.11.2009, it is mentioned that the pathway No.9 leading to Melbommarajapuram village starting from survey field number 1228 of Vellimalai Road survey field number 1228 F line measuring 48.4 metres at the cutting point of 6.4 metres from North to South and end in survey field number 340 total length of 3834.4 metres. As per notification, dated 25.11.2009, there is no pathway right allowed in survey Nos.226 to 230. This area is rich with wildlife. In view of area being critical wildlife habitat, motorable vehicle usage will



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only destroy the pristine wildlife habitat and also encourage encroachment. Moreover, if right of way is allowed, it would cause damages such as 1)It would lead to cutting of spontaneous growth trees on road side, 2)Soil erosion would be caused due to repair work on road, 3)It would affect elephant's passage as it is a part of elephant reserve, 4)It would affect the survival of elephant.

6.He further submitted that Megamalai Forest area is habitat for many of the endangered fauna such as elephant, tiger, Nilgiris Langur, Gaur, etc. The Megamalai forest land also constitutes an important migratory corridor for the elephants and other wild animals. The corridor provides a contiguous habitat for the wildlife connecting Periyar Tiger Reserve and Srivilliputhur Grizzled Squirrel Sanctuary. The petitioner has filed Writ Petition before this Court in W.P(MD)No.12930 of 2018 to direct the respondents to therein to declare the pathway No.9 starting from Vellimalai S.F.Nos.1228 to 230 as permanent pathway in the light of G.O.Ms.No.126, dated 16.09.1988, this Court, by order, dated 19.06.2018 observed that the 1st respondent therein shall take decision on the appeal presented by the petitioner association within a period of two



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months. The Principal Chief Conservator of Forests, Chennai in his letter No.TS2/24667/2018, dated 12.11.2018 gave direction to the Chief Conservator of Forests, Madurai and the Wildlife Warden, Megamalai that permission may be issued for the use of pathway for transporting the agricultural products from S.F.No.230 of Megamalai Village. While issuing permission, suitable conditions as deemed fit for protection of Forest & Wildlife may be imposed. Accordingly, the 5th respondent/Wildlife Warden, Megamalai had issued order permitting the petitioner for use of pathway with conditions.

7.It is further submitted that the 5th respondent had inspected the survey Nos.226 to 230 on 23.01.2019 and found that coffee and cardamom alone are cultivated. Further, dung of elephants and signs for availability of wild animals were also noticed. As the usage of motorable vehicle in the areas would harm wildlife therein and also cause noise pollution which will irk the wild animals, hence it was inevitable to modify the earlier order issued on 18.02.2018 and revised orders were issued by the 5th respondent to transport of the produce through head load vide his proceedings No.2753/2018, dated 04.02.2019. The orders issued



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by the 5th respondent does not confer any legal rights to the petitioner permanently. It is a temporary measures till the finalization of extension of forest block of Megamalai Reserved Forests which is under process. Thereafter, the petitioner filed Writ Petition before this Court in W.P(MD)No.6597 of 2010 challenging the G.O.Ms.No.118, Environment and Forests (FR-14) Department, dated 09.09.2009, II(2) EF/611/2009 under Section 16 of Tamil Nadu Forest Act, 1882 issued declaring 24655.75.5 Hectare of land in Megamalai Forest Block, Theni District, as Reserved Forest with effect from 31.05.2010. This Court on 29.10.2018 dismissed the same. Therefore, this Court upheld the validity of notification of Megamalai reserved forest in G.O.Ms.No.118, Environment and Forests (FR-14) Department, dated 09.09.2009 and hence, the petitioner does not have any right for the pathway in survey Nos.226 to 230. He further submitted that under Article 15-A(g) of Fundamental duties enshrined under part IV-A of the Constitution of India makes it a duty of every citizen of India to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures. Hence, he prayed for dismissal of this Writ Petition.



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8.This Court considered the rival submissions and perused the materials available on record.

9.Earlier, G.O.Ms.No.118, Environment and Forests (FR-14) Department, dated 09.09.2009 was challenged in W.P(MD)No.6597 of 2010 and the same was dismissed by this Court, by order, dated 29.10.2018. Now, challenging the G.O.Ms.No.126, dated 16.09.1988, which is pursuant to Megamalai Reserved Forest declaration brought under the Forest Conservation Act, 1980, is yet another form of questioning the authority of the forest officials in maintaining the reserved forest bringing it under conservation, thereafter, declaring the sanctuary as tiger reserve.

10.The Hon'ble Apex Court in the case of “***T.N.Godavarman Thirumalpad Versus Union of India***” defined the meaning of “forest” and held that the term “forest land” occurring in Section 2 will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the



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ownership. Further, the permission of Central Government is required if any non forest activity putting up building in any manner. Section 2(ii) of Forest Conservation Act, 1980 clarifies that an order from the Central Government is necessary and no State Government or any authority can make an order without approval of the Central Government for the use of any forest or any portion thereof for any non forest purpose. The Forest Conservation Act, 1980 clearly laid the embargo in this aspect that any non forest activity requires prior permission of the Central Government as held by the Hon'ble Apex Court in the case of “***Supreme Court Monitoring Committee Versus Mussoorie Dehradun Development Authority and others reported in (1997) 11 Supreme Court Cases 605***”, which is followed by this Court in a Public Interest Litigation in W.P.No. 20918 of 2008 in the case of “***S.Chakravarthi Versus the District Collector, Thiruvallur District, Thiruvallur and others***”.

11.In ***S.Chakravarthi*** (cited supra) case, the Hon'ble Division Bench of this Court following the case of “***Supreme Court Monitoring Committee Versus Mussoorie Dehradun Development Authority and others reported in (1997) 11 Supreme Court Cases 605***” held that once



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the land has been declared as Forest land, without getting permission from the Central Government, felling of trees would be in direct violation of Section 2(ii) of Forest Conservation Act, 1980 and also held that any building activity permitted within forest area would be non forest activity, which requires prior permission of the Central Government, hence, denied the permission to the State Government to put up construction of Samathuvapuram. In sum and substance, intruding into the forest area, in any manner will disturb and spoil the serenity and affect flora and fauna and its natural habitat.

12.As per G.O.Ms.No.14, dated 08.02.2021, the Government notified an area of 48,452.22 hectares in Madurai and the then Virudhunagar-Kamarajar District as Sirvilliputhur Grizzled Squirrel Wildlife Sanctuary. The Minister of State (Independent Charge), Environment and Forersts Department, Government of India, New Delhi has suggested that the Srivilliputhur Grizzled Giant Squirrel and the Megamalai Wildlife Sanctuaries along with portions of the Theni Forest Division (Varushanadu Valley) adjoining Periyar Tiger Reserve may be declared as Tiger Reserve.



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13.Hence, the restrictions imposed in movement of motorable vehicle in pathway No.9 starting from survey Nos.226 to 230 from Vellimalai road in Megamalai Panchayat, is justifiable. The petitioner and the Association members were given permission for movement of materials by head load and not to use any motarable vehicles.

14.In view of the above, this Writ Petition lacks merit for consideration. Hence, this Writ Petition is liable to be dismissed and, is dismissed. Consequently, the connected Miscellaneous Petition is closed. It is for the Government to take a decision to acquire the private lands and estate situated in the Reserved Forest area as contemplated under the Act for better upkeepment of Reserved Forest and sanctuary. No costs.

29.09.2022

Internet : Yes / No

Index : Yes / No

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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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