



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.06.2022

Pronounced on : 16.06.2022

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

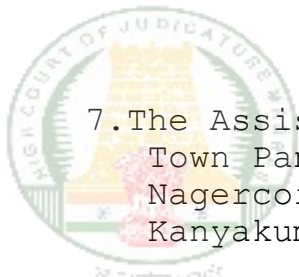
Writ Petition (MD) No.12997 of 2020
and WMP(MD) No.10943 of 2020

Black Rock Hill Planters Association,
Rep by its Secretary,
Mr.P.Lalaji
No.6, Perumal Street, K.P.Road,
Ramavarmapuram,
Nagercoil,
Kanyuakumari

.. Petitioner

Vs.

- 1.The Principal Chief Conservator of Forests,
(Head of Department),
Panagal Maaligai, Saidapet,
Chennai - 600 015.
- 2.The District Forest Committee,
Rep. by its Chairman / District Collector,
Kanyakumari District,
Kanyakumari.
- 3.The District Collector,
Kanyakumari District,
Kanyakumari.
- 4.The District Forest Officer,
Kanyakumari District,
Kanyakumari.
- 5.The Revenue Divisional Officer,
Revenue Divisional Office,
Nagercoil,
Kanyakumari District.
- 6.The Tahsildar,
Thovalai Taluk,
Bhoothapandi Post,
Kanyakumari District.



7.The Assistant Director,
Town Panchayat,
Nagercoil,
Kanyakumari District.

8.Azhagiapadiyapuram Town Panchayat,
Represented by its Executive Officer,
Azhagiapadiyapuram,
Thovalai Taluk,
Kanyakumari District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, for a direction directing the respondents No.3 and 8 to annually maintain the Panchayat and revenue portion of Road in S.No.777/2, 777/4, 777/6, 777/8, 777/10 Azhagiapandipuram Village, Thovalai Taluk, Kanyakumari District, and consequently direct the respondent No.4 to maintain the roads inside the Asambu reserve forest upto Mahendragiri estates and Nadukani trace upto Upper Victoria Estate and bridle pathway from Thoovachi to Black Rock estate annually within the time stipulated by this Court.

For Petitioner	:	Mr.T.Lajapathi Roy
For Respondents	:	Mr.P.Thilak Kumar
(R1 to R6)		Government Advocate
R7 and R8	:	Mr.M.Senthil Ayyanar
		Government Advocate

O R D E R

The petitioner, who is the Secretary of Black Rock Hill Planters Association, has filed this writ petition seeking a direction directing the respondents No.3 and 8 to annually maintain the Panchayat and revenue portion of Road in S.No.777/2, 777/4, 777/6, 777/8, 777/10 Azhagiapandipuram Village, Thovalai Taluk, Kanyakumari District, and consequently direct the respondent No.4 to maintain the roads inside the Asambu reserve forest upto Mahendragiri estates and Nadukani trace upto Upper Victoria Estate and bridle pathway from Thoovachi to Black Rock estate annually within the stipulated time.

2.The primary contention of the petitioner is that there are about 40 Estates within Blackrock, Asambu and Mahendragiri Hills in Kanyakumari District. The Estates are in existence for hundred of years and it has the oldest Clove, Pepper, Rubber, Coffee and Tea plantations. The Blackrock Estate was founded by Rev. Cox in the year 1865 and Rev. Caldwell, the reputed author of Comparative Grammar of South Indian languages had settled in Asambu Hill Estate during the 19th century. All these estates contribute to the economic growth of Kanyakumari District. These Estates have no other employment opportunity except agriculture and horticulture.



Further, T.F.Bourdillion F.L.S was the first conservator of Forest of Travancore and in his book named "The Forest of Travancore" in 1892 has stated as follows:

"Besides the tracks mentioned in describing the forests of the Mahendragiri slopes, good bridle path runs upto the Asambu and Black rock estates and a cart road connects the oliver estate with large bandy road running to the hills. This passes the virappuli depot in a Northerly direction towards the hills and southwards to Nagercoil"

3. There are overwhelming evidence that the road passing through Survey No.777/2, 777/4, 777/6, 777/8, 777/10, Azhagiyapandipuram Village, Thovalai Taluk, Kanyakumari District upto Mahendragiri estates and Nadukani trace upto Asambu estates and Bridle pathway from Thoovachi to Blackrock estate available. Further, as per Section 27(c) of the Wild Life (Protection) Act, 1972, a person who has any right over immovable property within the limits of the sanctuary can have access. Further, as per Item 129 of Forest 'B' Register, shows existence of the pathway, roads, Temple premises etc., This access is admitted for the use of workers and others.

4. Mr.P.Thilakkumar, learned Government Pleader appearing for the respondents 1 to 6 submitted that already notice taken and the same served on the respondents, the District Forest Officer alone have filed their counter on 05.07.2021. Despite several reminders from the Government Pleader Office, the revenue officials have not responded and no instructions has been given. Later after directions of this Court, District Revenue Officer appeared and filed counter.

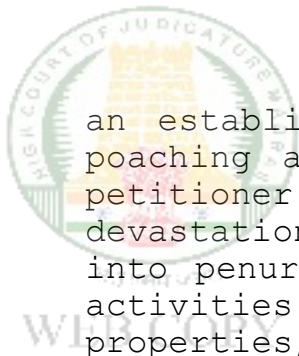
5. The primary contention of the Government Pleader is that it is a reserved forest area and further it has been recently declared as a 'Sanctuary', wherein, the minimum interaction of the humans have to be allowed no doubt, there is a passage in that area and no motorable pathway available. This passage is for the limited purpose of the forest officials and others. They use the same to perambulate forest area. If the petitioner given permission to access by motorable road, the flora and fauna of the forest would vanish. He further submitted that the prayer in this petition is with regard to maintaining the roads by the revenue officials. First road to be laid, handed over to forest officials thereafter it is for the Forest Officials to maintain the same. The stand of the officials is that major portion of the path is inside the private estate land. The District Collector and other revenue officials filed their versions and instruct the Government Pleader to make his submission, with regard to the vulnerability of laying of the road and its maintenance. This Court has already sent notice



to the respondents. Though the same has been served, the revenue officials failed to appear, for quite a long period, despite reminders, showing scant respect to Court notice.

6. It is further submitted that the Forest 'B' Register showing about forest roads, bridle paths scheduled pathways right of way and pathways for places of worship within Asambu Reserve Forest are not correct. Notification in G.O.Ms.No.Forest & Fisheries Department, dated 12.01.1980, covering an extent of 12642.88 Acres declared as reserved forest. He further submitted that no such Forest 'B' Register is maintained by the Forest Department. Forest Department maintains only a Register namely 'Register of Reserve Forests' wherein details of Reserve Forests, Copys of Reserve Forest Notification, are recorded. Hence, the reference on 'B' Register Forest is not proper. The primary purpose of the paths in Asambu Reserved Forest is for forest protection, patrolling by forest field staffs and to serve the erstwhile department clove plantations of Mahendragiri. These paths are allowed to be utilized by the estate owners. These pathways are being maintained by the Forest Department and the pathway are in usage. The usage of pathway alone would not be give any right for the petitioner to contend that it should be widened road to be laid for commercial purpose is not proper. The contention that the District Collector convened a meeting on 22.10.2019 and gave assurance for laying of road in Reserve forest and Wildlife Sanctuary is denied. Any development inside the reserve forest area would attract the provisions of Forest Conservation Act, 1980 and prior clearance from the National Board of Wildlife to be obtained. The Hon'ble Supreme Court time and again had directed the Forest officials to follow the rules and procedures. The petitioner quoting Section 27(c) of Wildlife Protection Act, 1972 for laying motorable road is not proper. As per Section 3(2) of the Tamil Nadu Preservation of the Private Forest Act, 1949, which only provide for "any act done for the customary domestic purposes".

7. In this case, admittedly, the petitioners are seeking right for commercial purpose. Almost in all the estates local people are not employed, North Indians are employed as labours. The Hon'ble Supreme Court in **W.P.No.202 of 1995** in the case of **T.N.Godavarman Thirumulkpad Vs. Union of India & Ors)** on 12th December, 1996 clearly held the "Forest Land", occurring in Section 2 of Forest Conservation Act, 1980 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 ownership. Further, the Hon'ble Supreme Court in **Writ Petition (Civil)No.337/1995** held that any proposal requires the recommendation of the Standing Committee of National Board for Wildlife. Further, the decision of the Hon'ble Green Tribunal made in **O.A.No.102 of 2016** is not relevant to the facts of this case. The Tribunal in its order observed that "It is



an established fact that good road network may lead to spurt in poaching and smuggling activities". Thus, the contention of the petitioner that lack of road facilities "shall cause immense devastation to the livelihood of the village residents pushing them into penury" is only a ploy to have motorable road for commercial activities. The estate owners are not staying in these properties, they are either settled in cities or in abroad the estates in the Reserve Forests are not under occupancy for most part of the year. There have been several complaints of poaching and other wildlife offences taking place inside these estates and there are instances of several cases booked in the past.

8. He further submitted that widening of pathways will lead to Human elephant conflict in that area. The clove harvesting season falls in the month of January to April and elephants migrate frequently during the same season in search of water. Hence, chances of Human elephant conflicts are more. The Apex Court in case of **Hospitality Association of Mudumalai Vs. In Defence of Environment and Animals and Ors etc., (Civil Appeal Nos.3438-3439 of 2020)** has observed that "we are dealing with a very fragile eco system. These elephants can become extinct in no time if illegal activities are not curbed in the elephant corridor. We do not want anybody to create trouble for elephants". The pathway passes through naturally grown teak forest area. Hence, allowing regular movement of workers will affect forest protection and lead to loss of valuable teak forests.

9. The further submission is that teak forest and dense growth of lemon grass in Asambu Reserve Forest are susceptible to frequent forest fire. Hence, movement of workers through this path may risk their lives and huge burdens to Forest Department, District administration and Fire and Rescue services Department to evacuate the workers during fire seasons. For that reasons some check posts created to monitor the movement of the men and material. By creating the check posts, the movement is only regulated and not restricted. As per Section 27(c) of the Wildlife Protection Act, 1972, the private lands inside the Reserve Forest are given access to their estates, of course, subject to verification. The Forest Department never restrained any other owners having access to their estates. On the representation of the petitioner dated 21.08.2019 discussions were held on 14.10.2019 and 23.10.2019 wherein the members of the petitioners association were informed, clarified about the rules and regulation and the statutory provisions. By having a discussion and clarification it cannot be claimed by the petitioners that the Collector gave them assurance to lay road into forest area.

10. Further, referring to the Executive Officer of the Azhagiapandiyapuram Town Panchayat, the learned counsel submitted that road leading to Devagiri Estate to the length of 12.00 k.m., is



a private road, a patta land wherein the private vehicles ply on it. This road is not in the records of panchayat. The estate owners have not taken any steps to handover private road to the panchayat. The panchayat road is only on 2.100 kms. During the year 2018-19 from the Moola Dhana Finance Scheme Rs.100 lakhs have been spent to lay the road from Palkulam to Karumparai Devagiri Estate Bridge. Now, the road is in good condition. Further, the lands referred by the petitioner either it is under the control of Forest Department or private patta land of the estate owners. Unless these lands are handed over to the Panchayat, the Panchayat cannot maintain the road. The question of formation and Laying of the road on the pathway inside the Forest region area, that to, in a Sanctuary will not arise. With the above submission and contention the Government Pleader strongly oppose this petition. However, he fairly submitted that if at all the petitioner has got any grievance, they can approach the concern official to redress their grievance.

11. I have heard the submissions made by the learned counsels appearing on either side and perused the materials on record.

12. The petitioner's prayer is to issue a direction to the District Collector, District Forest Officer and the Executive Officer, Town Panchayat, to maintain Panchayat and revenue portion of the road in S.Nos.777/2, 777/4, 777/6, 777/8, 777/10 Azhagiyapandipuram Village, Thovalai Taluk, Kanyakumari District. It is not in dispute that the roads pass through Reserve Forest and Sanctuary. The Hon'ble Apex Court as well as this Court time and again restrained from disturbing the natural flora and fauna found in all Forest. Further directing the officials to maintain and develop the Forest and the surrounding areas not allowing to get disturbed and damaged.

13. It is seen that already existing motorable roads are properly maintained by the Panchayat. The other portion of the roads are only bridle paths used by the forest officials to perambulate for protection of Forest. This passage cannot be further expanded in any manner making it motorable, otherwise damaging the eco-system of the forest area will occur. It is seen that the petitioners were never denied passage, access their estates. With proper reasons during harvest season the required work force are being permitted. Thus, the petitioner had not totally denied their access to their land for harvest. In view of the above, the prayer sought for by the petitioner cannot be entertained.

14. In the result, the Writ Petition stands dismissed. However, if the petitioner encounter any difficulty in having access to their estates, they can very well make a representation to the District Collector as well as to the Forest officials, who shall consider the same, without any delay, in accordance with law. No



costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Cs-III)

// True Copy //

WEB COPY

/06/2022

Sub Assistant Registrar(CS)

MPK

To

- 1.The Principal Chief Conservator of Forests,
(Head of Department),
Panagal Maaligai, Saidapet,
Chennai - 600 015.
- 2.The Chairman / District Collector,
District Forest Committee,
Kanyakumari District,
Kanyakumari.
- 3.The District Collector,
Kanyakumari District,
Kanyakumari.
- 4.The District Forest Officer,
Kanyakumari District,
Kanyakumari.
- 5.The Revenue Divisional Officer,
Revenue Divisional Office,
Nagercoil,
Kanyakumari District.
- 6.The Tahsildar,
Thovalai Taluk,
Bhoothapandi Post,
Kanyakumari District.
- 7.The Assistant Director,
Town Panchayat,
Nagercoil,
Kanyakumari District.
8. The Executive Officer,
Azhagiapadiyapuram Town Panchayat,
Azhagiapadiyapuram,
Thovalai Taluk, Kanyakumari District.



+1 CC to M/s.SPL.GP (SR-26846[F] dated 20/06/2022)

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-26992[F] dated
21/06/2022)

WEB COPY

Writ Petition (MD) No.12997 of 2020
and WMP (MD) No.10943 of 2020
16.06.2022

SRR(CO)
KB(28.06.2022) 8P 11C