



W.P(MD)No.21027 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.09.2022
PRONOUNCED ON : 29.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD)No.21027 of 2021 and
W.M.P(MD)No.17634 of 2021

Vivekanandan

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Principal Secretary to Government,
Environment & Forest Department,
St.George Fort, Chennai-9.

2.The District Collector,
Madurai, Madurai District.

3.The District Collector,
Theni, Theni District.

4.The District Forest Officer,
District Forest Office,
Theni, Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order of District Gazette Notification dated 08.02.1983 issued by the then 2nd respondent and the consequential impugned communication of the 4th respondent office through proceedings in Na.Ka.No.5898/2021/Ku, dated 07.06.2021 and quash the same.



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For Petitioner : Mr.T.Mohan for
Mr.D.Venkatesh

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

ORDER

Challenging the impugned order of District Gazette Notification, dated 08.02.1983 issued by the 2nd respondent and the consequential impugned communication of the 4th respondent office through proceedings in Na.Ka.No.5898/2021/Ku, dated 07.06.2021, this Writ Petition has been filed.

2.The contention of the learned counsel for the petitioner is that the petitioner purchased Punja property in S.F.No.412 to the extent of 7.86 Acres at Kookaiyur Village for sale consideration vide registered sale deed in document No.1534 of 2013, dated 26.03.2013, on the file of the Sub Registrar, Chinnamanur. After purchase of the property, necessary entries were made in 'A' Register entering the petitioner's name. The petitioner had also got patta in his name in No.2376,



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thereafter, the land was surveyed for fixing boundaries. He further submitted that the petitioner to develop the land for cultivation, intended to remove unwanted bushes and plants, hence, the 4th respondent and his subordinates restricted the petitioner in carrying out clearing work and informed that the land in S.F.Nos.414 & 526 in Koolaiyanur Village belongs to forest department. The petitioner was surprised and he had shown the title documents as well as the revenue records standing in his name. The 4th respondent and his subordinates refused to accept the same, on the contrary, they were unable to produce any piece of document to prove their title over the property. However, they repeatedly prevented the petitioner from using his land for cultivation.

3.The learned counsel further submitted that the petitioner raised a query through RTI Act on 25.03.2021 to the Public Information Officer under the 3rd respondent. By communication, dated 05.05.2021, the Public Information Officer forwarded the application to the Public Information Officer under the 4th respondent for providing necessary information. Thereafter, the petitioner was informed, vide



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communication, dated 07.06.2021 that the land in S.F.Nos.412, 414/2 & 526 of Koolaiyanur Village declared as forest lands by a publication made in Madurai District Gazette, dated 08.02.1983. Along with the reply, a copy of the publication made in the District Gazette was furnished. The 2nd respondent made a proposal to convert the specified lands including lands in S.F.Nos.412 & 414, Koolaiyanur Village as Forest lands. Apart from issuance of District Gazette, no Government Order was issued by the Public Information Officer. Infact, there must be a notification for acquisition by the State Government under the Tamil Nadu Forest Act. There is a procedure contemplated under the Tamil Nadu Forest Act and none of the Sections 4, 6, 9, 13 and 16 of the Tamil Nadu Forest Act followed in this case. In view of the same, the petitioner sent a representation on 17.09.2021 informing about the purchase of land in S.F.No.412 and mutation of revenue records in his name. Further, merely on the basis of the proposal made by the 2nd respondent on 08.02.1983 and in the absence of acquisition proceedings to show his land was acquired, the subordinates of the 4th respondent cannot disturb the petitioner's possession and enjoyment of the property in S.F.No.412.



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Though the respondents received the representation, dated 17.09.2021, till now it is not considered and no order passed. Even in the impugned communication, dated 07.06.2021, it was mentioned that the 4th respondent stalled the petitioner from having access to his land, to prevent encroachment, there is no mention about acquisition proceedings and conclusion of the same.

4.The learned counsel for the petitioner further submitted that earlier, the petitioner filed a Writ Petition in W.P(MD).No.20283 of 2021 seeking direction to the 4th respondent and his subordinates from preventing him to have access or cultivation of his land in S.F.No.412 by considering the representation, dated 17.09.2021. This Court, by order, dated 11.11.2021 dismissed the petition holding that the petitioner to necessarily challenge the District Gazette Notification, dated 08.03.1983 issued by the 2nd respondent and the consequential notification issued by the 4th respondent, dated 07.06.2021. Pursuant to the order of this Court, this Writ Petition has been filed challenging the District Gazette Notification, dated 08.03.1983 issued by the 2nd respondent and the consequential notification issued by the 4th respondent, dated 07.06.2021.



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5.The learned counsel further submitted that the impugned District Gazette Notification by the 2nd respondent and the consequential impugned communication of the 4th respondent are *per se* illegal, arbitrary and unjustifiable. The 4th respondent can claim right over the property in dispute only if the property has been acquired under the Tamil Nadu Forest Act. But in this case, admittedly, the property in dispute was not acquired by following the due procedures established under the Act. The impugned District Gazette Notification issued by the 2nd respondent cannot be termed as a notification under Section 4 of the Tamil Nadu Forest Act. Further, as per Section 2 of the Tamil Nadu Forest Act, the Government means State Government, which represents the Secretary to the Government. As per Section 4 of the Act, the notification shall be published by the Government not only in the Official District Gazette, but also in the Official Gazette. In this case, the Collector of the District had issued the District Gazette and no Government notification issued. In view of the same, the 4th respondent cannot claim any right based on the said notification. The petitioner is prevented from entering into his own land for cultivation, which is



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against the Article 300-A of the Constitution of India.

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6.Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents filed counter denying the averments made by the petitioner and submitted that the land in dispute is included in the proposed Mallingasamy Kovil Karadu Forest Block (1991.21 Acres) as per notification of the 2nd respondent published in Madurai District Gazette No.2, dated 08.02.1983. He further submitted that under Rule 5 of Section 26 of the Tamil Nadu Forest Act, 1882, the said land was declared as Reserved Land with boundary descriptions. As per R.S.O.No.15(38)(vii), when any land is set apart as reserved under rules framed under Section 26 of the Tamil Nadu Forest Act, the survey number of the land should be entered as reserved in the appropriate column of the Settlement Register and in the Adangal of the village. It should not be assigned except with the Special sanction of the Collector and the Collector should obtain the consent of the Conservator of the Forests before sanctioning the assignment. Accordingly, the 3rd respondent in his Ref.No.24363/2008/B3, dated 02.06.2008 and 04.07.2008 issued instructions to the respective Tahsildar and District



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Revenue Officer to make entries in the relevant entries and report of the fact. He further submitted that as per provision under Rule 5 of the General Rules under Section 26 of the Tamil Nadu Forests Act, 1882, the Collector of the District and the Conservator shall submit approval for notification under Section 4 of the Tamil Nadu Forest Act, 1882. Section 26 of the Act is an enabling Section to empower the Government to frame rules to implement the provision of the Act. Since the said land is declared by the Collector to be Reserved Land in the manner prescribed in Rule 5, the said land is at the disposal of the Government.

7.He further submitted that the District Revenue Officer, Uthamapalayam conducted joint inspection on 25.10.2008. The notification proposal under Section 4 of the said Act already sent to the Collector, Theni in C.No.D/1751/2006, dated 06.07.2009 of the District Forest Officer, Varusanadu Soil Conservation Division, Theni duly endorsed by the Forest Settlement Officer, Bodi for onward transmission to the Government, through the Conservator of Forests, Madurai. The proposal was returned by the Collector, Theni for rectification of certain defects in his C.Nos.24363/2009/B3, dated 01.11.2009 and the same was



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resubmitted in C.No.1751/2006/D, dated 10.11.2009 of the Divisional Forest Officer, Varusanadu Soil Conservation Division, Theni for further action. Unless the said land specifically exempted from the inclusion in schedule notified under Section 26 of the Act, the Forest Department has got overall jurisdiction over the said land till the process of settlement is over. As per Rule 6 of the General Rules framed under Section 26 of the Tamil Nadu Forest Act, 1882, the clearing of land notified for reservation and issue of patta for such land are regulated by Section 7 of the Tamil Nadu Forest Act, 1882. Accordingly, no fresh clearings for cultivation or for any other purpose can be made on such land. No patta, without the previous sanction of the Government be granted for such land and every patta granted without such sanction shall be null and void. The said land is included in the schedule in the proposal for notification under Section 4 of the Act. The representation of the petitioner, dated 17.09.2021 was received by the 4th respondent on 20.09.2021. In the representation, the petitioner has requested to take action to exclude the land in S.F.No.412 of Koolaiyanur Village from the schedule of land declared under Section 26 of the Act, as Reserved land as notified by the District Collector, Madurai, published in Madurai District Gazette No.2, dated 08.02.1983.



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8.He further submitted that as per Section 7 of the Act, 1882, no patta, shall without the previous sanction of the Government be granted in such land declared under Section 26 and every patta granted without such sanction shall be null and void. Hence, the patta No.2376, dated 25.12.2014 itself become questionable one and the Revenue Authorities to pass appropriate orders. The petitioner's land is included in the Schedule lands declared to be Reserved Land with boundary descriptions in the proposed Mallingasami Kovil Karadu Forest Block (1991.21 Acres) by the District Collector, Madurai and the notification under Section 26 of the Act has been published, in Madurai District Gazette No.2, dated 08.02.1983. After publishing the notification, patta has been granted to the petitioner in No.2376, dated 25.12.2014 without the consent of the Conservator of Forests, Madurai, against the requirement in R.S.O.No.15(38)(vii).

9.It is further submitted that Notification under Section 26 of the Act enables the Government to frame rules to implement the provisions of the Act. After approval of the proposal, a notification under Section 4



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of the Act by the Government will be issued. The process of settlement such as proclamation by Forest Settlement Officer under Section 6, enquiry by Forest Settlement Officer under Section 8, claims to right of occupancy and ownership under Section 10 and notification declaring Forest Reserved under Section 16 shall be carried out. Till then, the petitioner has no right to clear the said land. The petitioner to prove the said land is not within the purview of settlement and get the land, excluded from the notification of the Reserved Land. Further, the Hon'ble Apex Court in W.P(C)No.202/95 with WP(C)No.171/96, dated 12.12.1996 held that '*The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected herewith must apply to all forests irrespective of the nature of ownership or classification thereof. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of Forests and the matter connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.*'



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10.He further submitted that as per Rule 5 of the General Rules framed under Section 26, the land at the disposal of the Government by declaration to be Reserved Land, shall in the usual course, be submitted for the approval of the Government. If at all the petitioner has got any objection and grievance, he can approach the Forest Settlement Officer and submit representation, which would be considered and thereafter, appropriate decision would be taken. As per Section 2 of the Act, the 'Government' means the 'State Government' only and not the Secretary to the Government as interpreted. As per provision under Rule 6 of the General Rules framed under Section 26, clearing of any area specially declared by the Collector to be Reserved Land is prescribed in Rule 5, and the issue of patta for such land are regulated by Section 7. The land reserved under these rules, no fresh clearing shall be made for cultivation or for any other purpose, unless a patta or lease is obtained with the consent of the Conservator of Forests vide R.S.O.No.15(38)(vii).

11.In view of the above, the contention of the petitioner cannot be considered and this Writ Petition is liable to be dismissed.



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

13.It is seen that the Government had issued G.O.Ms.No.399, Environment and Forests (FR.5) Department, dated 26.12.1988 for notifying the area of 48,520.22 Hectares in Madurai and the then Virudhunagar – Kamarajar District as Srivilliputhur Grizzled Squirrel Wildlife Sanctuary. In G.O.(D)No.63, Environment and Forests (FR.5) Department, dated 26.06.2009, the Government have notified an area of 26,910.81.5 hectares in Theni and Madurai Districts as Megamalai Wildlife Sanctuary. The Government of India, Ministry of Environment, Forests and Climate Change D.O Letter No.15-43/2011-NTCA, dated 22.11.2011 had suggested that the Srivilliputhur Grizzled Giant Squirrel and the Megamalai Wildlife Sanctuaries, along with portions of the Theni Forest Division (Varushanadu Valley) adjoining Periyar Tier Reserve may be declared as a Tiger Reserve. The Principal Chief Conservator of Forests and Chief Wildlife Warden has furnished a detailed 'Concept Note' for formation of Srivilliputhu Megamalai Tiger Reserve as 5th Tiger Reserve and has requested the Government to recommend the same to



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the National Tiger Conservation Authority for getting in-principle approval as enshrined under Section 38V(1) of the Wildlife (Protection) Act, 1972.

14. Tiger is an ecosystem umbrella species and survival and growth of several of the co-predators and other species could be directly correlated to the growth of tigers. Elephants move across much larger landscapes and, therefore, contiguous, secured and protected large habitats could be very helpful for their conservation and population growth. The significant parts of the Megamalai landscape encompassing Varushanad Hills, Cumbam Valley, Highway vis mountains, and a portion of the northern slopes of the landscape together with Madurai Forest Division were declared as the Megamalai wildlife sanctuary, considering the conservation significance of the hill chain in having several endemic and threatened flora and fauna. The Government had accepted the proposal of the Principal Chief Conservator of Forests and Chief Wildlife Warden for declaring an area of 101657.13 hectares or 1016.5713 sq.km in Sirvilliputhur Grizzled Giant Squirrel Sanctuary and Megamalai Wildlife Sancturay as the “Srivilliputhur – Megamalai Tiger Reserve”



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under Section 38V of the Wild Life (Protection) Act, 1972 and G.O.Ms.No.14, Environment and Forests (FR.5) Department, dated 08.02.2021 had been passed. In the said Government Order, Megamalai Reserve Forest and its area 17710.809 hectares declared as core zone and Kollankondan-II and its area of 57.90 hectares declared as buffer zone.

15.In view of the above, this Writ Petition lacks merit for consideration and the same is liable to be dismissed and, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

29.09.2022

Internet : Yes / No

Index : Yes / No

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To

1.The Principal Secretary to Government,
The Government of Tamil Nadu,
Environment & Forest Department,
St.George Fort, Chennai-9.

2.The District Collector,
Madurai, Madurai District.



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3.The District Collector,
Theni, Theni District.

4.The District Forest Officer,
District Forest Office,
Theni, Theni District.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
W.P(MD)No.21027 of 2021

29.09.2022