



W.P.(MD).No.5733 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 18.07.2022

ORDER PRONOUNCED ON : 08.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.5733 of 2015

and

MP(MD).No.2 of 2015

Vijaya

... Petitioner

Vs.

- 1.The Chief Secretary to the
Government of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The Secretary to the Environment and Forest department,
Secretariat,
Fort St.George,
Chennai-600 009.
- 3.The Secretary,
Revenue Board,
Secretariat,
Fort St.George,
Chennai-600 009.
- 4.The Director of Survey & Settlement,
Central Survey Office (CSO),
Chepauk,
Chennai-600 005.



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- 5.The Assistant Director (Sketch),
Central Survey Office,
Chepauk,
Chennai-5.
- 6.The Deputy Tahsildar,
Andipatti Taluk Office,
Andipatti,
Theni District.
- 7.The District Forest Officer,
Office of the District Forest Office,
Theni District.
- 8.The Wildlife Warden,
Megamalai Wildlife Division,
Theni,
Theni District.

... Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned G.O.118 dated 09 .09.2009 in respect of S.No.280 passed by the second respondent and quash the same as illegal and arbitrary and consequently direct the third respondent to instruct the fourth respondent to dispose the claim dated 15.11.2012 in Revision Petition dated 27.01.1977 pending on the file of the fourth respondent and to pass order to eighth respondent for compliance and clearance of the same .

For Petitioner : Mr.V.Muniasamy



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For Respondents

: Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The present writ petition has been filed challenging a Government Order in G.O.Ms.No.118, dated 09.09.2009, under which Survey No.280 along with other survey numbers were declared as a reserved forest under Section 16 of Tamil Nadu Forest Act. Consequently, the petitioner has sought for a direction as against the third respondent to instruct the fourth respondent to dispose of his claim petition, dated 15.11.2012 in Revision Petition, dated 27.01.1977 pending on the file of the fourth respondent.

2. According to the petitioner, Survey No.280 in Megamalai Village, Periyakulam Taluk, Theni District was in possession of one Karipiah Servai for more than 45 years by paying kist to the Government and he is having title over the said properties. During survey and settlement proceedings, no proper notice was issued to the owner Karupiah Servai and he could not be present during the survey. Hence, the surveying team had omitted the schedule mentioned property and erroneously declared the disputed property as Forest Poramboke .As soon as Karupiah Servai came to know about the



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above said facts, he filed an objection by way of a revision petition on 27.01.1977 to the fourth respondent to delete the entry of forest poramboke and reclassify the same as a ryot land.

3. The learned counsel for the petitioner has further contended that the lands were taken over by the Government under Tamil Nadu Estate Abolition and Conversion into Ryotwari Act 1948, namely, Act 26 of 1948. Hence, the said Karupiah Servai is entitled to patta under Section 11 of the said Act. According to the petitioner, in the said survey number, 230 acres has been purchased by the claimant by paying due consideration by way of sale deed, dated 24.07.1957. According to the petitioner, on instructions from the legal heirs of the said Karupiah Servai, the present proceedings have been initiated.

4. The learned counsel appearing for the petitioner has contended that the said Karupiah Servai has filed an application on 27.01.1977 before the fourth respondent herein, seeking patta under Section 11 of Act 26 of 1948 and the said application is yet to be disposed of. In the meantime, the Tamil Nadu Government issued a notification under Section 4 of Tamil Nadu Forest Act on 28.02.1978, proposing to declare the said survey number as a reserved forest. Thereafter, a proclamation was issued under Section 6 of the said Act



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on 08.09.1978. Immediately, the petitioner has lodged a claim petition on 08.12.1978 before the Forest Settlement Officer, Usilampatti making a claim.

However, the said claim petition was disposed of on 11.07.1979 on the ground that the Settlement Officer under Act 26 of 1948 has not disposed of the revision as on that day. Unless the revision pending before the fourth respondent herein is disposed of, he will not be in a position to decide the claim made by the writ petitioner. Thereafter, the Government of Tamil Nadu has proceeded to issue G.O.Ms.No.118 Environment and Forest (FR-1), dated 09.09.2009 under Section 16 of Tamil Nadu Forest Act, declaring Megamalai Forest Block in Andipatty Taluk of Theni District as reserved forest under the Act. The said Government Order is impugned in the present writ petition.

5. According to the learned counsel for the petitioner, a claim petition was filed by him under Section 6 (d) of Tamil Nadu Forest Act, 1882. Thereafter, the Forest Settlement Officer has conducted an enquiry as contemplated under Section 8 of the Tamil Nadu Forest Act. However, the Forest Settlement Officer has not decided the application on merits and determined the claim of the petitioner, instead, the Forest Settlement Officer has closed the said claim petition on the ground that the Settlement Officer under Act 26 of 1948 has to dispose of the revision first. Only thereafter, the



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claim petitioner can approach the Forest Settlement Officer. Hence, according to the learned counsel for the petitioner, his claim petition before the Forest Settlement Officer has not been disposed of finally and the same has to be treated as pending even as on today. Therefore, he contended that unless the claim petition has been finally disposed of, a notification under Section 16 by way of declaring a forest as a reserved forest cannot be issued in view of Section 16(a) and 16(b). Hence, he contended that the present Government Order, dated 09.09.2009 declaring the disputed Survey No.280 as a Reserved Forest is not legally sustainable and the same is liable to be quashed. He has further contended that a direction may be issued to the fourth respondent herein, before whom a revision petition is pending, seeking patta outside the scope of the Act under Section 11 of the Tamil Nadu Act 26 of 1948.

6. Per contra, the learned counsel for the respondent had contended that the claim petition made by the writ petitioner on 08.12.1978 has already been disposed of on 11.07.1979. Once a claim petition has been disposed of, thereafter, there is no impediment on the part of the Government in issuing a notification under Section 16 of Tamil Nadu Forest Act. He further contended that if really the petitioner was aggrieved by the order, dated 11.07.1979 passed by the Forest Settlement Officer, he should have preferred an appeal



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under Section 10 of the Tamil Nadu Forest Act within a period of 30 days to the District Court. Once the petitioner has accepted the order of the Forest Settlement Officer, thereafter, he cannot question the notification issued under Section 16 of the Tamil Nadu Forest Act. He further contended that once a particular survey number has been declared as a Reserved Forest, the revenue or the authorities under Act 26 of 1948 will not have any jurisdiction to entertain any application for grant of ryotwari patta. Hence, he prayed for dismissal of the writ petition.

7. I have carefully considered the submissions made on either side and perused the records.

8. The writ petitioner claims that he had purchased the property under a registered document, dated 24.07.1957 by one Karupiah Servai, which according to them is a cultivable land. Even as per the admitted case of the petitioner that the lands were taken over by the Government under Act 26 of 1948. Hence, the petitioner should have approached the authorities under act 26 of 1948 for grant of patta under Section 11 of the said Act within the time fixed under the said Act. However, the petitioner has approached the authorities invoking G.O.Ms.No.1318 Revenue, dated 26.07.1967. Based upon the said Government Order, an application has been filed before the



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fourth respondent on 27.01.1977. According to the learned counsel for the petitioner, the said application is still pending.

9. A careful reading of Tamil Nadu Forest Act reveals that Section 4 empowers the Government to publish a notification relating to the proposal of constituting a reserved forest. After issuance of notification under Section 4, the Forest Settlement Officer shall publish in the official gazette, indicating the lands that are going to be included in such notification, specifying the survey numbers and boundaries and explaining the consequences. As per Section 6 (d), within 3 months from such proclamation, any person can make an application to the said Forest Settlement Officer and appear before him to project their case. The enquiry by the said officer shall be conducted as contemplated under Section 8 of the Act. Thereafter, under Section 10 of the said Act, the Forest Settlement Officer is entitled to pass orders either accepting the claim or rejecting the claim. In an event, where a claim is rejected either in whole or in part, an appeal lies before the concerned District Court within 30 days from the date of order. When no claim petition was preferred or the claim petitions have been disposed of, the Government can proceed to issue a notification under Section 16 of the Act, declaring a particular forest as a Reserved Forest.



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10. In the present case, a claim petition as contemplated under Section 6 of the Act has been filed by Karuppiah Servai. The said claim petition has been disposed of on 11.07.1979. The claim petition has not been disposed of on merits, but has directed the claimant to first approach the Settlement Officer under Act 26 of 1948. If the writ petitioner has accepted the said order, he cannot challenge notification issued by the Government of Tamil nadu under Section 16 of Tamil Nadu Forest Act. If the petitioner has not accepted the said order or aggrieved over the order, he should have filed an appeal before the District Court within a period of 30 days from the date of receipt of the order. The petitioner has done neither. As per Section 16 of the Tamil Nadu Forest Act, whenever a claim petition has been disposed of and the time for filing an appeal has also elapsed, the Government is entitled to issue a notification under Section 16. In the present case, the claim petition has been disposed of and the time to file an appeal has also elapsed when the impugned Government Order was passed under Section 16 of Tamil Nadu Forest Act. In such an event, the petitioner cannot now contend that the Government Order has been passed without considering his claim petition.

11. When the second respondent has passed the impugned Government Order after following all the procedures as contemplated under the Act, the



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petitioner cannot contend that the said Government Order is not legally sustainable on the ground that his claim for ryotwari patta is pending before an authority under a different enactment, namely, Act 26 of 1948. The Forest Settlement Officer is no way concerned with the ryotwari patta proceedings said to be pending before the fourth respondent under Act 26 of 1948. Hence, the grounds raised by the writ petitioner to challenge the impugned Government Order are not legally sustainable.

12. The petitioner has further prayed that the fourth respondent shall be directed to dispose of his application for patta, dated 27.01.1977. The said application has been presented, seeking patta outside the scope of Act 26 of 1948. After issuance of the impugned Government Order, dated 09.09.2009, the land in dispute is no longer a cultivable land. Hence, the question of granting ryotwari patta under Section 11 of Tamil Nadu Act 26 of 1948 does not arise. The said Act is applicable only for ryoti lands (cultivable). As per Section 3 (b) of Tamil Nadu Act 26 of 1948, forest lands along with other public lands shall stand transferred to the Government and vest in them, free of all encumbrances. The land in dispute has already been declared to be a Reserved Forest by way of a notification under Section 16 of Tamil Nadu Forest Act. The validity of the said notification has been upheld in the



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preceding paragraphs. Therefore, the question of granting ryotwari patta to a reserved forest does not arise. Hence, the prayer for mandamus as against the fourth respondent for grant of patta cannot be granted.

13. In view of the above said discussion, this Writ Petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.08.2022

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Internet : Yes/No
Index : Yes/No

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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