



W.P.(MD).No.5000 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 25.11.2022

ORDER PRONOUNCED ON : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.5000 of 2013
and M.P(MD).Nos.2 and 3 of 2013**

1.M.Chellam

2.Lingammal

3.Santhi

4.Pitchammal

5.Muniammal

6.Ponnammal

....Petitioners

Vs

1.The District Collector
Theni District
Theni

2.The District Manager
Tamil Nadu Adi Dravidar Housing and
Development Corporation (TANDCO)
Theni District

3.The Principal Chief Conservator of Forests
No.1, Jeenis Road
Panagal Building
Saidapet, Chennai 15



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4.The Conservator of Forests
Race Course Salai
Madurai – 2

5.The District Forest Officer
Madurai Forest Division
Race Course Road
Madurai -2

6.The District Forest Officer
Theni Forest Division
K.R.R.Nagar, Theni

7.The Forest Ranger
Megamalai
Kadamalaikundu
Theni Distrit

8.The Tahsildhar
Aundipatti Taluk
Theni District

...Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in Loan No. 10, 6, 3,2,8 and 1 issued by the second respondent dated 28.05.2012 to the petitioners and quash the same and further directing the respondent Nos.3 to 7 to permit the petitioners to use the pathway which runs from Theppampatti up to the property in Survey No.1314, Patta No.355, Kadamalaikundu Village, Aundipatti Taluk and Theni District through Dharmasathram.

For Petitioners

: Mr.R.Balakrishnan

For Respondents

: Mr.S.Shamugavel
Additional Government Pleader



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ORDER

The present writ petition has been filed challenging a demand notice issued by the second respondent herein and for a direction against the Forest Officer to permit the petitioners to use the pathway which runs from Theppampatti up to the property of the writ petitioner in Survey No.1314 in Patta No.355, Kadamalaikundu Village, Aundipatti Taluk and Theni District.

2. According to the petitioners, Survey No.1314 with Patta No.355 in Kadamalaikundu Village, Aundipatti Taluk and Theni District was originally owned by one Kalimuthu and it is an agricultural property with sufficient water. After obtaining legal opinion from the Government Advocate, Theni, the second respondent herein has purchased the above said property having a total extent of 46 acres. Thereafter, the second respondent namely the Tamil Nadu Adi Dravidar Housing and Development Corporation (TANDCO) had proposed to issue patta in favour of the writ petitioners.

3. The petitioners had further contended that the third respondent namely the Tahsildhar has issued a joint patta to the petitioners by an order dated 28.02.2008. According to the petitioners, a joint patta was granted with a condition that each petitioner should pay a sum of Rs.47,000/- with interest.



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Since the said amount was not paid in time, the impugned demand notice has been issued by the second respondent herein. According to the petitioners, the original owner namely Kalimuthu was enjoying the right of pathway which runs from Theppampatti up to the property in Survey No.1314. The said survey number is located in the middle of the forest which comes under the control of the Forest Department. After getting patta, the petitioners have attempted to pass through the forest land to reach their patta lands, but they were prevented by the officials of the Forest Department. The petitioners' patta land are surrounded on all four sides by the forest land. Hence, without passing through the forest land, they cannot reach the patta land located in Survey No.1314.

4.The petitioners had further stated that unless they are permitted for access to the property and do agricultural activities, they will not be in a position to pay the amount that is demanded by the second respondent herein. The petitioners had further contended that the second respondent herein had addressed a letter to the fourth respondent on 14.12.2009 requesting him to grant permission to the petitioners to use the pathway to reach their patta land. The second respondent had addressed another letter on 06.01.2010 to the fourth respondent reiterating the same request. The petitioners had also addressed a representation to the first respondent herein on 24.08.2011



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seeking a right of access to their property. The petitioners had directly addressed a communication to the fourth respondent on 24.08.2011 with a similar request.

5.The petitioners had further submitted that the fifth respondent herein by a communication dated 18.11.2011 had informed the petitioners that the second respondent has already been informed about the inability of the Forest Department to grant access or right of pathway through forest property. The petitioners had further contended that there is a pathway which runs from the Theppampatti up to the private patta land of the writ petitioners in Survey No.1314 through Dharmasathram. This pathway was used by the original owner namely Kalimuthu. The petitioner is also prevented to use the pathway by the Forest Officials. The petitioners being the downtrodden people belonging to schedule tribes, they are prevented from using the lands allotted to them by the second respondent herein. Hence, he prayed for allowing the writ petition.

6.Per contra, the learned Additional Government Pleader appearing for the Forest Department had contended that Survey No.1314 falls with Kadamalaikundu Village which has been declared as Gandamanaickanur (East) Block Reserved Forest. The said survey number along with other



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survey numbers has been declared to be reserved forest under Section 16 of the Tamil Nadu Forest Act 1882 with effect from 06.10.1988. Thereafter under G.O(D).No.63, Environment and Forests (FR.V), dated 26.06.2009, it has been declared as a Wildlife Sanctuary. Under G.O.Ms.No.14, Environment and Forests (FR.V) Department, dated 08.02.2021, the said survey number along with other survey numbers have been declared as part of Srivilliputhur Megamalai Tiger Reserve.

7.The learned Additional Government Pleader had further contended that the survey number is dispute has been declared as reserved forest in the year 1988 itself and only thereafter, the second respondent is alleged to have purchased the property from one Kalimuthu in the year 2007. Therefore, the joint patta that is said to have been granted in favour of the writ petitioners in the year 2008 is a highly doubtful document. He had further contended that the petitioners are claiming access to their patta land through Survey No.1315 which is also declared to be a reserved forest and falls within the Megamalai Tiger Reserve. When Survey Nos. 1314 and 1315 fall within the reserved forest area, the request of the petitioners cannot be considered. Hence, he prayed for dismissal of the writ petition.

8.I have considered the submissions made on either side and perused the materials available on record.



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9.From the averments in the writ affidavit, it could be seen that the petitioners are claiming that Survey No.1314 as their private patta land for which they seek access through Survey No.1315 which is said to be a forest land. The petitioners have not produced any record to establish their title over Survey No.1314. A perusal of the impugned order passed by the second respondent clearly indicates that each of the petitioners have borrowed a sum of Rs.47,000/- from the second respondent herein for purchasing agricultural lands. Since the said amount has not been repaid in time, the impugned notice has been issued by the second respondent directing the petitioners to repay the same within a period of 15 days.

10.A perusal of the said impugned order will clearly indicate that the lands have not been purchased by the second respondent herein and the petitioners have borrowed amount from the second respondent in order to purchase the agricultural properties. However, no records have been placed before this Court with regard to purchase of these agricultural lands by the writ petitioners especially Survey No.1314. Therefore, as rightly contended by the learned Additional Government Pleader appearing for the Forest Department, the joint patta issued in favour of the writ petitioners by the eighth respondent is highly doubtful. It is not known under what circumstances, this patta in Patta No.355 was issued to the writ petitioners. Therefore, the title and possession of the petitioner has not been established.



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11.A perusal of the counter clearly indicates that Survey No.1314 has been declared to be a reserved forest under Section 16 of the Tamil Nadu Forest Act, 1988 with effect from 06.10.1988. Except the legal opinion of the Government Advocate, Theni, dated 13.07.2007, nothing has been produced on the side of the writ petitioners to establish their purchase of the said survey number. Even assuming that the original owner Kalimuthu has sold the property in favour of the second respondent or the writ petitioners, it could only be after 2007. The lands having been declared to be a reserved forest in the year 1988 itself, the said Kalimuthu would not have any right or title to alienate the property either in favour of the second respondent or in favour of the writ petitioners.

12.The reserved forest has been declared to be a Wildlife Sanctuary on 26.06.2009. From 08.02.2021 onwards, it became part of the Srivilliputhur Megamalai Tiger Reserve. It could also be seen that the Kadamalaikundu Village has been notified under Tamil Nadu Hill Areas (Preservation of Trees) Act, 1955. Therefore, it could be seen that both the Survey Nos.1314 and 1315 are part and parcel of the reserved forest and none of the private parties would have any right over the said survey numbers.

13.The impugned notice will clearly indicate that the petitioners have neither repaid the amount nor purchased any property. It is for the petitioners to workout their remedy by approaching the second respondent herein. But,



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the petitioners cannot cite the prevention of access as a ground to quash the demand notice issued by the second respondent herein.

14.In view of the above said facts, there are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.

03.01.2023

Internet : Yes/No
Index : Yes/No
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To

1.The District Revenue Officer

1.The District Collector

Theni District

Theni

2.The District Manager

Tamil Nadu Adi Dravidar Housing and

Development Corporation (TANDCO)

Theni District

3.The Principal Chief Conservator of Forests

No.1, Jeenis Road

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8.The Tahsildhar

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Pre-delivery order made in
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