



W.P(MD)No.20510 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20510 of 2015

and

M.P(MD)No.1 of 2015

M.Marimuthu

... Petitioner

Vs

1.The District Collector,
Theni District,
Theni.

2.The Adi-Dravidar and
Tribal Welfare Officer,
Theni District,
Theni.

3.The District Forest Officer,
Theni District,
Theni.

4.The Revenue Divisional Officer,
Uthamapalayam,
Theni District.

5.The Block Development Officer,
Bodinaickanoor,
Theni District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the third respondent vide his proceedings in Na.Ka.No.513/2013 L dated 28.10.2015 and quash the same as illegal and consequently direct the respondents to issue patta to the petitioner for the land comprised in Survey No. 1092 to an extent of 7 Acres 20 cents situated at Pillaipatti, Thalasiyaru Agamalai Village, Bodinaickanoor Taluk, Theni District.

For Petitioner : Mr.A.Jayaramachandran

For Respondents : Mr.S.RA.Ramachandran
Additional Government Pleader for R.3

No Appearance for R.1, R.2 & R.4

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is an agriculturist by profession. He lays claim on 7 acres and 20 cents of land comprised in Survey No.1092 at Pillaipatti Thalasiyaru, Agamalai Village in Bodinaickanur Taluk. According to him, the land was originally owned by one Subbammal who was given zamin patta and that from her, petitioner's grandfather Chinna Thevar purchased in the year 1961 (Document No.1134 of 1961 dated 03.03.1961 on the file of Sub Registrar Office, Bodinaickanur). The petitioner claims that subsequent to the



W.P(MD)No.20510 of 2015

said purchase, his grandfather had planted commercial crops and applied for issuance of patta. After his grandfather's demise in the year 1979, the petitioner's father C.Mani maintained the orchard. He also could not succeed in getting patta. After the demise of the petitioner's father, the petitioner stepped into his shoes. The petitioner had been repeatedly knocking the doors of the authorities for issuance of patta. The petitioner filed W.P(MD)No.80 of 2013 for consideration of his request. This writ petition was disposed of with the direction to dispose of the petitioner's representation on 05.11.2014. Pursuant to the said direction, the impugned order rejecting the petitioner's request came to be issued. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His prime ground of attack is that the petitioner is entitled to the benefit conferred under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. According to him, the petitioner's possession over the land is beyond dispute. He also would point out that in order to protect rights of such persons, the statute contemplates consideration of one's request by the Grama Sabha. In the instant case, Grama Sabha passed a resolution recommending issuance of patta in favour of number of persons. The



W.P(MD)No.20510 of 2015

petitioner's name had also been included in the list of such recommended persons. Copy of the resolution passed by the Grama Sabha in favour of the petitioner has been enclosed.

4. The learned counsel appearing for the writ petitioner would argue that without taking note of the Grama Sabha resolution, the impugned order has been mechanically passed. He therefore pressed that the petitioner deserves to be granted relief.

5. The respondents strongly submitted that the petitioner has not made out any case for interference with the impugned order.

6. I carefully considered the rival contentions and went through the materials on record.

7. The learned Additional Government Pleader furnished copy of G.O(Ms)No.625 Forests and Fisheries Department dated 12.05.1982. It is seen there from that the lands in Bodinaickanur and Agamalai areas belonging to Bodinaickanur zamin were taken over by the Government after passing of the Estates Abolition Act, 1948. They were handed over to the Forest Department in the year 1954. Subsequently



W.P(MD)No.20510 of 2015

notifications were issued under the provisions of Tamil Nadu Forest Act, 1882.

Therefore, the petitioner cannot rely on the sale deed of the year 1961 executed in favour of his grandfather.

8. It is true that Grama Sabha has recommended the case of the petitioner. But then the resolution of the Grama Sabha by itself may not be sufficient or determinative. The petitioner must be eligible to get the benefit under Central Act 2 of 2007. It is meant for forest dwelling Scheduled Tribes and other traditional forest dwellers. Admittedly, the petitioner is not a person belonging to Scheduled Tribe community. The learned counsel appearing for the petitioner would claim that the petitioner is a traditional forest dweller. The expression has been defined in Section 2(o) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in the following terms:

*“2(o). **“Other traditional forest dweller”** means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.*

Explanation: For the purpose of this clause, “generation” means a period comprising of twenty-five years;”



W.P(MD)No.20510 of 2015

The statute contemplates that the applicant must have resided in and be dependent on the forest for atleast three generations. The Explanation states that “generation” would mean a period of 25 years. Thus, the petitioner must have established that he or his family has been dependent on the forest land for not less than 75 years. But in this case, the petitioner's rights are traceable only to 1961 sale document. The cut of date is 13.12.2005. That only for 44 years, the petitioner has been able to show his dependency on the forest land. There is a clear short fall of 31 years. Therefore, the petitioner will not fall within a term “other forest and traditional forest dwellers”. Since the petitioner is neither a Scheduled Tribe nor a forest dweller as defined in Section 2(O), it is not possible for this Court to grant relief. The order impugned in the writ petition is sustained.

9. This writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



W.P(MD)No.20510 of 2015

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