



W.P.(MD)No.26254 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.26254 of 2023

and

W.M.P.(MD)No.22601 of 2023

K.Azeeza Begum

... Petitioner

Vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary,
Department of Environment and Forest,
Secretariat, Fort St George,
Chennai-9.
- 2.The Principal Chief Conservator of Forest,
Panagal Building,
Saidapet, Chennai-15.
- 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 4.The District Forest Officer,
Ramanathapuram District,
Ramanathapuram.



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5. The Forest Range Officer,
Sayalkudi Forest Range,
Sayalkudi,
Ramanathapuram District.

...Respondents

PRAYER: 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 Order in Na.Ka.No.165/2017 dated 14.09.2023 on the file of the Respondent No.5 and quash the same as illegal and consequently for a direction, forbearing the Respondent No.5 from evicting the petitioner from the peaceful possession of her property in Survey No.230/3 to an extent of 6 cents situated in Oppilan village, Kadaladi taluk, Ramanathapuram District without following due process of Law as provided under the Scheduled Tribes and other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006 and Rules, 2000.

For Petitioner : Mr.S.Rajasekar

For R1 to R5 : Mr.S.Shanmugavel

Additional Government Pleader

ORDER

(Order of the Court was made by ***V.LAKSHMINARAYANAN, J.***)

The petitioner seeks for a writ of Certiorarified Mandamus to call for the records on the file of the fifth respondent in Na.Ka.No.165/2007 dated 14.09.2023 and to forbear the fifth respondent from evicting the petitioner from her properties



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situated in Survey No.230/3 at Oppilan Village, Kadaladi Taluk, Ramanathapuram District. The petitioner also claims the benefit of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules made thereunder in 2007 (hereinafter referred to as 'the Act').

2.The claim of the petitioner is that her grandmother, namely, Raheema Beevi had purchased the property on 06.09.1976 in Survey No.230/3 to an extent of 6 cents. According to her, after the death of her grandmother, her father Kaderkani succeeded to the estate. Thereafter, Kaderkani shifted to Singapore and started to live with the brother of the petitioner. According to the petitioner, she has been in possession and occupation of the property for the past 31 years. While so, the subject property has been notified as “reserved forest” by the State of Tamil Nadu and orders were passed directing removal of the encroachment made by the petitioner at the reserved forest area.

3.The said proceedings was challenged by way of writ petition in W.P. (MD)No.20085 of 2017 by the petitioner. This Court, at the time of disposal, did not go into the issue as to whether the Traditional Rights preserved under 2006 Act is applicable to the petitioner. However, the Court directed the petitioner to



file her objections to the proceedings demanding removal of encroachment and directed the Forest Department to consider pass appropriate orders on the same. It is the case of the petitioner that she filed her objections to the proceedings calling upon her to remove the encroachment and despite the same, order of eviction came to be passed, which is impugned in the present writ petition.

4.Let us take up the argument of the learned counsel for the petitioner claiming right under the Act first and then deal with the merits of the case, later.

5.It is an admitted case, as seen from the page No.28 of the typed set of papers, that the petitioner's grandmother had purchased 6 cents of property on 06.09.1976. The petitioner being the person belonging to Islamic persuasion, cannot claim himself as Scheduled Tribe. Secondly, the issue has to be seen as to whether the petitioner will fall under the definition of other Traditional Forest Dwellers as per 2007 Act. Under Section 2(o) of the said Act, definition is given as “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.. The Act also defines as to what is generation. The explanation states that in order



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to constitute generation period of 25 years should have lapsed. Therefore, applying Section 2(o) of the Act and its explanation to the case on hand, it is clear that 75 years must have lapsed before 13.12.2005 for the petitioner to claim the benefit of the legislation.

6. Admittedly, as seen from the affidavit, the grandmother purchased the property only in the year 1976 and therefore, at no stretch of imagination, the petitioner qualifies as “other traditional forest dweller” and therefore, she is not entitled for the benefit under the Act.

7. It is the next submission of the learned counsel for the petitioner that prior to the order of eviction passed by the respondents, no survey had been conducted.

8. The learned Additional Government Pleader submitted that pursuant to the orders of this Court dated 22.11.2017 passed in W.P(MD).No.20085 of 2017, notice had been issued not only on one occasion, but on two occasions ie., on 02.08.2017 and 01.09.2023. He would further submit that survey was conducted and it was found that the compound Wall of the petitioner is an encroachment.



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9. Therefore, we are of the view that the fifth respondent has complied with the requirement of the order passed by this Court dated 22.11.2017. It is necessary to point out that this Court, while disposing of the writ petition in W.P. (MD)No.20085 of 2017, had not interfered with the order passed on 02.08.2017, but had only directed that the objections of the petitioner to be considered. Pursuant to the said direction, the objections submitted by the petitioner had been considered and the compound Wall had been found as an encroachment, therefore, the petitioner cannot re-agitate the same issue all over again. Hence, we do not find any merits in this writ petition. Accordingly this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)
02.11.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To
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Department of Environment and Forest,
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Chennai-9.
- 2.The Principal Chief Conservator of Forest,
Panagal Building,
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- 3.The District Collector,
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AND

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