



WEB COPY

W.P.No.13537 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.13537 of 2024
and WMP.Nos.14684 & 14686 of 2024

A.Shanmughan

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Petitioner

vs

The District Collector
Office of District Collector
Udhagamandalam
Nilgiris District – 643 001.

2.The Sub Registrar
Gudalur, Nilgiris District.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling upon the records pertaining to the issuance of Circular No.COLREV/1904/2023-A4 dated 12.02.2024 on the file of the 1st respondent and the consequential refusal slip in Refusal Number :RFL/Goodaloor/23/2024 dated 28.03.2024 on the file of the 2nd respondent and quash the same as illegal and arbitrary and further direct the 2nd respondent to receive and register the Deep of Receipt dated 26.03.2024.

For Petitioner	:	Mr.M.Vijayamehanath
For Respondents	:	Mr.P.Sathish, AGP for R1. Mr.B.Vijay, AGP for R2.



ORDER

Challenging the circular issued by the Collector in Circular No.COLREV/1904/2023-A4 dated 12.02.2024 and the consequential refusal slip issued by the second respondent dated 28.03.2024 in RFL/Goodaloor/23/2024.

2. It is the case of the petitioner that subject property was assigned to the petitioner in proceedings in RC.G.1.No.14214/72 dated 24.07.1972 and the petitioner was granted ryotwari patta, the property is an agricultural property. However, the same is notified as private forest under Section 1(2)(ii) of the Tamil Nadu Preservation of Private Forests Act, 1949.

3. According to the petitioner, notification has been issued without hearing the parties, the Collector's notification came to the knowledge of the petitioner only in the year 2009. Only after such notification, the registration department started verifying the survey number as to whether particular survey number falls within the notified area, prior to that notification registration were taken place. The petitioner has mortgaged the property in favour of the Sakthi Primary Agricultural Cooperative Society on 18.11.1999 and the mortgaged amount has been repaid. When the



petitioner presented the receipt for registration, the second respondent citing the circular issued by the Collector refused to receive the document. Hence, the present petition.

4. A counter affidavit has been filed by the second respondent. The petitioner's land has been declared under Tamil Nadu Preservation of Private Forests Act, 1949 in the year 1991. The petitioner has not obtained any permission from the Collector as mandate under Tamil Nadu Preservation of Private Forests Act, 1949. Hence, circular has been reiterated only the mandatory provisions of law. Therefore, the impugned order cannot be set aside.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleaders for the respondents and perused the materials available on record.

6. It is not in dispute the petitioner's land is also notified under Tamil Nadu Preservation of Private Forests Act, 1949. Section 3 of the Act reads as follows :-



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3. Preservation of private forests:- (1) (a) No owner of any private forest shall, without the previous sanction of the Committee sell, mortgage, lease or otherwise alienate the whole or any portion of the forest.

Explanation: Nothing in the sub-section can be construed as preventing the owner from selling or otherwise dealing with the right together and remove forest product other than [trees, timber and reeds] in the usual or customary manner for a period of exceeding two years.

(b) Any alienation is contravention of clause(a) shall be null and void-

(i) If the alienation of any forest declared by [the District Collector] to be a forest under clause (iii) of section 1(2) or of any portion of such a forest and is made on or after the date on which the declaration takes effect;

(ii) [Sub Clause (iii) was omitted by Section 3 of the Tamil Nadu Preservation of Private Forests (Amendment) Act, 1957 (Tamil Nadu Act XV of 1957)]

(iii) If the alienation of any forest or any portion of such a forest, and is made on or after the 16th August 1946.]

(2) No owner of any forest and no person claiming under him, whether by virtue of a contract, license or any other transaction entered into before or after the commencement of the Tamil Nadu Preservation of Private



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Forests Act, 1946, or any other person shall without the previous permissions of the [Committee] --

(a) cut trees or reads ; or

(b) any Act likely to denude the forest or diminish its utility as a forest

Provided that nothing contained in this sub-section shall apply to the removal of dead or fallen trees or to any act done for the usual or customary domestic purposes or for making agricultural implements.

(3) Not withstanding anything contained in the sub-section (1) or sub-section (2) the[State] Government may exempt any forest or class of forest or class of trees there in from all or any of provisions of this section.

7. The above provisions make it clear that any alienation is made in respect of the private forest, such alienation is void, from the very inception of the Act. Though the mortgage deed is in terms of Section 3 of the Act is not valid, but the fact remains that despite there is provisions that documents have been registered in the year 1989.

8. In such view of the matter, this Court is of the view that mere registering the receipt to show that the mortgage amount has been repaid that will not have any serious impact of transferring the property. What is



prohibited is only transfer i.e, mortgage deed, lease or otherwise sale of any property. Mere registering the receipt evidencing the payment was already made to discharge the mortgage deed. This Court is of the view that circular issued by the Collector will not come in the way.

9. Accordingly, the impugned order of the second respondent is quashed and the second respondent is directed to register the receipt. As per Section 3 of the Act, any further mortgage or for such transaction, the petitioner has to obtain sanction from the concerned authorities for dealing with the properties i.e, for transferring or mortgage etc.

10. With the above observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

22.07.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To
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N.SATHISH KUMAR, J.

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