



W.A(MD)No.674 of 2014

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 27.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.674 of 2014
and
M.P.(MD)No.1 of 2014**

1. The District Collector,
Theni District.
2. The Revenue Divisional Officer,
Periyakulam,
Theni District.
3. The Tahsildar,
Taluk Office,
Periyakulam,
Theni District.
4. The Principal Chief Conservator of Forests,
Panagal Maaligai,
Gennis Road,
Saidapet, Chennai.
5. The Divisional Forest Officer,
Varushanadu Soil Conservation Division,
Theni District.



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6. The Forest Ranger,
Madurai Region,
Madurai.

7. The Forest Settlement Officer,
Taluk Office, Bodinayakkanur,
Theni District.

8. The Conservator of Forest,
Madurai Circle,
Madurai.

9. The District Forest Officer,
Theni District.

... Appellants

versus

M.Chinnasamy

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to allow this writ appeal by setting aside the order made in W.P.(MD)No. 9994 of 2011 dated 31.08.2013.

For Appellant : Mr.D.Sachi Kumar,
Additional Government Pleader

For Respondent : Mr.Vallinayagam,
Senior Counsel
for Mr.D.Nallathambi



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JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN.,J**)

The respondent herein filed a writ petition before this Court in W.P. (MD)No.9994 of 2011 for a Writ of Mandamus, directing the appellants 1 to 3 herein to issue permanent patta in his favour, in respect of the land to an extent of 3 acres in Survey No.1237/1 in Vadaveernaickanpatti Village, Periyakulam Taluk, Theni District, within a stipulated time. After hearing both sides, the learned Single Judge, by order dated 31.08.2013, allowed the writ petition and consequently, a direction was issued to the appellants 1 to 3 to issue permanent patta in favour of the respondent herein in respect of the above said land within a period of two months from the date of receipt of a copy of the order. Challenging the same, the present intra Court Appeal has been filed by the respondents therein.

2. The learned Additional Government Pleader appearing for the appellants submits that the land to an extent of 3 acres in Survey No.1237/1 in Vadaveeranaickanpatti Village, Periyakulam Taluk, Theni District, as claimed by



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the respondent herein, is a part of the lands, which were declared as “Reserved Land” vide Notification No.2, Madurai District Gazette dated 08.02.1983. The land as reserved under the Rules framed under Section 26 of the Forest Act shall not be assigned except with the special sanction of the Collector and the Collector shall obtain the consent of the Conservator of Forests before sanctioning the assignment as per the Board Standing Orders. Further, the Hon'ble Supreme Court in ***T.N.Godhavan Tirumoolappa vs. Union of India and others in I.A.No.418 in W.P.(Civil) No.202/1995 dated 12.01.1999***, held that there shall be no pattas granted with regard to any forest land nor shall any encroachment be regularized.

3. The learned Additional Government Pleader further submits that the writ petition filed by the respondent herein is not at all maintainable that the respondent herein does not have any right for the relief claimed by him in the writ petition and the appellants 2 to 4 herein do not have any authority to grant patta in favour of the respondent herein for the land which was already declared as “Forest Reserved Land”. The areas once declared as “Forests” cannot be excluded from the category of forests without the prior approval of the Government of India. He further submits that the request for the construction of Techno Park by



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the State Government in the same Survey Number was rejected by the Central Government that withdrawal of area notified under the relevant Forest Act for construction of Techno Park will amount to de-reservation of the area.

4. The learned Additional Government Pleader further submits that the legal status of forest land cannot be changed as the de-reservation of Forests has been supported by Supreme Court vide orders dated 13.11.2000 and 09.02.2004. Further, Section 2 of the Forest Conservation Act 1980 restricts the de-reservation of the Forests or use of Forest land for non-forestry purpose that no State Government or other authority shall make, except with the prior approval of the Central Government, any order on the forest land or any portion thereof for any non-forest purpose. But, the learned Single Judge failed to consider the above said fact and erred in allowing the writ petition in the light of the recommendations of the Forest Settlement Officer and also in the light of the pattas issued to similarly placed persons in Survey No.1237/1, when those recommendation as well as patta issued are contrary to law and non-est in law. Therefore, the order of the learned Single Judge passed in W.P.(MD)No.9994 of 2011 dated 31.08.2013 has been challenged by way of this intra Court appeal.



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5. The learned Senior Counsel appearing for the respondent herein submits that the respondent herein is an Ex-Serviceman and when he was in defence service, the then District Collector of Integrated Madurai District, vide his proceedings in R.C.No.17072/72D dated 19.06.1972, granted assignment of land to an extent of 3 Acres in Survey No.1237/1 in Vadaveeranaickanpatti Village, Periyakulam Taluk, Theni District, in favour of his father Mayandi Thevar. In pursuance of the same, the name of the respondent's father was entered in the records of Survey Department as well in the village accounts. Since then, his father was cultivating the assigned land and he was in effective possession and enjoyment of the same during his life time and he has also paid the kist. After the demise of his father, the respondent herein has been in possession and enjoyment of the assigned land till date and he is also paying the kist to the Revenue Department.

6. The learned Senior Counsel further submits that the respondent herein applied for permanent patta to the Tahsildar/3rd appellant herein in respect of the above said land. In the meanwhile, the Madurai District was bifurcated and the present Theni District was established, within which, the territorial area of



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Periyakulam Taluk lies. Since the Tahsildar/3rd appellant herein had not passed any order for a quite long time, he had filed a writ petition in W.P.(MD)No.3845 of 2007 before this Court for a Mandamus, directing the first and third appellants to grant patta in his favour in respect of the disputed property. This Court, by order, dated 23.04.2007, disposed of the writ petition with a direction to the 3rd appellant herein to dispose of his representation on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order. Pursuant to the same, the 3rd appellant herein, by order dated 05.06.2007, rejected the request made by the respondent herein to grant patta in respect of the above said land. Thereafter, the respondent herein made a representation dated 12.09.2007 to the 2nd appellant herein and filed a writ petition before this Court in W.P(MD)No.4325 of 2008, seeking for the issuance of Writ of Mandamus, to direct the second appellant to consider his representation dated 12.09.2007. This Court, by order dated 30.04.2008, disposed of the said writ petition with a direction to the second appellant to consider his representation dated 12.09.2007 and pass orders on merits and in accordance with law within a period of eight weeks.



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7. The learned Senior Counsel appearing for the respondent herein further submits that the respondent herein has also filed a writ petition before this Court in W.P(MD).No.10173 of 2008 to quash the rejection order passed by the 3rd appellant dated 05.06.2007 and also for a consequential direction to the appellants to grant patta. This Court, by order, dated 12.11.2008, passed an order directing the respondent herein to file an appeal before the Revenue Divisional Officer, Periyakulam, as the order was an appealable one. Thereafter, the respondent herein filed an appeal before the Revenue Divisional Officer, Periyakulam, namely, the 2nd appellant herein, on 08.12.2008 and the same is still pending. However, pending the appeal, the 3rd appellant herein, by his proceedings Na.Ka.No.644/2009/B3 dated 25.02.2009 sent a report to the 2nd appellant, namely, the Revenue Divisional Officer, Periyakulam, recommending for the assignment of land to the respondent herein. Based on that proceedings, the second appellant, by his proceedings dated 18.05.2010, sent a report to the 1st appellant to the same effect. The 5th appellant has also sent a report to the first appellant vide his proceedings dated 13.06.2010 to the effect that totally, an extent of 9 acres 24 cents, which includes 3 acres in S.No.1237/1, which is said to be in possession of the respondent herein, have to be deleted from the total area



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of 100.15 acres as reserved forest area as notified under Section 26 of the Tamil Nadu Forest Act in the Notification to be issued under Section 4 of the Act. The 3rd appellant, by his proceedings dated 31.08.2010, sent a communication to the first appellant, referring about the report of the 5th appellant herein to exempt the land, which was in possession of the respondent herein in the notification to be issued under Section 4 of the Tamil Nadu Forest Act. The first appellant has also sent a communication dated 24.01.2011 to the 4th appellant (Principal Chief Conservator of Forests) to drop the entire land in Survey No.1237/1 in Vadaveernaickanpatti Village, Periyakulam Taluk, in the notification to be issued under the Tamil Nadu Forest Act. Based on the said communications, it clearly shows that the land measuring 3 acres in Survey No.1237/1 is in possession and enjoyment of the respondent herein for nearly 42 years and therefore, the same has to be dropped in the Notification to be issued under Section 4 of the Tamil Nadu Forest Act as reserved forest area. Since the same has not been done, the respondent herein filed the writ petition in W.P.(MD)No.9994 of 2011 before this Court. The learned Single Judge, after considering the facts and circumstances of the case, has rightly allowed the writ petition and directed the appellants 1 to 3 herein to issue permanent patta in favour of the respondent herein.



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8. The learned Senior Counsel further submits that pursuant to the order of this Court dated 12.11.2008 passed in W.P.No.10173 of 2008, the respondent herein has preferred an appeal and the same is pending before the second appellant. Further, the recommendations made by the appellants 2, 3 and 5 would clearly show that the subject land is under cultivation. Therefore, the respondent herein is entitled to get patta in his favour. The learned Senior Counsel further submits that in the very same survey number, some other similarly placed persons are in possession of the land and patta was also issued in their name, whereas, the appellants herein refused to grant patta in the name of the respondent herein. The learned Single Judge has rightly issued a direction to grant patta in favour of the respondent herein and there is no merit in the appeal.

9. In support of his contentions, the learned Senior Counsel appearing for the respondent has relied on the following the Judgments:

(i) ***The Bombay Burmah Trading Corporation Ltd., Singampetti Group, Manjolai, rep. by its Legal Adviser*** reported in ***2003 (1) L.W. 276.***



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(ii) ***Mariabackiammal (deceased) by her legal heirs and three others vs. The District Forest Officer, Madurai North Division, Dindigul*** reported in ***1990 (2) L.W. 478.***

10. In reply to the submissions made by the learned Senior Counsel appearing for the respondent, the learned Additional Government Pleader appearing for the appellants submits that the subject land has now become a forest and unsuited for cultivation. For the past 20 years, i.e. after the notification under the Forest Act, no cultivation is being carried out. He further submits that from the year 1968 onwards, the total extent of 100.75 acres of land in Survey No.1237/1 comes under the control of the Forest Department and no patta was granted to any other persons in the above said survey number.

11. The learned Additional Government Pleader further submits that the issuance of patta to some other similarly placed persons, which has been referred by the learned Senior Counsel for the respondent, is pertaining to other survey number and is not pertaining to Survey No.1237/1 and the land in Survey No. 1237/1 was already declared as Reserved Forest Land under Section 26 of the Tamil Nadu Forest Act 1882 on 08.02.1983 itself and no cultivation is being

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carried out. Therefore, the respondent herein is not entitled to get patta for the said land. But, the learned Single Judge has failed to consider the same and erred in allowing the writ petition filed by the respondent herein.

12. The learned Additional Government Pleader further submits that in the earlier writ petitions, this Court has directed the appellants herein to consider the representation of the respondent herein and to pass orders, whereas, in the impugned order, the learned Single Judge has gone into one step further and directed the appellants 1 to 3 herein to issue patta in the name of the respondent herein. When the appeal is pending before the second appellant, it is for the second appellant to consider all the matters and pass orders in accordance with law. Therefore, the writ Court cannot sit as an appellate authority in the fact finding matters and not to grant any positive direction. Therefore, the impugned order passed by the learned Single Judge is liable to be set aside.

13. The learned Additional Government Pleader further submits that the patta granted in the name of the father of the respondent is only a temporary assignment. After the death of the father of the respondent, it will automatically



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be vested with the Government. When a person, who got temporary assignment, died, no title of the property would pass on to any other legal heirs of the deceased person. Hence, the respondent herein is not entitled to seek to grant patta in his favour as a matter of right. Therefore, the appeal has to be allowed and the order of the learned Single Judge is liable to be set aside.

14. Heard both sides and perused the materials available on record.

15. Admittedly, the disputed land was originally assigned to and in favour of the father of the respondent. The said assignment is only a temporary assignment. Subsequently, the total land to an extent of 100.75 acres in Survey No.1237/1 including the disputed property, was declared as “Reserved Land”. Under Rule 5 of the General Rules framed under Section 26 of the Tamilnadu Forest Act 1882, the Government lands specified in the Schedules I to V of the said notification were declared as “Reserved Land” free from grazing of cattle, felling of trees and all other concessions allowed under Rule 7 of the General Rules under Section 26 of the Tamil Nadu Forest Act, 1882 as well as clearing of lands for cultivation for any other purpose were prohibited in those area. The



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disputed land to an extent of 3 acres in Survey No.1237/1 in the above said village as claimed by the respondent herein is a part of the lands which were declared as “Reserved Land” vide Notification No.2, Madurai District Gazette dated 08.02.1983. The Divisional Forest Officer, Varushanadu Soil Conservation Division had also submitted a proposal for declaration of this land as “Reserved Land” under Section 4 of the Tamil Nadu Forest Act, 1882, through the Collector, Theni District. For the conservation of the forests and for matters connected therewith, the Central Government enacted Forest Conservation Act 1980, which came into force on 25.10.1980.

16. Section 2 of the Forest Conservation Act 1980 restricts the de-reservation of forests or use of forest land for non-forestry purpose. Section 2 of the said Act clearly prohibits the authority to make any order except with the prior approval of the Central Government. Therefore, the appellants cannot grant any permission or exemption further. It emphasizes that whoever contravenes or abets the contravention of any of the provisions of Section 2 of the Act shall be punishable with simple imprisonment for a period which may extend to 15 days as per Section 3A of the said Act. Therefore, a combined reading of the above



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said provision and also the Notification issued under Section 4 and Rule 26 of the Tamil Nadu Forest Act, clearly shows that the officials cannot recommend for exemption except with the prior approval of the Central Government.

17. From the materials, it is seen that the assignee Mayandi Thevar expired in the year 1985. Even during his life time, there was no cultivation in the disputed land, after the Notification dated 08.02.1983. The respondent herein, who is the son of the temporary assignee Mayandi Thevar, was working in the Indian Army and he had not cultivated the land. It is further seen that the respondent's father died way back in the year 1985. But, the respondent herein has made a representation only in the year 2007, i.e. after 21 years and he has also not made any objections regarding the Notification No.2, Madurai District Gazettee, dated 08.02.1983 and thereafter, he filed the writ petition only in the year 2007. In one of the writ petitions filed by the respondent herein in W.P. (MD)No.10173 of 2008, challenging the order passed by the 3rd appellant dated 05.06.2007, this Court, by order, dated 12.11.2008, directed the respondent herein to file an appeal before the 2nd appellant as it is an appealable order. Pursuant to the said direction, the respondent herein filed an appeal before the second



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appellant in the year 2008. But, the second appellant, without disposing of the said appeal, kept the appeal pending and also sent recommendation, which is against the fundamental procedure. Once an appeal is filed, it is the duty of the appellate authority to conduct an enquiry in that regard and pass an order on merits in accordance with law. But, the second appellant, instead of passing any orders on the appeal filed by the respondent herein on merits, kept the appeal pending before him. It clearly shows that the second appellant is bypassing the rules and violating the statutory provision. Further, there is no material to show that the second appellant has disposed of the appeal filed by the respondent herein. Therefore, the learned Single Judge ought to have directed the second appellant to hear the appeal and dispose of the same on merits and in accordance with law in a time bound manner. Instead of giving such direction to the second appellant to dispose of the appeal, the learned Single Judge has given a positive direction, directing the appellants 1 to 3 herein to issue patta in favour of the respondent herein. Since the appeal is pending with the second appellant/Revenue Divisional Officer, the decisions relied on by the learned Senior Counsel appearing for the respondent herein are not applicable to the present case on hand.



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“3. Hence, the learned Special Government Pleader is directed to produce the connected records in relation to the granting of patta to those individuals. This Court is inclined to *suo motu* implead all those individuals, who were granted patta in respect of lands in S.No.1237/1 in Vadaveeranaickanpatti Village, Periyakulam Taluk, Theni District. However, from the patta that was granted in favour of those encroachers, only the names are available. Hence, the learned Special Government Pleader is further directed to furnish the full address of the individuals, in favour of whom patta was issued.”

However, no report in this regard was produced before this Court.

19. Now all the documents produced by the parties show that no patta has been issued to any person in the disputed survey. The patta issued are in other survey numbers.

20. However, since the appeal is pending with the second appellant, the respondent herein is not entitled to get patta pending appeal. Therefore, the order



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of the learned Single Judge is set aside and this intra Court Appeal is allowed.

However, the second appellant is directed to give notice to all the interested parties including the forest officials and after hearing them, dispose of the appeal filed by the respondent herein, on merits and in accordance with law. The respondent herein shall raise all the grounds before the second appellant herein. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
27.09.2024

NCC : Yes/No
Index : Yes / No
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To

1. The District Collector,
Theni District.
2. The Revenue Divisional Officer,
Periyakulam,
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3. The Tahsildar,
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