



W.P(MD)No.8394 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2024

CORAM :

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE G.ILANGOVAN**

**W.P(MD)No.8394 of 2016
and
W.M.P(MD)No.6778 of 2016**

V.Palanichamy

... Petitioner

Vs.

- 1.The District Collector/The President,
District Level Committee-
Scheduled Tribes/Forest Dwellers,
Dindigul District,
Dindigul.
- 2.The District Collector/The President,
District Level Committee-
Scheduled Tribes/Forest Dwellers,
Madurai District,
Madurai.
- 3.The District Forest Officer,
Dindigul District,
Dindigul.



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4.The District Forest Officer,
Madurai District,
Madurai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 and 2 to direct the 4th respondent to remove the blockade at the entry point of the Kolinjipattti to Velampannai pathway on the basis of the representation of the petitioner dated 21.03.2016.

For Petitioner : Mr.O.R.Gokul Abimanyu

for M/s.C.Arul Vadivel @ Sekar

For Respondents : Mr.N.Satheesh Kumar,

Additional Government Pleader

ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

We have heard Mr.O.R.Gokul Abimanyu, learned counsel representing Mr.C.Arul Vadivel @ Sekar, learned counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the respondents.



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2. The petitioner seeks direction against the respondents to remove the blockade at the entry point of Kolinjipatti to Velampannai pathway on the basis of representation made on 21.03.2016.

3. The learned counsel for the petitioner submits that about 200 Scheduled Tribe persons reside in the forest area at Velampannai village. According to the learned counsel, the village of the petitioner is situated in Dindigul District. The petitioner has to climb up and down through a pathway that leads to Velampannai village which is 7 kms away from Madurai District, where there are Government Hospital, Bus Station and market place. In order to pursue elementary education, the children have to climb 7 kms. up and down from Velampannai to reach the Panchayat Union School at Ramagoundenpatti. According to the learned counsel, though the respondents contend that the said area is declared as reserve forest, still the petitioners have a right of way as per the provisions of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The petitioner has right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood. The petitioner also has right of ownership, access to collect, use and dispose of minor forest



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produce, which has been traditionally collected within or outside village boundaries. The said right is violated by blockage of the road.

4. The learned counsel also refers to Article 244(1) of Constitution of India to contend that the tribal autonomy, tribal culture and economic empowerment is guaranteed so as to ensure social, economic and political justice.

5. The learned counsel for the petitioner submits that the petitioners were using the said road that is blocked since time immemorial and in the year 2016 only, it is blocked. Because of the interim order passed by this Court, the petitioners are in a position to use the same.

6. The learned Government Advocate submits that it is false to say that 200 Tribals reside in the said area, only 6 families reside in the said area. The details are given of the availability of the various pucca roads. The village Vellampannai is having local school and access with regular traffic road and also there is a frequent public transport from Velampannai to Sirumalai Pudur by crossing only 3 k.m. The Velampannai villagers can reach the Primary Health centre and school. The area in question is declared as a reserve forest which



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is rich in flora and fauna and the same has to be protected. Ahead of the blockade, the same is only meant for patrolling purposes. The Dindigul Forest Officer has filed a detailed affidavit describing various ways the petitioner has. Valayapatti to Vellampannai is having total length of 13 kms. out of which Valayapatti forest limit is 6 kms. in the forest area, and another 3.5 kms belongs to Dindigul Forest Division. The area 3.5 kms. covered under the Madurai Division is having moderate slope and Dindigul area 3.5 kms. is near about vertical rocks and steep slopes, wherein road cannot be laid easily. The forest land cannot be used for non-forestry purposes. The request of the petitioner is not practical and not feasible. The contention that earlier the estimates were also provided for laying down the road in question is not totally correct. Because the said estimate was already withdrawn and the alternate road was contemplated considering the reserve forest and the preservation of it.

7. The forest is a subject matter of concurrent list under Entry 17A of List III of the Constitution of India. The Parliament has enacted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, wherein, certain rights are given to the dwelling Scheduled Tribes and other Traditional Forest Dwellers. Some of the rights include rights to hold and live in the forest



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lands for habitation or for self cultivation of livelihoods, the right of ownership, access to collect, use and dispose of minor forest produce. The disposal of minor forest produce is also defined under the Rules namely, Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules. It includes right to sell as well as process stored transport within and outside forest area through appropriate means of transport for use of such produce. The Forest Act also laid down certain restrictions. The Forest Act, 1882 prescribed some methodology for providing the right of way, in case of a claim for a right of way, the Forest Settlement Officer shall pass an order specifying the particulars of such claim.

8. The rights of the forest dwellers will certainly have to be protected. At the same time, care also needs to be taken to preserve the flora and fauna of the forest. Balance has to be struck between the competing rights, i.e., the maintenance of the forest and the rights of the forest dwellers.

9. It appears that the petitioner has alternate ways available, however, the said way which is sought by the petitioner and is used since time immemorial will also have to be considered. The restricted use of way can also be made permissible maintaining the



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purity of the forest. The Forest Officer/Competent Authority is required to consider the said stand including the ways available and the right of the tribals /forest dwellers. The extreme stand on either side would not be beneficial to anyone.

10. The petitioner may give an application to the competent authority with regard to the right to use the road in question. The authority shall consider the right of the forest dwellers and also the aspect of the reserve forest and shall take a decision upon it, preferably, within a period of three months. The petitioner shall make application within 10 days from today. Till the decision is taken by the Forest Officer, interim order passed by this Court shall continue. The present order is restricted to the residents of Velampannai village.

11. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[S.V.G., C.J.]

[G.I., J.]

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Index : Yes / No
Neutral Citation : Yes / No
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THE HONOURABLE CHIEF JUSTICE
and
G.ILANGO VAN, J.

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