



W.P.(MD) Nos. 24095 of 2023 & 19106 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
05.11.2024	19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) Nos. 24095 of 2023 & 19106 of 2024
and W.M.P.(MD).Nos.16163 & 16165 of 2024 & 20265 of 2023

W.P.(MD) No.24095 of 2023

A.Rooban

... Petitioner

/vs./

1.The Principal Chief Conservator of Forest,
Panagalmaligai, Saidapet,
Chennai – 15.

2.The Chief Conservator of Forest,
Madurai Region, Madurai – 02.

3.The Deputy Director,
Megamalai Tiger Reserve,
Megamalai Division, Theni District.

4.The District Forest Officer,
Theni Forest Division,
Theni.

5.The Wild Life Warden,
Megamalai Wild Life Warden, Theni.

... Respondents



W.P.(MD) Nos. 24095 of 2023 & 19106 of 2024

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the 3rd respondent to permit the petitioner and his agricultural labourers to use the existing motorable pathway from check post at Upper Manalar to Campshed, Andipatty Taluk, Theni District, spanning 1.77km in order to reach the petitioner's patta land in S.No. 201, 212 and 282 admeasuring about 44 Acres inorder to transport agricultural produces and etc., by a jeep bearing Reg No.KL 60 A 6354 by expediting the enquiry pending before the 3rd respondent in Petition No.4652022 dated 22.11.2022 and pass such or other orders.

W.P.(MD) No.19106 of 2024

1.M.Ravi
2.M.Prithivi
3.M.Parthiban
4.M.Asokan
5.M.Indra

... Petitioners

Vs

1.The Principal Chief Conservator of Forest,
Panagalmaligai, Saidapet,
Chennai – 15.

2.The Chief Conservator of Forest,
Madurai Region, Madurai – 02.

3.The Deputy Director,
Megamalai Tiger Reserve,
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4.The District Forest Officer,
Theni Forest Division,
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5.The Wild Life Warden,
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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the 3rd respondent to permit the petitioner and his agricultural labourers to use the existing motorable pathway from check post at Upper Manalar to Campshed, Andipatty Taluk, Theni District, spanning 1.77km in order to reach the petitioner's patta land in S.No. 1406 admeasuring about 72 Acres in order to transport agricultural produces and etc., by a jeep bearing Reg No.TN 38 CP 8057 on the basis of the representation of the petitioner dated 07.06.2024 within a time frame by this Court.

In both W.Ps.

For Petitioner : Mr.B.Saravanan, Sr., counsel for
M/s.B.Saravanan Associates

For Respondents : Mr.R.Suresh Kumar AGP
Mr.Y.Jegadeesh, Advocate Commissioner

COMMON ORDER

This instant Writ Petitions have been filed to direct the 3rd respondent to permit the petitioners and their agricultural labourers to use the existing



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motorable pathway from check post at Upper Manalar to Campshed, Andipatty Taluk, Theni District, spanning 1.77km in order to reach the petitioner's patta land in S.No.201, 212 and 282, 1406 admeasuring about 44 & 72 Acres in order to transport agricultural produces and etc., by a jeep bearing Reg No.KL 60 A 6354 & Reg No.TN 38 CP 8057 by expediting the enquiry pending before the 3rd respondent in Petition No.4652022 dated 22.11.2022 and on the basis of the representation of the petitioner dated 07.06.2024 within a time frame .

2. Heard Mr.B.Saravanan, learned Senior counsel appearing on behalf of M/s.B.Saravanan Associates, learned counsel for petitioner and R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents and Mr.Y.Jegadeesh, learned Advocate Commissioner.

3. The learned Senior Counsel appearing for the petitioners would submit that the petitioners are the owner of the agricultural land measuring about 44 and 72 Acres in Megamalai Village, Andipatty Taluk, Theni District and they have been cultivating coffee, cardamom, pepper and other hill crops in their lands. In the process, they are in regular employment of agricultural labourers



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and some of them are residing in the said land with their families. Hence, for the supply of all the essential to their agricultural labourers, it is indispensable to use the motor vehicles, for transporting of the said essentials and also the agricultural produces from these lands. To reach the agricultural lands, the petitioners have to pass through the pathway from the check post at Upper Manalar to Campshed, Andipatty Taluk, Theni District which covers about 1.77 kms and the same falls within the Reserve Forest land. Till 2015, they were using the said road, but, however, the Forest Officials prohibited the petitioners and others from using the motor vehicles for transportation of men and materials which has led to putting of restrictions on the usage of land of the petitioners and they are unable to use the land to its optimum. By letter dated 14.12.2022, the petitioners have requested the third respondent to permit them to use a light motor vehicle in the said road. However, the third respondent had not taken any steps to grant permission. A communication had been received from the Officer of the third respondent indicating that the petitioners' representation had been numbered as Petition No.4652022, dated 22.11.2022 and had called upon the Forest Officials of Megamalai Zone and Srivilliputhur Tiger Reserve to conduct a joint inspection and file their report. He would



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further submit that there has been no specific provision by any competent authority prohibiting vehicle use on the said stretch of road. Hence, they had approached this Court in these instant Writ Petitions.

4. He would vehemently contend that if the vehicles are not permitted to be used, there is a difficulty in moving the produce from the fields. That apart, if the employees of the petitioners falls sick, it is very difficult for them to reach the nearest hospital within the time given. Therefore, he would submit that the prayer sought for in these Writ Petitions is that the petitioners and others may be granted permission to use the motor vehicle, which would benefit the petitioners.

5. On the contrary, Mr.R.Suresh Kumar, learned Additional Government Pleader appearing on behalf of the respondents would submit that there is no cultivation in the petitioners land and the labourers are also not residing there as claimed by the petitioners. He would further submit that there is no existing motorable pathway as claimed by the petitioners. He would submit that the petitioners continue to access their lands only on foot. He would further



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contend that there has been an illegal felling of trees of spontaneous or natural origin in the patta lands against which, an offence in HPOR.No.01 of 2017 and Misc.O.R.No.07 of 2017 had been filed and the same is pending trial before the Judicial Magistrate, Andipatti. He would submit that the felling of trees inside the Reserve Forest is a serious offence and disciplinary action has also been initiated against the erring Officials including the Assistant Conservator of Forests and other Forest Officials. He would further submit that the petition submitted by the petitioners has been numbered on 22.11.2022 and thereafter an enquiry was called upon and the petitioners were directed to appear for the enquiry. The petitioners had appeared for the enquiry and were informed in writing to submit the relevant records to substantiate their claim. Even as on this date no records had been submitted by the petitioners and hence, no action had been taken on the same.

6. He would further submit that for a similar prayer in a Writ Petition in W.P.(MD).No.22037 of 2017 was made and this Court had directed the respondents to consider the claim of the petitioner therein dated 03.10.2017 and pass appropriate orders. He would further submit that a similar claim was made



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by the Secretary of Megamalai Farmers Association to permit them to use the pathway starting from Survey Nos.226 to 230 from Vellimalai Road in Megamalai Panchayat as a permanent pathway. This Court after hearing the parties concerned and after analysing the various orders and the orders passed by the Hon'ble Apex Court had held that there is no infirmity in the permission granted for movement of materials only by head load and not to use any motorable vehicles. The learned Judge had held that any intrusion into the forest area in any manner will disturb and affect the flora and fauna and its natural habitat. He would further submit that the the Government in G.O.Ms.No.14, Environment Forest Department dated 08.02.2021 had declared the Srivilliputhur Grizzled Giant Squirrel and Megamalai Tiger Reserve and had also delineated the admitted rights. The said Government order does not envisage a motorable road as claimed by the petitioners. Hence, he would submit that without challenging the aforesaid order, the petitioners cannot have a right to permit them to use light motor vehicles in a reserve forest area that too a tiger reserve.



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7. The learned Additional Government Pleader would also rely upon the judgment of the Division Bench of this Court made in W.P.(MD).Nos.6683 & 7161 of 2010 dated 01.11.2018 and he would submit that the petitioner challenging the notification issued by the Government declaring the area as a Reserve Forest and which area was proposed to be a Tiger Reserve Forest had in clear terms held that in such an event, the Government cannot be directed to consider the request of the petitioners for a motorable road way and advised that their existing right would only be protected and which has also been conferred under the said notification i.e., the petitioners therein was entitled to use only one meter pathway and nothing more. He would submit that the Division Bench had weighed the public interest over the private interest.

8. He would also submit that this Court in its order dated 19.03.2024 in the instant Writ Petition had appointed an Advocate Commissioner. He would further submit that the learned Advocate Commissioner had in his report has clearly indicated that the pathway is not motorable and can only be accessed by foot. He would submit that similar litigation have been initiated by various persons and such persons have also been unsuccessful. He would submit that



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another attempt by a group of persons to enter the Reserve Forest using a light motor vehicle endangering flora and fauna, tiger, elephant etc., He would further submit that it is not only the duty of the Government, it is also the duty of the private individuals to protect the flora and fauna of the forest that too a reserved forest declared to be a Tiger Reserve. He would further submit that the Grizzled Giant Squirrel and Manalur Night Frog which are endangered, are also found inside the flora and fauna which will also endanger their very existence, if the vehicles are permitted to be used inside the Forest. Hence, he would seek dismissal of the Writ Petitions filed by the petitioners.

9. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

10. The Writ Petitioners had sought for a right to use the pathway by using the light motor vehicle. The Government in G.O(MS).No.118, Environment and Forests (FR.14) Department, dated 09.09.2009 declaring various survey numbers in Megamalai Village, Andipatti Taluk, Theni District



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to be a Reserve Forest. Rights has also indicated the admitted rights for usage of pathway which came to be challenged before this Court in W.P.(MD).Nos. 6683 & 7161 of 2010.

11. A Division Bench of this Court while dealing with the said challenge that too particularly the claim of the petitioners with reference to the pathway that was held to be the admitted rights in the said order is only to a pathway measuring only one meter and weighing the public interest over the private interest had held that the Court cannot pass an order leading to the destruction of forest at the instance of the persons who are seeking to expose their private interest. The Hon'ble Division Bench had also found that the Forest Settlement Officer had also given a finding that the pathways were only one meter based upon which the Notification under Section 16 of the Act was issued. The Division Bench has also taken note of the fact that the said Megamalai Wildlife Sanctuary, as it was notified that there was also a proposal to make it a Tiger Reserve Forest, while rejecting the claim.



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12. It is pertinent to note that the Government in G.O.Ms.No.14 Environment and Forest Department, dated 08.02.2021 had declared the range to be Srivilliputhur-Megamalai Tiger Reserve. A reading of the said Government order would also indicate that the Government had notified an extent of about 48,520 Hectares as Srivilliputhur Grizzled Squirrel Wildlife Sanctuary as early as in the year 1988. By a Government order of the year 2009, the Government had notified that an extent of about 26,910 Hectares as Megamalai Wildlife Sanctuary. A further proposal had also emanated suggesting Srivilliputhur Grizzled Giant Squirrel Sanctuary and the Megamalai Wildlife Sanctuary along with portions of Theni Forest Division adjoining the Periyar Tiger Reserve to be declared as a Tiger Reserve.

13. After considering the various factors particularly the importance of tigers and flora and fauna of the area, the Government had resolved to issue a notification under the Wildlife Protection Act, 1972 declaring the said area to be a Tiger Reserve Forest, under which 1,01,657 Hectares of the Srivilliputhur Grizzled Giant Squirrel Sanctuary and the Megamalai Wildlife Sanctuary was declared as Srivilliputhur Megamalai Tiger Reserve. Under the said



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Government orders, boundaries have been fixed and admittedly the lands belonging to the petitioners fall within the said boundary. The said Government order also envisages the admitted rights in Annexure to the said Government order including the right of pathway such National Highways, State Highways, Estate Rules, E.B.Rules, etc., The said admitted rights do not include the pathway that is claimed by the petitioner. The pathway had already been notified under the earlier Government order declaring the Megamalai Wildlife Sanctuary. Even assuming that the said pathway declared under the said Government order is also extendable to the admitted rights in the present Government order, the Division Bench of this Court discussed supra indicates that when the right of pathway notified under the earlier Government order is only a one meter wide pathway and therefore the petitioners cannot seek to claim the right of using the pathway as motorable road.

13. That apart, a perusal of the Report of the learned Advocate Commissioner appointed by this Court would also indicate that there has been no motorable road in existence as claimed by the petitioners. Even though, the Report suggests that there is a wider pathway which also evidenced the recent



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use by motorable vehicle, when the Government order in G.O.Ms.No.118, Environment and Forest Department dated 09.09.2009 in which the Megamalai Wildlife Sanctuary was notified giving of rights of pathway which had been held to be only one meter in width and had been accepted so by the Division Bench of this Court, the petitioners cannot claim the right of a motorable pathway using the light motor vehicle which would be more than one meter in width, that too particularly when the entire area had been now notified as a Tiger Reserve. Hence, I do not find any merits in this Writ Petition to entertain even to grant of a Mandamus to consider their petition filed by the petitioners in the year 2022.

14. For the aforesaid findings and reasoning, I do not find any merits in these Writ Petitions and accordingly, these Writ Petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
Gba

19.12.2024



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