



WP(MD) No.22814 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
03.01.2025

PRONOUNCED ON
31.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.22814 of 2024

WMP.(MD).Nos.19336, 19337 & 22287 of 2024

1.J.Rajaretnam
2.R.Jaya Nagammal

... Petitioners

VS.

- 1.The District Collector,
Chairman,
District Committee (Formed under
Section 2A of Tamil Nadu Pvt., Forest Preservation Act),
Collectorate, Kanyakumari District.
- 2.The District Forest Officer,
Member Secretary,
District Committee (Formed under
Section 2A of Tamil Nadu Private Forest Preservation Act),
Kanyakumari Range, Nagercoil,
Kanyakumari District.
- 3.The Forest Range Officer,
Azhagiapandiyapuram Forest Range,
Azhagiapandiyapuram,
Kanyakumari District.
- 4.The Tahsildar,



WP(MD) No.22814 of 2024

Thovalai Taluk,
Thovalai, Kanyakumari District.

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5.Mr.K.Kumaraswamy

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned order passed by the second respondent herein vide proceedings in Na.Ka.No.9430/2023/Tha2, dated 10.09.2024 for cutting of rubber trees in Survey numbers 604/4 and 604/2A (Private Forest), Gnalam Village, Thovalai Taluk, Kanyakumari District and quash the same as illegal and as against the order dated 17.07.2018, passed in C.M.A.No.60 & 61 of 2010 on the file of the Additional District and Sessions Court, Kanyakumari @ Nagercoil and pass any other order.

For Petitioner : Mr.V.Meenakshi Sundaram for
Mr.D.Nallathambi

For Respondent : Mr.J.K.Jeyaseelan GA for RR1-R4
Mr.G.Prabhu Rajedurai for R5

ORDER

The Writ Petition had been filed challenging the impugned order passed by the second respondent, dated 10.09.2024 for cutting of rubber trees in Survey numbers 604/4 and 604/2A (Private Forest), Gnalam



WP(MD) No.22814 of 2024

Village, Thovalai Taluk, Kanyakumari District and quash the same as illegal

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2. Heard Mr.V.Meenakshi Sundaram, learned counsel appearing on behalf of Mr.D.Nallathambi, learned counsel appearing for the petitioners, Mr.J.K.Jeyaseclan, learned Government Advocate appearing for RR1-R4 and Mr.G.Prabhu Rajedurai, learned counsel appearing for R5.

3. The learned counsel for the petitioners would submit that the petitioners have joint common interest in the lands in question which comes within the domain of private forest and being aggrieved against the order of the second respondent permitting the fifth respondent to cut rubber trees in the said private forest have approached this Court.

4.It is the case of the petitioners that the said private forest estate is a property belonging to their family. The fifth respondent herein who is the brother's son of her father-in-law had exploited him and created several documents and trying to misappropriate the large extent of the private forest estate belonging to the family. Hence, the petitioners have already initiated a suit in O.S.No.129 of 2009 on the file of the II-Additional Sub-Court,



WP(MD) No.22814 of 2024

Nagercoil to declare the registered Lease Deed that is alleged to have executed by the father-in-law of the first petitioner and the father of the second petitioner in favour of the fifth respondent in respect of 125 Acres of private forest estate for a period of 90/99 years as null and void and for recovery of possession of the said extent of land. They had also initiated one another suit in O.S.No.159 of 2009 for a declaration to declare the Sale Deed that have been executed by the first petitioner father-in-law and father of the second petitioner dated 12.08.2005 in favour of the fifth respondent in respect of the 40 Acres of private estate as null and void and for the recovery of the possession.

5.He would submit that the entire forest estate has been used for rubber plantation. In an off-shoot proceedings before this Court in C.R.P.Nos.2546 & 2607 of 2010, an Advocate Commissioner was appointed and a detailed Report was filed recording the standing and fallen trees and the number of trees illegally cut and removed by the fifth respondent herein. Based upon the learned Advocate Commissioner's Report, the petitioners have also amended the plaint. Originally, the Trial Court refused to grant an interim order and being aggrieved, the petitioners



WP(MD) No.22814 of 2024

have preferred a Civil Miscellaneous Appeal in C.M.A.Nos.60 & 61 of 2010 in which the Appellate Court allowed C.M.As by directing the parties to maintain the status-quo, as per the Report of the learned Advocate Commissioner by its order dated 17.07.2018. Suppressing the order of status-quo, the fifth respondent seems to have made an application for cutting and removing of more than 2200 rubber trees from the above forest estate. He would further submit that the impugned order was passed without conducting any enquiry with the land owner as admittedly the major extent of the lands are in possession of the fifth respondent based upon an illegal Lease Deed. He would further submit that the value of the trees that is sought to be removed would come to around Rs.2,20,00,000/-. He would submit that the impugned order is in violation of Section 10 of the Tamil Nadu Preservation of Private Forest Act. He would further submit that there is no inspection on the part of the Officer nor the impugned order refers to the ownership of the forest lands. He would further submit that when the civil suits are pending as regards to the rights of the parties, it would be incumbent upon the respondent not to grant such permission to the fifth respondent. Hence, he seeks interference of this Court with the orders impugned herein.



WP(MD) No.22814 of 2024

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6. In reply, Mr. J. K. Jeyaseelan, learned Government Advocate appearing on behalf of the respondents 1 to 4 would submit that it is wrong to allege that there was no inspection that was conducted before the grant of permission. He would submit that an inspection was carried out on 19.10.2023 by the third respondent and a Report had also been submitted in respect of the application made by the fifth respondent. Only after considering the Report that no disturbances would be caused to the wild and that based on the assurance given by the fifth respondent that no exotic trees like teak, rose wood, etc., and other miscellaneous species other than the rubber trees would be cut and removed, permission had been accorded by the second respondent. He would further submit that the petitioners have only made representation making their claims as made in the Writ Petition subsequent to the grant of permission to cut under the impugned order.

7. The learned counsel appearing on behalf of the fifth respondent would submit that the lands in issue belong to the mother of the second petitioner and the estates were administered and managed by her husband who is the father of the second petitioner. The said land owner had executed



WP(MD) No.22814 of 2024

a general Power of Attorney in favour of her husband and on the strength of such Power of Attorney executed a sale deed for a valuable consideration in respect of 40 Acres of land and also executed a registered Lease Deed to an extent of 125 Acres of rubber estate in the favour of the fifth respondent for a period of 99 years from the year 2005. The petitioners had been in possession of the lands measuring a total extent of 165 Acres under the above said two registered documents. He would submit that the rubber cultivation is a planned cultivation and is not a wild growth. He would further submit that the rubber trees have a life span on 20 years and beyond the said period it does not produce latex. Hence, every 20 years the rubber plants needs to be replanted. Since, the lands were leased to the fifth respondent in the year 2005 and that 20 years have gone by, the rubber trees had completed their life span and would have to be replaced for new harvest. The said rubber trees can only to used for the purpose of fire wood or to create wood mesh. Only with that object, the trees were sought to be removed and the said tress would only fetch a value of about Rs.20,00,000/- and not Rs.2,20,00,000/- as claimed by the petitioners. He would further submit that after cutting down 2162 which have crossed 20 years, he has proposed to plant 6000 trees as more vacant place is available.



WP(MD) No.22814 of 2024

He would further submit that these samplings would grow to matured trees and would only yield latex after a period of 20 years. He would further submit that if the tress are not permitted to cut neither the petitioners nor the fifth respondent would have any benefit. He would further submit that if new rubber plants are replaced and in any event, if the petitioners succeeds in the Suit, it would only enure to the benefit of the petitioners. He would further submit that the petitioners would not be remediless, as they could always made claim in the Civil Suit pending consideration between the parties.

8. I have considered the rivals submissions made by the learned counsels appearing for the respective parties and perused the materials placed on record.

9. The lands measuring about 165 acres admittedly belonged to the second petitioner's mother is the subject matter in issue. The said lands are also being used for rubber cultivation. It is the claim of the petitioners that the fifth respondent coercing with the father of the second petitioner had got two documents executed in his favour. Hence, a Suits had also been filed in



WP(MD) No.22814 of 2024

O.S.Nos. 129 and 159 of 2009 seeking to declare the registered sale deed and also lease deed executed by the father of the second petitioner in favour of the fifth respondent as null and void and also for recovery of possession.

10. The rubber cultivation is a planned cultivation requiring regular nurturing of trees. It is the case of the fifth respondent that the rubber trees have to be replaced every 20 years for harvesting the maximum yield of latex. It is the claim of the petitioners that the value of the trees that is sought to be cut and removed would be Rs.2,20,00,000/-.

11. On the contrary, it is the claim of the fifth respondent that the value of the trees would be only Rs.20,00,000/-. The claim of the fifth respondent about the life span of the rubber trees are the requirement to replace the rubber trees for every 20 years had not been disputed by the petitioners.

12. Be that as it may, an injunction application had been moved in the said Suits which came to be originally dismissed by the Trial Court, against which the petitioners had also preferred Civil Miscellaneous Appeals in



WP(MD) No.22814 of 2024

CMA.Nos.60 & 61 of 2010, by a fair and decreetal order dated 17.07.2018, the Appellate Court taking into consideration of the dispute between the parties and also taking into account, the report of the learned Advocate Commissioner in which the physical features of the property were also noted, had granted an order of status quo as per the report of the learned Advocate Commissioner on 03.01.2017. The effect of such an order of status quo by the Civil Court is that the property should be maintained in the same manner as reflected in the Advocate Commissioner's report dated 03.01.2017. The learned Advocate Commissioner's report also indicates the count of various trees. The present impugned order of permitting the fifth respondent to cut the trees, if allowed to be executed, the same would interdict with the order of status quo granted by the Civil Court.

13. It is to be noted that while issuing the impugned order, there is no reference to the order of status quo granted by the Court. It is the case of the respondents 1 to 4 that they were not aware of such interim orders passed in respect of the properties and that such interim order had been brought to the knowledge of the authorities subsequent to the passing of the impugned order.



WP(MD) No.22814 of 2024

14. In such view of the matter, I am of the view that if the impugned order is permitted to be acted upon, the same would be in violation of the status quo granted by the Appellate Court in CMA Nos.60 & 61 of 2010.

15. In fine, the Writ Petition is allowed and the order impugned in the Writ Petition is set aside. However, the fifth respondent is at liberty to approach the appropriate Court seeking modification of the order of status quo or would seek permission of the Civil Court in which the Suits are by pending by making an application for cutting and removing these trees and make thereafter, approach the appropriate authority for cutting and removing trees. However, there shall be no order as to costs. Consequently connected are Miscellaneous Petitions are closed.

31.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Gba



WP(MD) No.22814 of 2024

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A Pre-delivery order made in
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