
(2002) 02 MAD CK 0159

In the Madras High Court

Case No : Writ Petition No. 9741 of 1996

Aleyamma

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Tamil Nadu Forest Act, 1882 — Section 10, 16, 17, 3, 6

Citation : (2002) 02 MAD CK 0159

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : B. Ramamoorthy, for the Appellant; Selvi George, for V.S. Sethuraman, SGP, for the Respondent

Judgement

D. Murugesan, J.—The petitioner is claiming herself to be in possession of the portion of the land in S.No.437/2 in Padanthorai Village, Gudalur Taluk, Nilgiris District. The said land is a pasture land and the petitioner is using the same for grazing cows and buffalos for more than 20 years. Pursuant to the order of the Government u/s 3 of the Tamil Nadu Forest Act (hereinafter referred to as "the Act"), a publication was made u/s 4 of "the Act" on 15.6.92 notifying various lands including the land in question to be a reserved forest. A proclamation was also made u/s 6 of "the Act" on 1.7.94. The grievance of the petitioner is that even though the petitioner was in possession of the land in question, she was not given any notice as provided u/s 6(d) of "the Act" and therefore, the petitioner was not aware of the proclamation. However, after the enquiry was conducted u/s 8 of "the Act", the Forest Settlement Officer passed an order u/s 10 of "the Act" on 30.3.85. When the petitioner came to know of the above proceedings only in the year 1996, she made an application u/s 17 of "the Act" before the Forest Settlement Officer, the second respondent for exclusion of the said land from the proclamation. The said request of the petitioner was rejected by the impugned order dated 27.5.96 of the second respondent on the ground that he had already passed orders u/s 10 of "the Act" on 30.3.85 in respect of the land. The said order is challenged in this writ petition.

2. Mr.B.Ramamoorthy, learned counsel for the petitioner submitted that the petitioner ought to have been given a notice u/s 6(d) of "the Act" since the petitioner was in possession of the land before the second respondent conducted enquiry u/s 8 and passed orders u/s 10 of "the Act" on 30.3.85. Further, the learned counsel submitted that u/s 17 of "the Act", the right of the petitioner to seek for exemption is not extinguished till such time notification declaring as reserved forest is made u/s 16 of "the Act". Admittedly, the notification as required u/s 16 has not been so far made and therefore, the rejection of the request of petitioner for exclusion of the land on the ground that orders u/s 10 has already been passed by the Forest Settlement Officer cannot be sustained.

3. Miss.Selvi George, learned counsel for the respondents submitted that as per Section 6(d) of "the Act", an individual notice is contemplated only in case of persons who are in actual possession of the land. It is the specific stand of the respondents that the petitioner was not in possession on the date of proclamation. Hence, the petitioner is not entitled to individual notice. Secondly, the learned counsel submitted that once order u/s 10 was passed and the petitioner did not file any claim before the Forest Settlement Officer who conducted enquiry, it is not open to the petitioner now to seek for exclusion of the land from the order of the Forest Settlement Officer dated 30.3.85. Hence, the learned counsel submitted that the impugned order is well within the powers of the Forest Settlement Officer.

4. I have given my due consideration to the submissions of the respective counsel. Insofar as the grievance of the petitioner that she is entitled to an individual notice u/s 6(d) of "the Act", this Court cannot go into the disputed questions of facts as to whether the petitioner was in possession of the land on the date of proclamation as the second respondent has taken a specific stand that the petitioner was not in possession on the date when the proclamation was made. However, for the purpose of considering the validity of the impugned order, Section 16 and 17 of the Forest Act can be usefully referred to and hence the same are extracted as follows:-

"16. NOTIFICATION DECLARING FOREST RESERVED:- When the following events have occurred, namely:-

(a) the period fixed u/s 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest Settlement Officer; and

(b) if such claims have been made, the period fixed by sections 10 and 14 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate authority; and

(c) all proceedings prescribed by section 10 have been taken and all lands (if any) to be included in the proposed forest which the Forest Settlement Officer has u/s 10 elected to acquire under the Land Acquisition Act, 1870, have become

vested in the Government u/s 16 of that Act;

The Government may publish a notification in the Official Gazette specifying the limits of the forest which it is intended to reserve and declaring the same to be reserved from a date to be fixed by such notification.

The Forest Settlement Officer shall, before the date so fixed, publish such notification in the manner prescribed for the proclamation u/s 6. From the date so fixed, such forest shall be deemed to be a reserved forest.

17. EXTINCTION OF RIGHTS NOT CLAIMED:- Rights in respect of which no claim has been preferred u/s 6 shall thereupon be extinguished, unless, before the publication of such notification, the person claiming them has satisfied the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed u/s 6 in which case the Forest Settlement Officer shall proceed to dispose of the claim in the manner herein before provided."

As per Section 17, the right in respect of which no claim is preferred u/s 6 shall thereupon be extinguished, only from the date the notification u/s 16 of "the Act" is published. Admittedly, no notification has been published u/s 16 of "the Act" so far. Hence, the claim of the petitioner that her right u/s 6 is not extinguished on the date when she filed application to the second respondent for exclusion of the land under alleged occupation from the order dated 30.3.85 is justifiable. Therefore, the said claim made by the petitioner cannot be rejected on the ground that already an order has been passed u/s 10 of "the Act". What is contemplated u/s 17 of "the Act" is only when a notification under 16 was issued, any claim for right over the property will be extinguished and such a claim is not extinguished by mere fact that Forest Settlement Officer had passed orders u/s 10 of "the Act". In view of the above, I am unable to sustain the impugned order of the second respondent dated 30.3.85 rejecting the request of the petitioner for exclusion of the land which is alleged to be in her occupation. Accordingly, the impugned order is set aside and the writ petition is allowed. The second respondent is directed to consider the claim of the petitioner made u/s 17 of "the Act" and pass orders within a period of two months from the date of receipt of copy of this order. It is made clear that while disposing the application of the petitioner filed u/s 17 of "the Act", the second respondent is empowered to consider all the matters including as to whether the petitioner was actually in possession of the land on the date of proclamation and whether the petitioner is entitled to any claim for exclusion of the land from his order dated 30.3.85. There will be no order as to costs.