
(2006) 07 MAD CK 0001

In the Madras High Court

Case No : Contempt Petition No's. 742 and 748 of 2002, Sub. Application No's. 502 and 503 of 2003 and WPMP No's. 2585 and 2586 of 2004

Elizebath Anne Simpson and Others

APPELLANT

Vs

K. Shivashankaran, The Tahsildar

RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2(1)

Citation : (2006) 4 CTR 426 : (2007) 1 RCR(Civil) 15 : (2007) 1 RCR(Criminal) 38

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : D. Sadhasivan, for the Appellant; P.S. Raman, A.A.G. Assisted by Titus Jesudoss, Spl. Govt. Pleader (Forest) and P. Wilson, Spl. Govt. Pleader (Writs), for the Respondent

Judgement

P. Sathasivam, J.—The petitioners, complaining that the common order dated 20.01.1997 made in W.P.Nos. 2585 and 2586 of 1994 has

not been implemented, filed contempt petition Nos. 742 and 748 of 2002.

2. The contempt petitioners filed the said writ petitions praying for a writ of Mandamus directing the respondents, particularly, the first respondent

Tahsildar, Thovala Taluk, Kanyakumari District to grant patta for 65.86 acres and 205.42 acres of lands as per the Commissioner's plans marked

as Exs.C.2 and C.4 in O.S. Nos. 66 and 67 of 19 86 respectively on the file of District Judge, Kanyakumari at Nagercoil. After hearing both

parties, this Court, by order dated 20 .01.19 97, allowed both the writ petitions and directed the said Tahsildar to issue patta within a period of

four weeks from the date of receipt of copy of the said order. It is also the grievance of the petitioners that in spite of various representations, the

respondent herein (R.1 in writ petitions) has not granted patta, as directed by this Court by order dated 20.01.1997.

3. Pursuant to the notice, the respondent Tahsildar appeared in person. The second respondent in the writ petitions, viz., District Forest Officer,

Kanyakumari District at Nagercoil has filed two miscellaneous petitions, viz., WPMP. Nos. 8719 and 8720 of 2004 seeking for modification of

the order dated 20.01.1997 in W.P. Nos. 2585 and 2586 of 1994 respectively. In the affidavits filed in support of the above petitions it is stated

that while taking steps to implement the order of this Court, the Revenue Department surveyed the area and in that survey it was found that the

area identified by the parties clearly falls within the Asambu Reserved Forest. It is stated that the property identified by the petitioners is situate in a

hill area with about 3500 to 4500 natural trees and the property used to receive rain for atleast 1 to 9 months in a year. It is further stated that the

subject matter of land attracts the provisions of Forest Conservation Act, 1980 since the same is declared as Reserve Forest. The Hon"ble

Supreme Court in W.P.(Civil)No. 202 of 1995 dated 12.12.1996 directed all the States to implement the Forest (Conservation) Act, 1980

without any variance. As per the order of the Supreme Court, the word Forest must be understood according to its dictionary meaning and this

description covers all statutorily recognized forest whether designated as reserve, protected or otherwise for the purpose of Section 2(1) of the

Forest (Conservation) Act. The Supreme Court further held that the term forest land occurring in Section 2 will not only include Forest as

understood in the dictionary sense, but also any area recorded as Forest in the Government record irrespective of ownership. It is further stated

that there is a specific ban by the Supreme Court to grant patta in respect of to Reserve Forest area and hence the order dated 20.01.1997

requires modification.

4. In the light of the above factual details this Court heard Mr. D. Sadasivan, learned Counsel for the contempt petitioners and Mr. P.S. Raman,

learned Additional Advocate General for the respondents.

5. At the outset, learned Additional Advocate General submitted that the directions of the Hon"ble Supreme Court in T.N. Godavarman

Thirumulkpad Vs. Union of India and others, , particularly the direction in respect

of State of Tamil Nadu would squarely apply to the case on hand and in the light of the ban order and of the fact that the land in question lies in a reserve forest area, patta cannot be issued as directed. He also contended that the said direction has to be modified and both the contempt petitions are liable to be dismissed.

6. On the other hand, Mr. D. Sadasivan, learned Counsel for the petitioners submitted that in view of the decree granted by the competent civil

Court, which is confirmed by this Court and of the fact that the lands in question are patta lands, direction of the Supreme Court is not applicable

and respondent has to be punished for disobeying the order dated 20.01.1997.

7. It is not in dispute that in T.N. Godavarman's case, the Hon"ble Supreme Court in order to protect the environment and ecology of the

country and to preserve the forest, issued several directions. The direction in so far as the State of Tamil Nadu is concerned, reads as under.

I.A. No. 418

Notice to the State of Tamil Nadu returnable in the first week of August, 1999.

In the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularized.

Learned Additional Advocate General also submitted that even today the said direction is in force and there cannot be any violation. He also

brought to my notice that in T.N. Godavarman Thirumulkpad Vs. Union of India and others, , while considering the definition of the word ""Forest

found in the Forest Conservation Act, 1980, the Hon"ble Supreme court has held that, the word forest must be understood according to its

dictionary meaning. This description covers all statutorily recognized forest, whether designated as reserved, protected or otherwise for the

purpose of Section 2(i) of the Forest Conservation Act. The term forest land, occurring in Section 2 will not only include forest as understood in

the dictionary sense, but also any area recorded as forest in the Government record irrespective of ownership. This is how it has to be understood

for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forest area and the

directions connected therewith must be applied clearly to all forest areas so understood irrespective of the ownership or classification thereof.

8. In the light of the clarification by the Hon"ble Supreme Court and the order

passed in I.A. No. 418 in W.P. (Civil) No. 202 of 19 95, which relates to State of Tamil Nadu, I am in agreement with the objection raised by the learned Additional Advocate General. Unless and until the same is clarified by the Hon''ble Supreme Court, the Tahsildar cannot be penalized.

In the light of the above discussion, the following order is passed. The common order dated 20.01.1997 made in W.P. Nos. 2585 and 2 586 of 1994 is subject to order in I.A. No. 418 in W.P.(Civil) No. 202 of 1 995, pending on the file of Supreme Court. With the above direction, the contempt applications are closed and WPMPs., are ordered accordingly. In view of disposal of the main contempt petitions, connected sub applications are closed.