

(2000) 04 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 19900 of 1992

Padavettai and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Tamil Nadu Forest Act, 1882 — Section 16(2)

Citation : AIR 2000 Mad 524

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : Mohamed Sheriff, for the Appellant; Titus Jesudoss, Spl. Govt. Pleader (Forest), for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioners herein have filed the present writ petition, seeking

for a writ of Certiorari to call for the records from the respondents relating to the notification published in the Dt. Gazette of Dharmapuri dated 10-

10-1990 in so far as it relates to the petitioners" portion in S. No. 22 of Elakalahalli village, Dharmapuri Taluk and to quash the same.

2. In support of the writ petition, the petitioners herein have filed an affidavit wherein they have narrated all the facts and circumstances that forced

them to file the present writ petition and requested this Court to allow the writ petition as prayed for, per contra, on behalf of the respondents a

counter-affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this

Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned counsel appearing for the

respective parties during the course of their arguments. I have perused the contents of the affidavit and the counter affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration is, as to whether there are any valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioners herein as seen from their affidavit are as follows : the petitioners herein are landless poor. Their

father who belonged to Palacode migrated to this village and with the assent of the erstwhile landholder began cultivating the private forest land in

S. No. 22 of Valakalahalli village in Krishnagiri Taluk about 60 years ago. They are members of a joint family and they migrated to this village and

are living by cultivation of this portion in the said private forest. After the Estate Abolition Act came into force also, they have been cultivating the

said lands without any let or hindrance from the State or anybody else. Thus we have more than 30 years of possession and enjoyment. Their

father had dug a well raised dry crops, reclaimed the land and their family had spent considerable amounts as well as much labour on this piece of

land. They have no other land to fall back upon and they have no other source of income. They have put up houses in the said field and are paying

taxes for the said houses to the Panchayat. They have been paying kist and penal assessment for the land for over 30 years for each of their

portion. There are 400 mango plants 5 years old on the land. The first respondent has caused a notification to be made in the Dharmapuri Gazette

dated 8th October 1990 declaring the area in and around this land as forest land u/s 16(2) of the Tamil Nadu Forest Act 1862 hereinafter referred

to as the Act. They came to know of it only recently when the second respondent desired to plant trees in the said land. The said notification is

illegal in so far as it relates to the portion in their possession and enjoyment for the reasons that there has been no enquiry as contemplated u/s 6 of

the said Act, there was no enquiry as to the existence, nature and extent of their rights over the said land and they are not given any notice at any

time nor any indication for acquisition of the land and thus they had no opportunity to represent their case. The forest officer has not issued any notice at any time to any of them though the petitioners herein are reputed owners paying kist to the Government as well as house taxes to the Municipality. Further the cultivation is Faking place, wells are dug and assessment is collected and these facts must be deemed to be known to the respondents. The persons who are cultivating the lands like themselves in the said area have been granted exception and to their ill luck, no such provision has been made in their favour. Thus they have been discriminated from others who have been shown undue preference by the respondents.

The petitioners have perfected their title to the land comprised in S. No. 22 by adverse possession having been in occupation for more than the statutory period of 30 years, It is also their case that if proper enquiries as contemplated under Sections 4 and 6 and other provisions of the Forest Act had been made, the portions in their possession would have been excluded as there is ample proof of long cultivation for over the statutory period. The impugned notification has been made in utter disregard of the rights of the citizens. It is against law and equity besides being arbitrary and capricious Violating their fundamental rights guaranteed under the Article 14 of the Constitution of India. According to them, they have no other alternative or effective remedy but to move this Court under Article 226 of the Constitution of India for redressal of their grievances against the respondents. It is also their case that the respondents are taking hurried steps to forcibly evict them from the land pursuant to the impugned notification. Hence they have filed the present writ petition and If in the meanwhile the respondents should take forcible possession and displace them they will be put to great hardship and irreparable loss and that therefore the respondents should be interdicted from interfering with their possession and enjoyment.

6. Per contra, in the counter affidavit filed by the respondents, inter alia it has been contended by them that the notification u/s 16(2) of the Tamil Nadu Forest Act V of 1882 was published in Dharmapuri District Gazette dated 10-10-90. It is not correct to say that the petitioner came to know of its only recently when the second respondent desires to plant trees in

the said land since the notification u/s 16(2) was already published on 10-10-90 as Reserve Forest. The proclamation u/s 6 of the Act was published in Dharmapuri District Gazette No. 7 dated 2-5-1989 inviting objections from the interested persons within 3 months from the date of the proclamation. The above proclamation was published in the Notice Board of the Taluk Office, Krishnagiri and Gazette copies were duly served to all the encroachers and also adjoining pattadars facilitating them to file their claims and objections if any in time. Since the petitioners herein had refused to receive the copy of notification u/s 6 of the notifications were served by affixing on the doors of their houses. The said notification was also published in the Notice Board of the Panchayat Union Office, Krishnagiri. The notification was duly served to the Velagalahalli Panchayat President and it has been published duly by beat of tom-tom and affixture in conspicuous places in the Veialalahalli village. Though there were encroachments by 33 persons including these three petitioners, nobody had claimed rights over their encroachments within the stipulated period. Therefore it is contended by the respondents that it is not correct to say that the petitioner was not given any opportunity to represent the case as stated by petitioner. According to them no persons who were cultivating the land in the said area have been granted exception as stated by the petitioner. The entire area of 135.31.0 has been notified as R.F. u/s 16 of Forest Act of 1882 and that therefore it is not true to say that there is discrimination and undue preference. It is also the case of the respondents that the respondents have actually discharging their duties only and since the declaration of the Reserved Forest of the above mentioned area, they have every right to enter and use the area legally. Further according to the respondents the same petitioners have already filed suit in the District Munsif Court, Krishnagiri in O.S. No. 350/92 on 15-10-1992 which is pending on the file of the above Court.

7. Having seen the entire material available on record and from the facts and circumstances of this case and also from the claims and counter-claims made by the rival parties, the following are the admitted facts in this case. The petitioners herein have filed the present writ petition to call for the records from the respondents relating to the notification published in the District Gazette dated 10-10-90 in so far as it relates to Survey No.

22 of Valahalahalli Village, Krishnagiri Taluk, Dharmapuri District and to quash the same. In and by the said notification, the respondents declared the area in and around this land as forest land u/s 16(2) of the Tamil Nadu Forest Act 1862. It is contented by them that the said notification is illegal in so far as it relates to the portion in their possession and enjoyment. It is the main contention of the petitioners herein that there has been no enquiry as contemplated u/s 6 of the Act and also they were not given any notice at any time nor any indication for acquisition of the land and thus they had no opportunity to represent their case. They also contend that the Forest Officer has not also issued any notice at any time to any of them though the petitioners herein are reputed owners paying kist to the Government as well as house taxes to the Municipality, cultivation is taking place, wells are dug and assessment is collected and these facts must be deemed to be known to the respondents. That apart it is also their grievance that several persons who are cultivating the lands like the petitioners herein in the said area have been granted exception and to their ill luck, no such provision has been made in their favour. Therefore it is their case that they have been discriminated from others who have been shown undue preference by the respondents. It is also their case that the petitioners herein have perfected their title to the land comprised in S. No. 22 by adverse possession having been in occupation for more than the statutory period of 30 years. That being so, it is denied by the respondents herein that the petitioners herein came to know of it only recently when the second respondent desires to plant tree in the said land since the notification u/s 16(2) was already published on 10-10-90 as Reserved Forest. It is also the categorical contention of the respondents that the proclamation u/s 6 of the Act was published in Dharmapuri District Gazette No. 7 dated 2-5-89 inviting objection from the interested persons within 3 months from the date of the proclamation. That apart the said proclamation was published in the Notice Board of the Taluk Office, Krishnagiri and Gazette copies were duly served to all the encroachers and also adjoining pattadars facilitating them to file their claims and objections if any in time. It is also significant to note that the petitioners herein refused to receive the copy of the Notification u/s 6 and that therefore the notifications were served by affixing on the doors of their houses. Further apart from publishing the same in the notice board of the

concerned Panchayat Union office and also the panchayat it has also been published by beat of tom tom and affixture in conspicuous places in the village. It is also important to note that though there were encroachments by 33 persons including these petitioners, nobody had claimed--rights over their encroachments within the stipulated period. Therefore in the above facts and circumstances of this case it is futile for the petitioners to contend that the petitioners were not given any opportunity to represent the case. Further in this case the petitioners herein have refused to receive the copies of the notification and that is why the respondents has to resort to other modes of service by affixture and by torn torn. That being so the contention of the petitioners herein that they came to know about the notification only recently when the second respondent desired to plant trees in the said land, in the above facts and circumstances of this case, cannot be accepted. Coming to the other contention that several persons who are cultivating that lands like the petitioners in the said area have been granted exception and to their ill luck, no such provision has been made in their favour and thus they have been discriminated from others who have been shown undue preference by the respondents. That is stoutly denied by the respondents and according to them, no persons who were cultivating the land in the said area have been granted exception as stated by the petitioner and the entire area of 135.31.0 has been notified as F.R. u/s 16 of Forest Act of 1882. Without providing any detail the petitioners herein are raising this contention in vacuum. Therefore such contention of the petitioners herein also cannot be accepted. In this case it is also contended by the respondents that these petitioners have already filed a suit in the District Munsif Court, Krishnagiri in O.S. No. 350/92 on 15-10-1992 and that the same is pending before the said Court. That has also not been denied by the petitioners. That being so, the petitioners herein cannot maintain both this writ and also the civil suit in the Munsif Court. It is also contended by the petitioners herein that the impugned notification has been made in utter disregard of the rights of the citizens and it is against the law and equity besides being arbitrary and capricious violating their fundamental rights guaranteed under Article 14 of the Constitution. But it is very clear in this case that the petitioners herein alone have refused to receive the copy of the notifications and nobody came forward to file their objections and hence they were forced to go for substituted service by

affixture and by beat of torn torn. Therefore in such circumstances of this case, I do not see any merit in the various contentions raised by the petitioners herein.

8. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to the various aspects of this case, I am of the clear view that the petitioners herein have failed to make out any case in their favour and that therefore there is no need for any interference with the order impugned in this writ petition. Thus the writ petition fails and the same is liable to be dismissed for want of merits.

9. In the result, the writ petition is dismissed. No costs.