
(2014) 09 MAD CK 0288

In the Madras High Court

Case No : W.P. (MD) Nos. 8028 and 8281 to 8286 of 2007

Ramar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2, 2(c), 2(o), 3, 3(a)

Citation : (2014) 09 MAD CK 0288

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—There are forest lands at West Vali, Gudalur, Suranganar, Kumuli and other areas, in Cumbum Valley, Uthamapalayam Taluk, Theni District. These areas are located in Tamil Nadu ? Kerala border. The petitioners claimed that for generations they have been in occupation of the lands in Suranganar forest. Admittedly, the lands, which are stated to be in their occupations, are all Reserved Forest lands. According the petitioners, these lands are not Reserved Forest lands, but, they lie in the fringes of the forest between the State of Kerala and Tamil Nadu border. Like the petitioners, according to them, there were around 300 families living in the said Suranganar Forest, Amravathipuram, Aasaripallam. During the year 1992, according to the petitioners, an attempt was made by the forest officials to dispossess them. On the complaint of a forest official, a criminal case was registered in Crime No. 64 of 1992 against 143 such forest dwellers, which resulted in a final report. The said case was tried by the learned Additional District and Sessions Judge, Fast Track Court, Periyakulam, in S.C. No. 381 of 2000 and they were all acquitted by the judgment dated 14.03.2005. Their cultivations and the superstructure put up by them were all allegedly destroyed by the forest officials.

2. While so, the petitioners filed a writ petition in W.P. No. 19711 of 1993 before the Principal Bench of this Court. Further, 33 similarly placed persons filed similar writ petitions in W.P. Nos. 14174 of 1993, 17552 of 1993, 18185 of 1993, and

381 of 1995. The prayer in all those writ petitions was for a Mandamus to forbear the respondents/forest officials from evicting them from the forest lands and also for a direction to the Government to grant patta for the holdings of the petitioners therein. Initially, while admitting those writ petitions, the Principal Bench granted interim injunction to restrain the forest officials from evicting the petitioners therein. As against the said interim order, the writ appeals in W.A. Nos. 209 to 211 of 1996 were also filed by the forest officials. When the said appeals were pending, the writ petitions were disposed of by the Principal Bench, by order dated 04.09.2000, directing the Government and forest officials to conduct joint inspection, as per Section 8 of the Tamil Nadu Forest Act and to pass orders on the representations made by the petitioners and others, in the light of G.O. Ms. No. 930, dated 07.08.1984, within a period of three months therefrom. Those writ appeals were therefore closed.

3. According to the petitioners, no such joint inspection was conducted, as directed by this Court, instead, again further attempts were made to evict them. The petitioners have also sent a further representation on 17.08.2007.

4. While so, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as 'the Act') came into being on 29.12.2006. According to the petitioners, they are entitled for certain rights, as dealt with in Section 3 of the Act, including the right to hold and live in the forest lands. The grievance of the petitioners now is that without considering their rights conferred under Section 3 of the Act, an attempt is made again to evict them from their respective holdings. With this grievance, the petitioners are before this Court seeking a direction to forbear the respondents from in any manner interfering with their alleged peaceful possession and enjoyment of the lands.

5. A detailed common counter affidavit has been filed in all these writ petitions by the District Forest Officer. The crux of the counter is that the petitioners are not the 'other traditional forest dweller' as defined under the Act and therefore, they are not entitled for the benefits of the Act. According to the counter, the petitioners were only encroachers of reserve forest lands from the year 1971. They were all evicted by following the procedure established by law in the year 1994. After 1994, the lands in question are fully under the control of the forest department and the forest department has also raised bamboo clusters on those lands. Thus, according to the counter, the petitioners are not at all in possession of the lands in question. It is also stated in the counter that the petitioners are residing in Gudalur and they are having patta lands. They are residing in their respective own houses. They have also been given family cards by the Revenue Department. Thus, according to the respondents, the petitioners are not traditional forest dwellers at all and therefore, they are not entitled for any protection under the Act. At any rate, since the petitioners are not in possession of the property, the relief sought for in these writ petitions cannot be granted, it is contended.

6. I have heard the learned counsel appearing on either side and perused the materials available on records carefully.

7. The prayer in these writ petitions is as simple as it could be. It is only for a Mandamus to forbear the respondents from interfering with the alleged possession and enjoyment of respective lands of the petitioners. But, in the counter it has been very clearly stated that even in the year 1994, they were all evicted from encroachments and thus, they are not in possession and enjoyment of the lands in question. Though it is claimed by the petitioners that so called eviction was not at all made and they are continued to be in possession of the property even now, there is no material even to make prima facie case in support of the petitioners. At any rate, it is a disputed question of fact, which cannot be gone into in the writ petitions. Therefore, the prayer sought for in these writ petitions cannot be conceded to.

8. Now turning to the provisions of the Act, the Act, which came into being on 29.12.2006, was enacted with the object to recognize and vest the forest rights and occupation in forest lands in "forest dwelling Scheduled Tribes" and "other traditional forest dwellers", who have been residing in such forests for generations, but whose rights could not be recorded; to provide for a frame work for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest lands.

9. As seen from the object of the Act, this is an Act to protect the rights of the two classes of people viz., "forest dwelling Scheduled Tribes" and "Traditional forest dwellers". The term "forest dwelling Scheduled Tribes" is defined in Section 2(c) of the Act which states that a forest dwelling Scheduled Tribe means, the members or community of the Scheduled Tribes, who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities. Similarly, the term "other traditional forest dweller" means any member or community, who has, for at least three generations prior to the 13th day of December, 2005, primarily resided in and who depend on the forest or forests land for bona fide livelihood needs. It is also defined that for the purpose of the clause, "generation" means a period comprising of twenty five years.

10. Section 3 of the Act enumerates "forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers". One such right is the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes or other traditional forest dwellers (vide Section 3(a) of the Act). Section 4 of the Act deals with recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers.

11. Section 6 of the Act deals with the authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure

thereof. According to this provision, there shall be a Grama Sabha, who shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims. If any person is aggrieved by the decision of the Grama Sabha, under Sub section (2) of Section 6 of the Act, he may make a petition to the Sub Divisional Level Committee. Under Sub-Section (3) of Section 6 of the Act, if any person is aggrieved by the decision of the Sub Divisional Level Committee, he may prefer a petition to the District Level Committee within 60 days from the date of decision of the Sub Divisional Level Committee (vide Sub Section (4) of Section 6 of the Act). Thus, the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers are protected by the provisions enumerated hereinbefore.

12. Now, in the cases on hand, the petitioners do not claim that they are "forest dwelling Scheduled Tribes", but they claim that they are "other traditional forest dwellers" as defined in Section 2(o) of the Act. As we have read the said provision, to satisfy the requirements of the said provision, one should prove that he and his ancestors have been in occupation of the forest land for at-least 75 years. The question, in the instant cases, is as to whether the petitioners were in occupation of the respective lands for three generations i.e., for 75 years. In this regard, the District Forest Officer, who is present before this Court, has produced G.O. Ms. No. 11, Forests & Fisheries Department, dated 03.01.1984.

13. A reading of the above said Government Order would go to show that the Government was informed that there were large number of agricultural families including tribals and hill tribes who have encroached upon the forest lands in the West Vali, Gudalur, Suranganar, Kumuli and other areas in Cumbum Valley of Uthamapalayam Taluk, in erstwhile Madurai District. There were lot of representations to the Government to evict these encroachers. The Government called for report, including the data from the forest authorities, in respect of the length of the period of such encroachments and soil conservation measures undertaken by the Forest Department in that areas, together with a sketch indicating boundaries of the reserve forest lands. The Chief Conservator of Forests, had submitted such a report, after holding a detailed inspection and enquiry. According to the said report, it was reported to the Government that the petitioners herein were all encroachers only from the year 1971 and there were not forest dwellers. It was also reported that even Kumri cultivation leases given in these areas were not successful, inasmuch as Kumridars went in for cultivation of crops and not for planting trees. It was also reported that they destroyed the tree plantations raised by the Forest Department. The Kumridars refused to vacate the lands even after the expiry of the lease period. All the efforts made by the Forest Department to evict them could not succeed. The total extent of encroachment was 650 hectares. Over an area of 555.50 hectares, the encroachments were gradually removed and the possession was restored to the Forest Department. As on the date there were encroachments only in the rest of

the areas, measuring 94.50 hectares. Out of 94.50 hectares, an extent of 55.50 hectares had been encroached upon by the people from this State, while remaining extent of 39 hectares had been encroached by the people from across the border. Having considered the said report and after considering all the other reliable factors, the Government issued G.O. Ms. No. 11, Forest and Fisheries Department, dated 03.01.1984, directing the forest officers to evict all these encroachments. The said G.O. has been filed before this Court by way of typed set of papers.

14. It is stated by the District Forest Officer that based on the above Government Order and the directions issued thereunder, the petitioners were all removed from the encroachment in 1994 itself. It is stated by him that the petitioners were in occupation as encroachers only for a short period i.e., from 1971 to 1994, and they were not at all in occupation of the forest lands for more than three generations, as it is claimed by them. Therefore, according to the District Forest Officer, the petitioners are not the traditional forest dwellers.

15. The learned counsel for the petitioners is not in a position to show any material in order to substantiate his contention that the petitioners are "other traditional forest dwellers" as defined in sub Section (o) of Section 2 of the Act. Above all, as on the date of coming into force of the Act, the petitioners were not in occupation of these lands.

16. From the above narration of the facts, it could be seen that absolutely there is no material even to infer that the petitioners satisfy the definition of "other traditional forest dwellers" as defined in Sub section (o) of Section 2 of the Act. Therefore, I have to necessarily hold that the petitioners, who were only encroachers, are not entitled for any benefit under the Act. Above all, the petitioners do not rely on forest lands for their livelihood. No material has been placed to prove the same.

17. Of-course it is true that the authority competent to decide as to whether the petitioners are traditional forest dwellers or not is the Grama Sabha, Sub-Divisional Level Committee and ultimately District Level Committee, but I am not inclined to direct these authorities to examine as to whether the petitioners are "other traditional forest dwellers" as defined in Section 2(o) of the Act, in view of the fact that it is a closed chapter, because even in 1994 the Government had issued an order after thorough enquiry that the petitioners were all encroachers from the year 1971. In such view of the matter, giving liberty to the petitioners to approach the Grama Sabha or the Committee constituted under the Act, will only be a waste of time of the authorities, as the same would not serve any purpose.

18. In such view of the matter, I do not find any merit in any of these writ petitions. These writ petitions have to necessarily fail.

19. In the result, all these writ petitions are dismissed. No costs.

20. Mr. A.S. Marimuthu, District Forest Officer, Theni District, who is present in Court, has, in a dispassionate manner, explained the facts involved in these matters in open Court. It is appreciated.