

(2008) 09 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 20918 of 2008

S. Chakravarthi

APPELLANT

Vs

The District Collector, Thiruvallur, Thiruvallur District and The
Government of Tamil Nadu

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

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

Citation : (2008) 09 MAD CK 0017

Hon'ble Judges : A.K. Ganguly, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V. Prakash, for Mr. D. Anbarasu, for the Appellant; J. Raja Kalifulla, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—This is a public interest litigation and the petitioner seeks for issuance of a writ of mandamus to direct the

respondents not to fell the trees in the land in Survey No. 77/3 of Mamandur Village, Thiruttani Taluk, Thiruvallur District in order to implement the

Periyar Memorial Samathuvapuram Scheme on the said land or the other lands in Survey Nos. 77/8, 77/9,77/10, 77/11 and 77/12 of the said

village and district. According to the petitioner, the lands situated in the said survey numbers are forest lands which are spread in an area of about

24.64.0 Hectares, that the Government, in G.O. Ms. No. 195, Department of Environment and Forest dated 19.3.1991, notified the same in the

Government Gazette dated 1.5.1991 for formation of a forest in the lands situated in the above survey numbers and that thereafter, objections

were also called for vide proceedings dated 30.10.1991 from the general public

for reserving the said lands as forest lands. Mr. V. Prakash, learned senior counsel appearing for the petitioner also pointed out that a notification u/s 6 of the Tamil Nadu Forest Act, 1881 came to be issued on 1.9.1991 for the purpose of declaring the above referred to lands as forest land. In the circumstances, the lands have virtually assumed the character of forest land over a period of time, where huge growth of trees has also been undertaken at the instance of the Department of Forest coming within the jurisdiction of the second respondent. Learned senior counsel further contended that the present attempt of the first respondent to indulge in an activity of deforestation of the above referred to lands for the purpose of construction of houses under the Periyar Memorial Samathuvapuram Scheme would be in direct violation of Section 2(ii) of the Forest (Conservation) Act, 1980 inasmuch as such an attempt is being made without getting the prior approval of the Central Government.

2. On a perusal of the material papers placed before us and after hearing the learned Government Pleader, we find that the first respondent has planned to create a Samathuvapuram under the Periyar Memorial Samathuvapuram Scheme in the lands in the above referred to survey numbers.

3. The learned Government Pleader, by referring to the notification dated 15.5.1991 issued u/s 6 of the Tamil Nadu Forest Act, 1881, contended

that though under the said notification, objections were called for to declare the above referred to lands under the category of ""Odukkadu Kadugal"",

viz. Reserved Forests, the ultimate declaration u/s 16 of the said Act was not issued and that the above referred to lands continued to remain and

be classified as ordinary Government lands. The learned Government Pleader would, therefore, contend that inasmuch as the above referred to

lands cannot be construed as forest lands falling under the provisions of the Tamil Nadu Forest Act, 1881, the question of invoking Section 2(ii) of

the Forest (Conservation) Act, 1980 does not arise and consequently, the approval of the Central Government was not required to create a

Samathuvapuram in the said lands.

4. Having heard the learned counsel for the parties, we had the benefit of perusing the decision of the Honourable Supreme Court reported in The

Supreme Court Monitoring Committee v. Mussorie, Dehradun Development Authority and Ors, (1997) 11 SCC 605 in the case of Supreme

Court Monitoring Committee vs. Mussoorie Dehradun Development Authority & Others, where a more or less similar situation came to be

considered by the Supreme Court. That was also a case where a land where extensive growth of trees and plantations was sought to be converted

into a housing colony in the State of Uttar Pradesh and while dealing with the said situation, the Supreme Court has stated as to what land can be

construed as forest land. In the words of the Supreme Court as stated in paragraph 1 of the said judgment, the term "forest land" can be construed

in the following manner :-

The term "forest land" has not been defined under the Indian Forest Act, 1927 or the 1980 Act and, therefore, has to be understood as including

an extensive track of land covered with trees and undergrowth, sometimes intermingled with pasture, i.e., it will have to be understood in the broad

dictionary sense. So understood, any area which the State Act considers to be a forest and is governed under that law will also be subject to

Section 2(ii) of the 1980 Act. Viewed in this light, any land which the State of Uttar Pradesh by notification declares to be a forest would be

governed u/s 2(ii) of the 1980 Act.

When we apply the principle set out in the abovesaid decision to the case on hand, we find that as early as in the year 1991, when the State

Government issued the notification dated 15.9.1991, there was an indication to the effect that there was extensive growth of trees and other

plantations in the above referred to lands and that the State Government itself intended to declare the said lands as forest lands in the light of such

extensive growth of trees and plantations. Though the further declaration u/s 16 of the Tamil Nadu Forest Act, 1881, did not ultimately fructify, the

fact that the land had extensive growth of trees and plantations having been accepted by the Department of Forest themselves, it will be too late in

the day for the respondents to contend that the said lands were mere Government lands and therefore, there is nothing for seeking the permission

of the Central Government as prescribed u/s 2(ii) of the Forest (Conservation) Act, 1980. When we apply the ratio laid down by the Supreme

Court in the above referred to judgment to the present case, we have no hesitation in holding that the land in question, which had extensive growth

of trees and plantations, squarely comes under the definition of "forest land" and

consequently attracts the stipulations contained in Section 2(ii) of the 1980 Act.

5. As far as the move of the State Government for construction of houses under the Periyar Memorial Samathuvapuram Scheme is concerned,

here again, we wish to be guided by what has been stated by the Supreme Court in the very same judgment, wherein in paragraph 2, while

considering the question as to whether the activity of construction of building can be construed as non-forest activity, the Supreme Court has held

as under :-

...Any building activity permitted within the forest area would certainly be a non-forest activity which requires the prior approval of the Central

Government....

Therefore, the present attempt of the State Government in putting up certain constructions, though for the purpose of creating a Samathuvapuram,

would nonetheless be a non-forest activity and consequently, the compliance of Section 2(ii) of the Forest (Conservation) Act, 1980 would

become imperative. In such circumstances, we hold that the respondents, in particular the first respondent, is bound to follow the statutory

prescription contained in Section 2(ii) of the Forest (Conservation) Act, 1980 and without getting the prior approval of the Central Government,

the respondents are not entitled to proceed with any construction in the lands situated in Survey No. 77/3 of Mamandur Village, Thiruttani Taluk,

Thiruvallur District or the other lands in Survey Nos. 77/8, 77/9, 77/10, 77/11 and 77/12 of the said village and district. The writ petition,

therefore, stands allowed. We, however, give liberty to the respondents to approach the Central Government and seek for appropriate permission,

if they still wish to pursue with their scheme of construction of a Samathuvapuram in the lands in the above referred to survey numbers. There shall

be no order as to costs. Consequently, M.P. No. 1 of 2008 is closed.