

(2002) 10 MAD CK 0098
In the Madras High Court
Case No : C.M.S.A. No. 29 of 1996

The District Forest Officer, Gudalur Division
Vs

APPELLANT

M.P. Varghese

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Tamil Nadu Forest Act, 1882 — Section 10

Citation : (2003) 2 LW 139

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : V. Sethuraman, Special Govt. Pleader, for the Appellant; B. Ramamoorthy, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—This Civil Miscellaneous Second Appeal is directed against the judgment of the learned District Judge and Appellate Authority, Nilgiris District at Uthagamandalam, in C.M.A.No.15 of 1995 dated 29.11.1995, confirming the order passed by the Forest Settlement Officer, Gudalur, in R.C.A.No.86 of 1991 dated 9.1.1995.

2. By a notification issued and published in the Gazette on 25.9.1992 u/s 4 of the Tamil Nadu Forest Act, 1982 hereinafter called "the Act", a large extent of land was proposed to constitute a Reserved Forest. The said large extent included the land belonging to the respondent herein of an extent of 0.21 hectares. The said notification was followed by proclamation by the Forest Settlement Officer u/s 6 of the Act. In terms of Sections 8,9 and 10, the petitioner filed his objections as an occupant of the land and objected to the inclusion of the land in the proposed area to constitute a Reserved Forest. The Forest Settlement Officer after enquiry as contemplated u/s 8 of the Act, held that the respondent appears to have been in possession for more than 10 years and that the said land may be excluded from the proposal.

3. Aggrieved by the said order, the District Forest Officer filed appeal before the learned District Judge in terms of Section 14 of the Act. The learned District

Judge also went into the matter and considering that the Village Administrative Officer had suggested that the land in question need not be proposed for afforestation, the learned District Judge concluded that the Forest Settlement Officer has rightly excluded the land and with the result, confirmed the order of the Forest Settlement Officer. Hence, the above Miscellaneous second appeal by the District Forest Officer.

4. At the time of admission of the above Second Appeal, the following substantial question of law has been framed for consideration:-

"Whether the lower appellate Court is right in allowing the appeal by recognising the right of the respondent mainly on the ground of encroachment?

5. Learned counsel for the appellant contends that the authorities below have misconstrued the scope of the claims, which can be maintained before the Settlement Officer. Admittedly, the respondent was not a patta holder and he was only an illegal encroacher and that therefore, he was not competent to file any claim petition. Learned counsel would state that encroachers having illegal occupation of the land are not entitled to put forward any claim under the Act.

6. Per contra, Mr.B.Ramamoorthy appearing for the respondent contends that the provisions of the Act do not make any distinction between patta land or non-patta land or whether occupation was on the basis of any proprietary right or as an encroacher. The object of the Act, according to learned counsel, was only to increase the forest area and as such, discretion was given to the Forest Settlement Officer to exclude such of those lands which are under occupation of individuals and not to cause hardship to such individuals. Learned counsel also relied on the judgment of the Lahore High Court in State of Uttar Pradesh Vs. The IInd Additional District and Sessions Judge and Others, which will be dealt with subsequently.

7. I have considered the submissions of both sides. The only issue which arises for consideration is as to whether a person in illegal occupation of the Government land/encroacher, is entitled to file a claim petition as contemplated u/s 8 of the Act.

8. It is pertinent to note that power is given to the Government u/s 3 of the Act to constitute any land at the disposal of the Government as a Reserved Forest. Section 4 of the Act entitles the Government to issue notification to constitute any land as a Reserved Forest subject to the procedure to be followed thereunder. After issuing the said notification, the Forest Settlement Officer is authorised to issue proclamation. He is entitled to specify the situation and the limits of the lands proposed to be included within the reserved forest and spell out the consequences which will ensue on the formation of the Reserved forest.

9. Thereafter, u/s 8 of the Act, the Forest Settlement Officer shall receive in writing all statements and if there be any objection, to enquire into of the claims of such claimants. The following extract of Section 10 will be relevant for the

purpose of considering the issue in this appeal:-

"10. CLAIMS TO RIGHTS OF OCCUPANCY AND OWNERSHIP:-

In the case of a claim to a right in or over any land other than the following rights:-

- (a) A right of way;
- (b) a right to a water course, or to use of water;
- (c) a right of pasture; or
- (d) a right to forest produce;

the forest Settlement Officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

(1) ADMITTED CLAIMS:- (i) If such claim is admitted wholly or in part, the Forest Settlement Officer may (1) come to an agreement with the claimant for the surrender of the right; or (2) exclude the land from the limits of the proposed forests, or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870."

When once the Forest Settlement Officer comes to the conclusion that the claim is either to be admitted in whole or in part, then he should come to an agreement with the claimant for the surrender of the right or exclude the land from the limits of the proposed forest or proceed to acquire such land in the manner as provided under the Land Acquisition Act. The Sub-section as extracted above would show that the claims can be admitted only in respect of the lands over which the claimant can put forth and establish a definite right. Such a right cannot be claimed by an encroacher. There will be no question of or any obligation on the part of the Forest Settlement Officer to come to an agreement or settlement with an encroacher for the surrender of his right. There is also no necessity to acquire such a land under the provisions of the Land Acquisition Act. Sub-section 1 therefore, clearly envisages that any claim can be only in respect of the right of a person who in law will be entitled to such right and to claim compensation. This would only mean that the claim could be maintained only by a person having lawful title or lawful possession of the property. It follows that claims as contemplated under the Act could be only with reference to ownership or possession which are legally valid thus entitling the owner to be compensated and cannot extend to lands under illegal occupation or in favour of encroachers. I have no hesitation in holding that both authorities below have totally failed to consider the scope of the claims which can be entertained under Sections 8 to 10 of the Act. Therefore, the entire claim petition, filed by the respondent herein being only an encroacher is liable to be rejected. Learned counsel in the alternative, contended that the respondent had prescribed title by adverse possession and that he has also requested for assignment of the land and the same may be considered. He would further submit that the location of the land

was such that it cannot be included in the forest as the disputed land was completely surrounded by patta lands.

10. I am able to entertain the claim of adverse possession at least for three reasons. Firstly, there is no decree by any competent Civil Court holding that he has prescribed title by adverse possession. Claims of adverse possession cannot be upheld only on the basis of the unilateral claim by the encroacher. Secondly, the very objection of the respondent before the authorities is that he was in possession of the property for over 25 years. According to the Revenue Authorities, he was in possession for the past 10 years and this finding has also been accepted by the appellate Court. Declaration u/s 4 of the Act has been issued on 25.11.1992 followed by proclamation u/s 6 of the Act on 9.11.1993. Therefore, on 25.11.1992 there has been a statutory intervention snapping adverse possession followed by a statutory vesting of the property with the Government. Thirdly, to claim adverse possession, there is absolutely no animus or denial of the title by the occupant as against the Government. At an earlier stage, he himself has asked for assignment which had been turned down by the Government. The said fact is disclosed on a perusal of the file. This request for the assignment was made by the petitioner on receipt of a notice for eviction. Therefore, there is absolutely no animus to prescribe adverse title, much less any denial of Government's title over the property.

11. As regards the petitioner's request for assignment, it was turned down by the Collector earlier and the respondent does not appear to have pursued the same. It is now contended on behalf of the respondent that the land in question is surrounded by patta lands and thus any attempt to afforestation of the land in his possession would be impossible. It is not for this Court to decide whether a piece of land would be capable of conversion as a Reserved Forest. That is a matter for the Forest officials to decide. I am also unable to accept that the land is fully surrounded by patta land. A perusal of the plan shows that the land on north bearing No.987 is not a patta land. However, if any request for assignment is pending with the Government, the respondent is free to pursue the same. The competent authority to assign the land has not been impleaded in this proceeding. Therefore, all that this Court can do is to permit the respondent to approach the competent authority with the request for assigning and the competent authority could be directed to dispose of the request on merits within a time frame.

12. Before parting with this case, I should place on record the deplorable manner in which the forest lands, public lands are dealt with by the Forest/Revenue officials. In this case, knowing fully well that the respondent is an encroacher having no rights over the property, instead of clearing the illegal occupation in accordance with law, the officials have been presenting a case in favour of the encroacher. Before the enquiring authority, the Forest Department was curiously not represented. This is nothing but a deliberate default and connivance and collusion with the illegal encroachers. The Supreme Court had repeatedly pointed

out the duty of the Government at least in the context of the Forest lands to strictly implement the provisions and proper maintenance of the Reserved Forest. But we are only able to come across such cases where Forest/Revenue officials go out of the way to accommodate and regularise illegal occupation and turn a blind eye to encroachments under their very nose. There is no reason why the notice under the Land Encroachment Act which was issued earlier was not pursued further. It is also strange that both the authorities below have chosen to accept the suggestion of the Village Administrative Officer that the land in question need not be proposed for afforestation. He is not the competent authority under the provisions of the Forest Act and it is not known as to how his suggestion had weighed with the authorities, the Settlement Officer and the learned District Judge.

13. In the result, I am inclined to pass the following order:-

(i) This C.M.S.A. is allowed and the Claim Petition filed by the respondent is dismissed.

(ii) The respondent may file a petition for assignment with the Competent Authority within two weeks from the date of receipt of a copy of this order and the Competent Authority may dispose of the same in accordance with law within a period of eight weeks thereafter. This part of the judgment does not mean that there is a direction to consider the request for assignment favourably to the respondent. The application shall be considered and disposed of in accordance with law also after hearing the Forest Department and only if he is eligible to assignment and that it will not affect the process of afforestation. No costs.