
(1964) 08 MAD CK 0042
In the Madras High Court
Case No : Second Appeal No. 1676 of 1961

The State of Madras	Vs	APPELLANT
M. Muthuswami Gownder and Others		RESPONDENT

Date of Decision : 04-08-1964

Acts Referred:

Tamil Nadu Forest Act, 1882 — Section 10, 11, 12, 13, 14

Citation : (1965) ILR (Mad) 654

Hon'ble Judges : Natesan, J

Bench : Single Bench

Advocate : T.N.C. Rangarajan, for A. Alagiriswami, Government Pleader, for the Appellant; T.M. Chinnayya Pillai and T.S. Palanisivagurunathan, for the Respondent

Final Decision : Dismissed

Judgement

Natesan, J.—The State of Madras, represented by the Collector of Salem, who was the Defendant in the suit and has lost in both the

Courts below, is the Appellant here.

2. The Plaintiffs instituted the suit in a representative capacity, as the representatives of the pattadars of Erumapalayam and Odayapatti villages, for

a declaration of the mamul right of the pattadars to graze their cattle including goats and to take manure leaves in and from a defined area in the

Jarugumalai reserved forest, and for necessary and consequential reliefs. The cause of action for the suit is stated to be the order of the District

Forest Officer, Roc. No. 4264/55, dated 16th July 1955, confirmed by the District Collector requiring the villagers to take out free permits from

the District Forest Officer after producing certificates from the Revenue Inspector or the Village Munsif showing the survey number and extent of

land and the number and description of the cattle owned by each of the Applicants. The order also prohibits the grazing of goats.

3. The Government does not deny the right of free pasture, but only permits are insisted upon, and the Government also contends that it is entitled

to prohibit the grazing of goats in the areas in question.

4. The contention on behalf of the pattadars is that, when proceedings for reservation of the forest were taken about 1918 there was an enquiry in

the matter by the Forest Settlement Officer, that there was an appeal by the pattadars u/s 14 of the Madras Forest Act, that on appeal an order

was passed in their favour recognising the rights of the pattadars to graze their cattle within a defined area and also to cut and remove shrubs of

nona, kolinji, cattukottai, etc., in that area free of any charge, that the rights have become final by a notification u/s 16 of the Act and that, ever

since, they have been exercising the rights thus recognised without interference by the Government and without any insistence of permits or

prohibition of grazing of goats.

5. The Appellant took its stand on the rules framed under the Madras Forest Act, whereunder grazing can be allowed in a reserved forest only on

permits issued by the forest department, and the issue of permits for goats was prohibited. The Plaintiffs let in evidence to show that for decades

they have been grazing their cattle inclusive of goats in the areas in question without taking permits, after the proceedings recording their rights in

1918. It is seen from the evidence that the pattadars own, in addition to their cattle, a sizable number of goats. The first Plaintiff, besides other

cattle, owns thirty five goats. The sixth Plaintiff who Owns 11 acres of land besides other cattle has forty goats. The seventh Plaintiff, examined as

P.W. 3, speaks to grazing cattle including goats in the reserved forest area for over thirty years. The fifth Plaintiff, examined as P.W. 5, has stated

that he owns cattle including fifty goats. Several other pattadars have deposed their owning goats and grazing them in the areas in question. On the

evidence, the Courts below have come to the conclusion that, after the order of the Collector in 1918 recognizing the rights of the pattadars, no

permits were obtained by the pattadars, and that from 1918 till 1954 the Plaintiffs and other pattadars of the two villages have been exercising their

rights without getting any permits, even though permits may be called free

permits.

6. On behalf of the Plaintiffs it is contended that the pattadars are a fluctuating body that the cattle owned by them would also be fluctuating and

that there will be considerable difficulty in their taking individual permits. It is argued on their behalf that the recognition of the right of free grazing at

the time of reservation of the forest was of the village community, the body of pattadars in the villages owning cattle, in recognition of their mamool

rights of grazing.

7. It is contended on behalf of the Government that the permit system came into existence in 1926 and that the areas in the Jerugumalai forest was

constituted into a reserved forest only in 1926. Though such a contention has been put forward, the Government has not chosen to file the

notification u/s 16 of the Forest Act, which must be available with it. There was no plea in the written statement that the reservation was only in

1926, and the contention, in the absence of plea and any evidence, has been rejected by both the Courts below. Based on the order, Exhibit A-I,

on the appeal by the pattadars u/s 14 of the Madras Forest Act, at the time of the reservation of the forest in 1918 the Courts below have upheld

the contention of the Plaintiffs and decreed the suit as prayed for.

8. It is urged before me by the learned Counsel Sri T.N.C. Rangarajan, appearing for the Government Pleader that the recognition of rights u/s 12

of the Madras Forest Act, is under the very provisions of Section 12, subject to the rules that may be prescribed by the Government and under

Chapter III even cattle grazing as of right or as privilege without payment must be governed by permits, for which no charge was made and that no

permits can be issued for goats. Mr. T.M. Chinnayya Pillai, learned Counsel for the pattadars contends that, by the rules, the Government cannot

take away the rights which have been recognised after due enquiry, and the rule making power conferred on the Government was only to carry out

the provisions of the Act. It is contended that the right of free grazing of cattle including goats had been recognised after due enquiry, and by way

of rules the rights cannot be taken away and fresh restrictions imposed by insisting on permits.

Chapter II of the Madras Forest Act. 1882, provides for the constitution of any land at the disposal of the Government, a reserved forest. Section

4(c) requires before constituting any land as reserved forest, the appointment of an officer to enquire into and determine the existence, nature and

extent of any rights claimed by, or alleged to exist in favour of any person in or over any land comprised within such limits, or to any forest produce

of such land and to deal with the same as provided in the chapter. Section 6 provides for the making of claims, and Section 8 provides for enquiry

by the Forest Settlement Officer. In respect of claims of right to pasture and of right to forest produce, Section 11 provides that the Forest

Settlement Officer shall pass an order specifying the particulars of such claim, as far as may be necessary to define the nature, incidents and extent

of the rights claimed, and admitting or rejecting such claim wholly or in part. It provides that where the right is a right to forest produce, he shall

also record whether the forest produce obtained by the exercise of such right may be sold or bartered. Section 12 reads as follows:

When the Forest Settlement Officer has admitted wholly or in part, and recorded u/s 11, the claim to a right of pasture or to forest produce, he

shall, as far as possible, provide for the exercise of such right:

(a) by altering the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably

convenient for the purposes of the claimant,

(b) by recording an order continuing to the claimant a right of pasture or to forest produce (as the case may be), subject to such rules as may be

prescribed by the Provincial Government.

The order passed under Clause (b) shall record, as far as practicable, the number and description of the cattle which the claimant is from time to

time entitled to graze, the local limits within which, and the seasons during which, such pasture is permitted ; or

the quantity of timber or other forest produce which the claimant is authorised to take or receive, the local limits within which, the season during

which, and the mode in which, the taking of such produce is permitted and such other particulars as may be required in order to define the extent

of the right which is continued, and the mode in which it may be exercised.

10. Section 13 of the Act is important. It provides that whenever any right of pasture or to forest produce admitted u/s 11 is not provided for in

one of the ways prescribed in Section 12, the Forest Settlement Officer shall

subject to such rules as the Government may prescribe in this behalf, commute such right by paying a sum of money in lieu thereof, or, with the consent of the claimant, by the grant of rights in or over land or in such other manner t as such officer thinks fit. There is provision for appeal u/s 14 of the Act from the order passed by the Forest Settlement Officer under Sections 11, 12 and 13 of the Forest Act. Section 16 provides for the final notification after the disposal of the appeal. Section 63 provides that the Provincial Government may make rules consistent with the Act, amongst other purposes with which we are not now concerned, generally, to carry out the provisions of the Act.

12. The rules on which the Government now relies come under the heading Rules and conditions regarding the issue of grazing permits. The material portions are extracted:

I. Grazing shall be allowed in reserved forests only on permits issued by the Forest Departments.... These permits, however, do not cover grazing in areas which are specially closed to grazing. Permits hold good only for reserves under the control of the Forest Department and not for reserves under panchayat management.

II. ...

III. Except in the case of right or privilege holders permits shall be issued on payment of such fees as may be prescribed by Government from time to time. No permits shall be issued for goats. Cattle grazing as of right or as a privilege without payment must be covered by permits for which no charge will be made....

13. The rules also give the form of the permit. It contains columns as to the person to whom it is issued, the place of residence, name of the range, number and description of animals, fees paid, and also a column for remarks. Certain conditions are prescribed regulatory of the grazing. There is a note added that breach of any of the conditions subject to which the permit is issued will ipso facto make void the permit, though the District Forest Officer may remit this penalty and allow the permit to continue valid, if he sees fit.

14. It may be seen from Exhibit A-10, a certified copy of a report referring to the enquiry into the claims put forward by the pattadars that

representations have been made before the enquiring officer and that even in 1877 the rights of the mitta ryots to graze their cattle and to cut leaves

from the area had been recognised by the Sessions Court, Salem. The report also shows that one of the persons examined asserted the right of

grazing even of goats from the time of his forefathers. Exhibit A-1 is the order passed on the appeal preferred by the pattadars u/s 14 of the

Madras Forest Act from the order of the Forest Settlement Officer. The material portion of the order is set out hereunder:

It should be held therefore that the right actually exercised by the rayats was a limited one. On a consideration of this fact and of the fact that such

a limited right can be admitted without detriment to the purpose for which these hills were reserved, I decide to admit such a limited right to the

persons shown in the schedule below.

The extent of his right will, as required by Sections 11 and 12 of the Act, be defined as follows: The Appellants having by their pleader agreed to

accept under Panchayat's management certain areas defined and demarcated by the District Forest Officer and to relinquish all claim to any right in

other areas the right to free grazing in the areas allotted to the Appellants respectively is admitted.

With regard to the claim for free removal of leaf manure the right to remove leaves of shrubs named in the Panchayat lease (and of these only) will

be admitted so far as the areas are concerned for which Panchayat lease is granted.

For the villages of Odayappatti and Erumapalayam, the Appellants shall be taken to represent the villages as a whole.

In all other points the decision of the Settlement Officer is confirmed and the appeals rejected

Schedule.--(1) All rights claimed but not presented on appeal, are extinguished. (2) Appeals V and VIII preferred by the Malayali villagers are

unsupported by evidence. They have been duly provided for, the appeals are rejected. (3) Appeals 1 and 3 to 7. The Appellants so far as they are

landholders of the villages of Erumapalayam and Odayappatti are conceded on their own behalf and on behalf of other pattadars of the village, (a)

The right to graze cattle in the area defined by the panehayat lease. (b) The right to cut and remove shrubs known as nona, kolingi, kattukottai,

unanthalai, vilari thavari, ponnavarai within that area. (4) No appeal was preferred from Ammapate the claim therefore is extinguished....

15. This order defining the rights of the pattadars does not limit the grazing rights to cattle other than goats. In this connection, a reference has to be

made to the definition of cattle under the Madras Forest Act. Section 2 defines cattle thus:

cattle includes elephants, camels, buffaloes, horses, mares, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.

16. It is not contended that the rules were made subsequent to the order exhibit A-1. The rules have been there already according to the

Government Pleader but in my opinion it is immaterial when the rules were made. At the enquiry, representation was made on behalf of the

pattadars that they have been grazing their cattle inclusive of goats. It is not as if there was no grazing of goats prior to the enquiry in question.

While recognizing the claim for free grazing put forward by the pattadars, goats have not been excluded. The question for consideration is whether,

by reason of rule III, the right of grazing goats has been taken away, even though the claim to graze cattle inclusive of goats was pressed at the

enquiry and the grazing right as claimed was admitted.

17. Section 12, already set out enables the Forest Settlement Officer to provide for the exercise of the rights admitted wholly or in part u/s 11 of

the Act. Clause (a) provides for altering the limits of the proposed reserved forest so as to exclude land of sufficient extent, of a suitable kind, and

in a locality reasonably convenient for the purposes of the claimant. Clause (b) provides for continuing to the claimant a right of pasture or to forest

produce, subject to such rules as may be prescribed by the Provincial Government. That cannot mean that the right which has been recognised or

admitted can be taken away by the rules. The rules can only regulate the exercise of the right and not take away a right recognised after due

enquiry and recorded. As set out already, the rule making power of the Government is limited to making such rules as may be necessary to carry

out the provisions of the Act. The Act does not provide for the extinction of the rights, if any, which are found to exist in the claimants. When

extinction of the right to pasturing recognised u/s 11 becomes necessary, Section 13 provides for the commuting of such rights by paying a sum of

money in lieu thereof, or, with the consent of the claimant, by the grant of rights in or over land or in such other manner as such officer thinks fit. It

cannot be disputed, in the present case, that the villagers have been from time immemorial exercising the right of grazing even goats. In the absence

of any limitation, while admitting the right of grazing cattle, it must be held that there has been recognition of the right to free grazing of all cattle,

which, apart from the evidence adduced, by the definition itself, includes the grazing of goats. If any prohibition had to be made for the grazing of

goats in the reserved area, the Government would have commuted that right of grazing in the pattadars u/s 13. It is not contended for the

Government that there were proceedings for the commutation of the right of grazing goats, as provided for u/s 13; nor has any other land been

allotted for the grazing of goats.

18. Reference may be made in this connection to a decision of a division Bench of this Court in *Thatha Pillai v. Emperor* (1918) 45 I.C. 504, a

case arising u/s 26 of the Madras Forests Act. Section 26 comes under chapter III of the Act dealing with the protection of land at the disposal of

Government not included in reserved forest. It provides that, subject to all rights now legally vested in individuals and communities, the Provincial

Government may, for any district or portion of a district, make rules to regulate the use of the pasturage or of the natural produce of land at the

disposal of Government and not included in a reserved forest. Such rules may, with respect to such land, provide inter alia for regulating or

prohibiting the cutting of grass and pasturing of cattle. The case mentioned above arose on a conviction u/s 26 and the rules and regulations framed

thereunder. The question was whether Section 26 contemplated that the Government could under that Section prohibit the use of the land which is

dealt with under chapter III of the Forest Act for pasturage. The rights dealt with under that Section and the language of the Section are no doubt

entirely different. But the following observation is significant:

The language of the Legislature seems to us clearly to mean just the reverse. They did not intend to empower the Government to regulate the use of

the land which is dealt with under this chapter to the detriment of any rights existing in individuals and communities. This becomes still clearer when

we refer to Sections 10 and 11 of the Act. Section 10 lays down the procedure

with reference to rights claimed in land other than rights of way, pasturage, water course or forest produce. The procedure with regard, to dealing with those rights is laid down in Section 11. These sections deal with the procedure for reserved forest. Chapter III deals with land not included in reserved forest, and it seems to us that the wording of the section is clear enough to show that as in the case of reserved forest so also with respect to lands not included in reserved forest, the Legislature did not mean to interfere with the existing rights of the people.

19. The observation in the passage above set out to the effect that in a reserved forest the Legislature did not mean to interfere with the existing rights of the people, even if it may not be necessary for the disposal of the case, is entitled for considerable weight.

20. The Act provides for an enquiry into claims and an admission or rejection of the claims. In respect of rights which are admitted, if they could not be conveniently provided in the reserved forest, provision is made in Section 13 of the Act for compensating of such rights or otherwise to accommodate the claimants. That being the scheme of the Act, it is clear that the rules cannot take away a right which has been admitted. The following remarks of Lord Dunedin in *R. v. Minister of Health Ex parte Yaffe s*, 503 extracted in *Craies on Statute Law*, sixth edition, page 311, though obiter, are apposite in the present context.

The confirmation makes the scheme speak as if it was contained in an Act of Parliament, but the Act of Parliament in which it is contained is the Act which provides for the framing of the scheme, not a subsequent Act. If therefore, the scheme, as made, conflicts with the Act, it will have to give way to the Act. The mere confirmation will not save it. It would be otherwise if the scheme had been per se embodied in a subsequent Act, for then the maxim to be applied would have been "*Posteriora derogant prioribus*". But as it is, if one can find that the scheme is inconsistent with the provisions of the Act which authorises the scheme, the scheme will be bad....

21. The following passage set out at page 320 from another decision may also be referred to:

It has been argued that these rules having been approved by the King in Council, have under the provisions of this statute the force of an Act of Parliament.... The words of these rules are no doubt very large, but, as they are

made under the power of the Act and to provide for cases mentioned in the Act, we must look to the Act itself in order to construe them.

22. Now Section 11 providing for the admission of claims requires the order passed to specify the particulars of such claims, as far as may be necessary to define the nature, incidents and extent of the rights claimed, and admitting or rejecting such claim wholly or in part. The order admitting the claim on appeal has been set out in extenso. There is no limitation to the free grazing in the areas allotted to the Respondents. The right is admitted without any conditions. The right admitted is of the pattadars of the villages as a body Counsel appearing for the Government could not place before me any authority for the position that the requirement as to free permit was not an infraction of the rights recognised.

Learned Counsel for the Respondents also was not able to place any authority for the contrary position. However, as the permit that could be granted under the rules cannot be in respect of goats, it follows that, in this case, no permits could be insisted upon. The pattadars own not only other cattle but goats, and each of them owns a fairly large number of goats and have been freely grazing these goats for decades. Rule III of the rules regarding issue of grazing permits is emphatic that no permit shall be issued for goats. If for purposes of regulating grazing permits could be insisted upon, as not being any restriction on the rights recognised, the permits should provide for and include goats in this case. The pattadars may have no objection to such permits. But as the permits now prevalent cannot include goats, it must be held that the Government has no right to require the pattadars to take out permits.

23. There is one other manner of looking at this question, and evidently that might have been the reason why permits have not been insisted on all these years, since 1918. A reference to Exhibit A-I shows that the free grazing areas allotted to the pattadars are areas under panchayat management, and that they were required to relinquish the claims in other area. Rule I, which provides for permits being taken out for grazing in reserved forests states that permits hold good only for reserves under the control of the forest department and not for reserves under panchayat management. The grazing in the present case having been provided for in areas under panchayat management, it followed that the requirement of

permit under Rule I, did not apply to the present case. No other question has been argued before me.

24. In the result, the appeal fails and is dismissed with costs. No leave.