

(2013) 12 MAD CK 0073

Madras High Court

Case No: Rev. Appl. No. 147 of 2012 and W.A. No. 1584 of 2011

The District Forest Officer, Erode
District, Erode

APPELLANT

Vs

B.R. Viswanathan, The District
Collector, The Executive
Engineer, Public Works
Department and The Village
Administrative Office

RESPONDENT

Date of Decision: Dec. 20, 2013

Citation: (2014) 1 CTC 433 : (2014) 2 MLJ 673

Hon'ble Judges: T.S. Sivagnanam, J; Chitra Venkataraman, J

Bench: Division Bench

Judgement

T.S. Sivagnanam, J.

This Review Application has been filed by the District Forest Officer, Erode District, against the Order dated 8.9.2011, in Writ Appeal No. 1585 of 2011. By the said Order, the Appeal filed by the Applicant herein against the Order passed in W.P. No. 20193 of 2007, dated 28.4.2010, was dismissed. The said Writ Petition was filed by the first respondent herein praying for a direction to forbear the Review Applicant from interfering with the First Respondent's possession and enjoyment of the land in Survey No. 411-B measuring 0.80 hectares and in Survey No. 642, measuring 0.98 hectares at Vengambur Village, Erode District, based on an allotment in Ref. No. PSR No. II 1033/51. The First Respondent/Writ Petitioner stated that his father was a freedom fighter and died during 1949. Subsequently, his mother was allotted ten acres of land at Kollegal Village, Gobi Taluk. Subsequently, she made a request for allotment of land for agricultural purpose which was favourably considered and lands in Vengambur village were allotted. The First Respondent/Writ Petitioner claims to be in possession of the land after his mother's demise for about ten years and paying necessary Kists. The grievance expressed was that the Applicant herein is interfering with his peaceful possession and enjoyment of the said lands.

2. The Applicant resisted the Writ Petitioner's claim by stating that the land has been notified u/s 16 of the Tamil Nadu Forest Act and published in the Erode District Gazette No. 79 dated 21.9.2000 and payment of kist to the Public Works Department will not give any right to the Writ Petitioner over the said lands.

3. The Writ Court opined that the Writ Petitioner was in possession of the land in Survey No. 587 A/642, the Public Works Department was receiving kists and without allotting alternate lands, the Applicant herein could not prevent the Writ Petitioner from entering into the said lands, more so, when the land was given on lease under the Freedom Fighter Quota. Accordingly, the Writ Petition was disposed of by order dated 28.4.2010, directing the Applicant herein not to interfere with the Writ Petitioner's possession and enjoyment of the said land except following the due process of law.

4. The Applicant filed W.A. No. 1585 of 2011, challenging the said Order. The Division Bench by Order dated 08.09.2011, dismissed the Writ Appeal holding that it was not disputed that the land in question was leased out to the predecessors of the Writ Petitioner by the Revenue Department and alleged to be in their possession and the learned Single Judge, directed the Review Applicant/Writ Appellant to take action after following due process of law and in that view of the matter observed that there is no reason to interfere with the Order passed in the Writ Petition.

5. The Review Applicant being aggrieved by the dismissal of the Writ Appeal, preferred Appeal to the Hon"ble Apex Court in SLP (CC) 13161 OF 2012. The Hon"ble Apex Court by Order dated 9.8.2012, disposed of the Appeal by passing the following order:

...Learned Counsel for the Petitioner brought to our knowledge specifically to paragraph 3 at page 33 and paragraphs 5, 6 & 11 at pages 35 & 36 of the Rejoinder Affidavit filed before the Division Bench of the High Court stating that in the S.F. No. 642 out of total extent 123.40.5 hectare 54.02.0 hectare with boundary description was notified u/s 4 of the Tamil Nadu Forest Act, 1882 during 1977. Further, it was also stated that the State is in possession and enjoyment of the land. Those aspects were pointed out but were not considered by the learned Single Judge and the Division Bench of the High Court. Further, it was admitted that the Petitioner had not admitted before the High Court that the Writ Petitioner was in possession of Survey No. 642.

Petitioner, under the above circumstances, sought permission to file a Review Petition before the Division Bench of the High Court. Liberty granted. If the Petitioner files a Review Petition within a period of one month, the same will be decided on merits after issuing Notice to the parties. Period of limitation will not stand in the way of the High Court in entertaining the Review Petition. The SLP is disposed of.

It is made clear that we have not expressed any opinion on the merits of the case.

Pursuant to the above Order, the Applicant has preferred this Review Application.

6. We have heard Mr. M. Hidayathulla Khan, learned Government Advocate (Forests) for Mr. M.K. Subramanian, learned Special Government Pleader (Forests) for the Review Applicant, Mr. S. Thangavel, learned Counsel for the First Respondent and Mr. R. Ravichandran, learned Additional Government Pleader for the Respondents 2 to 4 and perused the materials placed on record.

7. It is seen from the affidavit filed in support of the Writ Petition that the Writ Petitioner claimed that during 1993 the lands were allotted to his mother and after her demise the lands were assigned to the Writ Petitioner and he has been paying all necessary taxes to the Public Works Department. On a specific question raised to the learned Counsel for the Writ Petitioner, it is fairly submitted that there is no such Order of Assignment in favour of the Writ Petitioner. Therefore, it is clear that the statement made by the Writ Petitioner that he was an assignee is an incorrect statement.

8. The Forest Department claimed that the land in question has been declared as a Reserve forest and notified u/s 4 of the Tamil Nadu Forest Act, and published in the Tamil Nadu Government Gazette dated 2.9.1977. On and from the date of such notification, the land is a forest land and cannot be leased out without the concurrence of the Forest Department. It is their further case that after coming into force of the Forest Conservation Act, 1980, prior concurrence of the Government of India is necessary for leasing out the forest land for other than forestry purposes. Therefore, it is stated that payment of kist to the Public Works Department, will not give any right to the Writ Petitioner. It is pointed out that subsequently, the lands were notified u/s 16 of the Tamil Nadu Forest Act and published in the Erode District Gazette No. 79 dated 21.9.2000. The claim made by the Writ Petitioner that he is carrying on Agricultural operations and effected improvement in the land was denied. The Writ Court by placing reliance on the communication dated 3.4.2009, held that the land has not been transferred from the Revenue Department to the Forest Department and the Assistant Executive Engineer, Public Works Department, Kulithalai, has addressed the Applicant and called upon them not to interfere with the Writ Petitioner's possession of the said land. Therefore, the Writ Court held that the Writ Petitioner cannot be prevented from entering into the land without allotting an alternative site. With these observations, the Writ Petition was disposed of with the direction that the Applicant herein should not interfere with the Writ Petitioner's possession and enjoyment of the land except following due process of law.

9. In the Writ Appeal filed by the Applicant, a Rejoinder Affidavit was filed placing on record certain additional facts with the view to substantiate the stand of the Forest Department that the Writ Petitioner has no vested right over the land. The Writ Appeal was dismissed holding that it was not disputed that the land in question was leased out to the predecessor of the Writ Petitioner and the Writ Petition itself was

disposed with an observation that the Writ Petitioner should not be evicted except by following due process of law, the Appeal was dismissed.

10. On further Appeal to the Hon"ble Apex Court, it was pointed out that the Forest Department never admitted the possession of the Writ Petitioner and though facts were place on record, the Division Bench did not notice the same. Therefore, the Review Applicant sought permission to file Review Application before the Division Bench. The Hon"ble Apex Court directed that if the Applicant filed Review Application, within a period of one month, the same will have to be decided on merits after issuing Notice to the parties. It was made clear that the Hon"ble Apex Court had not expressed any opinion on the merits of the case.

11. In the light of the fact that the stand taken by the Applicant in the Rejoinder Affidavit with specific reference to the plea of possession was not taken into consideration by the Division Bench earlier and this error which has crept in the Order of the Division Bench being apparent, this Review Application is entertained.

12. As noticed above, the Writ Petitioner, though initially stated that he was an assignee, now claims to be a lessee. However, no written lease document given by the Public Works Department has been produced before this Court. Copies of receipts have been filed, which have been signed by the Junior Engineer of the Public Works Department W.R.O. R.C. Section, Karur, which states that certain sums of money were received from the Writ Petitioner for lease amount. In the said receipt there is a mention of the Survey Number of the land which is shown as S.F. No. 411 B (642). We find that the lease amount collected is on a year to year basis and a receipt has been issued for the year 2012-13 on account of "MP. Collection" dated 11.12.2013, during the pendency of this Review Application. Copies of receipts signed by the Village Administrative Officer dated 1.6.2000, 3.11.2001, and 5.9.2002 shows that certain amount of money was collected as "B" Memo charges.

13. The case of the Writ Petitioner is that the land belongs to the Public Works Department and he is a lessee. From the facts placed on record, it is seen that the lands in S.F. No. 642 measuring a total extent of 123.40.5 hectares was demarcated and an extent of 54.02.0 hectares was notified as Vengambur, Forest Block u/s 4 of the Tamil Nadu Forest Act, by a Notification dated 21.9.1977. Subsequently, a Notification was issued u/s 6 of the Forest Act and published in the Erode District Gazette dated 21.9.2000. Thus, by virtue of such Notification an extent of 54.2.0 hectares has been declared as forest land. The Writ Petitioner claimed that the lands in S.F. No. 411-B measuring 0.98.0 hectares and S.F. No. 642 measuring 0.80.0 hectares was leased out to his mother for agricultural purpose. It is pointed out that S.F. No. 411-B is a separate field and not related to S.F. No. 642 and the "B" Memo said to have been issued to the Writ Petitioner during 1997, cannot have any validity as the area has already been notified under the Tamil Nadu Forest Act as early as 1977.

14. The learned Special Government Pleader submitted that the Writ Petitioner has not made any cultivation or effected any improvement in the said lands and the claim is false. Further, it is stated that once the land is notified under the Tamil Nadu Forest Act, the Public Works Department has no right over the land and the claim that lease amount was paid to the Public Works Department for S.F. No. 411-B is no way related to the area in S.F. No. 642. It is stated that the land in S.F. No. 642 is an undisturbed forest with rich tree growth and the Writ Petitioner is not in possession and enjoyment of any forest land.

15. With regard to the communication received from the Assistant Executive Engineer (PWD), Reserve Conservation, Kulithalai, dated 20.2.2007, wherein it has been stated that an extent of 0.98.0 hectares in S.F. No. 587-A, has been leased out to Tmt. K.S. Jayalakshmi, from the year 1997, there is tampering of record by the Writ Petitioner by inserting S.F. No. 642. Further, S.F. No. 587-A, is a separate field and it is no way related to S.F. No. 642. Further, the "A" Register extract also does not reveal any assignment in respect of the said land.

16. In the Rejoinder Affidavit filed by the District Forest Officer, serious allegations have been made against the Tahsildar, Erode, who is said to have unlawfully and unilaterally made survey of altering the already surveyed field boundary, notified u/s 4 of the Tamil Nadu Forest Act. It is further stated that a communication has been sent to the District Collector on 25.2.2011 about the illegal action and the false Report submitted by the Tahsildar, Erode, and the Collector of Erode District, by Letter dated 1.3.2011, instructed the Tahsildar, Erode, to demarcate the boundary of already surveyed field map notified u/s 4 of the Tamil Nadu Forest Act, before the concerned Forest Officials, however, the Tahsildar, has not complied with the directions of the District Collector. Further, it is submitted that if the State Government proposes to withdraw any land notified as a forest land, then permission of the Central Government is required for such withdrawal.

17. From the above facts, it is evidently clear that there is absolutely no vested right for the Petitioner and even assuming that certain lease rents were collected by the Public Works Department, they had no authority to do so in the light of the fact that the land has been notified as a forest land under the Tamil Nadu Forest Act, as far back as 1977. It is further seen that one Muralidharan had filed Criminal Original Petition being Crl. O.P. No. 23792 of 2010, before this Court for a direction to direct the Inspector of Police, Kodumudi Police Station, Erode District, to take action on the Complaint given by him against the Forest officials. The said Criminal Original Petition was disposed of by directing the Petitioner therein to give a fresh copy of the Complaint to the Deputy Superintendent of Police, who would enquire into the matter, in the light of the Order passed in the Writ Petition.

18. From the Affidavit filed by the Forest Department, it is seen that the Deputy Superintendent of Police has conducted an enquiry on 3.10.2010 in the presence of all parties. The learned Special Government Pleader submitted that the land in

question is a river bed and there is no cultivation done by the Writ Petitioner who is residing permanently in Bangalore and the said Muralidharan is his Power of Attorney Agent and they are attempting to take possession of the land to exploit the mineral resources in the land since it is a river bed. To substantiate his claim certain photographs were produced. However, we refrain from expressing any opinion on such submission.

19. From the facts noticed above it is evidently clear that the Writ Petitioner is attempting to take advantage of the dispute between two Departments, said to have caused mainly at the instance of the Tashildar, Erode. In any event, collection of any lease rent by the Public Works Department in respect of a forest land cannot confer any right on the Writ Petitioner. Hence, for all the above reasons, no relief can be granted to the Writ Petitioner. Accordingly, the Review Application is allowed, the Order passed in the Writ Appeal is set aside and the Writ Petition stands dismissed. No costs.