
(2010) 12 MAD CK 0258

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 10531 of 2005

P. Gopi and P.
Rajendran
represented by his
Power of Attorney P.
Gopi

APPELLANT

Vs

The State of Tamil
Nadu and Others

RESPONDENT

Date of Decision: Dec. 16, 2010

Acts Referred:

- Tamil Nadu Hill Areas (Preservation of trees) Act, 1955 - Section 3(1)

Citation: (2011) WritLR 357

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: V.R. Venkatesan, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioners have filed this writ petition seeking a Writ of Mandamus to direct the Respondents 3 to 5 to pass an appropriate orders by means of permitting the Petitioners for cutting, removing and transporting the shade trees, robusta and arabica, the very old plants which need to be uprooted as mentioned by the Deputy Director(Extension) Coffee Board situated in Survey Nos. 161, 178/1, 171/1 measuring an extent of 2.03.5 Hectares situated at Kanalkadu, Kamanur Village, Kodaikanal Taluk, Dindigul District.

2. According to the Petitioners, they are the owners of the dry lands in an extent of 2.03.5 Hectares comprised in Survey Nos. 161, 178/1, 171/1 in Patta Nos. 280, 282

and its old Survey Nos. 133/3 and 125/1 of Kamanur Village of Kodaikanal Taluk, Dindigul District. The said properties have been purchased by the Petitioners for a sum of Rs. 1,33,000/-(Rupees one Lakh and Thirty three Thousand only) from one M/s. S. Shanmugavel and three others through a sale deed dated 18.06.1993 bearing Document No. 1930/93. The Petitioners/vendors derived title from one Thirupurasundari Ammal. The said Thirupurasundari Ammal planted Coffee trees and registered the Coffee Estate with the Coffee Board on 02.12.1943 and the Coffee Board has assigned the Registration No. as 596.

3. The case of the Petitioners is that the Coffee Plantations are now 62 years old and therefore they require re-plantation. Further, in the Petitioners' Coffee Estate there are about 700 shady trees with girth of above 1.5 metres and more than 500 trees with girth of less than 1.5 metres are standing. During the year 1994, for more than 100 trees were fallen due to heavy rain and wind. These shady trees are non-scheduled items of timber.

4. The property is located in hill area and governed as per the provisions of Tamil Nadu Hill Areas (Preservation of Trees) Act 1985 and the rules framed thereunder. The Coffee Estate is registered under the Coffee Board as per the provisions of the Coffee Act 1942, which is a Central Act. The First Respondent/Government of Tamil Nadu has framed a rule under the Tamil Nadu Preservation of Trees Act, 1955, in G.O. Ms. No. 512, Forest and Fisheries Department dated 21.04.1984, in and by which it is mentioned that no permission is necessary for cutting shady trees in Coffee/Cardamom Plantations provided that atleast a minimum of trees per Hectare shall be retained and only for reducing the shady trees to below 100 trees per Hectare. Moreover the permission of the Committee has to be obtained and will be subject to the trees being silviculturally matured etc.

5. The Petitioners' case is that the Petitioners are intending to cut and remove only the old trees in their Estate. 100 trees, which have fallen due to wind, have been collected on 05.08.1993 and the Petitioners kept the same in their Estate for removal to some other place. Earlier, the Petitioners have filed a Writ Petition in W.P. No. 21137/1994, wherein they have sought for issuance of direction to be issued by this Court in directing the Respondents therein to permit the Petitioners to remove 15 loads of Casaurins, 35 loads of non-scheduled timber and wind fallen trees after giving sureties for the same which have been kept in the Petitioners' Coffee Estate in connection with O.R. No. 21/93 on the file of the third Respondent therein etc.

6. In the Writ Petition, after hearing both sides, this Court has passed an order dated 09.03.1998 to the effect that the Criminal proceedings pending before the learned Judicial Magistrate, Kodaikanal be expeditiously disposed of, within six weeks from the date of receipt of a copy of the order. It appears that the said order has been passed on the assumption that the proceedings before the Criminal Court has been pending. However, the Petitioners have projected a Review Application No. 17/1998 before this Court and this Court on 30.03.1998 in Review Application No. 17/1998 in

Writ Petition No. 21137 of 1994, has among other things passed the following orders:

6. Therefore, the Petitioners are entitled to succeed in the writ petition and are entitled to obtain the release of the timber as prayed for in the writ petition. However, having regard to the fact that Criminal proceedings are still pending by way of revision before this Court, it will be in the interest of justice that the Petitioners are permitted to take possession of the timber in question after furnishing proper sureties to the satisfaction of the third Respondent which will be operative till the ultimate disposal of the proceedings against the Petitioners.

7. Subject to the above observations, the Review Application as well as the writ petition are ordered. No costs.

7. The Petitioners also earlier have filed a Writ Petition for issuance of Mandamus by this Court, restraining the Respondents therein, their men and agents, etc., from interfering with the Petitioners's cutting, removing and transporting the shade trees in their Coffee Estate, measuring to an extent of 2.03.05 Hectare and thereafter, the Petitioners projected W.M.P. No. 1464 of 1994 to amend the prayer directing the third Respondent to consider and pass orders on the Petitioners' application dated 06.12.1993 and this Court has passed orders on 20.01.1994 directing the Respondents to dispose of the Petitioners' representation within two months from the date of receipt of a copy of the order.

8. The Fifth Respondent/the District Collector, Dindigul District has rejected the permission, in respect of cutting of the trees by means of order dated 12.04.1994 without considering the report of the Tahsildar and the Petitioners preferred an appeal before the Government on 28.04.1994. Since the said Appeal has not been disposed of, the Petitioners have been constrained to file W.P. No. 16424/1994 and this Court on 16.09.1994 has directed the Government to consider and pass orders on the Petitioners' application dated 28.04.1994 within a period of eight weeks from 19.10.1994. The first Respondent has passed orders on 21.08.1995 in his proceedings G.O.(2D) No. 68 ENVIRONMENT AND FOREST (FR.IV) DEPARTMENT mentioning that,

(a) The District Committee examined and rejected the application stating that the trees intended for cutting has not been properly numbered to facilitate inspection that the slope of the land is 35% to 45% and that the land owner has not done any soil conservation measures to prevent soil erosion.

(b) and that neither of the applicants had appeared for inspection along with the District Forest Officer inspite of prior notice to them.

(c) in the present appeal the Appellants have stated that the request for felling of trees is as per provisions of the Tamil Nadu Hills Areas (Preservation of Trees) Act 1955 and the rules framed there under.

(i) that their request is for the felling of shade trees with the girth of more than 1.5 metre and breast height after retaining not less than 100 shade trees in an Hectare.

(ii) they have proposed to replant the Coffee Plantation which is aged 51 years after cutting the excess shade trees.

(iii) the Executive Engineer(Agriculture Engineering) inspected the site on 31.05.1995 and 01.06.1995, 20.06.1995 stating that

(a) different types of trees such as Orange, Silver Oak, Jack fruit and different varieties of Scrub trees exist in the field.

(b) the exact number of felling trees could not be identified in the absence of the identification marks for felling trees and standing trees.

(c) the boundaries of the field are not kept clean to facilitate verification.

(d) the trees in the field for which the permission is sought for felling are not numbered.

(e) therefore it is not possible for him to verify the girth of the trees on silvicultural maturity of the trees in the field.

and remanded the case back to the District Committee on the following grounds:

(a) the Appellants have not numbered the trees to facilitate the identification of trees for felling and to assess silvicultural maturity of the trees.

(b) the direction for joint inspection of the Committee consisting the Personal Assistant

(General) to Collector, the District Forest Officer, the Tahsildhar, the Executive Engineer (Agriculture Engineering) in-charge of soil conservation headed by the decision on the request.

(c) the Appellants are requested to ear mark the boundaries of the field clearly for easy verification and ensure that the trees proposed to be retained and trees proposed to be felled are numbered in different colours.

9. The Petitioners, as against the remand order passed by the First Respondent dated 21.08.1995, have preferred an Appeal to the Government on 27.01.1998 as against the order of rejection of the application by the District Committee for felling of trees on 20.07.1998 and that the Petitioners have been called upon by the Secretary to Government in his letter No. 2685/FR.III/98-2, dated 20.07.1998 to appear before the first Respondent for hearing of the appeal on 10.08.1998 at 3.30p.m. at the Chambers of the Secretary to Government, Environment and Forests Department in the Seventh Floor of Namakkal Kavingnar Maligai, Secretariat, Chennai-9.

10. The Petitioners's Power Agent one R. Palanikumar has presented a petition dated 23.12.2001 to the committee headed by the Fifth Respondent/the District Collector and the District Collector by his reply dated 05.11.2003 has among other things mentioned that "1. Boundary has not been clearly specified and 2. No endeavour has been made to show the boundaries at the time of spot inspection," and therefore, the Petitioners have been directed to rectify the defect and to renew the application and therefore the Petitioners' documents have been returned to them. The first Petitioner has given a letter dated 08.08.2005 to the fifth Respondent/the District Collector, whereby he has mentioned that he has cancelled the power given to one R. Palanikumar from 07.08.2003 given in favour of Palanikumar and therefore has prayed for passing of the orders in regard to the rectification of defects and also prayed for permission in respect of cutting of trees.

11. The learned Counsel for the Petitioners relies on the letter dated 29.07.2002 of the Deputy Director (Extension), Coffee Board, Coimbatore addressed to the Fifth Respondent/the District Collector, wherein it mentioned as hereunder:

An area of 2.03.05 Ha situated in Sy. No. 161 (0.26.0 Ha), No. 178/1 (0.51.0. Ha) and No. 171/1 (1.26.5 Ha) of Kamanur Village was found to be planted with both Robusta and Arabica varieties of coffee in three different blocks. The coffee plants are of very old age-1942 planting -and are not maintained properly shade in the plantation. Because of excess shade and poor maintenance. The yield of coffee is very poor-not even 100Kgs per acre. The agroclimatic conditions are favourable for commercial coffee cultivation in this area, although the terrain is or medium to steep slopes. No intercrops have been tried so far. Incidence of coffee berry borer could be noticed due to improper harvesting, non-collection of gleanings and non-practising of IPM. Coffee Plants have been found to be left for nature without plant-training. Recommendations:

Since the conditions are almost similar in all the three blocks, the following recommendations are meant for all the blocks.

Shade:

Since shade is excess, it is absolutely necessary to bring it to the optimum level. In order to achieve this goal, some trees are to be felled from the coffee area. Hence, it is recommended to cut and remove the following trees which have been identified, marked and listed by the grower.

1 Silver Oak	-	22	
2 Jack(Pala)	-	55	
3 Erumpakkani	-	15	
4 Murungai	-	15	
5 Kumil	-		07
6 Malai Vembu	-	03	
7 Selai	-		26

8 Thandi(Podugai) -	01	
9 Venkkattai	-	03
10. Ulavu	-	05
11. Kotta	-	08
12. Nellarai	-	08
13. Meena	-	02
14. Milachathai	-	04
15. Usilai	-	02
16. Athi	-	01
17. Santhanan Vembu	-	01
18. Vembu	-	04

Total	-	182 Nos

Replanting of Coffee:

Both Robusta and Arabica plants are very old and unproductive, it is suggested to replant with good Arabica materials. The Grower is advised to contact Boards Office to get free supply of good seedlings next year. After the felling of trees is completed, the existing coffee plants need to be uprooted and then fresh line marking and pit-digging are to be done for taking up replanting next year.

Intercrops:

It is advisable to have few intercrops which are suitable for the area like Orange, Pepper, banana etc.,

Since the area is of medium steep slope, it is suggested to have terraces with the support of stone revetments using available stones within the plantation itself.

The Grower is advised with a copy of this letter to take up the above recommendations.

This is for your kind information and necessary action please.

12. According to Mr. D. Sasikumar, learned Government for the Respondents, the Petitioners" request was referred to the members of the District Hill Areas (Preservation of trees) Committee for inspection, enquiry and report to the fact to the District Hill Areas (Preservation of Trees) Committee for finalization of the Petitioners"s request and the third Respondent/the District Forest Officer has submitted a report dated 02.12.2002 mentioning that the boundary stones are not visible and not able to identify the said lands by the inspecting Officials of Forest Department and also that the Petitioners have not come forward to facilitate the inspecting Forest Officials in identifying the lands in question. Moreover, the Petitioner has been informed to rectify the defects noted by the District Forest Officer, Dindigul and renew his application for felling of trees in this Office S.R. No.

55/01/E3, dated 05.11.2003. Subsequently, the first Petitioner sent an application dated 09.08.2005 and his application has been forwarded to the third Respondent's office for verification and has reported as per letter dated 31.08.2005 and that the third Respondent has submitted his report dated 01.12.2005 in which he has mentioned that the lands have not been maintained properly and it is seen like a natural growth of forest and no boundary stones are found to identify the Petitioners' land.

13. The stand of the Fifth Respondent/the District Collector is that the Petitioners have not co-operated with the Forest Officials in identifying the land and the trees to be felled and also the paint marked in the trees which have been proposed to fell are not legible.

14. Advancing his arguments, it is the contention of the learned Government Advocate that the report of the District Forest Officer mentioned that only 37 Silver Oak trees have been felled by the Petitioners without obtaining prior permission of the District Committee constituted under the provision of the Tamil Nadu Hill Areas (Preservation of trees) Act 1955 and in violation of the said Act, the offences have been booked for the 37 trees felled illicitly and that the Petitioners have felled 37 trees during 26.03.93 and 18.12.93

15. As per the Government Order G.O. Ms. 512(Forest and Fisheries) Department dated 21.04.84, prior permission has to be obtained from the District Hill Areas (Preservation of trees) Committee, for the removal of the wind fallen trees by the Petitioners. Moreover as per the revision order of the Government, the Petitioners have to apply to the District Committee for getting permission of the Committee for felling of trees. As per Section 3(1)(b) of the Tamil Nadu Hill Areas (Preservation of trees) Act 1955, no person shall fell or remove wind fallen trees without the prior permission of the District Committee. Two cases in THPOR No. 21/93 and 29/93 have been booked against the Petitioners for violation of the Act and the felled trees were left in the lands itself. The Petitioners have been fined at Rs. 1,000/- (Rupees one Thousand only) each by the learned District Munsif cum Judicial Magistrate, Kodaikanal on 22.02.1996. The fifth Respondent/the District Collector, in compliance of the order of the High Court dated 20.01.1994, has passed orders on 12.04.1994 by rejecting the permission for cutting of the trees as per application made by the Petitioners.

16. Pursuant to the orders of the High Court dated 19.10.1994 in W.P. No. 16424/94, the first Respondent/the Government has passed orders on 21.08.1995 in G.O.(2D) No. 68, Environment and Forest FR(IV) Department. But the case has been remanded back to the District Committee. The District Committee as per order dated 10.12.1997 has rejected the request of the Petitioners by mentioning that except 54 Silver Oak trees, all the remaining trees for which permission was requested for by the Petitioners were spontaneously grown trees.

17. The plea of the Respondents is that the Petitioners have not willingly come forward to identify the boundaries of the lands during inspection by the District Forest Officer, Dindigul. The Village Administrative Officer is not a competent Authority to issue a certificate without recording the evidence of the Executive Engineer(Agricultural Engineering) and respective Tahsildar concerned. The request of the Petitioners would have been considered in the year 2003 itself. It is pointed out by the fifth Respondent.

18. The sum and substance of the stand taken by the Respondents is that the Petitioners will have to obtain permission from the District Committee to fell the trees.

19. As seen from the letter of the District Collector Office dated 05.11.2003 in S.R. No. 55/2001/E3 wherein it is mentioned that the boundary has not been explained and further no endeavour has been made to show the boundaries at the time of spot inspection and therefore, the Petitioners have been directed to rectify the defects. The communication of the Fifth Respondent dated 05.11.2003 has been communicated to one Palanikumar, the power Attorney of the Petitioners. The first Petitioner in his letter dated 08.08.2005 addressed to the fifth Respondent/the District Collector has stated that he has cancelled the power of Attorney from 07.08.2003 executed by him in favour of Palanikumar and since the said power has been cancelled, he has submitted the present petition dated 03.08.2005 by rectifying the defects and has also prayed for permission being granted to him to fell the trees.

20. When the Petitioners in the main Writ Petition have sought for a relief in the nature of Writ of Mandamus in directing the Respondents 3 to 5 to pass appropriate orders in permitting the Petitioners for cutting, removing and transporting the shade trees, robusta, arabica etc., the Petitioners have to specify the boundaries and also they must make an honest endeavour to show the boundaries or identify the same at the time of spot inspection, in the considered opinion of this Court. The Fifth Respondent/the District Collector is also directed to take the assistance of the Revenue Department Officials, so as to demarcate and identify the boundaries at the time of the spot inspection by the fifth Respondent or by its Committee. It is open to the Petitioner to seek the assistance of the Revenue Officials or a qualified surveyor from the Tahsildar to identify the boundaries and also to see the boundaries, being the subject matter in issue. Since the subject matter in issue has a long chequered career, because of the simple fact that the Petitioners have filed earlier different Writ Petitions and still they are not able to reach the benefits, as defined by them and to put an end to all these sufferings, this Court, on the basis of equity, fair play, good conscience, in the interest of justice and even as a matter of prudence, directs the Petitioners as well as the Fifth Respondent/the Committee to jointly co-operate with each other and the parties are directed to take the assistance of the Revenue Officials or the approved surveyor in identifying the boundaries and

also to show the boundaries or identify the same at the time of spot inspection and the Fifth Respondent/the Committee comprising of its members are directed to pass appropriate orders in a dispassionate manner uninfluenced by any of the observations made in this petition by this Court, in regard to the application submitted by the first Petitioner dated 03.08.2005 within a period of eight weeks from the date of receipt of a copy of this order, so as to give a complete quietus to the matter in issue by resolving the disputes/controversies in a complete and comprehensive manner. The parties are directed to lend their helping hand to the Fifth Respondent/the District Committee in completing the proceedings by means of necessary orders being passed by it as prayed for by the Petitioners in regard to cutting, removing and transporting the shade trees, robusta, arabica etc.

21. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.