

(2009) 10 MAD CK 0296

Madras High Court

Case No: Writ Appeal No. 376 of 2008

Salem Mavatta Ezhpulli
Malaivazh Makkal Nala Sangam

APPELLANT

Vs

1. The State of Tamil Nadu, The
Secretary to Government,
Environment and Forest
Department, The District
Collector, Salem District, Salem,
The District Revenue Officer,
Salem District, Salem and The
Forest Settlement Officer, Attur,
Salem District

RESPONDENT

Date of Decision: Oct. 20, 2009

Acts Referred:

- Land Acquisition Act, 1894 - Section 16
- Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 - Section 14(1), 2(c), 2(d), 2(o), 3

Citation: (2010) 1 MLJ 730

Hon'ble Judges: S.J. Mukhopadhaya, J; N. Kirubakaran, J

Bench: Division Bench

Advocate: V. Jeevagiridharan, for the Appellant; D. Sreenivasan, A.G.P. for RR-1 to 4, Mr. S.N. Kirubanandam, Spl. G.P. for R-5, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

The members of the appellant-Salem Mavatta Ezhpulli Malaivazh Makkal Nala Sangam (writ petitioner) (for short, "Association") are all hill tribes, cultivating the waste dry Government poramboke land(s) from time immemorial and are in possession and enjoyment of S.No.1/1 Malayalapatti Village, Attur Taluk, Salem

District. They sought for a Writ of Mandamus, to forbear the respondents from issuing declaration u/s 16 of the Tamil Nadu Forest Act, 1882 for the land(s) in S.No.1/1 of the aforesaid Malayalapatti Village, without considering the claim of the members of the appellant-Association, totally 217 persons, whose names were given in the annexure to the Writ Petition in question and to grant patta to them for an extent of four acres of each of the said land(s) in the said S.No.1/1. The learned single Judge, taking into consideration the facts of the case, maintenance of ecological balance and environmental protection, referring to some of the decisions of the Supreme Court, and having refused to grant the relief, the present Writ Appeal has been preferred by the appellant-Association.

2. The only question to be determined in the present case is as to whether the members of the appellant-Association, who are Scheduled Tribes and those who are other traditional forest dwellers, who otherwise fulfill the requisite conditions, have the forest rights and right of occupation in the forest lands in question.

3. It appears that the land(s) in question i.e. in S.No.1/1 of Malayalapatti Village was proposed for declaration as a "reserve forest" u/s 4 of the Tamil Nadu Forest Act, published on the Gazette vide G.O.Ms.No.3133, dated 28.12.1972 issued from Agricultural Department, followed by Notification u/s 6 published in the District Gazette on 24.11.1978, calling for claims on right, which was existing in the said land(s). According to the respondents, neither the Sangam (Association), nor its members did present any claim during 1978 before the Forest Settlement Officer u/s 10 of the Tamil Nadu Forest Act, which indicates that they were not cultivating during the year 1978. Their representation to the Government for allotment of the land(s) was filed only during 1999, claiming that they were cultivating land(s) from 1991 onwards.

4. The Tahsildar, Attur, by letter dated 22.6.1992, forwarded the claim of the members of the appellant-Association to the District Revenue Officer, Salem, with a report/Survey Notes and other enclosures. It was informed that the land(s) in S.No.1/1, an extent of 1205.27.0 hectares is made up of flat surface and heightened like a small hillock. Huge thick trees are found in the small hillock and some bushes are found in the foot of this small hillock. 538 people, whose names are found in the Adangal, have removed these bushes and have cultivated punja crops and in some places, have removed the bushes and have levelled the land(s). On enquiry, it was learnt that since the boundaries of the forest have not been demarcated, those lands could not be developed any further. It was further informed that Malayalapatti Village is surrounded by hillocks on three sides. For a very long period of time, it is the Adivasis (malayalis, i.e. the Scheduled Tribes), who are in inhabitation. All time passed, other backward people have also settled there. The list showing the land(s) which were allotted for public purpose for the Malayalapatti Village people was also enclosed. It was further informed that the land(s) in dispute are situated 2 Kms. from Malayalapatti Village and cannot be used for public purpose. There are no

Mosques, Temples, burial ground, ancient sculptures in the above said Survey Number. There are no mineral deposits in the said S.No. and there is no possibility of any river to flow and lakes or ponds to form for any small water irrigation. The land(s) are in the nature of red sand and are fertile. The water source is available approximately 30% to 50%. In the midst of the same S.No.1/1, cultivation in S.No.315 consisting of an extent of 23.00 acres were classified as patta land(s) and are enjoyed by four persons by an earlier settlement of lands. In the aforesaid S.No., a Well has been dug and rice crops are being cultivated. There was no objection in the village for converting and allotting the land(s) to the poor, such as landless power and Scheduled Tribes.

5. The Revenue Divisional Officer, Salem, in his turn, by letter dated 10.7.1992, informed the District Revenue Officer, Salem, the aforesaid facts. It was also intimated that pursuant to G.O.No.28, dated 7.12.1997, issued from Forest Department, with regard to the abovesaid land(s), action to be taken according to the Forest Boundary Assessment Act and the recommendation was made to sub-divide 1205.27.0 hectares in S.No. 1/1,131-Malayalapatti Village and to handover the same to the landless poor people.

6. On 8.7.1992, the Revenue Divisional Officer, Salem, vide his note, mentioned that prior to UDR, the land(s) were classified as Government poramboke. The land value was Rs. 1,560/- as was recommended by the Tahsildar and the land(s) had not been of any use for all these days and only bushes which are of no use is grown there. As the forest boundaries have not been demarcated, it was recommended to transfer the land(s) in favour of the poor. Similar report was submitted by the District Revenue Officer in 1992, but the matter remained pending.

7. It appears that inspite of favourable reports, no action having been taken by the State, the appellant-Association moved before this Court in W.P.No.6815 of 2000 for issuance of a Writ of Mandamus, to consider the claim of its members for grant of patta. This Court, by order dated 6.6.2000, directed the District Collector and the District Revenue Officer to initiate proper enquiry and communicate the decision to the appellant-Association within three months. A detailed enquiry was conducted by the Tahsildar and by proceedings dated 14.3.2001, a favourable report was submitted in favour of the members of the appellant-Association and recommended for grant of patta in their favour.

8. The Forest Settlement Officer, Attur, by order dated 11.9.2002, having noticed the fact that the Notification u/s 4 of the Tamil Nadu Forest Act, 1882 was published long ago, followed by the Gazette publication on 19.5.1976 and the District Gazette publication on 21.9.1981 and that the Notification u/s 6 of the Tamil Nadu Forest Act was also published in the District Gazette on 21.4.1977, 21.11.1977, 21.2.1984 and again on 21.3.1990, submitted his report u/s 8 of the Tamil Nadu Forest Act.

9. The District Collector, Salem, by proceedings, dated 31.3.2003, forwarded his remarks to the Secretary to Government, Environment and Forest Department, Secretariat, Chennai, to the effect that since the Government has already issued the Notifications under Sections 4 and 6 of the Tamil Nadu Forest Act, proposing the declaration, and declaring the area of 1205.27.0 hectares including the impugned land(s), namely in S.No.1/1, Malayalapatti Village, Attur Taluk, Salem District, as "reserve forest", it is for the Government to call for the objections from the encroachers and to take appropriate decision.

10. Similarly, the Principal Chief Conservator of Forests, Chennai, in his proceedings, dated 1.3.2004, addressed to the Secretary to Government, Environment and Forests Department, Secretariat, Chennai, while referring to G.O.Ms.No.313, dated 28.12.1972, issued from Agricultural Department, proposing to declare the land(s) in question as a "reserve forest", expressed his opinion that there is no provision under the Tamil Nadu Forest Act, 1882 to call for a fresh application in the matter and since the Notification has already been issued u/s 4 of the Tamil Nadu Forest Act, 1882, it is to culminate into the Notification u/s 16 of the Tamil Nadu Forest Act and hence, the question of receiving fresh application now from the encroachers does not arise.

11. Learned counsel appearing on behalf of the State submitted that when once the objections were received u/s 6(d) of the Tamil Nadu Forest Act and enquiry made u/s 8, and on that basis, an order was passed u/s 10, the authority has no jurisdiction to entertain further objections u/s 6(d), nor can make any further enquiry u/s 8, nor can pass a second order u/s 10 of the Tamil Nadu Forest Act, 1882.

12. Per contra, according to the learned counsel appearing for the appellant-Association, the members of its Association being Tribal, and they and their ancestors being in possession and enjoyment of the land(s) in question from time immemorial, the State is bound to recognise their right by issuing patta in their favour.

13. The impugned order was delivered by the learned single Judge on 1.4.2005, against which the present Writ Appeal is preferred and is pending. During the pendency of this Writ Appeal, a Central Act was promulgated, namely "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006". Learned counsel for the appellant-Association, while relying on the relevant provisions of the said Act, 2006, and the Rules framed thereunder, also referred to Sections 16 and 17 of the Tamil Nadu Forest Act, 1882.

14. We have heard the learned counsel appearing for the parties and noticed the rival contentions.

15. The Madras Forest Act 5 of 1882. now known as Tamil Nadu Forest Act. 1882, was promulgated with the object to provide for the constitution of more important forests as "State Reserves" and to give powers for the conservancy of forest lands

not included in the "Reserve Forests".

While Section 4 of the Tamil Nadu Forest Act, empowers the Government to issue Notification of proposal to constitute any land a Reserved Forest, under Clause (c) of Section 4, the State Government is empowered to appoint an officer (Forest Settlement 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 or over any land comprised within such limits or to any forest produce of such land, and to deal

with the same as provided under Chapter-II of the Tamil Nadu Forest Act, 1882. When a Notification is issued u/s 4 of the Tamil Nadu Forest Act, 1882. the Forest Settlement Officer is empowered to issue proclamation u/s 6 of the Tamil Nadu Forest Act, 1882, specifying the situation and limits of the land proposed to be included in the reserved forests. Under Clause (d) of Section 6, the Forest Settlement Officer is supposed to fix a period not less than three months from the date of publication of such proclamation, requiring every person claiming any right referred to in Section 4 either to present to such Officer, within such period, a written notice specifying, or to appear before him within such period and state the nature of such right and in either case, to produce all documents in support thereof.

After serving of notice to the same effect of every known or reputed owner or occupier of any land in or adjoining the land proposed to be constituted a reserved forest, the Forest Settlement Officer is to make enquiry u/s 8 into all claims made u/s 6 recording the evidence in the manner prescribed by the CPC Code in appealable cases. At the same time, the Forest Settlement Officer is to consider and record any objection which the Forest Officer (if any) appointed u/s 4 may make to any such claim.

After such enquiry, the Forest Settlement Officer shall pass an order u/s 10 specifying the particulars of such claim and admit or reject the same, wholly or in part with regard to (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. With regard to the admitted claim, the Forest Officer may come to the agreement with the claimant for the surrender of the right or exclude the land from the limits of the closed forests or may proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870 (Land Acquisition Act 1 of 1894). However, with regard to the rejected claims, there is a provision for appeal provided u/s 10 of the Tamil Nadu Forest Act within a reasonable period.

Finally, u/s 16 of the Tamil Nadu Forest Act, 1882, Notification is required to be issued declaring the Forest Reserved after the period fixed u/s 6 for preferring the claims has elapsed and all claims (if any) made within such period, have been disposed of by the Forest Settlement Officer and in case, such claims have been made and determined, the appeals presented and disposed of by the appellate authority.

Under Section 16(c) of the Tamil Nadu Forest Act, 1882, all proceedings prescribed by Section 10 have been taken and all lands (if any) to be included in the proposed forest which the Forest Settlement Officer has u/s 10 elected to acquire, under the Land Acquisition Act, 1870 and on such issuance of Notification u/s 16, the lands stand vested in the Government.

Under Section 17 of the Tamil Nadu Forest Act, 1882, rights in respect of which no claim has been preferred u/s 6, shall thereafter be extinguished, unless before publication of such Notification, the person claiming them has satisfied the Forest Settlement Officer that he had sufficient cause for not preferring such claim within the period fixed u/s 6, in which case, the Forest Settlement Officer shall proceed to dispose of the claim in the manner provided under the Tamil Nadu Forest Act.

16. From the aforesaid provisions of the Tamil Nadu Forest Act, 1882 it would be evident that apart from the claim of right of occupation and ownership, which can be made u/s 6 and determined u/s 10, even after vesting of the land on issuance of the Notification u/s 16, the Forest Settlement Officer, if on the claim of such right, is satisfied that the claimant had sufficient cause for not preferring such claim within the period fixed u/s 6, can prefer objection u/s 17 and in such a case, the Forest Settlement Officer shall proceed to dispose of the claim in the manner provided under the Tamil Nadu Forest Act.

17. In the present case, it has not been brought to the notice of the Court as to what was the time prescribed u/s 6 of the Tamil Nadu Forest Act, 1882, but from the records, it appears that such a proclamation u/s 6 was issued on 24.11.1978 and it is informed that the three months" period was prescribed for submitting the claim of rights and it is also informed that 36 claims were received, of which, many claims were rejected in 1979. The right to claim water course, etc., u/s Section also lapsed on 24.2.1979. However, it is admitted that till date, no Notification has been issued u/s 16, declaring the land(s) in question as "Forest Reserve" and thus, it cannot be argued that the right to claim occupancy and ownership or other rights, extinguished u/s 17 of the Tamil Nadu Forest Act, 1882.

18. The learned single Judge has failed to notice the aforesaid provisions of law and thus, we hold that the members of the appellant-Association still have a right to claim occupancy, ownership and other rights, if they satisfy the Forest Settlement Officer that they had sufficient cause for not preferring such claim within the period fixed u/s 6 of the Tamil Nadu Forest Act and such a claim can be made u/s 17 of the Tamil Nadu Forest Act, after publication of the Notification u/s 16 of the Tamil Nadu Forest Act, declaring the land(s) as a "Reserve Forest".

19. The learned single Judge has referred to the decision of the Supreme Court in the case of " [M.C. Mehta Vs. Kamal Nath and Others](#), in maintaining the ecology in the context of doctrine of public trust, wherein the Supreme Court held as follows:

"The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system-based on English Common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is a part of the law of the land."

20. Learned single Judge has also placed reliance on the decision of the Supreme Court regarding maintenance of ecology balance and environmental protection in the case of [T.N. Godavarman Thirumalpad \(through K.M. Chinnappa\) Vs. Union of India \(UOI\) and Others](#), wherein the Supreme Court observed as follows:

"19. Environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in this exercise. Many have enacted laws long back and they are busy in remodelling the environmental law. The others have moved their law-making machineries in this direction except the underdeveloped States who have yet to come in this wavelength. India was one of those few countries which paid attention right from the ancient times down to the present age and till date, the tailoring of the existing law to suit the changing

conditions is going on. The problem of law-making and amending is a difficult task in this area. There are a variety of colours of this problem. For example, the industrial revolution and the evolution of certain cultural and moral values of humanity and the rural and urban area developments in agricultural technology, waste, barren or industrial belts; developed, developing and underdeveloped parts of the lands; the rich and poor Indians; the population explosion and the industrial implosion; the people's increasing awareness and the decreasing State exchequer; the promises in the political manifestos and the State's development action. In this whole gamut of problems the Tiwari Committee came out with the data that we have in India "nearly five hundred environmental laws" and the Committee pointed out that no systematic study had been undertaken to evaluate those legislative developments. Some legal controls and techniques have been adopted by the legislatures in the field of Indian environmental laws. Different legislative controls right from the ancient times down to the modern period make interesting reading. Attention has to be paid to identify the areas of great concern to the legislature; the techniques adopted to solve those problems; the pollutants which require continuous exercises; the role of the legislature and people's participation outside. These are some of many areas which attract the attention in the study of history of the Indian environmental law.

20. Since time immemorial, natural objects like rivers enjoyed a high position in the life of the society. They were considered as goddesses having not only purifying capacity but also self-purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included penance, outcasting, fine etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental pollution was controlled rigidly in the ancient times. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. The "dharma" of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of the society, motivated them to allow the natural objects to remain in the natural state. Apart from this motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the ecosystems. The noteworthy development in this period was that each individual knew his duty to protect the environment and he tried to act accordingly. Those aspects have been highlighted by a learned author C.M. Jariwala in his article "Changing Dimensions of the Indian Environmental Law" in the book Law and Environment by P. Leelakrishnan.

21. The Economic and Social Council of the United Nations passed a resolution on 30-7-1968 on the question of convening an international conference on problems of human environment. In the United Nations Conference on Human Environment at Stockholm from 6-6-1972 to 16-6-1972, proclamation was made on United Nations on Human Environment. It was stated in the proclamation in these profound words:

"Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself.

The protection and improvement of the human environment is a major issue which affects the well-being of people and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all Governments."

22. When the necessity to promote the environment turned grave, doubt was expressed by some commentators whether the issue of the environment would last. They have been proved wrong, since it is clearly one of the big issues, perhaps the biggest issue of the 1990s. It is a big issue in political terms, since protection of the environment is high on most people's priorities for the 1990s. As a result political parties and Governments are falling over each other in their eagerness to appear green, even if as yet their actions rarely match their rhetoric. It is big in terms of the size of the problem faced and the solutions required: global warming, the destruction of the ozone layer, acid rain, deforestation, overpopulation and toxic waste are all global issues which require an appropriate global response. It is big in terms of the range of problems and issues-air pollution, water pollution, noise pollution, waste disposal, radioactivity, pesticides, countryside protection, conservation of wildlife-the list is virtually endless. As observed by Simon Bell and Stuart Bell in Environmental Law:

"....In the words of the White Paper on the Environment. This Common Inheritance (cm. 1200, 1990) the issues range "from the street corner to the stratosphere". Finally, it is big in terms of the knowledge and skills required to understand a particular issue. Law is only one element in what is a major cross-disciplinary topic. Lawyers need some understanding of the scientific, political and economic processes involved in environmental degradation. Equally all those whose activities and interests relate to the environment need to acquire an understanding of the structure and content of environmental law, since it has a large and increasing role to play in environmental protection."

21. It has not been made clear as to how the aforesaid observations made by the Supreme Court will affect the right of the Scheduled Tribes, who can claim their right of occupancy and ownership, including the right of way, right of water course, or use of water, right of pasture, or right of forest produce, as prescribed u/s 4(c) read with Section 6(d) and determined u/s 10 of the Tamil Nadu Forest Act, 1882.

22. In India, one cannot think of a Scheduled Tribe without a forest. In Arabian countries, there are Tribes in the deserts. In India, the Tribes mostly live in forests and depends on the forest lands for bona-fide livelihood needs. Apart from the forest dwelling Scheduled Tribes, there are other traditional forest dwellers, who are also depending on the forest, its produce and the forest lands. They do not disturb the conservancy or bio-diversity or ecological balance. In fact, the forest dwelling Scheduled Tribes and other traditional forest dwellers, who are depending on forest produce and the forest, conserve bio-diversity and maintain the ecological balance by conserving the forest. They do not allow others to destroy the forest. It is for the said reason, even under the Tamil Nadu Forest Act, 1882, the claim of rights of occupancy and ownership, even in the "reserve forest" was recognised and is still continuing.

23. The Act, namely The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was enacted and published in the Gazette of India, on 2.1.2007 to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations, but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land. It was also made for strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers. It was also noticed that the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem. These will be evident from the objects of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short, "the Act. 2006").

Section 2(c) of the Act, 2006, defines the "forest dwelling Scheduled Tribes" as under:

"Section 2(c): "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forest or forest lands for bona fide livelihood needs and includes the Scheduled Tribes pastoralist communities."

Section 2(o) defines "other traditional forest dweller", as quoted hereunder:

"Section 2(o): "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs."

"Forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks, as evident from Section 2(d) of the Act. 2006.

The "Forest Rights" have been dealt with under Chapter II of the Act, 2006, and relevant portion of the same is quoted hereunder:

"Section 3: (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

....

....

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use: (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity:

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005."

It would be evident that the forest dwellers, Scheduled Tribes and other traditional forest dwellers have right of conversion of pattas or leases or grants issued by any local authority or any State Government on the forest land(s) to titles.

Recognition, restoration and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers, have been provided under Chapter III of

the Act, 2006, relevant portion of which are discussed hereunder:

Under Section 4(3), while such recognition and vesting of forest rights under the Act, 2006, shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before 13.12.2005 u/s 4(4), a right conferred by Section 4(1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons. u/s 4(5). no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

Chapter IV of the Act, 2006, prescribes the authorities and procedures for vesting of forest rights.

Under Section 6(1), the Gram Sabha is authorised to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers.

Against the decision of the Gram Sabha, any person aggrieved has a right to prefer a petition u/s 6(2) to the Sub-Divisional Level Committee constituted u/s 6(3).

There is a provision for further petition u/s 6(4) before the District Level Committee against the decision of the Sub-Divisional Level Committee.

Under Section 6(5), the State Government is empowered to constitute a District Level Committee, whose decision regarding the forest right is final u/s 6(6).

24. The Rules, namely the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Rules, 2007 (for short, "the Rules, 2007"), have been framed u/s 14(1) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights), Act, 2006, and published in the Gazette of India, Extraordinary, Part-II, dated 1.1.2008.

It has come into effect and in the said Rules, 2007, provision has been made as to how Gram Sabha shall be convened by the Gram Panchayat, as evident from Rule 3; the functions of the Gram Sabha is prescribed under Rule 4, which includes initiating the process of determining the nature and extent of forest rights, receive and hear the claims thereto; preparation of list of claimants of forest rights and maintain a register containing such details of claimants and their claims as the Central Government, may by order determine, etc.

Sub-Divisional Level Committee has to be constituted by the State Government in terms of Rule 5 of the Rules, 2007 and the said Sub-Divisional Level Committee is required to function and determine in the manner prescribed under Rule 6.

The State Government is also required to constitute a District Level Committee in terms of Rule 7, which is required to function in terms of Rule 8.

There is a State Level Monitoring Committee to be constituted by the State Government in terms of Rule 9, which is required to function and devise the criteria and indicators for monitoring the process of recognition and vesting of forest rights, etc., in the manner prescribed under Rule 10.

The process of verifying claims by Forest Rights Committee and the evidence for determination of forest rights, have also been prescribed under Rules 12 and 13 of the Rules, 2007, respectively.

Form-A is enclosed with the said Rules, 2007 in terms of Rule 6(1) of the Rules, 2007, wherein the details of the claimants, his name, spouse name, etc., are to be reflected and the extent of the right claimed on the land is also to be reflected therein.

25. The forest right over the land(s) has been casually referred to as "title" for the purposes of Act, 2006 and Rules, 2007, and the Tamil Nadu Forest Act, 1882, but like title under the general law, it is not alienable or transferable though it is heritable by descendants.

26. In view of the aforesaid Act, 2006 and the Rules, 2007 framed thereunder, if one or other member of the appellant-Association can show that he or she is a forest dwelling Scheduled Tribe or any other traditional forest dweller, primarily residing and is depending on the forest or forest land(s) for bona-fide livelihood needs, can bring such evidence on record, they have a right to consider their case of vesting of the "forest rights" as provided u/s 3 of the Act, 2006 and cannot be evicted from the land(s) till such rights are determined.

27. It has been brought to our notice that the Act, 2006, has been challenged before this Court in the case of "V. Sambasivam vs. Govt. of India, Ministry of Tribal Affairs, rep. by its Secretary, Shastri Bhavan, New Delhi-110 001 and others" in Writ Petition No.4533 of 2008 and in the said case, while challenging the said Act, 2006, M.P.No.1 of 2008 was also filed for grant of order of interim injunction restraining the respondents therein from giving effect to the said Act, 2006, pending disposal of the above said Writ Petition. A Division Bench of this Court, by its unreported order dated 30.4.2008 in M.P.No.1 of 2008 in W.P.No.4533 of 2008, while noticing the relevant provisions of the Act, 2006, refused to grant interim injunction as sought for but issued the following directions by way of interim order:

"11. Therefore, we issue the following directions:

(a) If claims are made for community rights or rights to forest land and applications are submitted as per Sections 3 and 4 of the Act read with Rules 11 and 12 of the Rules, then the process of verification of the claim after intimation to the concerned claimant shall go on, but before the certificate of title is actually issued, orders shall

be obtained from this Court.

(b) As regards felling of tress for providing diversion of forest land u/s 3(2) of the Act is concerned, the process shall go on till the clearance of such development projects and also the Gram Sabha's recommendation is obtained but before the actual felling of tress orders shall be obtained from this Court."

28. Therefore, it will be also evident that under the Act, 2006, the members of the appellant-Association have a right for consideration of their cases for "forest rights" conferred u/s 3 of the Act, 2006 and till the claim is finalised, they have a right to hold the land in their possession and till such a decision is given, in terms of the said interim order of this Court, the claim as made by the members of the appellant-Association, is required to be verified in terms of the Act, 2006, but for issuance of patta or certificate of title, order is required to be obtained from this Court, in view of the interim order aforesaid passed in M.P.No.1 of 2008 in W.P.No.4533 of 2008, dated 30.4.2008.

29. We have already held that the members of the appellant-Association have a right to make their claim u/s 17 of the Tamil Nadu Forest Act, 1882, after the notification u/s 16 of the Tamil Nadu Forest Act, 1882, is issued, subject to the conditions that if they satisfy the reasons for not filing the claim within the time prescribed u/s 6 of the Tamil Nadu Forest Act, 1882.

30. In view of the aforesaid provisions of law, as referred to above, we are of the view that the claim of the members of the appellant-Association should be re-considered and the impugned order passed by the learned single Judge cannot come in their way to defeat their claim. We accordingly set aside the impugned order passed by the learned single Judge in W.P.No. 10954 of 2005, dated 1.4.2005 and remit the case to the respondents to re-consider the case of the members of the appellant-Association in terms of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 read with Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 and after determination of their claim, if so required, the respondents will obtain permission of this Court before issuance of certificate of title in favour of one or other member of the appellant-Association, in view of interim order as noticed and quoted above. The Writ Appeal is allowed with the aforesaid observations and directions. No costs.