

W.P.No.8498 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2023

DELIVERED ON : 10.03.2023

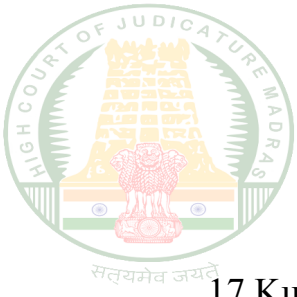
CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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- 1.A.C.Murugesan
- 2.P.Kandaswamy
- 3.Madhu
- 4.Amudha
- 5.Madesu
- 6.Pazhaniyammal
- 7.Anbu Rajendran
- 8.Aarumugam
- 9.Vijayalakshmi
- 10.Thangavel
- 11.Govindan
- 12.Veerappan
- 13.Gopal
- 14.Saradhamani (alias) Saradhambal
- 15.Manickam
- 16.Kaali (alias) Sevaththa Kaali

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17.Kuzhandaivel

18.Chinnamuthu

19.C.Iyanaar

20.S.Valli

21.Anbukkarasan

... Petitioners

Vs.

1.The District Collector,
The District Level Committee,
Collectorate, Salem – 636 001/

2.The Revenue Divisional Officer,
Sub Divisional Committee,
Collectorate, Salem – 636 001.

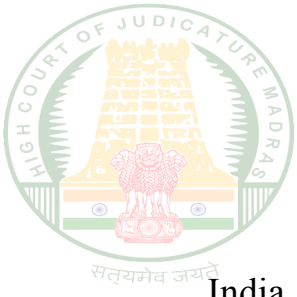
3.The Special Tahsildar (Tribal Welfare),
Collectorate,
Salem – 636 001.

4.The District Forest Officer,
Gandhi Road,
Salem – 636 001.

5.Forest Range Officer,
Forest Range Office,
Shevroy South Range,
Hasthampatti,
Salem – 636 007.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of



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India seeking a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent Na.Ka.No.17079/2006/TA dated 08.02.2021 to quash the same and consequently directing the 1st respondent to pass an order to restore the petitioners in their respective land in possession as on date of eviction date 27.01.2020.

For Petitioners : Mr.Vineeth Subramanian

For Respondents : Mr.R.Anitha,
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order of the first respondent, dismissing the applications and confirming the order of the original authority, rejecting the claim of the petitioners under 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' (hereinafter referred to as 'said Act' for brevity).

2. The case of the Writ Petitioners that they have been in possession and enjoyment of the property bearing Survey No.1905 to an extent of 291.60 acres situated at Suriyur Village, Kuralnatham Panchayat, Panamarathuppatti Union, Salem Taluk, Salem District. They

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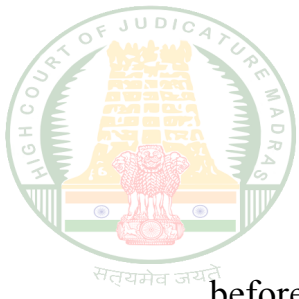


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have been in cultivation of the land, put up residence and living there for more than 75 years. While so, for the construction of the Panamarathupatti Lake and reservoir, the Municipal Corporation had acquired lands. In earlier 1900, the Suriyur was adjacent to Athipatti and the Village Number was 125 and the Pallakadu – Suriyur Village No.126, area was 506 acres and the lands acquired for only 227 acres, which comprised in S.Nos.2 to 52. The remaining survey No.1 was segmented into 3, which was 1/1, 1/2 and 1/3. Survey No.1/1 area is 237.21 acre, 1/2 is 34 acre and 1/3 is 7.49 acre, totalling 279.10 acres. The people, who were evicted from Survey Nos.2 to 52, were compensated, migrated and settled somewhere else. However, the people living in S.Nos.1/1, 1/2 and 1/3 have been disturbed and evicted from the place by Forest Authorities at least 17 times since 1984. Aggrieved over the eviction, the petitioners have filed a Writ Petition before this Court and the same was dismissed. As against the same, the petitioners have filed a Writ Appeal and the said Writ Appeal was also dismissed. As against the dismissal of the Writ Appeal, the petitioners have filed S.L.P.No.18974 of 2018, which was also dismissed. However, they have filed a Writ Petition

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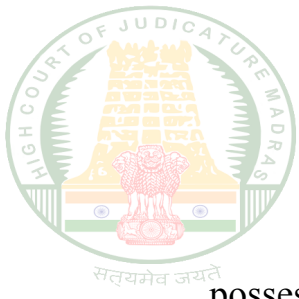


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before this Court in W.P.No.15348 of 2013 as against the eviction notice dated 13.06.2018. The said Writ Petition was dismissed, directing the respondents to take up the claim petitions and deal with the same in accordance with the provisions of the said Act. As such, the petitioners have filed claim petitions before the Revenue Divisional Officer, Salem and the same has been disallowed by the second respondent. Aggrieved over the same, the petitioners have preferred appeals before the first respondent and he has also confirmed the order of the second respondent holding that the petitioners were not entitled to patta under the said Act. It is the contention of the Writ Petitioners that the authorities simply rejected their claims stating that there is no Suriyur Village and the land is acquired for public purpose and they have not filed any documents to prove the ownership and long stay. The petitioners have also filed an appeal before the Secretary to the Government, Forest Department, who returned the appeal stating that there is no appeal lies before the Government. Hence, this Writ Petition.

3. It is the contention of the petitioners that they have been in



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possession of the land in question for more than 75 years. The orders have been passed against 21 persons. The representation was made by the Members of Grama Sabha. In the absence of any person, it would be treated as an Association not an individual. Therefore, the order passed against 21 persons is unlawful. But, no order has been passed against 11 persons. The said 11 persons could not file appeal before the 1st respondent, because no notice has been served on them. The first respondent as a Final Authority had not gone into the various aspects of the claim petitions. The respondents ought to have seen that once the petitioners evicted from the Suriyur Village, they could not expect them to serve the notice in Suriyur Village. It is the further contention that so far, the patta and other documents relating to possession was not issued by the Revenue Authority. Therefore, the petitioners could not furnish the revenue records with regard to their possession. The first petitioner's father Chinna Gounder and Chinna Gounder's father Arai Gounder and Arai Gounder's Father Perumal Padaichi were in possession of the lands from 1920 as per adganga. In S.L.P.No.18974 of 2018, the Apex Court has held that the appellants are entitled to avail remedy under the said



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Act, whereas the respondents have not considered the same. Hence, this Writ Petition.

4. A counter affidavit has been filed by the respondents 4 and 5 stating that the petitioners have not produced any piece of evidence before the District Collector, Salem to prove that they were cultivating the land and primarily residing in the aforesaid land for over 75 years. The Writ Petitioners are not local residents and they are living outside Jarugumalai and Jalluthu Reserve Forest as per the records available in the revenue Department. The Writ petitioners are not belonging to Tribal Community and since they have not proved their existence in the above said land for atleast three generations prior to 13.12.2005, they are not depending on the forest land for their livelihood. Therefore, they cannot be construed as 'Other Traditional Forest Dwellers'. It is the further case of the respondents that the Jalluthu Forest block of Salem Taluk has been notified as Reserved Forest under Section 16 of the Madras Forest Act, 1882 and the same came into effect from 15.09.1889 with clear boundaries. The Jarugumalai Forest block was notified as Reserved

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Forest under Section 16 of the Madras Forest Act, 1882 and the same came into effect on 15.03.1926. The petitioners and others were encroachers in the aforesaid Reserved Forest and therefore, they cannot make any claim under the said Act. The petitioners had initially made attempts to encroach the aforesaid Reserved Forest land from the year 1980 and the Forest Department had filed cases against the petitioners for having trespassed into the Reserved Forest land in O.R.No.436/97-98, 3/1998-99, 131/99-2000, 41/2008-09 and 45/2008-09 of Shervaroy's South Range and the encroachers have also been fined for illegal occupation of the Reserved Forest land. The petitioners have also filed various writ petitions challenging the eviction notices and seeking for patta, which were all dismissed. The Special Leave Petition filed against the orders of this Court have also been dismissed. W.P.No.15384 of 2013, which was filed challenging the eviction notice dated 13.06.2018 came to be disposed of by directing the Revenue Divisional Officer to initiate action and pass final orders in accordance with law. The Revenue Divisional Officer, rejected the claim of the petitioners, which was also confirmed by the first respondent. The 2nd respondent herein

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had conducted an enquiry and passed final orders on 18.09.2020, as per the report of the Special Tahsildar and the claim petitions received from the Grama Sabha. The resolutions passed in the Village Panchayat, during the meeting of Gram Sabha on 30.12.2021 at Gejjalanikkanpatti Panchayat and on 01.05.2012 at Thumbalpatti panchayat, do not relate to the claim of the petitioners, since the lands claimed by the petitioners are comprised within Kuralnatham Village. Those resolutions were communicated to the petitioners. Besides, the petitioners did not produce any evidence to show that they are residing in the aforesaid Reserved Forest land and they are depending on the forest land for their livelihood. Therefore, this Writ Petition is liable to be dismissed.

5. Mr.Vineeth Subramanian, learned counsel appearing for the petitioners mainly submitted that the second respondent has passed orders only on the ground that no documents whatsoever have been filed to prove the possession of the land for three generations. It is the contention of the learned counsel for the petitioners that the petitioners' ancestors were in possession of the property even in the year 1900 and

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part of the lands were acquired for creation of the Lake and Adangal Register also clearly established the above facts. It is his further contention that the rights of the petitioners cannot be denied on ground that no documents have been produced. The petitioners were residing in the forest for more than three generations and they are uneducated people and therefore, it is the duty of the Official to verify the records and take a decision. According to him, in the Frequently Asked Questions on the Forest Rights Act, the Government also clearly stated that there is no provision in the law that Forest Dwellers should be solely or even primarily dependent on the forests for their livelihood or for disqualifying persons whose family income is derived from a basket of sources. There is every likelihood that a family may be depending for its livelihood needs both on the forest rights as well as supplement their family income through a Government job or salaried income. In fact, there are many families where one or more adult member has a salaried job requiring him to live in an urban area, while the other family members reside in the village and are sustained through intricate and sustainable relationships with the forests and forest produce. Therefore,

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it is his contention that merely because the petitioners are residing outside the forest, it does not mean that they have no rights in the forest. When their ancestors were all along in the forest for more than three generations, merely on the ground that the petitioners have not produce any documents, the rights cannot be disputed.

6. It is his further contention that the Apex Court in the SLP filed against the order of this Court has recognized the rights of the petitioners to establish their rights under the said Act. Though many of the documents have been annexed with the claim application, none of the documents have been considered by the authorities. It is his further contention that even assuming that no documents have been produced by the petitioners, it is the duty of the authorities to verify the documents as per the Rules and make inspection of the site and decide the matter thereafter. However, without following any Rules, the rights of the petitioners have been declined. Therefore, the matter may be remitted back to the authorities for fresh consideration and also may be permitted the petitioners to engage a counsel to appear before the Authorities.

7. The learned Special Government Pleader appearing for the

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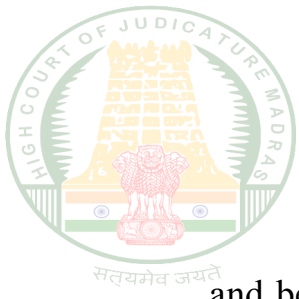


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respondents would submit that the petitioners are not residing inside the forest and they have made attempts to encroach the forest land from the year 1980. Previously, the petitioners have filed writ petitions claiming patta and this Court has dismissed the above petitions. It is the specific stand of the petitioners before this Court that the land in question was not a forest land. Merely because, the SLP was dismissed by observing that the rights, if any, under the said Act are left open to be agitated in the appropriate forum, taking advantage of that observation, the petitioners once again sought a re-litigation. She further submitted that it is seen from the claim petitions and the affidavit filed by the petitioners before this Court that the petitioners have already been evicted from the Forest area. According to the learned Special Government Pleader, the Jarugumalai Forest was notified as Reserved Forest in the year 1926, the petitioners are resident of Salem and they have made attempts to encroach upon the Forest lands from the year 1980, which has been successfully prevented. When the eviction notice was issued, the same has been challenged before this Court. At the relevant point of time, it is the specific stand of the petitioners that the lands are not the forest lands

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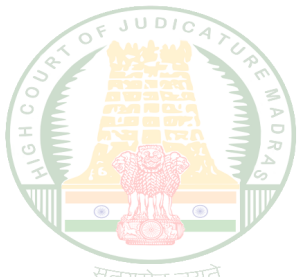
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and belong to the Revenue Department. It is her further contention that the petitioners are not belonging to the Scheduled Tribes Community and therefore, the petitioners are not entitled to claim any right under the said Act and hence, she prays for dismissal of this Writ Petition.

8. I have perused the entire materials available on record.

9. On a perusal of the records, it is seen that in the year 1990, some areas have been acquired for the reservoir purposes, but the lands in S.Nos.1/1, 1/2 and 1/3 to an extent of 279.10 acres have not been acquired at the relevant point of time, since it is a forest land. Subsequently, the Government issued a notification, in which the aforesaid lands have been declared as Reserved Forest on 15.03.1926 itself. It is further stated by the petitioners in the affidavit that their ancestors were in possession of the survey No.126 even in the year 1900. The petition further indicate that they have already been evicted from the said area. As against the eviction notice, the petitioners have filed a Writ Petition before this Court in W.P.No.15348 of 2018 and the Division

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Bench of this Court by order dated 05.12.2018, has observed as follows:

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“6.On a perusal of the order passed in W.P.No.1963 of 2006, it could be seen that the petitioners themselves have stated that the land is not a forest land. When the petitioners claim that it is not a forest land, they cannot be termed as forest dwellers. The relevant portion of the order passed in W.P.No.1963 of 2006 dated 19.10.2012 is extracted below:

“...

20.The learned Senior counsel for the petitioners invited my attention to the detailed report submitted by the National Commission for Scheduled Castes and Scheduled Tribes, after visiting the area in question. I have gone through the said report. The said report, cannot be relied upon for a variety of reasons. The report records the fact that persons who are affected by the stand taken by the respondents, are not only those belonging to the Scheduled Castes, but also those belonging to Backward Classes. At the same time, the Commission has referred to the provisions of The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act, 2006. But the said Act, does not apply to persons belonging to Backward Communities. Moreover, the said Act, applies only to a person who is a forest dweller. The petitioners have not come up with a claim that they are forest dwellers. Obviously they cannot claim to be so. If the petitioners claim that they are forest dwellers, then there should be a forest. In other words, if the petitioners are to be recognised as forest dwellers, then the land should necessarily be a forest land. The petitioners claim that it is not a forest land. Therefore, they cannot be termed as forest



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dwellers. But the report of the National Commission for Scheduled Castes and Scheduled Tribes, overlooks these aspects and makes a simple recommendation for the grant of patta on humanitarian grounds. Therefore, the report of the National Commission, cannot be accepted.

21.The contention that the District Collector did not make an inspection, does not appear to be factually correct. At least after the interim direction issued by this Court, an inspection had been carried out.

22.The learned Senior Counsel for the petitioners drew my attention to page 10 of the Re-survey and Re-settlement Register of the Village and pointed out that wherever a land is classified as a reserve forest, the Register also contained a footnote mentioning the particulars of the notification under which the classification was made. But in respect of the land in question, there was no footnote in the relevant page, where the land is shown to be a reserve forest. Therefore, the learned Senior Counsel contended that the entry in the "A" Register cannot be relied upon.

23.I do not think that the absence of a footnote containing the details of the notification under which the classification was made, can be a ground to hold the entry in the Register to be not reliable. All entries in the official records are presumed to be validly made, till they are set aside. Therefore, I have no reason to suspect the entry in the village Register.

24.In view of the above, I see no merits in the writ petition and hence it is dismissed. There will be no order as to costs. Consequently, connected miscellaneous petition is also dismissed."

6.1.As against the order passed by the learned Single Judge, the petitioners have filed an appeal in W.A.No.2467 of 2012 and the Division Bench of this Court, by order dated 19.03.2018, dismissed the Writ Appeal, finding that the petitioners have not proved that the lands



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were not included in the “Reserved Forest”. When the burden lies on the petitioners, they have not discharged the said burden. Further, the entries made in the Re-settlement records also stare at them. In the records, it is specifically mentioned that the lands are Reserved Forest. While approaching the 1st respondent, the District Collector, for issuance of patta, the petitioners claimed that it is not a Reserved Forest and therefore, they are entitled to get patta. But now, they have taken a U turn and claimed that the lands are in Reserved Forest and that they are forest dwellers. The petitioners cannot be allowed to take inconsistent and contrary stand now in the present proceedings. As already stated, since the petitioners themselves have stated that the land is not a forest land, they cannot be construed as forest dwellers.

7.From the contrary stand taken by the petitioners, it is clear that the petitioners have not approached the Court with clean hands. Even while disposing of the Writ Appeal in W.A.No.2467 of 2012, the Division Bench of this Court observed that the petitioners should be evicted only under due process of law. Accordingly, the 4th respondent had issued the impugned eviction notice dated 13.06.2018 under Section 68-A of the Tamil Nadu Forest Act for evicting the petitioners. Since



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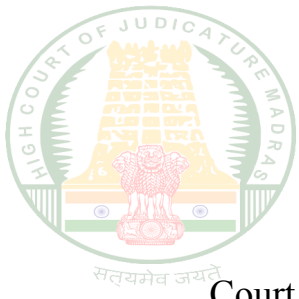
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the 4th respondent had initiated action following due process of law, we do not find any ground to interfere with the same. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.”

10. As against the order passed in W.P.No.1963 of 2006, dated 19.10.2012, the petitioners have filed W.A.No.2467 of 2012. The Division Bench of this Court, by order dated 19.03.2018, dismissed the Writ Appeal, finding that the petitioners have not proved that the lands were not included in the 'Reserved Forest'. Thereafter, SLP was filed as against the said judgment in S.L.P.No.18974 of 2018. While dismissing the SLP, the Apex Court has held as follows:

“However, it is made clear that the rights, if any, under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, are left open to be agitated in the appropriate forum.”

11. Thereafter, another Writ petition has been filed before this

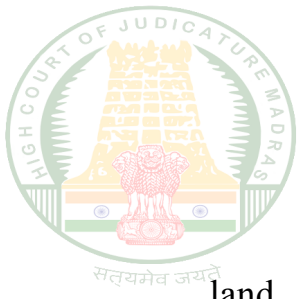


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Court in W.P.No.6388 of 2020, wherein this Court by its order dated 27.07.2020, directed the respondents to take up the claim petitions filed by the petitioners and deal with the same in accordance with the provisions of the Act and final orders shall be passed within eight weeks from the date of receipt of a copy of that order. Pursuant to the above directions, again enquiry was conducted by the second respondent and the claim applications have been considered. As the petitioners have not filed any documents, the second respondent has passed an order dismissing the applications filed by the petitioners. Challenging the same, an appeal has been preferred before the first respondent and the first respondent has also dismissed the said appeal. It is relevant to note that when the eviction notice issued by the Forest Department, which has been challenged before this Court, the petitioners have never claimed any rights under the said Act, whereas the petitioners have taken a stand that the land itself is not a Forest land and they are in possession of the said land for many years. In the earlier writ petition, the stand of the petitioners that the lands are not a Forest land, whereas before the Division Bench, the petitioners stated that they are residing in the Forest

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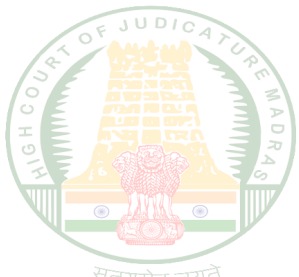
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land. However, the Division Bench dismissed the Writ Appeal and the Apex Court has also not interfered with their plea and only made an observation that the rights, if any, under the said Act, are left open to be agitated in the appropriate forum. Most of the petitioners are not Scheduled Tribes. It is an admitted fact. In the Writ Petition itself the petitioners clearly indicate that already they have been evicted from the Forest land. In the claim petitions, the temporary address given by them clearly indicates that they are not residing inside the forest. Be that as it may. It is relevant to note that definition of Section 2(o) of the said Act, deals with the “Other Traditional Forest Dwellers” and the same makes it clear that one has to show that at least three generations prior to 13th December 2005, primarily resided in the forest and would depend on the forest or forest land for bona fide livelihood needs. The explanation appended to Section 2(o) of the said Act reads as follows:

“Explanation.-For the purpose of this clause, “generation” means a period comprising of twenty-five years;”

12. In this regard, the Division Bench of this Court by order dated

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17.03.2022, in a batch of Writ Petitions in W.P.(MD)Nos.6994 of 2021

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etc., batch, has held as follows:

“24. The above definition of Section 2(o) of the said Act, falls within the “other traditional forest dwellers”, makes it clear that one has to show that at least three generations prior to 13th December 2005, primarily resided in the forest and would depend on the forest or forest land for bona fide livelihood needs. The explanation appended to Section 2(o) of the said Act reads as follows:

“Explanation.-For the purpose of this clause, “generation” means a period comprising of twenty-five years;”

Therefore, to claim the benefit as “other traditional forest dwellers” one should show that at least 75 years prior to the cut off date i.e., 13th December 2005, they are residing in the forest and would depend on the forest or forest lands for bona fide livelihood needs. Rules 2(b) of the said Rules reads as follows:

“Rule 2: Definitions.-

(a).....

(b) “bona fide livelihood needs” means fulfillment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the Act and includes sale of



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surplus produce arising out of exercise of such rights;”

The above definition makes it very clear that “bonafide livelihood needs” means fulfilment of livelihood needs of self and family through exercise of any of the rights specified in sub-section (1) of Section 3 of the said Act and include sale of surplus produce arising out of exercise of such rights. It is relevant to extract sub-Section 1 of Section (3) of the said Act and the same is extracted hereunder:

“Section 3. Forest rights of forest dwelling, Schedule Tribes and other traditional forest dwellers.-

(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:-

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water



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bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(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



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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. ”

25. Section 3(1) of the said Act deals with the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. The word used is cultivation. Therefore, cultivating for bonafide livelihood purposes, in our view, would only mean that ploughing, irrigation and planting for the purpose of livelihood, but not for commercial exploitation of the land offending Forest Conservation Act, 1980. Though it is urged by the writ petitioners that there are several families in the Megamalai area, it is stated in the counter affidavit and additional counter affidavit that the villages and the schools are outside the forest area. Therefore, when the cultivation itself is not for bonafide livelihood needs and exploitation being done by using the forest lands, such activities never be construed to mean that the petitioners are totally depend upon the fulfilment of livelihood needs. Except contending that petitioners are cultivating the lands for livelihood, it is not the case of the petitioners that they are depending on the community rights or depending on the minor forest produce



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which has been traditionally collected within or outside the village boundaries. The main contention is that they are cultivating the lands for livelihood for many years. As indicated by us that, a person to be “other traditional forest dwellers” they should depend the forest lands for their livelihood needs and not for commercial exploitation of the land.”

13. Though much emphasis made by the learned counsel for the petitioners that Ministry of Tribal Affairs in a subsequent notification dated 09.06.2008, has clarified that the implication of using the word 'primarily' is to include the Scheduled Tribes and other Traditional Forest Dwellers, who have either habitation or patches of land forest cultivation for livelihood and would, therefore, be primarily spending most of their time either in temporary make shift structures or working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land. Therefore, such Scheduled Tribes and other Traditional Forest Dwellers who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs would be covered under the definition of 'forest dwelling Scheduled Tribes' and 'Other Traditional Forest Dweller' as given in

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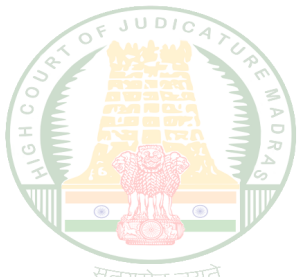


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Sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Similarly, in the Frequently Asked Questions on the Forest Rights Act, the Government also clearly stated that there is no provision in the law that Forest dwellers should be solely or even primarily dependent on the forests for their livelihood or for disqualifying persons whose family income is derived from a basket of sources. There is every likelihood that a family may be depending for its livelihood needs both on the forest rights as well as supplement their family income through a Government job or salaried income. No doubt, the subsequent clarification as referred to above is also extend the benefit to the person, who are residing outside the Forest area, but the fact remains that they should be depending on the forest for their bona fide livelihood needs, then only that will enure the benefits to them to avail the rights under the said Act. In the affidavit filed in support of this petition, no where it is the case of the petitioners that they are primarily depending upon the forest produce for their livelihood, whereas, the photographs, annexed in the typed set filed by the petitioners, show that the petitioners raising commercial crops with

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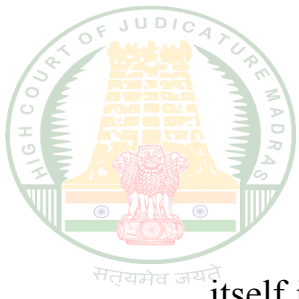
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electricity motors and modern equipments.

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14. Therefore, as held by the Division Bench, cultivating for bona fide livelihood purposes, would only mean that ploughing, irrigation and planting for the purpose of livelihood, but not for commercial exploitation of the land offending Forest Conservation Act, 1980. When the Forest land has been used by exploiting the said land for commercial purposes, it cannot be said that the petitioners totally depending on the forest produce. Therefore, this Court is of the view that when the Jarugumalai Forest block was notified as Reserved Forest in the year 1926 itself and the petitioners have been evicted from the Forest land and they are residing somewhere else, merely because, the petitioners had made attempts to encroach the forest lands from the year 1980 and doing some cultivation in the larger area, which was declared as Reserved Forest, it cannot be said that they are the 'Other Traditional Forest Dwellers' and eking out their livelihood only through the forest produce or the community rights etc. When the petitioners themselves had challenged the eviction order mainly on the ground that the land

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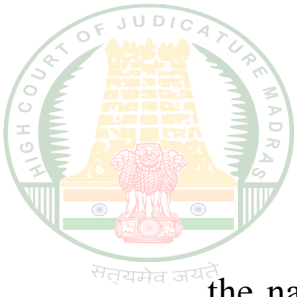


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itself is not a forest land and such a rights under Forest rights never been raised in the earlier occasion, therefore, now the petitioners cannot develop their case by merely getting an observation from the Apex Court. At any event, in the Writ Petition and the claim petition, it is not their case that they are totally depending on the forest produce. Therefore, this Court is of the view that even assuming that respondents have not considered the document like Voter ID, Ration Card and Aadhar Card, it is the admitted case of the Writ Petitioners before this Court that they have Aadhar Card in different addresses. It is projected before this Court that since their ancestors are residing in the forest long back, the petitioners also get the said right automatically. This Court is of the view that merely because, the petitioners' ancestors were originally residing in the forest, thereafter, some areas have been acquired, the entire area have been declared as Reserved Forest in the year 1926 and now the petitioners who are residing somewhere else, the petitioners cannot claim any right under the said Act, without establishing the fact that they solely depend on the forest or forest land for bona fide livelihood needs. In the affidavit, not even an averment has been made by the petitioners to show

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the nature of the forest produce they collect in the forest for their bonafide livelihood.

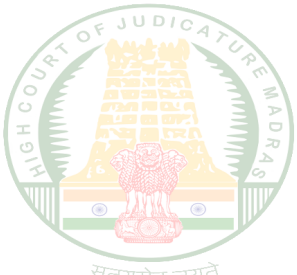
15. In view of the above, this Court is of the view that when the petitioners have challenged the eviction notice, which was dismissed by this Court, the petitioners have taken a different stand before this Court that it is not a Forest land and now the petitioners, taking advantage of the observations made by the Apex Court while dismissing the SLP, cannot seek rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, without establishing any semblance of right that fall within the ambit of the said Act. Therefore, I do not find any merit in this Writ Petition and the same deserves to be dismissed.

16. Accordingly, this Writ Petition is dismissed. No costs.

10.03.2023

NCC: Yes/No

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Index: Yes/No

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VSM

To

1. The District Collector,
The District Level Committee,
Collectorate, Salem – 636 001/
2. The Revenue Divisional Officer,
Sub Divisional Committee,
Collectorate, Salem – 636 001.
3. The Special Tahsildar (Tribal Welfare),
Collectorate,
Salem – 636 001.
4. The District Forest Officer,
Gandhi Road,
Salem – 636 001.
5. Forest Range Officer,
Forest Range Office,
Shevroy South Range,
Hasthampatti,

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Salem – 636 007.

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N.SATHISH KUMAR, J.

VSM

Pre-delivery order in
W.P.No.8498 of 2022



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10.03.2023