

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in W.P.the High Court may be pleased to restrain the 4th respondent from taking steps for vesting of the Forest Rights including diversion of the forest land under Act 2 of 2007, pending W.P.No.21479 of 2007 on the file of the High Court.

WPMP.NO. 2566/2009:

Between:

Government of Andhra Pradesh, rep.by its Principal Secretary to Government, Tribal Welfare Department, Secretariat, Hyderabad.

... Petitioner

(Proposed Respondent No.11)

And

- 1 J.V.Sharma, IFS (Retired) S/o Subba Rao,
R/o Block 27, Flat No.7, MIG II, APHB Quarters, Baghlingampally,
Hyderabad-500 044.
- 2 L.Lohit Reddy, S/o Kodanda Reddy,
Retired Deputy Conservator of Forests Flat No.103, Divyasakthi
Apartments, Godavari Block, Navodaya Colony, Srinagar Colony
Post, Hyderabad-500 073.
- 3 A.H.Qureshi, S/o late Mohd.Qamaruddin, IFS, @ Deputy
Conservator of Forest (Retired) R/o H.No.20-4-207/1,
Himmatpura, Shalibanda Road, Hyderabad.

... Respondents

Petitioners

4. Government of India, rep. by its Secretary, Ministry of Tribal Affairs,
Sastri Bhavan, New Delhi.
- 5 The Government of India, Ministry of Environment and Forests,
rep. by its Secretary, Paryavaran Bhavan, New Delhi-110 003.
- 6 Director General of Forests, Ministry of Environment and Forests,
Paryavaran Bhavan, New Delhi-110 003.
- 7 The Government of Andhra Pradesh, rep. by its Principal Secretary,
Environment, Forests and Science & Technology Department,
A.P.Secretariat, Hyderabad-500 004.
- 8 The Principal Chief Conservator of Forests, Government of Andhra
Pradesh, Aranya Bhavan, Saifabad, Hyderabad-500 004
9. Sarla Mangireddy s/o. Mutyalureddy, Sarpanch of Pamuleru
Panchayat r/o. Kutrawada, H/o. Pamuleru, Mare Dumilli (M) East
Godavari District.
10. Suvarnapaka Narsaiah s/o.Rangaiah, r/o. Marrigudda (V & Post)
Kothaguda Mandal, Warangal.
11. Chanda Ramaswamy s/o. Mutyapurayudu, r/o. Karakagudem, H/o.
Thatigudem, Pinapaka Mandal, Khammam District.
12. Kunjam Pandu Dora s/o. Chellanna Dora, r/o.D. Bheemavaram (V &
Po) Addateegala Mandal, E.G. District.
13. Palla Trinadha Rao s/o. Adinarayana, Resources for Legal Action,
r/o. 78-10-4/3, SBI Colony, Shyamalanagar, Rajahmundry-533103,
East Godavari District.

... Respondents

(Respondents 1 to 10 in do)

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in W.P. the High Court may be pleased to permit the implead petitioner herein to issue certificate of title to the eligible Forest Dwelling Scheduled Tribes and other Traditional Forest Dwellers under the Act, pending disposal of the W.P.NO. 21479 of 2007 on the file of the High Court.

These petitions coming on for hearing, upon perusing the Petition and the affidavit filed herein and upon hearing the arguments of SRI G.VIDYASAGAR ,Advocate for the Petitioners in WPMP.No. 23208 of 2008 and of SRI.A. RAJASHEKAR REDDY, ASST SOLICITOR GENERAL for the respondents 1 to 3 in WPMP.NO. 23208 of 2008 and of the Govt. Pleader for Forests for the respondents 4 and 5 in WPMP.NO. 23208 of 2008 and of Sri K. Bala Gopal Advocate for the respondents 6 to 10 in WPMF.NO. 23208 of 2008 and of Sri V. Raghu Advocate for the No.11 and of the Advocate General for the petitioner in WPMP.No.2566 of 2009 and of Sri G. Vidyasagar Advocate for the respondents 1 to 3 in WPMP.No.2566 of 2009 and of Sri A. Rajasekhar Reddy, Asst. Solicitor General for the respondents 4 to 6 in WPMP.No. 2566 of 2009 and of the Govt. Pleader for Forests for the respondents 7 and 8 in WPMP.No.2566 of 2009 and of Sri K. Bala Gopal Advocate for the respondents 9 to 13 in WPMP.NO. 2566 of 2009, the court made the following:

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THE HON'BLE SRI JUSTICE B PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE R KANTHA RAO

W.P.M.P.NOs. 23208 of 2008 and 2566 of 2009
IN
W.P.NO. 21479 OF 2007

ORAL ORDERS: (per Sri Justice B Prakash Rao)

In the main writ petition filed by the petitioners as Public Interest Litigation, where they sought for a writ of mandamus declaring the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act No.2 of 2007) and in particular chapters 2 to 4 of the Said Act as illegal and unconstitutional, an interim applications has been filed in W P M P No. 23208 of 2008, where a Division Bench of this Court passed an order on 19.8.2008, which reads as under;

"Heard the learned Advocates.

There is no dispute that after hearing the concerned parties on the same subject, a Division Bench of Madras High Court has passed the following order on 30.4.2008.

- (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 trees for providing diversion of forest land under Section 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 trees, orders shall be obtained from this Court'

It has been submitted by Sri A Rajashekar Reddy, learned Asst Solicitor General that the Union of India would like to challenge the validity of the said order before the Hon'ble Supreme Court. However, he has submitted that as on today the said order is in force.

In view of the above fact, the aforesaid interim order is also passed in this application.

It is, however, clarified that during the pendency of the litigation no member of a forest dwelling schedule tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.

In view of the above order, the application stands disposed of."

Subsequently, the matter underwent adjournments for the purpose of filing counter affidavits. The main ground urged in the writ petition is that having regard to the National Forest Policy, which

contemplates maintenance of forestry to the extent of 1/3rd of the total land area in the country, the provisions of the Act and the conferment or recognition of the certificates for those alleged to be in possession defeats the very policy. Further, these provisions also run counter to various other enactments like Wild Life Protection Act, 1972, Forest Conservation Act, 1980 etc. The petitioners gave a detailed count as to the policy and objects thereunder, hence, with these and other grounds, the petitioners sought to assail the validity of the legislation.

Further it was also pointed out that even the procedure as contemplated and the powers conferred on the Gram Sabha, Sub Divisional level Committee, District level Committee, is only a make believe one and one cannot accept the consideration of the relevant aspects vis-à-vis the objects and the National Policy and therefore any such unguided, uncontrolled powers on those authorities, is bad.

Pending writ petition, the petitioners sought interim directions against the respondents, not to give effect to the provisions of the said legislation. However, following the interim orders granted in similar writ proceeding by the Division Bench of Madras high Court dated 30.4.2008, the aforesaid interim orders dated 19.8.2008 have been passed. During

the course of hearing, the learned counsel for petitioner pointed out that subsequently in the said writ petition before the Madras High Court, orders have been passed in an Interim application on 30.4.2008. The operation portion of which reads as under;

"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 trees for providing diversion of forest land under Section 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 trees, orders shall be obtained from this Court'

Therefore, it is the contention on behalf of the petitioners that unless and until the main questions are gone into and appropriate steps are taken for protecting the forestry, any consideration for grant of certificates is of no use and further under the guise of grant of these

certificates, several ineligible and influential persons are getting into the said land at the cost of forestry and real eligible persons.

The respondents herein have filed an Interim application in WPMP No. 2566 of 2009 seeking a direction to permit them to issue certificate of title to the eligible Forest Dwelling Scheduled Tribes and other Traditional Forest Dwellers under the Act. It is contended in the affidavit filed along with the said application sworn by Mr Asoke Kumar Tigidi, Principal Secretary to Government, Tribal Welfare Department that after making a detailed exercise and enquiry with the assistance of the concerned department and on receipt of the total application of 3,26,328 with their respective claims to cover 11,22,408 acres spread in 22 districts and after making a survey, there is a due recommendation by the Grama Sabha to the Sub Divisional Level Committees and out of the total claims the Grama Sabhas have rejected 43,829 claims and recommended to the District level Committee for approval of 1,23,195 and rejected 10,530 claims. The District level Committee approved 1,14,329 claims and rejected 6,058 claims. It was contended that elaborate enquiry was conducted with participation of Forest and other authorities and with the assistance of NGOs and therefore now the

entire exercise is over, permission as per the orders of this Court passed earlier as mentioned above, be granted.

Opposing the application and also opposing modification in regard to the earlier orders passed by this Court, the learned counsel for the writ petitioners submitted that the petitioners have not given any details or particulars, much less the procedure followed before making any such finalization and that in view of the absence of any such details, the writ petitioners are not able to point out various defects. In fact, it is his contention that there was no survey nor any verification much less there is due identification of the individuals in possession entitled for any such certificates vis-à-vis to establish the factum of possession by them, therefore, the question of grant of certificates, at this stage, does not arise and further it was stated that if all the particulars are furnished to the writ petitioners, they would be in a position to reply pointing out the defects, ineligibilities or to submit any other such objections.

We have heard Mr G Vidyasagar, learned counsel appearing for writ petitioners, learned Advocate General and Mr Balgopal, learned counsel appearing for other respondents, in detail and at length.

During the course of the arguments, it was pointed out that having regard to the pendency of similar matters in other High Courts and applications filed seeking for transfer before the Supreme Court, the main writ petition cannot be heard and orders are being awaited. In view of the same, we refrain from going into the merits in the writ petition.. However, falling back, consideration of the interim applications filed from both the sides and taking into consideration the earlier orders of this Court, passed by following the orders passed by the Division Bench of Madras High Court, the main aspect which requires to be pondered over is whether the respondent authorities need to be given permission for grant of certificates of title, as sought for in the application filed by them, since according to them the entire exercise is over. Prima facie, it is to be seen that the writ petition is filed in a Public Interest with the main abode object of protecting the forestry in general, spread all over India and affect of the provisions of the said legislature vis-à-vis the grant of certificates of title to those alleged to be in possession and deprivation of the forestry to the country as a whole, that apart, the entire procedure and the conferment of powers on authorities as contemplated according to the petitioner is not sufficient

enough to protect the rights of the individuals who are really entitled to and to protect the forestry in general. Therefore, though initially the petitioners sought the interim direction not to give effect to the provision of the said legislation, this Court passed the aforesaid orders following the orders passed by the Division Bench of Madras High Court.

It is now well established that if a legislation is under challenge on the ground of unconstitutional or otherwise, normally the Courts will be slow in granting any such directions as against the implementation of the legislation in exercise of powers conferred under Article 226 of the Constitution of India. However, apparently it is only due to the pendency of the similar matters and orders passed by the other High Court, the same was followed.

In the end, the Division Bench of Madras High Court and as well this Court did make an observation that as and when the certificates are to be granted, necessary permission has to be obtained from this Court. It is at this stage now where the application has been filed by the authorities seeking for such permission, the question is as to the scope of the enquiry to be made while granting the permission. According to the respondent authorities, every enquiry has been made and

verification etc vis-à-vis possession and of the claims have been received through at different levels of Grama Sabha, Sub Divisional Level Committee and District Level Committee and ultimately the individuals have been identified who are entitled to certificates. There is no dispute on the part of the writ petitioner as to the participation as well by several NGO organization in the process, apart from the concerned authorities. Even the provisions of the Act, do, specifically provide for such exercise with the assistance and participation by all the authorities like Revenue, Forest etc. However, even though entire such exercise was done at several district places, there appears to be no attempt on the part of the writ petitioner to put their claims/objections of whatsoever nature in the entire process, be that as it may, since the petitioners themselves are not claiming any such rights or certificates of title under the provisions or much less denial thereof, we are of the view that in the entire process as stated on oath by the authorities, there is no reason, at this stage to doubt the same. Further it is found there have been several claims running into thousands at different parts of 22 districts and particulars of those claims have been verified and processed through and ultimately restricted to those who are found to be eligible.

Even an attempt on the part of this Court to verify correctness of those claims individually by going through, would be much against the well established principles while exercise of the jurisdiction under Article 226 of the Constitution of India, therefore this Court would not venture to make any attempt to go into or conduct an enquiry as regards correctness thereof. However, it would suffice in the interest of justice to permit the petitioners to seek for all those details or particulars, as they may require directly from the concerned authorities or by filing appropriate applications and even by invoking the provisions under Right to Information Act. All those claims are now arising in almost 22 district of the State of A P and therefore the entire records would be available at the three tier authorities in the respective district which can be availed of by the writ petitioner.

We also take note of the fact that entire exercise as per the provisions of the Act is a basis i.e., a three tier system primarily at Grama Sabha, secondly at Sub Divisional Level Committee and ultimately at District level Committee consisting of various authorities and it is always open for the writ petitioners to seek for information and particulars, if any ineligible person or individual is sought to be given any

such certificate, it can raise all objections, which, we are sure the concerned authorities before whom such objections are filed, be it Grama Sabha, Sub Divisional Level Committee or District Level Committee, would certainly enquire into and would pass appropriate orders in accordance with law.

However, having regard to the very laudable object to protect the possession of such individuals which law tries to take care of, any denial thereof, would only prejudice to them, therefore we are of the opinion that there is no basis, as such for any apprehension on the part of the writ petitioner to assail that the entire exercise is farce one or certificate of identity by the authorities are false or in any way tainted, unless and until such thing has been specifically pointed out.

We are sure that if any such defects or ineligibility aspects are pointed out the same would be taken into consideration and appropriate orders would be passed by the authorities. Further we reiterate that in view of the safeguards provided under the very provisions and also interim orders granted earlier protecting those who are in possession, it is needless to make any further apprehension for causing any inconvenience or loss, as such.

In view of the aforesaid reasons, the W.P.M.P. No. 2566 of 2009

is order as under;

- a) The authorities are permitted to issue certificate of title to the eligible forest dwelling Scheduled Tribes and other Traditional Forest Dwellers under the Act.
- b) Any grant of such certificates will be subject to the result in main writ proceedings challenging the legislation,
- c) Further the said certificates are also subject to their enquiry or verification on the objections pointed out by the petitioners or otherwise,
- d) Petitioners are permitted to seek details and particulars and obtain the necessary copies in respect of the certificates which are been granted at different places and raise their objections,
- e) On receipt of such objections, the authorities, especially the District Level Committee concerned shall go into the same, enquire, verify the

correctness and pass appropriate orders on merits

and in accordance with law,

- f) The certificates granted above, shall be subject to the orders that may be passed as mentioned in clause (e) above.
- g) Further the person in possession of any of the lands shall not in any way disturb or evicted till the disposal of the writ petition.

Sd/- K. SACHIDANANDA SARMA
Asst. Registrar

ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Secretary, Government of India, Ministry of Tribal Affairs, Sastri Bhavan, New Delhi.
2. The Secretary, Government of India, Ministry of Environment and Forests, Paryavaran Bhavan, New Delhi-110 003.
3. The Director General of Forests, Ministry of Environment and Forests, Paryavaran Bhavan, New Delhi-110 003.
4. The Principal Secretary, Government of Andhra Pradesh, Environment, Forests and Science & Technology Department, A.P.Secretariat, Hyderabad-500 004.
5. The Principal Chief Conservator of Forests, Government of Andhra Pradesh, Aranya Bhavan, Saifabad, Hyderabad-500 004
6. Sarla Mangireddy s/o. Mutyalureddy, Sarpanch of Pamuleru Panchayat r/o. Kutrawada, H/o. Pamuleru, Maredumilli (M) East Godavari District.
7. Suvarnapaka Narsaiah s/o. Rangaiah, r/o. Marrigudda (V & Post) Kothaguda Mandal, Warangal.
8. Chanda Ramaswamy s/o. Mutyapurayudu, r/o. Karakagudem, H/o. Thatigudem, Pinapaka Mandal, Khammam District.
9. Kunjam Pandu Dora s/o. Chellanna Dora, r/o. D. Bhemavaram (V & Po) Addateegala Mandal, E.G. District.
10. Palla Trinadha Rao s/o. Adinarayana, Resources for Legal Action, r/o. 78-10-4/3, SBI Colony, Shyamalanagar, Rajahmundry-533103, East Godavari District.
11. Girijana Sangham, Regd. Society rep. by its Secretary, R. Sriram Naik, Regd. No. 242/03, 1-1-60/2, RTC Cross Roads, Hyderabad.
(1 to 11 by RPAD)
12. 2 CCs to the Advocate General, High court of A.P.Hyd.(O.UT)
13. 2 CCs to the Govt. Pleader for Forests, High court of A.P.Hyd.(O.UT)
14. One C.C. to Sri A. Rajasekhara Reddy, Asst. Solicitor General, High court of A.P.Hyd. (O.UT)
15. One C.C. to Sri G. Vidyasagar Advocate. (OPUC)
16. One C.C. to Sri K. Bala Gopal Advocate. (OPUC)
17. One C.C. to Sri V. Raghu Advocate. (OPUC)
18. 2 spare copies.

(6)



HIGH COURT

BPR.J
&
RKR.J

DATED 1-05-2009

ORDER

WPMP.NOS. 23208OF 2008 AND 2566 OF 2009
IN
W.P.NO. 21479OF 2007

DIRECTION