

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2006

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION Nos.31878 of 2004 & 30264 of 2006

& WPMP.NO.38611 OF 2004 & MP.NOs.1 & 2 OF 2006

Kallai Saw Mills, rep.by
its Proprietor E.Anandan

..Petitioner in
WP.No.31878/04

T.R.Saw Mills, rep.by its
Proprietor Mr.T.Rajappan

..Petitioner in
WP.No.30264/06

Vs

1.State of Tamilnadu, rep.by its
Secretary, Environmental & Forest
Department, Fort.St.George
Chennai-9.

2.State of Tamilnadu, rep.by its
Secretary, Small Industries
Department, Fort.St.George,
Chennai-9.

3.The Industries Commissioner &
Director of Industries & Commerce
Chennai-5.

4.The General Manager, District
Industries Centre, Udhagamandalam
The Nilgiris.

5.The District Forest Officer, Gudalur
Division, Gudalur, The Nilgiris.

6.The Executive Officer, Gudalur Town
Panchayat, Gudalur.

..Respondents 1 to 4 in
both WPS

..Respondents 5 and 6 in
WP.NO.31878/04

7.The District Forest Officer,
South Division, Ooty
The Nilgiris District.

8.The Executive Officer, Kilkunda
Panchayat, Manjur, Kunda
Bridge Post, The Nilgiris District.

..Respondents 5 and 6 in
WP.No.30264/06

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the fourth respondent pertaining to the impugned order passed by the fourth respondent in his proceedings in RC.NO.2121/B/2004 dated 23.8.2004 and quash the same (WP.NO.31878 of 2004) and to call for the records of the sixth respondent culminating in his proceedings in Na.Ka.No.204/2004 dated 25.8.2006 and quash the same (WP.NO.30264 of 2006).

For Petitioner in WP.NO.31878 of 2004 : Ms.M.B.Dominique
For Petitioner in WP.NO.30264 of 2006 : Mr.V.Raghupathi
For Respondents 1 & 5 in both WPS : Mr.Titus Jesudoss, SGP[F]
For Respondents 2, 3 and 6 in both WPS : Mr.S.Rajasekar, AGP

C O M M O N O R D E R

As both the writ petitions arise out of almost similar situation and the grounds of attack are one and the same, with consent

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of learned counsel on either side, the writ petitions are taken up together for final disposal after hearing the learned Special Government Pleader and the learned Additional Government Pleader.

2. The facts in respect of WP.NO.30264 of 2006 are taken as a typical case for the disposal of these writ petitions, which facts are as follows :

The petitioner was running a saw mill with a valid licence issued by the sixth respondent in a building and land leased out to the petitioner by the owner, which property is situated within the limit of Manjur, Kilkunda Panchayat Union. They started the saw mill in the year 1995 by following the rules and regulations as well as the guidelines issued by the authorities concerned and also after registering themselves under the Tamilnadu General Sales Tax Act.

3. According to the petitioner, as per the order of the Supreme Court in the case of T.N.Godavarman Thirumulkpad Vs. Union of India (1997 (2) SCC 267), as against the unlicensed saw mill and plywood industries started functioning subsequent to the date of said order of the Supreme Court, action was directed to be taken as directed in the said order itself. Taking the said order of the Supreme Court as a handle, the sixth respondent, without any rhyme or reason

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and without issuing any prior notice, passed the impugned order to close down the petitioner's saw mill with immediate effect as if the petitioner's saw mill has come within the purview of the said decision of the Supreme Court on the ground that the empowered committee has not issued any permission for running the saw mill. That order is put in issue before this Court.

4. The other case i.e W.P.NO.31878 of 2004 arises out of the same set of facts.

5. The fifth respondent filed a counter affidavit to the effect that the Government of Tamilnadu passed a Government Order in G.O.Ms. No.355 Environment and Forests Department (FR III) dated 19.1.1997 wherein among other things, the Government directed that the saw mills, which are existing near the forest area, should be asked to be relocated, if the District Forest Officer is of the view that they are likely to harm directly or indirectly the preservation of forests in that area.

6. The said Government Order came to be passed in view of the directions of the Supreme Court in the decision rendered in 1997 (2) SCC 267 (supra) (WP(C) Nos.202 of 1995 and 171 of 1996 dated

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12.12.1996) wherein the Supreme Court observed that the provisions of the Forest (Conservation) Act, 1980 (hereinafter referred to as the Act) must apply to all the forests irrespective of the nature of ownership or classification thereof and the word 'forest' must be understood according to its dictionary meaning. It was further observed that this description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Act. The Supreme Court further directed that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest' and in accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country without the prior approval of the Central Government must cease forthwith.

7. On these grounds, it was contended by the fifth respondent that running a saw mill of any kind including veneer or plywood mill and mining of any mineral are non-forest purposes and are not permissible without prior approval of the Central Government. Accordingly, such activity is, prima facie, in violation of the provisions of the Act and every State Government must promptly ensure total cessation of all such activities forthwith.

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8. The fifth respondent further stated in the counter that he addressed the sixth respondent, who accorded permission to the petitioner, to cancel the licence for running the saw mill in lieu of its proximity to the reserve forest. The sixth respondent, therefore, issued the notice

dated 25.8.2006 asking the petitioner to stop running the saw mill, as necessary permission from the Central Government was not obtained. The distance between the petitioner saw mill and the reserve forest, namely Kunda forest had been verified and it was found to be harmful to the protection of the said forest. On that basis, in the counter filed by fifth respondent, learned Special Government Pleader sought to sustain the impugned order.

9. I have heard the learned counsel for the petitioners as well as the learned Special Government Pleader and the learned Additional Government Pleader.

10. It is not in dispute that the Supreme Court condemned deforestation heavily in the decision reported in 1997 (2) SCC 267 (supra) for preservation of ecology and forest life. In respect of running a saw mill, necessary directions were given to the State Governments wherein the State Governments were directed to strictly see that no breach would be caused to the directions of the Supreme

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Court in the decision reported in 1997 (2) SCC 267 (supra). Pursuant to the same, the impugned order has been passed, of course, without issuing any notice. However, following the principles of natural justice by issuing a notice is not an embodied code.

11. In view of the strong directions given by the Supreme Court in the the decision reported in 1997 (2) SCC 267 (supra), this Court is not inclined to interfere with the impugned orders immediately. On the other hand, the petitioners' grievance can be directed to be considered by the respondents, if they are not coming under the purview of the directions issued by the Supreme Court in the decision reported in 1997 (2) SCC 267 (supra) and the respondents can issue necessary directions without breaching any one of the directions given by the Supreme Court and also the statutory provisions governing the issue, for which course of action, learned counsel for the petitioners are also in agreement.

12. However, learned counsel for the petitioners have argued the matter as if the petitioners' saw mills were situated outside the prohibited distance as prescribed in the Act as well as the decision of the Supreme Court in 1997 (2) SCC 267 (supra).

13. This is a factual issue that has to be considered by the respondents themselves. Hence, this Court is of the view that the writ petitions can be disposed of by giving directions to the respondents authorities, particularly respondents 5 and 6 in the respective writ petitions.

14. Accordingly, the writ petitions are disposed of with the following directions :

"i. The respective petitioner is permitted to give individual petition stating all their grievances to the respective fifth respondent in these writ petitions within a period of one week from the date of receipt of a copy of this order;

ii. On making such petitions to the respective fifth respondent, the respective fifth and sixth respondents are directed to consider the grievances of the respective petitioner in accordance with the statutory provisions of the Act and the directions issued by the Supreme Court in the decision reported in 1997 (2) SCC 267 (supra) and pass appropriate orders after affording reasonable opportunity to the respective petitioner within four weeks thereafter; and

(9)

iii. The request of the petitioners that till such time they may be allowed to run the saw mills cannot be accepted in view of the categorical pronouncement of the Supreme Court in the decision reported in 1997 (2) SCC 267 (supra) and hence, the same is rejected."

No costs. Consequently, the above MPS and WPMP are dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

- 1.The Secretary to Government of Tamilnadu, Environmental & Forest Department, Fort.St.George, Chennai-9.
- 2.The Secretary to Government of Tamilnadu, Small Industries Department, Fort.St.George, Chennai-9.
- 3.The Industries Commissioner & Director of Industries & Commerce Chennai-5.
- 4.The General Manager, District Industries Centre, Udthagamandalam The Nilgiris.

- 5.The District Forest Officer, Gudalur Division, Gudalur, The Nilgiris.
- 6.The Executive Officer, Gudalur Town Panchayat, Gudalur.
- 7.The District Forest Officer, South Division, Ooty, The Nilgiris District.
- 8.The Executive Officer, Kilkunda Panchayat, Manjur, Kunda Bridge Post, The Nilgiris District.

+ 1 CC To Miss.M.B.Dominique, Advocate SR NO.50922

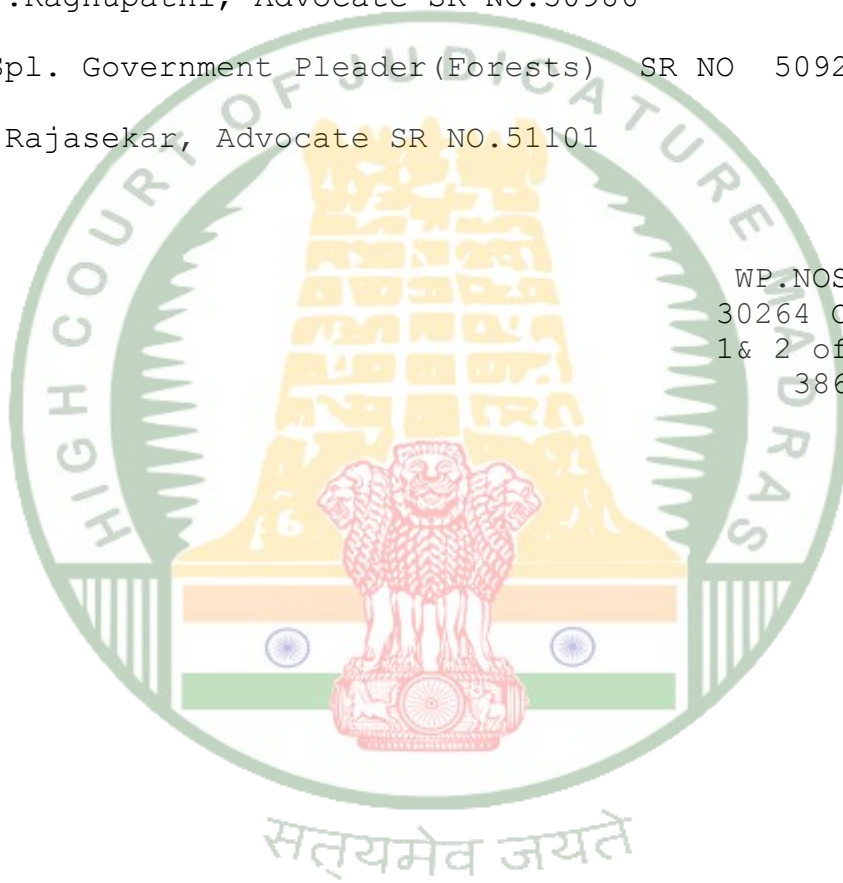
+ 1 CC To Mr. V.Raghupathi, Advocate SR NO.50986

+ 1 CC to the Spl. Government Pleader(Forests) SR NO 50925

+ 1 CC To Mr.S.Rajasekar, Advocate SR NO.51101

RS

jrg(co)
Gp/9.11.



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30264 OF 2006 & MP.Nos.
1& 2 of 2006 & WPMP.No.
38611 of 2004
31.10.2006

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