

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 88 of 2015

AND

M. A. NO. 148 of 2015

Muthukumaran
s/o Periyasamy
70, A-1, Nadutheru
Koomapatti, Virudhu Nagar Distict

----- Applicant.

Vs

1. The State Tamil Nadu

Rep. by its Principal Secretary
Environment and Forests
Fort St. George, Chennai- 600009

2. The District Collector

Virudhu Nagar District

3. The Tahsildar

Srivilliputhur

4. The Executive Office

S. Kodikulam Panchayat
Koomapatti

Respondents.

Counsel for Applicant:

Mrs. Rema Smirti

Mr. A.Yogeshwaran. Advocates

Counsel for Respondents:

Counsel for Respondent 1 to 3:

M/S M.K. Subramaian

M. R. Gokul Krishnan. Advocates

Counsel for Respondent 4:

M/S Abdul Saleem

Mrs. Vidyalakshmi. Advocates

QUORAM

Hon'ble Justice Dr. P. Jyothimani, Judicial Member

Hon'ble Prof. Dr. R. Nagendran, Expert Member

ORDER

Delivered by Justice Dr. P. Jyothimani, Judicial Member dated 3rd August, 2015

- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
 2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. This application is filed seeking for an order of restraint against the respondents from felling or permitting felling of trees in Survey No. 628/2, S. Kodikulam village, Koomapatti and also to direct the respondents to find an alternative suitable site which does not involve any felling of trees for the construction of a Police Station and a TANGEDCO Sub-Station. While the applicant is not opposed to the construction of the Police Station in the area, he is stated to have concerned with the felling of 480 coconut trees, 7 mango trees, 2 drumstick trees and other standing trees. The applicant states that he is one among 10 persons who are granted 2- c patta which confers them a right to use the lands and to harvest the produce of the trees which are stated to have been taken care by the applicant and others by watering etc. and they are the source of their income.
2. It is the case of the applicant that when they were informed that they are going to be evicted by the respondent, for construction of the Police Station and an Electric Sub Station, the applicant and four others filed a civil suit on the file of the District Munsiff Court, Srivilliputhur in O.S. No. 17/2014 seeking for an order of injunction from evicting them. It is stated that some other persons similarly situated have also approached the civil court .The public in the area were informed that trees will be auctioned. According to the applicant there are other alternative sites available for putting up the construction of the Police Station without cutting any trees. The land in which the proposed construction is to take place is in the extent of four acres and four km away from Koomapatti and therefore not suitable for a Police Station.

3. By allowing the respondents to cut the trees for construction of the Police Station, grave environmental harm will be caused and the ecosystem will be spoiled. The applicant has placed reliance on various studies to state that trees form part of the natural oxygen producing units and they are to be preserved at all cost. According to the applicant, in choosing the place concerned to cut the trees, the respondents have flouted various directions issued by the Apex Court from time to time. According to the applicant, the respondents are attempting to cut 482 standing trees and such action is contrary to the precautionary principle and sustainable development. The respondents should have considered the alternative site for constructing the Police Station.
4. The second respondent District Collector, in his reply has stated that Survey No. 628/2, S. Kodikulam Village is classified as thoppu poromboke with an extent of 2.47.43 Hectares. The land contains 239 coconut trees, 11 tamarind trees, 3 mango trees and 3 illupai trees and 2-c patta was given to 11 persons including the petitioner by the Tahsildar to usufruct the trees. The said 2-c patta does not grant any right on private individuals to the trees and the same can be cancelled at any time. As administrative directions were issued by the Government sanctioning to construct a Police Station, the Superintendent of Police, Virudhunagar has requested the District Revenue Officer, Virudhunagar to allot 20 cents of land and the Tahsildar has recommended Survey No.628/15 for an extent of 2000 square meters Thoppu poromboke land from Survey No.628/2 out of the total extent of 2.47.43 Hectares in S. Kodikulam Village as no other suitable land available. It is stated that a notice inviting objection for construction of Police Station was issued and there was no objection received from any one. Then, the proposal was forwarded to the 4th

respondent Panchayat and the Panchayat has accepted unanimously in its resolution dated 20-02-2013.

5. The District Collector has issued permission to the Superintendent of Police to enter upon on 06-11-2013 and 2-c pattas issued to 11 persons were cancelled on 28-01-2014. It is stated by the District Collector that the 2-c patta holders have filed Civil Suits in O.S. No.39/2014 and O.S.No.41/2014 before the Principal District Munsiff Court, Srivilliputhur and the same were dismissed on 13-08-2014. It is further stated that thereafter the Assistant Collector, Sivakasi in his proceedings dated 13-04-2015 has instructed the Executive Officer of S. Kodikulam Town Panchayat to remove 52 trees in the proposed land with a direction to plant ten times the number trees to be cut as per G.O.Ms. No.704 dated 03-08-2010.
6. Therefore, it is stated that the Police Station is proposed to be constructed in S.No.628/15 in the extent of 2000 square meters out of the total extent of 2.47.43 hectares in S.No.628/2. It is further stated that the Joint Director, Agriculture Department, Virudhunagar, who was directed to visit and report, has reported that the land contains 45 coconut trees aged about 27 to 30 years and economically having yielding capacity for 20 years 2 drumstick trees used for domestic purpose and one match wood tree. Therefore it is denied that 480 coconut trees, 7 mango trees and 2 drumstick trees are to be cut. It is stated that in the total extent of 2.47.43 Hectares in S.No.628/2, there are 239 coconut trees, 11 tamarind trees, 3 illuppai trees and 2 drumstick trees and in the proposed site of 2000 square meters located in S.No.628/15, there are only 45 coconut trees, 2 drumstick trees and 1 match wood tree.
7. It is clearly stated by the District Collector that in Koomapatti Police Station there are 30 police people in the area consisting of population of 60000 people and the area

includes Periyar Dam and Kovilar Dam affecting the zone of natural calamities and also Law and Order, being the vulnerable area. There is no other suitable land than the proposed one.

8. M.A.No.148/2015 is filed by the Superintendent of Police, Virudhunagar to implead him as a party in the main application on the ground that the District Collector has accorded sanction for construction of Police Station on 06-11-2011 itself and the construction of a Police Station in the area is of vital importance. Therefore, according to him, he is a proper and necessary party in the main application.
9. Mr. A.Yogeshwaran, learned counsel appearing for Ms. Hema Smirithi, the leaned counsel for the applicant would submit that in as much as the respondents have proposed to cut nearly 480 coconut trees etc., it is a matter of grave environmental concern and this Tribunal should interfere and put an end to this menace. The applicant who is admittedly the 2-c patta holder is taking care of these trees. The respondents should have considered the alternative land belonging to the Panchayat in S.No.544/3 which is closer to Koomapatti. According to him, for selection of 2000 sq mtrs out of a larger extent no reason has been given. According to him, the plants release oxygen which is the imminent necessity for the human life, which is true in respect of coconut trees also even though they are of lesser foliage. He has relied upon the study made by Dr. Severino S. Magat of Philippine Coconut Authority, a study made by C. S. Ranasinghe and K. S. H. Thimothias and another study on Valuation of Ecosystem Services of Coconut Types by Jose Nestor M. Garcia.
10. *Per contra*, it is the submission of the leaned counsel for the respondents that as there was no proper alternative place available and the construction of the Police Station is of utmost public importance in the area, the place has been chosen. The learned counsel appearing for 4th respondent has also categorically stated that only the Police

Station is going to be constructed in the area and approximately 52 trees most of which are coconut trees aged nearly 30 years are only to be cut and as per the Government order the 2nd respondent is prepared to plant 10 times the number of trees cut.

11. We have heard learned counsel for applicant as well as respondents at length, referred to the pleadings and documents and applied our mind to the issue involved in the case. The issue to be decided is as to whether the applicant is entitled for a permanent injunction against the respondents from felling any trees in survey No. 628/2 S kodikkulam Village, Koomapatti and direct the respondents to find an alternative site for construction of Police Station without felling trees.
12. While deciding with the said issue, at the outset we have no hesitation to hold that the application is totally misconceived. The applicant along with ten others are the 2-c patta holders which entitles them to use the products of the coconut trees. Admittedly, the applicant has no interest or title over the land but only the usufructs of the trees. It is also admitted that the applicant along with 4 other persons has filed a civil suit against the respondents herein praying for an injunction from interfering with their enjoyment of right to usufruct of coconuts. The statement by the 2nd respondent that said suit along with other suits have been dismissed on 13-08-2014 stands not controverted. Further, a reference to the contents of the plaint does not anywhere show that there are 480 coconut trees in survey no 628/2. On the other hand, it is the clear case of 2nd respondent that the Police Station is to be constructed in survey no 628/15 in an extent of 2000 sq. mtrs. The Joint Director of Agriculture Department, Virudhu Nagar on inspection has found that there are only 48 coconut trees in the said Survey Number. In the absence of any proof to the contrary we cannot believe that the

respondents propose to cut 480 trees apart from the 7 mango trees as stated by the applicant. Therefore, the plea raised by the applicant cannot be accepted.

13. It is also stated by 2nd respondent that the 2-c Patta granted to the applicant and others have been cancelled by the Tahsildar on 28-01-2014 which fact also remains uncontroverted. **However, we have to make it clear that in the event of the applicant claiming himself to be entitled for usufructs from the coconut trees, it is for him to work out his remedy in the manner known to law.** The 2nd respondent has also clearly stated that there is no suitable Government poramboke land available in the village except the proposed land for construction of Police Station. Therefore, it is not for this Tribunal to give any direction when the Government has decided to have a permanent Police Station in Koomapatti having a population 60000 people. This is within the affective zone of Periyar Dam and Kovilar Dam and there are enormous law and order problems being a vulnerable area. We are of the considered view that the applicant's view cannot stand when larger public interest is involved.
14. The Police Station which is required in the vulnerable area serves a better public purpose and in such circumstances we have to strike a balance between the public interest and the loss of a few trees to have a sustainable development. Admittedly the oxygen production by coconut tree is much less as compared to those with denser foliage. As far as the yielding is concerned, as the trees are aged 27-30 years, it is also not economically a viable plantation. In any event, the private interest of the applicant cannot be a ground for obstructing the public cause. The study by Jose Nestor M. Garcia and others on the **valuation of ecosystem service of coconut types**, mostly deals with the economic value of ecosystem services relating to coconut. The study shows that there are very limited studies done on the characterisation and evaluation of different cultivars with respect to the characters that have direct bearing on their

ecosystem services. The study by Rita T. Delacruz also mostly concerns with coconut productivity rather than a comparative study with the environmental issues. Be that as it may, now that the Joint Director of Agriculture Department, Virudhu Nagar has stated that on inspection of the place where the Police Station is to be built namely Survey No. 628/15 in the extent of 2000sq mtrs, 45 coconut trees, 2 drumstick trees and one matchwood tree are present and even according to the 2nd respondent, the 4th respondent has already instructed the Panchayat to remove 52 trees out of which 45 are coconut. It is sufficient to give appropriate directions to the respondents to carryout afforestation by planting 520 trees of native character and see that all the said trees are grown up well by maintaining the same for sufficient number of years.

15. Considering the overall view and looking at any angle we are unable to grant any relief to the applicant except stating that if the applicant is having valid 2-c patta in respect of 22 coconut trees he must be permitted to use the benefits. It will be always open to the respondent to construct the Police Station in Survey No. 628/ 15 by removing 52 trees and replanting 520 native trees and maintain the same for a required number of years at their cost. With the above direction the application stands dismissed. There shall be no order as to cost.
16. As the main application is disposed M.A. No. 148 of 2015 stands dismissed as no orders are necessary.

Dated August 2015

Justice Dr. P. Jyothimani (JM)

Chennai

Prof. Dr. R. Nagendran (JM)