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W.P.(MD) No.16485 of 2015 etc. batch

W.P.(MD) Nos.16485, 14699 of 2015; 20767 of 2013;
2847, 4646, 5456 of 2017;
1921, 19612, 19615 and 19618 of 2019;
W.P.Nos.3075 of 2017 and 8932 of 2022
and

Contempt Petition (MD) Nos.773 of 2017 and 1340 of 2014

THE HON'BLE CHIEF JUSTICE
N.SATHISH KUMAR, J.
and
N.MALA, J.

(Order of the Court was made by the Hon'ble Chief Justice)

A status report has been filed by the Principal Chief Conservator of Forests (Head of Forest Force) to indicate their efforts to remove prosopis juliflora from different Districts. Details of the number of trees in the waterbody and other areas in each District apart from the details of the trees removed has been given. The status report, however, does not contain the method applied for removal of the trees apart from the agency undertaking such work. Therefore, the status report is quite vague in regard to the required information because any further delay to remove prosopis juliflora would be detrimental to the environment in the State of Tamil Nadu.

2. We further find that the draft policy has not been finalised



W.P.(MD) No.16485 of 2015 etc. batch

WEB COPY

though it was assured on the last date of hearing. It is stated that the matter has been referred to the Government to take a final decision. The matter cannot be adjourned time and again for it, more so, when even the Government has shown concern to the problem and their willingness to remove the *prosopis juliflora* from the State of Tamil Nadu at the earliest.

3. We fail to understand as to what is the purpose of preparing the draft policy if it cannot be taken up immediately for finalisation. Therefore, no further time should have been given, but looking to the fact that the issue involved in the present matter pertains to the environment, thus, last opportunity is given to the Government, however, if there would be failure to finalise the policy, we may insist for the presence of the defaulting officer.

4. We further direct that the respondents would place all the relevant material on record on the next date which includes the method adopted for removal of the tree and if it has been through a contractor or any other agency, then to specify the name of the contractor or the agency and if any contractor is involved, whether a



W.P.(MD) No.16485 of 2015 etc. batch

WEB COPY

bid for it was called. They would also put on record the period given to the contractor or the agency to remove the tree and the total amount incurred therein. The aforesaid direction would be carried out without fail.

5. The learned Additional Advocate General has referred to a letter dated 07.07.2022 issued by the Director, MGNREGA, New Delhi. It is to intimate that the funds of MGNREGA cannot be used to remove the invasive plant and exotic species in view of Schedule-I, para 4(3).

6. The letter aforesaid refers to the permissible work under MGNREGA which includes tree plantation and horticulture in community and individual as per Para 5 of Schedule-I of MGNREGA. We find that the same argument was earlier dealt with by this Court in W.M.P.(MD) No.5461 of 2022 in W.P.(MD) No.3633 of 2014, by the order dated 29.04.2022. It is to our surprise that despite a judicial order, the Director, MGNREGA has sent the letter to the State Government showing their inability to allow use of the MGNREGA funds for a good cause which otherwise is nothing but to



W.P.(MD) No.16485 of 2015 etc. batch

WEB COPY

be used for plantation and horticulture in community and individual.

It is for that reason the prosopis juliflora trees are required to be removed. It is necessary for plantation to remove prosopis juliflora.

The plantation and horticulture cannot take place without preparing the earth and it can be when earlier plant is removed. Thus, the letter sent by the Director, MGNREGA is not appropriate rather we reiterate our direction given in W.M.P.(MD)No.5461 of 2022 in W.P.(MD) No.3633 of 2014 by the order dated 29.04.2022. The relevant paragraphs of the order are quoted hereunder:

"8. The reports filed before this Court indicate that the invasive species are threat to the entire eco system and if arrest of the invasive species is not made at least from now, within few years the entire forest will die as the aging trees will automatically die within a short span of time. The invasive plants also suppressed the secondary growth in the forest which also made the fodder scarcity which leads to the animal like elephant straying outside the forests resulted in conflict between man and animals. The services of the Tribals who are the real foot soldiers of the forest have already been engaged in many ways in protecting the forest in the form of Anti Poaching Watchers. Therefore, the Tribal living in and around the forest who are living coexistence with the wild life



WEB COPY



W.P.(MD) No.16485 of 2015 etc. batch

can very well be engaged in removing the weeds, like lantana and other invasive species, as the object of the Mahatma Gandhi Rural Employment Guarantee Act, 2005 itself to provide livelihood security. In this regard, we have also passed an order dated 19.04.2022, which reads as follows:

"a) Invasive alien species can be removed from protected areas namely Tiger Reserves, Sanctuaries and National Parks in the State of Tamil Nadu and the same can be sold in open market at competitive price;

b) The sale proceeds realized by selling the invasive species should be maintained in a separate corpus account to be informed to this Court. The periodical statement of the removal of exotics consisting of the area of removal, quantity of invasive species removed and sold and sale proceeds realized thereof should be filed once every 3 months before this Court;

c) The details of expenses incurred out of the amount realized by selling the removed invasive alien species towards further removal including the extent



WEB COPY



W.P.(MD) No.16485 of 2015 etc. batch

thereof, maintenance of habitat and restoration of endemic species should be filed before this Court once in 3 months;

d) The local tribal communities shall be given the first choice for utilizing the removed invasives for making furniture out of lantana and other value additions;

e) Allotment of invasive species to the State owned Corporation like TANTEA, TNFL, etc., should be prioritized.

f) Local tribal people should be engaged in removal of invasive species and first priority to be given to them.”

9. Therefore, in our view, the very afforestation includes removal of weeds and planting indigenous species in the forest. The afforestation meaning cannot be confined only planting of trees but also protect the existing forest from dying automatically due to the invasive plants. Clearing such weeds, regrowth of forest is automatic which also amounts afforestation.

10. In view of the above, we direct the Union Government and State Government to use the funds under the Mahatma Gandhi National Rural Employment



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W.P.(MD) No.16485 of 2015 etc. batch

Guarantee Scheme (MGNREGA) for removal of invasive species by engaging the Tribal and local community people, who are already living in co-existence with the wild life and living in and around the Forests, Sanctuaries and National Park.

11. Accordingly, W.M.P.(MD)No.5461 of 2022 in W.P.(MD)No. 3633 of 2014 is ordered."

7. Accordingly, we direct the State Government to use the funds of MGNREGA for the purpose and within the framework of the rules clarified by us. If the Director, MGNREGA has any objection to it, he may remain present in Court on the next date to clarify it further.

Let this petition be listed again on 14.07.2022. A copy of this order would be made available to the learned Additional Solicitor General so that it may be sent to the Director, MGNREGA.

(M.N.B., CJ.) (N.S.K., J.) (N.M., J.)
07.07.2022

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