

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.Nos.29413 of 2011,
W.P.No.2166 of 2012
& W.P.No.31518 of 2015

V.Arumugam

... Petitioner in all WPs.

Vs.

1. Mallasamudram Panchayat Union,
rep. by its Chairman,
Mallasamudram,
Namakkal District.
2. The Block Development Officer,
Mallasamudram Panchayat Union,
Mallasamudram,
Namakkal District.
3. Palamedu Village Panchayat,
rep. By its President,
Palamedu Post,
Tiruchengode Taluk,
Namakkal District.

... Respondents in WP.29413/2011

The District Collector,
Namakkal District,
Namakkal

सत्यमेव जयते

... Respondent in WP.2166/2012

1. The Revenue Divisional Officer,
Tiruchengode,
Namakkal District.
2. The Tahsildar,
Tiruchengode,
Namakkal District.

WEB COPY

3. The Block Development Officer (Village Panchayat)
Mallasamudram Panchayat Union,
Mallasamudram,
Namakkal District.

... Respondents in WP.31518/2015

W.P.No.29413 of 2011 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the order of the 1st respondent dated 24.11.2011, made in Subject No.31(31), and quash the same.

W.P.No.2166 of 2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the order of the respondent dated 27.01.2012 in Na.Ka.No.227/2012.Vu.Ni3 and quash the same.

W.P.No.31518 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing the respondents, their men and agents from in any manner interfering with the fishing rights of the petitioner in the Palamedu Chinna Eri alias Periya Eri, Palamedu, Namakkal District during the currency of the Licence dated 23.11.2011, granted by the Palamedu Panchayat, to the petitioner for the period from 01.01.2012 to 31.12.2016.

For Petitioner

in all Writ Petitions : Mr.K.Selvaraj

For R1 & R2

in W.P.No.29413/2011 : Mr.S.Gomathinayagam,
Additional Advocate General
assisted by
Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For R3

in W.P.No.29413/2011 : Mr.T.L.Thirumalaisamy

For Respondent

in W.P.No.2166/2012 : Mr.S.Gomathinayagam,
Additional Advocate General
and R1 to R3 assisted by

in W.P.No.31518/2015

Mr.S.V.Duraisolaimalai,
Additional Government Pleader

C O M M O N O R D E R

As the issues involved in all the Writ Petitions are one and the same, they are being taken up and disposed of by a common order.

2. The petitioner was a successful bidder for the leasing out of the fishing rights by the President of the local Panchayat. After that, the licence was confirmed in favour of the petitioner. Thereafter, the Panchayat Union Council passed a resolution to the effect that it would undertake the right of auctioning the fishing rights. That was challenged in W.P.No.29413 of 2011. On the complaint made, the District Collector, Namakkal has cancelled the licence given to the petitioner on the ground of procedural violations. Challenging the same, W.P.No.2166 of 2012 has been filed. Despite the interim orders obtained in the above two Writ Petitions, the petitioner was not allowed to do fishing and therefore, W.P.No.31518 of 2015 has been filed seeking a writ of mandamus forbearing the respondents from in any manner interfering with his fishing rights.

3. Learned counsel for the petitioner submitted that the Tank belongs to the local body namely, local Panchayat. Even prior to the present auction, it was the Panchayat which was auctioning it from time to time. Form 16 maintained by the Panchayat also indicates that the Tank lies with the Panchayat. The petitioner was not heard before the orders were passed by the District Collector.

4. Learned Additional Advocate General appearing for the respondents submitted that the Tank belongs to the Panchayat Union and without following the procedure and without authority of law, the President of the local body has auctioned it. As per Rule 13 of the Tamil Nadu Panchayats (Lease and Licensing of Fishery Rights in Water Sources vested and regulated by the Village Panchayat Union Councils) Rules, 1999, the authority competent to confirm the auction is the District Collector. As per the said Rules as well as the Tamil Nadu Public Works

Department Code, all Tanks other than those vesting with the Public Works Department, would rest with the Panchayat Unions. Therefore, there is no question of affording any opportunity to the petitioner, as the very licence given itself was one without jurisdiction.

5. By way of a reply, learned counsel appearing for the petitioner submitted that as per Rule 12 of the Rules aforesaid, the Panchayat is the Executing authority to auction the fishing rights. The question as to whether the Tank lies with the Panchayat or the Panchayat Union Council has to be decided by the District Collector. As the civil rights of the petitioner is involved, he has to be given an opportunity to put forth his case. Learned counsel also submitted that the petitioner would not indulge in any fishing activities till appropriate orders are passed by the District Collector, Namakkal, as in the manner known to law.

6. Certainly, the rights of the petitioner is affected by the order passed by the District Collector. Except by stating that there are certain procedural violations, no reasons have been indicated nor the petitioner was heard. It is not in dispute that the petitioner was put in possession after licence granted to him. Thus, considering the above, this Court is of the view that the petitioner is entitled for a fair hearing.

7. Accordingly, the orders impugned in these Writ Petitions are set aside and consequently, the District Collector, Namakkal, is directed to issue notice to the petitioner to show cause as to why his highest bid shall not be confirmed. After receiving reply, if any, from the petitioner, the District Collector, Namakkal, shall pass appropriate orders. The entire exercise will have to be done within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. The statement made by the counsel for the petitioner that the petitioner would not indulge in fishing operations till appropriate orders are passed by the District Collector, Namakkal, is recorded. Till such time, no third party shall involve in fishing and there shall not be auction as well.

9. In fine, Writ Petitions in W.P.No.29413 of 2011 and W.P.No.2166 of 2012 are allowed as indicated above and W.P.No.31518 of 2015 is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

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To

Sub Assistant Registrar

1. The Chairman,
Mallasamudram Panchayat Union,
Mallasamudram, Namakkal District.
2. The Block Development Officer,
Mallasamudram Panchayat Union,
Mallasamudram, Namakkal District.
3. The District Collector,
Namakkal District, Namakkal
4. The Revenue Divisional Officer,
Tiruchengode, Namakkal District.
5. The Tahsildar,
Tiruchengode, Namakkal District.
6. The Block Development Officer
(Village Panchayat)
Mallasamudram Panchayat Union,
Mallasamudram, Namakkal District.

+3cc's to Mr.K.Selvaraj, Advocate, S.R.No.1675
+2cc's to Mr.S.V.Duraisolaimalai, Advocate, S.R.No.1899
+2cc's to the Government Pleader, S.R.Nos.2260 & 2234

W.P.Nos.29413 of 2011,
W.P.No.2166 of 2012 & W.P.No.31518 of 2015

SCD(CO)
CA(28/01/2016)