

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.3.2016
Date of verdict : 29-03-2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.32070 of 2015 and
M.P.Nos.1 to 4 of 2015

G.N.D.Visuvasam

... Petitioner

Vs.

1. The District Collector,
Kancheepuram District.

2. The Executive Engineer,
Public Works Department,
Water Resource Organisation,
Lower Palar Basin Division,
Kancheepuram.

3. The Assistant Engineer,
Public Works Department,
Water Resource Organisation
(Irrigation Division),
Sriperumpudur.

4. Inspector of Police,
Sriperumpadur Police Station,
Kancheepuram District.

5. The President,
Gundu Perumpedu Village Panchayat,
Sriperumpudur Taluk,
Kancheepuram District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, to direct the respondents 1 to 4 to take appropriate action against the 5th respondent for his illegal fishing in violation of the order of fishing permission granted by the 3rd respondent in his proceedings made in L.No.190/2015A.E/Thiru/Pa/Ko24 dated 09.07.2015 on the basis of the petitioner representation dated 25.09.2015 and 05.10.2015 respectively.

For Petitioner : Mr.P.Gopiraja

For Respondents: : Mr.S.Pattabiraman, GA

ORDER

This Writ Petition has been filed by the petitioner, praying for the issuance of a writ of mandamus, to direct the respondents 1 to 4 to take appropriate action against the 5th respondent for his illegal fishing in violation of the order of fishing permission granted by the 3rd respondent in his proceedings made in L.No.190/2015A.E/Thiru/Pa/Ko24 dated 09.07.2015 on the basis of the petitioner representation dated 25.09.2015 and 05.10.2015 respectively.

2. According to the petitioner, pursuant to the auction notice, dated 15.7.2015 issued by the Assistant Engineer, he participated in a public auction conducted by the 3rd respondent on 02.07.2015 in respect of fishing rights in a lake, called Gunduperumpedu lake situated in Gunduperumpedu village and became a successful bidder on payment of auction amount of Rs.10,200/-. Consequently, he invested huge amount of Rs.1,20,000/- for purchase of fish breeds. After receipt of the auction amount, the 3rd respondent, by proceedings dated 9.7.2015 granted permission to the petitioner for fishing in the above said lake for the period from 09.07.2015 to 30.06.2016. The grievance of the petitioner is that he has not been allowed for fishing since the 5th respondent, who is the President of Gunduperumpedu village panchayat started indulging in the activities of illegal fishing in the lake and when the petitioner questioned the same, he threatened him with dire consequences. Further, on the instigation of the 5th respondent, 2nd respondent has issued a letter dated 29.7.2015 to the 3rd respondent, directing him to cancel the fishing rights of the petitioner. In such circumstances, the petitioner made a representation on 25.9.2015 to the first respondent and another representation to 4th respondent on 5.10.2015 to prevent the 5th respondent from indulging in illegal fishing. As there was no action, the petitioner has come forward with the present writ petition.

3. A counter affidavit has been filed on behalf of the 2nd and 3rd respondents, wherein, it is stated that the Assistant Engineer, Irrigation Section, Sriperumbudur has issued notice for conducting auction in respect of fishing rights for a period from 9.7.2015 to 20.6.2015 in Gunduperumbedu tank. As per the conditions, the auction of the fishing rights in the said lake is subject to confirmation by the 2nd respondent and without such confirmation, the auction sale cannot be construed to be reached finality. After holding the auction in respect of

fishing rights, there were written complaints about the petitioner indulging in subleasing the fishing rights without the knowledge of the villagers and hence, a representation was made by the villagers to the Special Cell of the Chief Minister to cancel the auction sale in favour of the petitioner. Pursuant to the same, the 2nd respondent has directed the 3rd respondent to cancel the auction. Therefore, as the petitioner has indulged in subleasing the fishing rights which is not permissible, auction bid in his favour was not confirmed so as to permit him to carry on fishing activities in the said lake. It is also stated that 5th respondent has not been permitted as claimed by the petitioner to do any activities of fishing in the lake. With these averments, the respondents sought for dismissal of the writ petition.

4. A reply affidavit has been filed by the petitioner, wherein, it is stated that the petitioner has not violated any terms or conditions regarding the fishing rights and he never attempted to sublease the fishing rights to others as alleged by the respondents. The petitioner has not received any notice from the respondents 2 and 3 regarding the complaints made by the villagers about subleasing fishing rights to third persons. It is also stated that the villagers are not the aggrieved parties as they have no legal right to prevent the petitioner to exercise his lawful right of fishing. The 2nd respondent, having accepted auction amount, cannot turn around and state that the permission granted by the 3rd respondent is not confirmed and hence, the petitioner cannot claim right though he is successful bidder. Therefore, the petitioner has prayed to direct the respondents to grant adequate protection to exercise his fishing rights.

5. Heard the learned counsel and perused the records available on record.

6. As could be seen from the record, it appears that the 3rd respondent has called for tenders from the public in respect of fishing rights in Gunduperumpedu tank for the period from 9.7.2015 to 30.06.2016. Pursuant to the same, the petitioner has participated in the public auction and became a successful bidder having knocked down the bid for Rs.10,200/- as against the minimum bid of Rs.7680/- fixed by the Fisheries Department. It is not in dispute that the petitioner has paid the bid amount through D.D.No.004715, dated 2.7.2015 drawn on State Bank of India in favour of the 2nd respondent, which was also received by the 2nd respondent. According to the 2nd respondent, as per the norms and conditions, the auction of the fishing right is subject to the confirmation by the second respondent and since the petitioner has indulged in the activities of subleasing the fishing rights to third parties, he was not permitted to exercise his fishing rights. However, it

is to be noted that the 2nd respondent has not produced any tangible material to substantiate the said allegation. This Court cannot conduct a roving enquiry over the disputed fact as to whether the petitioner has indulged in the activities of subleasing the fishing rights to third parties. Per contra, according to the petitioner, though he was declared as a successful bidder, he was prevented from exercising his fishing rights by the 5th respondent. It is well settled that 'acceptance of the tender is an acceptance in the legal sense and it creates an obligation. Having accepted the tender amount offered by the petitioner, the 2nd respondent is not justified in not confirming the tender in favour of the petitioner and also in not permitting him to exercise the fishing right. If at all the petitioner violates any norms or conditions of the tender, it is always open to the 2nd respondent to take appropriate action in accordance with law, after affording an opportunity to the petitioner. The period of leasing fishing right is still subsisting.

7. In view of the above, 2nd respondent is directed to conduct an enquiry regarding the allegation against the petitioner, by affording an opportunity of personal hearing to the petitioner as well as 5th respondent and confirm the tender in favour of the petitioner if the allegations are found baseless. If the petitioner is found indulging in subleasing the fishing rights, the 2nd respondent is at liberty to take necessary action in accordance with law. The second respondent is directed to complete such an enquiry within a period of two weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

suk

To

1. The District Collector,
Kancheepuram District.

2. The Executive Engineer,
Public Works Department,
Water Resource Organisation,
Lower Palar Basin Division,
Kancheepuram.

3. The Assistant Engineer,
Public Works Department,
Water Resource Organisation
(Irrigation Division),
Sriperumpudur.

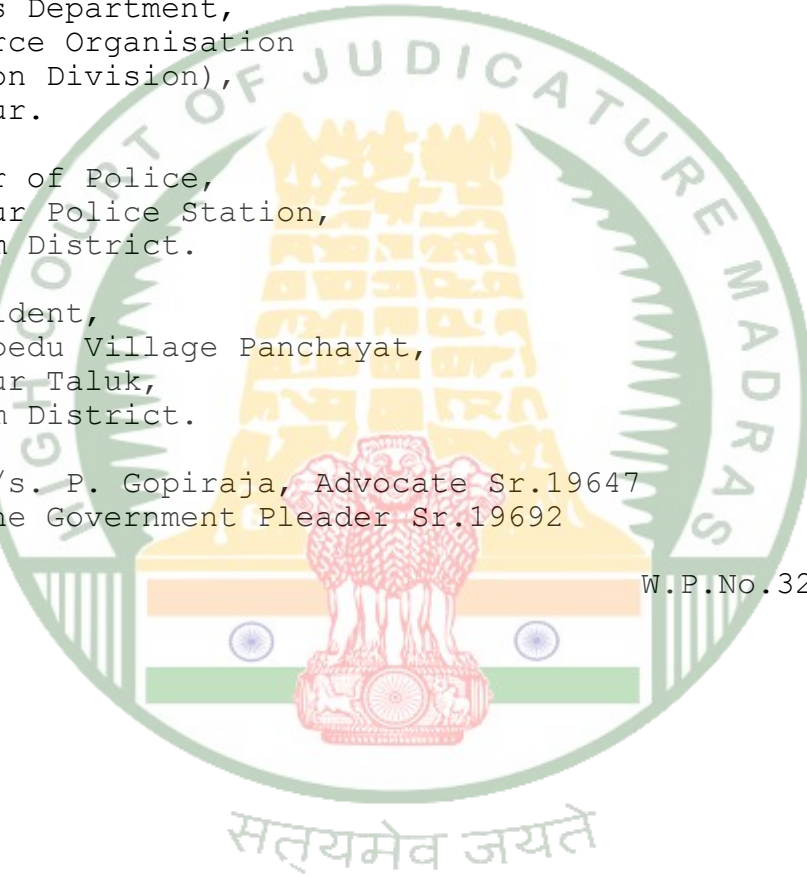
4. Inspector of Police,
Sriperumpudur Police Station,
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Gundu Perumpedu Village Panchayat,
Sriperumpudur Taluk,
Kancheepuram District.

+ 1 cc to M/s. P. Gopiraja, Advocate Sr.19647
+ 1 cc to the Government Pleader Sr.19692

W.P.No.32070 of 2015

VD(CO)
Eu 07.4.16



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