



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM :

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.15595 of 2016
and

W.M.P (MD) Nos.13278 and 11462 of 2016

R.Sethuraman

... Petitioner

Vs.

- 1.The Commissioner of Fisheries,
O/o.The Commissioner of Fisheries,
Chennai 6.
- 2.The Director of Fisheries,
Fisheries Department,
485, M.T.B.Building,
6th Floor, Nandanam,
Chennai 600 035.
- 3.The Assistant Director of Fisheries
(Inland Fisheries),
Fisheries Department,
Pechiamman Padithurai,
Madurai 625 001.
- 4.The District Collector,
Madurai District, Madurai.
- 5.P.K.Dhanabalan
- 6.V.Senthilkumar
(RR5&6 impleaded as per
order dated 01.12.2016 in
W.M.P (MD) Nos.13984 and 12371/2016)

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.11509/F2/2016, dated 09.08.2016 on the file of the respondent No.1 and the consequential impugned order in Na.Ka.No.829/E/2015, dated 19.08.2016 on the file of the respondent 3 and quash the same as illegal and consequently for a direction directing the respondents to either reimburse the sum of Rs.94,19,250/- (Ninety Four Lakhs Nineteen Thousand Two Hundred and Fifty Rupees) spent by the petitioner for fish culture at Periyakulam Tank, Ayanpappakudi Village, Madurai South Taluk, Madurai District or to extend the lease period of the petitioner



for a period of three years and to stop the discharge of sewage, drainage entering into Periyakulam Tank, Ayanppakudi Village, Madurai South Taluk Madurai District within a time period stipulated by this Court.

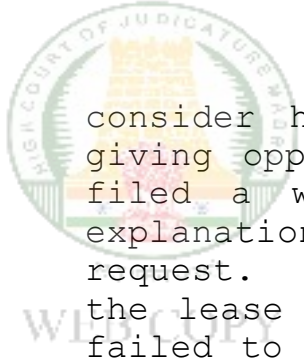
For Petitioner : Mr.T.Lajapathi Roy
For Respondents 1-4 : Mr.N.S.Karthikeyan,
Additional Government Pleader.
For 5th Respondent : Mr.G.Prabhurajadurai
For 6th Respondent : Mr.R.Anand

ORDER

The case of the petitioner in brief is as follows:-

The petitioner is a lessee in respect of fishing in Periyakulam Tank, Ayanppakudi Village, Madurai South Taluk, Madurai District. Earlier, the third respondent called for tenders for leasing out the fishing rights and the petitioner was a highest bidder with a bid amount of Rs.5 lakhs. He was declared as successful bidder and the lease was granted for three years period from 2015-2018. After entering into lease agreement, the petitioner deposited a sum of Rs.1,75,000/- to clean the tank. Later, on 08.02.2016, he has spent a sum of Rs.15,15,000/- for purchasing varieties of fish fingerlings, again on 15.02.2016, the petitioner purchased fish fingerlings for a sum of Rs.10,25,000/- and left it in the Periyakulam Tank. Thereafter, on 29.02.2016, all the fish fingerlings died and found floating in the Tank. Later on, he came to know that the fingerlings died only due to discharge of sewage and drainage let in the channel which ultimately spoiled the tank. According to the petitioner, the Periyakulam tank is not fit for fishing culture and the third respondent suppressing the above fact, leased out the property to the petitioner and he has invested a huge amount of Rs.94,19,250/-. In the above circumstances, he sent representation on 25.04.2016 seeking compensation for the loss occurred to him and also requested to stop the discharge of sewage and drainage and chemical wastes from tanning industries entering into the Periyakulam Tank. On receipt of the above representation, the third respondent informed the petitioner that they have requested the Pollution Control Board to prevent the discharge of sewage into Periyakulam Tank. However, till date no action has been taken to stop the discharge of sewage into the tank. According to the petitioner, the third respondent is vicariously liable to pay compensation to the petitioner to the tune of Rs.94,19,250/-.

3.It is further stated that even though the petitioner is ready to pay the lease amount for the upcoming year, since the third respondent did not take steps to clean the tank, the petitioner is not in a position to pay the amount. Since the request of the petitioner for the payment of compensation is not considered by the respondents, the petitioner has filed a writ petition before this Court in W.P(MD)No.9980 of 2016 and this Court by an order dated 07.06.2016 directed the respondents to



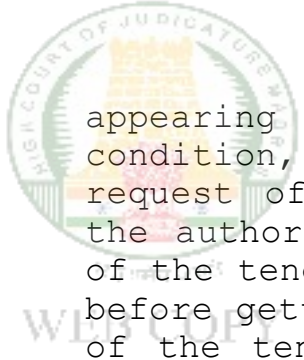
consider his representation and pass appropriate orders after giving opportunity to the petitioner. Thereafter, the petitioner filed a written explanation but without considering the said explanation, the first respondent passed the order rejecting his request. Subsequently, the third respondent has also cancelled the lease for the second year on the ground that the petitioner failed to pay second year lease amount. Challenging both orders, the present writ petition has been filed.

4.The third respondent filed a counter affidavit denying the averments made in the affidavit filed in support of this writ petition. According to the third respondent, there is no mortality in Periyakulam Tank as claimed by the petitioner. In the photographs produced by the petitioner itself show that the growth of the fish kept in the vehicle weighed more than 2 kgs and it is not possible the fish will grow 2 kg within 2 or 3 weeks and the documents filed by the petitioner for the purchase of fish seeds are contradictory in nature and it has been created for the purpose of filing this writ petition. The third respondent further submitted that it is not possible for the petitioner to spend huge amount for cleaning the tank and the writ petition has been filed only to extract money from the Government.

5.So far as the allegation of discharge of drainage water, chemical effluents, there is no tannery or dying industries in the vicinity to discharge chemical. It is also confirmed by the Tamil Nadu Pollution Control Board. It is also not possible to stock fish seeds in 52 acres of land in the tank worth about Rs.29 lakhs and regarding various reports submitted by the authorities including the Tamil Nadu Pollution Control Board wherein there is no adverse report about the tank water. Apart from that as per the tender condition, the petitioner ought to have consulted the authorities before taking any action for the fishing culture and he has acted on his own and therefore, the Government is not liable for his own act. Even though personal hearing was afforded to the petitioner by the fourth respondent, he did not avail the same. Hence, the orders were passed based on the explanation submitted by the petitioner and there is no infirmity in the order passed by the first respondent and sought for dismissal of the writ petition.

6.Mr.T.Lajapathy Roy, learned counsel appearing for the petitioner submitted that the petitioner has suffered huge loss because of the act of the third respondent, and hence, he should be adequately compensated for the same and the first respondent has mechanically rejected his request without considering the factual aspects. Since the petitioner suffered a huge loss, he was not in a position to pay the second year lease amount. In the above circumstances, the third respondent cancelled the lease for non payment of the second year lease amount. He would further submit that now the petitioner is ready and willing to pay the lease amount for the second year and requested the third respondent to confirm the lease for the second year.

7.Per contra, learned Additional Government Pleader



appearing for the respondents would submit that as per the tender condition, the first respondent has elaborately considered the request of the petitioner and also various reports submitted by the authorities and came to the conclusion that as per clause 19 of the tender condition, the petitioner should submit stock report before getting in the fingerlings in the tank and as per clause 11 of the tender conditions, the petitioner should get advise from the authorities for the fish culture. But the petitioner failed to do so, now cannot put the blame on the respondents. Clause 10 of the tender conditions clearly says that if there is a failure of monsoon or any natural calamities, the Department is not responsible. As per condition 16 of the tender condition, the Department is not responsible for the theft of fish or death due to sickness of fish or flood in the tank. The petitioner after agreeing with the above conditions entered into agreement now cannot turn around to claim compensation.

8.I have considered submissions made by the learned counsel on either side.

9.As rightly pointed out by the learned Additional Government Pleader for the respondents that as per the tender conditions, the petitioner cannot make the Department liable for any loss due to the failure of monsoon or natural calamities or any other fish culture and as per clauses 10 and 16, he cannot make the Department liable for any such loss. The first respondent has elaborately considered all the above aspects and rejected his request. Apart from that except submitted a written objection, the petitioner did not appear before the first respondent and produce any material to substantiate his claim. Hence, the first respondent after considering the report submitted by the Tamil Nadu Pollution Control Board and the written submission of the petitioner and the reply submitted by the third respondent and considering the lease agreement, has rightly come to the conclusion that the petitioner is not entitled for the relief sought for. Therefore, I find that there is no infirmity or irregularity in the order passed by the first respondent warranting interference by this Court.

10.So far as the order passed by the third respondent cancelling the lease is concerned, the third respondent cancelled the lease only on the ground that the petitioner did not pay the second year lease amount on or before 31.07.2016.

11.Today, learned counsel appearing for the petitioner on instructions submitted that due to heavy loss suffered by the petitioner, he was not in a position to pay the amount before 31.07.2016. Now he is ready and willing to pay the amount. Considering the plight of the petitioner and considering the pendency of various proceedings before this Court as well as before the first respondent and the fact that the lease was granted to the petitioner upto 2018, in the interest of justice, the petitioner may be permitted to pay the second year lease amount and the third respondent is directed to confirm the lease for the year second year on receipt of such payment.



12. In the result, the writ petition is partly allowed and the order passed by the first respondent in and by his proceedings in Na.Ka.No.11509/F2/2016, dated 09.08.2016 is confirmed and the order passed by third respondent in and by his proceedings in Na.Ka.No.829/E/2015, dated 19.08.2016 is set aside. Consequently, the petitioner is directed to pay second year lease amount within four weeks from the date of receipt of a copy of this order and on receipt of such payment, the third respondent is directed to confirm the lease for the second year in favour of the petitioner. No costs. Consequently, W.M.P(MD)Nos.11462 and 13278 of 2016 are closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The Commissioner of Fisheries,
O/o.The Commissioner of Fisheries, Chennai 6.
- 2.The Director of Fisheries,
Fisheries Department,
485, M.T.B.Building, 6th Floor, Nandanam, Chennai 600 035.
- 3.The Assistant Director of Fisheries
(Inland Fisheries),
Fisheries Department, Pechiamman Padithurai, Madurai 625 001.
- 4.The District Collector, Madurai District, Madurai.

+1 cc to M/s.T.Lajapathi Roy, Advocate in SR.No. 63775

sms

CSL/SS-2/21.12.2016: 5P/6C

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and
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