



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. (MD) No.9455 of 2011

A.Udayasuriyan

: Petitioner

Vs.

1.The District Collector,
Virudhunagar District Collectorate Complex,
Virudhunagar.

2.The Commissioner,
Rajapalayam Panchayat Union,
Panchayat Union Office,
Rajapalayam.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, to direct the respondents to refund the amount of Rs.22,50,048/- (Rupees Twenty Two Lakhs Fifty Thousand and Forty Eight only) to the petitioner being the amount paid by the petitioner for fishery right in Karunkulam Pudupalayam Kanmai of South Venganallur, Rajapalayam for Fasli year 1419.

For Petitioner

: Mr.M.Ashok Kumar

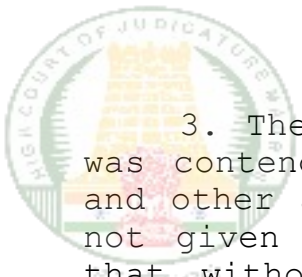
For Respondents

: Mr.A.Muthukaruppan,
Additional Government Pleader

ORDER

The petitioner filed this Writ Petition to direct the second respondent to refund a sum of Rs.22,50,048/- (Rupees Twenty Two Lakhs Fifty Thousand and Forty Eight only), stated to have been deposited by him, pursuant to the notification dated 05.03.2010.

2. According to the petitioner, he deposited the amount in question on the basis of the notification issued by the second respondent calling for the grant of privilege to take the fishing right in respect of the pond called as Karunkulam Pudupalayam Kanmai of South Venganallur, Rajapalayam Taluk, for the Fasli 1419. The petitioner complied with the conditions. Even then, auction was not confirmed in his name. The petitioner, therefore, filed this Writ Petition for a direction to the second respondent to refund the money.



3. The second respondent filed a counter-affidavit, wherein it was contended that the petitioner failed to deposit the sales tax and other amount, pursuant to the notification and as such, he was not given confirmation. The second respondent, further, contended that without an order of confirmation, the petitioner illegally collected the fish for the Fasli 1419 and 1420 and as such, he is not entitled to the refund of the amount.

4. The second respondent, further, contended that the petitioner has already filed a suit in O.S.No.306 of 2010 before the learned District Munsif, Srivilliputhur, on the basis of the very same cause of action and as such, the very Writ Petition is not maintainable in law.

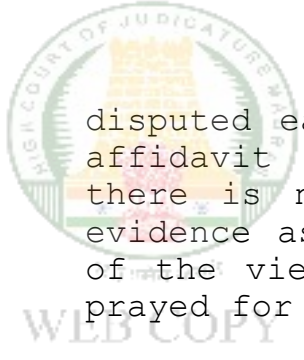
5. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents.

6. The petitioner submitted his bid, pursuant to the notice dated 05.03.2010. The petitioner quoted a sum of Rs.21,10,000/-. He paid a sum of Rs.5,62,512/- on 10.03.2010 and a further sum of Rs.16,87,536/- on 15.03.2010. The petitioner was informed that the auction would be confirmed only after payment of the balance amount. According to the second respondent, there was a balance amount of Rs.2,78,787/-. Since the said amount was not paid by the petitioner, the auction was not confirmed in his name.

7. The second respondent has taken up a contention that the petitioner illegally took the fish for the Fasli 1419 and 1420 and as such, a complaint was filed before the Inspector of Police, South Police Station, Rajapalayam on 06.05.2010 and 12.05.2011. Moreover, a suit in O.S.No.306 of 2010 instituted by the petitioner before the District Munsif Court, Srivilliputhur, is also pending trial.

8. The matter is in the realm of contract. Though the petitioner has taken up a contention that he is entitled to the confirmation of the bid, the second respondent has specifically disputed the said contention, as according to him, the petitioner failed to deposit the remaining amount. In case the petitioner has not deposited the remaining amount, there is no question of issuing a Mandamus, directing the second respondent to refund the money. Moreover, serious allegations have been made by the second respondent that even though bid was not confirmed, the petitioner collected the fish from the pond in question for the Fasli 1419 and 1420. If that being so, he has to account for the money received by the sale of the fish for the Fasli 1419 and 1420. Moreover, the suit filed by the petitioner before the Civil Court in O.S.No.306 of 2010 is pending. Nothing prevented the petitioner from claiming refund of the amount in the said suit in O.S.No.306 of 2010.

9. It is not as if the second respondent has accepted the contentions taken by the petitioner. The second respondent has



disputed each and every contention taken by the petitioner in his affidavit filed in support of the Writ Petition. In such a case, there is no question of issuing a Mandamus. The matter requires evidence as there are disputed questions of fact. I am, therefore, of the view that the petitioner is not entitled to the relief as prayed for in the present Writ Petition.

10. In the upshot, I dismiss the Writ Petition. No costs.

11. This order would not stand in the way of the petitioner from amending the plaint for the purpose of claiming refund subject to the law of limitation.

Sd/-

Assistant Registrar (Record)

/True Copy/

Sub Assistant Registrar

SML

To

1.The District Collector,
Virudhunagar District Collectorate Complex,
Virudhunagar.

2.The Commissioner,
Rajapalayam Panchayat Union,
Panchayat Union Office,
Rajapalayam.

+1 cc to Mr. M.ASHOK KUMAR ,Advocate, Sr.No: 50745

JAM/SKS-RR/20.09.16/ 3P-4C

Order made in
W.P. (MD)No.9455 of 2011

Dated: 02.09.2016