

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28422 of 2017

V.C.Anbarasan

.. Petitioner

Vs.

1. The District Collector
Vellore District.

2. The Block Development Officer,
Alangayam, Vaniyambadi Taluk,
Vellore District.

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent herein to consider the representation, dated 16.02.2017 made by the petitioner herein and pass appropriate orders within stipulated time period as may be fixed by this Court.

For Petitioner : Mr.T.Sundaravadanam

For Respondent 1 : Mr.S.Diwakar,
Special Government Pleader

For Respondent 2 : Ms.M.Jayashree, Govt. Advocate

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent herein to consider the representation, dated 16.02.2017 made by the petitioner herein and pass appropriate orders within stipulated time period as may be fixed by this Court.

2. The case of the petitioner is that he has participated in the auction conducted in the year 2016 in respect of fishery rights in the village lake. The said auction is for a period of five years and that the petitioner was the successful bidder. Pursuant to the demand, the petitioner paid necessary charges of Rs.6,000/- to the respondents and that every year, there will be increase of 10% over and above the lease amount for the purpose of continuing the fishery rights. The petitioner, after having made a representation to renew the lease, has also paid Rs.6,600/- for continuing the fishery rights for the second

year. But unfortunately, the request of the petitioner has not been considered and without giving any reply, the respondents wanted to conduct fresh auction. It is submitted by the petitioner that he has made a representation on 16.02.2017 for renewal of lease of fishery rights and prayed that the same may be considered.

3. Even though several opportunities have been given, no counter affidavit is filed by the respondents. But the learned Special Government Pleader appearing for the first respondent and the learned Government Advocate appearing for the second respondent submitted that the auction was conducted in 2016 which is for a period of five years and that the petitioner has paid Rs.6,000/- for the first year to avail fishery rights and paid Rs.6,600/- for the second year, and the respondents have not taken any decision with regard to renewal of the lease from the second year, in view of the objection raised by the villagers. It is further submitted that there is a loss on account of the fishery rights given to the petitioner and that the respondents want to go ahead with the fresh auction.

4. Heard both sides and perused the materials available on record.

5. It is not in dispute that there was an auction in 2016 and the petitioner was the successful bidder and availed fishery rights and for the first year, the petitioner paid Rs.6,000/- and for the second year, he has paid 10% over and above the amount that was paid for the first year and that no decision has been taken by the respondents with regard to the renewal of the lease. As could be seen from the provisions of the Tamil Nadu Panchayats Act, read with Rule 11 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in the Panchayats) Rules, it is clear that the right to enjoy the fishery rights, is for a period of five years and that every year, the petitioner will have to pay 10% over and above the rental amount of the previous year. The relevant portion of Rule 11 of the said Rules is extracted below:

Rule 11: Period of lease: The Panchayat shall, in respect of property other than the property vested with it, fix the period of lease of right to enjoy the property and the period of lease of properties as specified in the Table below, subject to conditions prescribed under this rule:-

Table

Nature of property		Maximum lease period at a time
1	..	...
...	...	...
...	..	.
9	Right to enjoy fishery rights in water sources under the control of the Village Panchayat or the Panchayat Union Council, as the case may be. The Tamil Nadu Panchayats (Lease and Licensing of Fishery Rights in Water Sources Vested and Regulated by the Village Panchayats and the Panchayat Union Councils), Rules, 1999 will apply for the auction procedures.	Five years

6. The petitioner has paid the Earnest Money and thereafter, participated in the auction, in which the petitioner was the successful bidder. That being the case, the contention of the respondents that there should be auction every year and that there is a loss to the Government on account of fishery rights given to the petitioner, cannot be countenanced. With an open eye, the respondents have conducted the auction and the respondents could have fixed the upset price on the higher side, but having fixed the nominal rate and that the petitioner being successful bidder, permitting the respondents to conduct auction every year or whenever they want, would run counter to the provisions of the said Act and the said Rules. Unless and otherwise the petitioner has defaulted in paying the lease amount and/or on account of various other factors, the respondents cannot deprive the continuance of the fishery rights of the petitioner for a period of five years. It is open for the respondents to go ahead with the auction after completion of five years, unless and otherwise, there are legal impediments and in that event, it is open for the respondents either to give the fishery rights to the petitioner or to any other person who is the highest bidder at that point of time.

7. With the above observations, the Writ Petition is disposed of. No costs.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

CS

To

1. The District Collector
Vellore District.
2. The Block Development Officer,
Alangayam, Vaniyambadi Taluk,
Vellore District.

+1 cC to Govt. Pleader sr 83729.

+1 Cc to Mr.T. Sundaravadanan, Advocate sr 83075.

W.P.No.28422 of 2017

SP(29/11/2017)

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