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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED **11.07.2017**

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)No.1008 of 2015
&
C.M.P.(MD)Nos. 1 & 2 of 2015
and
W.A.(MD)No.987 of 2015
&
C.M.P.(MD).Nos.1 & 2 of 2015

W.A.(MD)No.1008 of 2015:-

M.Reji .. Appellant /Petitioner

Vs.

1. The District Collector,
   Kanyakumari District,
   Nagercoil.

2. The Assistant Director(Panchayat)
   Kanyakumari District,
   The District Collector Office Premises,
   Nagercoil.

3. The Block Development Officer,
   Perumalpuram,
   Kottaram Post,
   Agesteeswaram Union,
   Kanyakumari District.

4. The President,
   Kovalam Village Panchayat,
   Kovalam,
   Kanyakumari District.

5.Alagesan ...Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order passed by the Learned Judge in W.P.(MD)No.9203 of 2015, dated 28.08.2015.

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Prayer in WP(MD). 9203/ 2015 :
Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the 4th respondent pertaining to its proceedings bearing NO. Che.MU.NO. A5/1352/2014 dated 19.03.2015 advertised in Thina Murasu dated 19.03.2015 and to quash the same and consequently direct the respondents to conduct the auction after giving vide publicity and proper notice and tender forms to the interested persons including the petitioner.

For Appellant : Mr.S.C.Herold Singh
For R1 & R2 : Mr.M.Murugan
Government Advocate
For R5 : M.P.Senthil
For R3 : Mr.S.Chandra Sekar
For R4 : No Appearance

W.A(MD)No.987 of 2015:-

P.Sivaperumal .. Appellant/Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort Saint George,
Chennai-600 009.

2. The District Collector,
Kanyakumari District,
Kanyakumari.

3. The Kovalam Village Panchayat represented by its
Executive Officer Cum President,
Kovallam,
Kanyakumari District.

4. M.Flora,
The President,
Kovalam Village Panchayat,
Kovalam,
Kanyakumari District.

5.Alagesan. .. Respondents/Respondents

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PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order passed by the Learned Judge in W.P.(MD)No.9587 of 2015, dated 28.08.2015.

Prayer in WP(MD). 9587/ 2015 :

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned and connected proceedings passed by the 3rd respondent in se.Mu. no. A5/1352/2014 dated 19.03.2015 published in Dina Murasu and quash the same and direct the respondents 2 &3 to conduct fresh auction for the lease hold rights to collect entry fee from vehilces entering into Kovalam Panchayat at sunset point as well as the right to collect user charges from General public for using the toilet complexes situated therein for a period of 3 years in a fair manner.

For Appellant : Mr.N.Dilip Kumar
For R1 & R2 : Mr.M.Murugan
Government Advocate
For R5 : M.P.Senthil
For R3 : Mr.S.Chandra Sekar
For R4 : No Appearance

JUDGMENT

[Judgment of the Court was delivered by **M.M.SUNDRESH, J.**]

By consent, the writ appeal itself is taken up for final disposal.

2.Heard Mr.S.C.Herold Singh and Mr.N.Dilip Kumar learned Counsel appearing for the appellants in both writ appeals, Mr.M.Murugan, learned Government Advocate appearing for respondents 1 and 2, Mr.S.Chandra Sekar, learned counsel appearing for the third respondent and M.P.Senthil, learned counsel appearing for the fifth respondent,

3. Being aggrieved by the order passed by the Learned Single Judge in dismissing these Writ Petitions, wherein challenge was made to the publication dated 19.03.2015, by which the right to collect fees for vehicle entry and for usage of toilets was leased out and the present appeals have been filed. Incidentally, the respondent No.5 herein also filed a Writ Petition seeking an appropriate direction, being the successful bidder. The Writ Petition in W.P.(MD)No.12193 of 2015 filed by the fifth respondent was dismissed and there had been no appeal on that.

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4. The learned Counsel for the appellants would submit that

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there is a procedural violation with reference to the period mentioned in the auction and the method adopted with the auction proceedings in the tender process. Under such circumstances, the learned counsel would submit that the entire process would get vitiated by the Tamil Nadu Panchayat Act, 1994, for conducting the public auction of leases in that panchayat.

5. The learned Counsel appearing for the fifth respondent and for the local authority would submit that as rightly held by the learned Single Judge, the appellants have no locus standi to challenge the above said proceedings. They did not participate in the tender process before filing the writ Petition. Hence no interference is required.

6. The fact that the appellants did not take part in the tender process is not in dispute. What has been challenged is the notification issued dated 19.03.2015. Once notification is issued and the other is issued such notification then there is no question of appellants participating in the auction or tender, there is a case may be. In other words the challenge is made on the notification itself. The fifth respondent has become successful bidder and his tender has been confirmed.

7. Admittedly, the appellants have not participated in the tender process for more than nearly 2½ years within three years. Therefore, considering the above, this Court is of the view that the academic exercise would go into issues. Further more the Writ Petition has been filed without challenging the confirmation order in favour of the fifth respondent. All these Writ Petitions filed by the appellants have been heard along with the writ petition filed by the fifth respondent. In filing the appeal against the order passed in the above Writ Petition in W.P.(MD)No.12495 of 2015 they would certainly attract the principles of *res judicata*. Therefore, we do not find any merit in this case.

8. However, considering the facts and circumstances of the case we would like to indicate that for the future auction the third respondent has to strictly follow the provisions of the rules, namely, the Tamlinadu Pachayat Rules(2001) while doing so, they will have to fix the period of auction, specifically for one year. Secondly, if there are auction or tender they will have to strictly follow the Rule 22 of the above said rules.

9. With the above said observation these Writ Appeals are dismissed.

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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To

1 The Principal Secretary to Government,
Government of Tamilnadu,
Rural Development and Panchayat Raj Department,
Secretariat, Fort Saint George,
Chennai-600 009.

2.The District Collector,
Kanyakumari District,
Nagercoil.

3.The Assistant Director(Panchayat)
Kanyakumari District,
The District Collector Office Premises,
Nagercoil.

4.The Block Development Officer,
Perumalpuram,
Kottaram Post,
Agesteeswaram Union,
Kanyakumari District.

5.The President,
Kovalam Village Panchayat,
Kovalam,
Kanyakumari District.

6.The Kovalam Village Panchayat represented by its
Executive Officer Cum President,
Kovallam,
Kanyakumari District.

+1 cc to Mr.S.C.Herold singh , Advocate in SR.No. 64675
+1 cc to The Special Government Pleader in SR.No.64964
+1 cc to Mr.S.Chandrasekar , Advocate in SR.No. 64736
+1 cc to Mr.M.P.Senthil kumar , Advocate in SR.No. 64745

MM/TA
AE/MR KKR/SAR2/25.09.2017/5P/11C

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