



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.A. (MD) No.1052 of 2017
and
W.M.P (MD) No.7340 of 2017**

1. The District Collector,
Madurai District,
Madurai.
2. The District Collector,
Virudhunagar District,
Virudhunagar.
3. The superintendent of Police,
Madurai District,
Madurai.
4. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
5. The Inspector of Police,
Watrap Police Station,
Watrap, Srivilliputhur Taluk,
Virudhunagar District.
6. The Wild Life Warden,
Grizzled Squirrel,
Wild Life Sanctuary,
Srivilliputhur.

: Appellants/Respondents 1 to 6

.vs.

1. T.Venkatesan,
Proprietor,
M/s.A.A.Solars,
26, Meenakshi Gardens,
VKL-Avenue,
N.G.G.O,Colony,
Coimbatore.

: Ist Respondent/Writ Petitioner



2. P.N.Deva,
District President,
Sathuragiri Circle Thalaisumai
Sumaithookum Thozhilalar Sangam,
Near Muthalamman Pottal,
Watrap, Srivilliputhur Taluk,
Virudhunagar District.

3. J.Lazar,
General Secretary,
Sathuragiri Circle Thalaisumai
Sumaithookum Thozhilalar Sangam,
Near Muthalamman Pottal,
Watrap, Srivilliputhur Taluk,
Virudhunagar District.

4. S.Kottaimalai,
President,
Sathuragiri Circle Thalaisumai
Sumaithookum Thozhilalar Sangam,
Aakasampatti,
Watrap, Srivilliputhur Taluk,
Virudhunagar District.

5. M.Murugan,
Secretary,
Sathuragiri Circle Thalaisumai
Sumaithookum Thozhilalar Sangam,
South Street, Melappalayam,
Watrap, Srivilliputhur Taluk,
Virudhunagar District.

6. M.Murudappan

7. Kannan

8. Orusoll

: Respondents/Petitioners

PRAYER: Writ Appeal filed under Clause 15 of Letter patent, praying this Court to set aside the order dated 29.6.2017 made in W.P(MD)No.12009 of 2017, on the file of this Court.

Prayer in WP(MD). 12009/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the official respondents especially the 5th respondent to give necessary police protection to the petitioner for executing and construction work as per the four work orders dated 06.01.2017 issued to the petitioner, till the completion of the project and pass appropriate orders.



For Appellants

: Mr.M.Govindan
Special Govt.Pleader

For Respondents
1 to 8

: No appearance

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J U D G E M E N T

[Judgement of the Court was made by **M.VENUGOPAL, J.**]

This Writ Appeal has been filed seeking to set aside the order, dated 29.06.2017 made in W.P(MD)No.12009 of 2017, on the file of this Court.

2.Heard the learned Special Government Pleader appearing for the appellants.

3.Notices sent to respondents 1 to 3, 7 and 8 got returned with an endorsement as ''unclaimed-returned to sender''.As such, it amounts to refusal of service. Today, there is no representation on behalf of them either in person or through their learned counsel. In respect of R4 to R6, notices were served, but on their behalf, there is no representation. Also, there is no representation on the side of the 5th respondent through learned counsel(who is the Writ Petitioner in W.P(MD)No.14688 of 2017).

4.The learned Special Government Pleader appearing for the appellants/respondents 1 to 6 submits that the order of the learned Single Judge, dated 29.06.2017 in W.P(MD)No.12009 of 2017 is unsustainable in law and legally invalid one because of the simple reason that as per Section 33(d) of the Wild Life (Protection) Act, 1972 donkey(live-stock) is prohibited to enter into wild life sanctuaries. Moreover, the estimate for construction of ABW sheds for which work orders issued to M/s.A.A.Solars(Proprietor-Mr.T.Venkatesan) was approved based on the actual head load rate at work site ascertained through quotations from such labourers involved in carrying head load from foot hills at Thaniparai to Sundaramahalingam Temple in Saptur RF as recommended by Technical Committee headed by Conservator of Forests, Virudhunagar Circle, constituted by Principal Chief Conservator of Forests, Chennai, dated 26.05.2015.

5.Lastly, it is the submission of the learned Special Government Pleader that although the appellants are ready to obey the order of the learned Single Judge passed in W.P.(MD) No.12009 of 2017, dated 29.06.2017 to the effect that Police protection in respect of usage of donkeys in Wild Life Sanctuary area is un-sustainable in the eye of law and therefore, the said order of the learned Single Judge is liable to be set aside in the interest of justice.



6.It is to be pointed out that the right to carry on business as enshrined under Article 19(1)(g) of the Constitution of India is subject to certain reasonable restrictions under Article 19(6) of the Constitution of India.

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7.It cannot be gain-said that the principle on which the power of the State to impose restriction is based on the fact that all rights of persons are held subject to such reasonable limits and regulations as may be necessary or expedient for the protection of the rights of others, ordinarily termed as 'social interest'.

8.It is to be pointed out that a mere perusal of the ingredients of Section 33(d) of the Wild Life(Protection) Act, 1972 unerringly points out that the Chief Wild Life Warden may regulate, control or prohibit, in keeping with the interests of wild life, the grazing or movement of live-stock. As such, the order passed by the learned Single Judge, dated 29.06.2017 in W.P (MD)No.12009 of 2017 to the effect that the fifth respondent/Writ Petitioner has got every right to carry on his trade under Article 19(1) of the Constitution of India, which cannot be obstructed by any person and the same is incorrect in the considered opinion of this Court. Furthermore, the direction issued to the respondent/Police therein to give sufficient Police protection to the fifth respondent/Writ Petitioner so that there is no illegal obstruction to his legal activities, is well-founded. As pointed out by this Court, looking at any angle, the Writ Appeal succeeds.

9.In fine, the Writ Appeal is allowed and the order made in W.P(MD)No.12009 of 2017, dated 29.06.2017 is set aside by this Court for the reasons assigned in this Writ Appeal. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

VSN

VB/KK/SAR3/26/10/2017/4P/1C

JUDGEMENT MADE IN
W.A. (MD)No.1052 of 2017
and
W.M.P (MD)No.7340 of 2017
11.10.2017