



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.07.2017

CORAM:

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

W.A.(MD).No.275 of 2016 &
C.M.P.(MD).No.1462 of 2016

1. The Commissioner of Fisheries,
Fisheries Department,
DMS Compound, Teynampet, Chennai-6.

2. The Assistant Director of Fisheries,
Theni, Camp at Vaigai Dam,
Theni District.

: Appellants/Respondents

Vs.

M.Thirumalai Palpandian

: Respondents/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters patent Act against the order dated 23.07.2015 passed in W.P.(MD).No.19914 of 2014.

Prayer in WP(MD). 19914/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order vide Na.Ka.No. 33902/F2/2012 dated 16.10.2014 on the file of the 1st respondent and quash the same as illegal and consequently direct the Respondents to immediately reimburse the bid amount of Rs. 6,56,000/- and with 5% bid amount of Welfare Scheme and other amounts deposited by the Petitioner and pass such further or other orders.

For Petitioner	: Mr.VR.Shanmuganathan Special Government Pleader
For Respondents	: Mr.P.Muthuvijayapandian

JUDGMENT

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

The writ petitioner/respondent being the successful bidder paid an amount of Rs.6,56,000/-. Though an agreement was entered into between them, the writ petitioner/respondent was not allowed to do fishing on the ground of pendency of writ petition filed at the instance of third party, who thereafter obtained an order of interim stay. The writ petition was disposed of since the period itself was



over.

2. The present writ petition has been filed by the respondent herein seeking refund of the amount paid by him. The learned Single Judge was pleased to allow the writ petition as admittedly the respondent has not done any fishing. Challenging the same, the present writ appeal is filed.

3. The learned Special Government Pleader would submit that as per Clause 11 of the tender condition, the respondent/writ petitioner is not entitled for the refund.

4. We are of the view that the said clause cannot be pressed into service to deny the refund sought for by the respondent. There is no natural calamity involved. It is settled law that an act of Court shall not prejudice any one. Earlier writ petition was not filed by the respondent herein. It was also filed against the appellants herein being the main respondents, whose action was challenged. Therefore, the writ petitioner and the present writ petition has not no role to play, though he suffered in view of the interim order obtained by the third party. When the writ petitioner/respondent herein has not done any fishing operation, it is not open to the appellants to deny the refund of deposit made by him.

5. In such view of the matter, we do not find any error in the order of the learned Single Judge, though the relief is granted on some other ground. Accordingly, the writ appeal is dismissed. No costs. Considering the facts and circumstances of the case, we direct the appellants to make payment as ordered by this Court, within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Fisheries,
Fisheries Department,
DMS Compound, Teynampet, Chennai-6.

2. The Assistant Director of Fisheries,
Theni, Camp at Vaigai Dam, Theni District.

+ 1 CC TO Mr.P.MUTHU VIJAYA PANDIAN, ADVOCATE IN SR No. 65060
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 65321

JIKR

TE/MR-KKR/SAR-I : 25/07/2017 : 2P/5C

ORDER MADE IN

W.A. (MD) .No.275 of 2016 &
C.M.P. (MD) .No.1462 of 2016
12.07.2017