



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MRS.JUSTICE R.THARANI

W.P. (MD) No.18113 of 2017
and
W.M.P. (MD) Nos.14571 and 14572 of 2017

Shajhakhan

.. Petitioner

vs.

1. The District Collector,
District Collector Office,
Sivagangai,
Sivagangai District.
2. The Revenue Divisional Officer,
O/o. Revenue Divisional Office,
Sivagangai, Sivagangai District.
3. The Tahsildar,
Thirupuvanam Taluk Office,
Thirupuvanam, Sivagangai District.
4. Kalukarkadai Village Panchayath,
Represented by the Special Officer cum
Block Development Officer,
O/o. Block Development Office,
Thirupuvanam Union,
Sivagangai District.
5. The Executive Engineer,
Water Resource Organization /
Public Works Department,
P.W.D. Office, Thirupuvanam,
Sivagangai District.

6. Fakkir Mohammed

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order passed by the Second Respondent vide order proceedings in Na.Ka.A-

25.09.00
Città di Genova

For Petitioner : Mr.T.Lajapathi Roy
For R1 to R5 : Mr.G.Muthukannan
Government Advocate
For R6 : Mr.R.Udhayakumar

ORDER

Heard the Learned Counsel for the Petitioner; the Learned Government Advocate for the Respondents No.1 to 5 and the Learned Counsel for the Sixth Respondent.

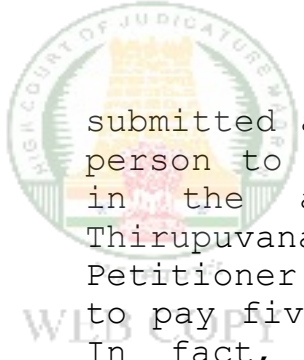
2. According to the Petitioner, the Idayankulam Kanmai (Tank) measures an extent of 23.18.00 Hectares. There are plenty of Seemai Karuvelam trees grown in the tank worth about more than Rs.15 lakhs available in Idaiyankulam tank alone. The amount is more than five times the auction amount, which was sanctioned to the Sixth Respondent.

3. Further, the 'Revenue Income' will be very low due to improper hurry burry auction conducted by the Respondents No.1 to 5. Earlier, before this Court, a Writ Petition in W.P.(MD)No.16485 of 2016 was filed by the Petitioner therein seeking issuance of direction and on 20.12.2016, 10.01.2017 and 31.01.2017 necessary directions were issued to remove the Seemai Karuvelam trees.

4.The stand of the Petitioner is that the Second Respondent subsequent to the interim directions issued by this Court in the afore stated W.P.(MD)No.16485 of 2016, had not issued proper notice, as per the Tamil Nadu Transparency in Tender Act, 1998 for removing the Seemai Karuvelam trees in Survey Nos.27 and 33 to an extent of 25.09.00 Hectares at Idaiyankulam Kanmai (tank) and Kaalvai, Thirupuvanam Taluk, Sivagangai District.

5. Apart from that, it is the plea of the Petitioner that the Second Respondent had not issued proper Paper wide publication for conducting public auction, as per the provisions of the Tamil Nadu Transparency in Tenders Act, 1998.

6. The Petitioner obtained the impugned order, dated 15.09.2017, from the third Respondent's office under the Right to Information Act and also on 15.09, 2017,



submitted a representation before the third Respondent's office in person to re-conduct the auction for cutting the Karuvelam trees in the aforesaid Idaiyankulam Kanmai (tank) and Kaalvai, Thirupuvanam Taluk, Sivagangai District. Besides these, the Petitioner had informed the Second Respondent that he is willing to pay five times of the awarded amount to the aforesaid auction. In fact, the Respondents No.1 to 5 had not considered the augmentation of income to the Government.

7. At this stage, the Learned Counsel for the Petitioner submits that the impugned order passed by the Second Respondent, as per proceedings, dated 08.03.2017, is an arbitrary and a capricious one. Moreover, it is projected on the side of the Petitioner that the Second Respondent/Revenue Divisional Officer, Sivagangai had given public auction for a sum of Rs.2,35,000/- to and in favour of the Sixth Respondent, which is a very low amount for an extent of 25.09.00 Hectares. Indeed, the amount ought to be more than five times high for the cutting tender orders in Idaiyankulam tank alone, as given to the Sixth Respondent. In this connection, the plea of the Petitioner is that the value of the trees would be much more, than the final auction price determined by the official Respondents and therefore, the impugned order, dated 08.03.2017 of the Second Respondent is liable to be set aside, in the interest of justice.

8. It comes to be known that the auction was conducted on 08.03.2017. The ground of attack projected on the side of the Petitioner is that the Notification, dated 08.02.2017, in respect of the Seemai 'Karuvelam Trees Auction Notice' issued by the third Respondent/Tahsildar, Thirupuvanam, was issued without wide publicity and also the name of the Newspaper publication was not mentioned in the impugned order, by the Second Respondent and for want of publicity, the Petitioner and others could not obtain an opportunity to take part in the 'Tender Process, as called for by the Second Respondent.

9. Advancing his arguments, the Learned Counsel for the Petitioner projects an argument that the Revenue income to the Government will be very scanty, if the Sixth Respondent is allowed to cut the trees. Apart from that, the contention of the Learned Counsel for the Petitioner is that the Respondents No.1 to 5 had not followed the Rules stipulated in the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Lease and Sales in Panchayats) Rules, 2001.

10. The Learned Counsel for the Petitioner draws the attention of this Court to Rule 10(b) of the Tamil Nadu Transparency in Tenders Act, 2000, which reads as under:-

<https://hcservices.ecourts.gov.in/caseDetails> **10. Details to be mentioned in Notice Inviting Tenders.-** The Notice Inviting Tenders shall contain the



following details, namely:- (b) Name of the scheme, project or programme for which the procurement is to be effected."

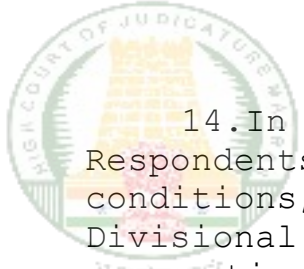
11. The Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in **CNTRE FOR PUBLIC INTEREST LITIGATION AND OTHERS v. UNION OF INDIA AND OTHERS**, reported in (2012) 3 SCC 1, at special page 62, wherein at paragraph No.100, it is observed and laid down as follows:-

"When matters like these are brought before the judicial constituent of the State by public-spirited citizens, it becomes the duty of the Court to exercise its power in larger public interest and ensure that the institutional integrity is not compromised by those in whom the people have reposed trust and who have taken an oath to discharge duties in accordance with the Constitution and the Law without fear or favour, affection or ill-will and who, as any other citizen, enjoy fundamental rights and, at the same time, are bound to perform the duties enumerated in Article 51-A. Reference in this connection can usefully be made to the judgment of the three-Judge Bench headed by Kapadia, C.J. In Centre for PIL v. Union of India (2011) 1 SCC (L&S) 609."

Therefore, it is the stand of the Petitioner that to maintain an 'Institutional Integrity', the present Writ Petition filed by the Petitioner under the name and style of 'Public Interest Litigation' is per se maintainable in the eye of Law.

12. It appears that the Sixth Respondent, who was the successful bidder was given the time before 24.03.2017 to remove the entire Seemai Karuvelam trees. In fact, the time before 24.03.2017, was envisaged by the Second Respondent/Revenue Divisional Officer, Sivagangai. According to the Learned Counsel for the Sixth Respondent, due to 'Insufficiency of Man Power', the Sixth Respondent had not removed and cut the Seemai Karuvelam trees. Further, in W.P.No.10614 of 2017 (Principal Seat) filed by one Mehanathan, interim stay was granted, in respect of cutting of Seemai Karuvelam trees in Tamil Nadu and on 28.07.2017, the stay was vacated in respect of water bodies alone. As such, the Seemai Karuvelam trees were not cut.

13. The Learned Counsel for the Sixth Respondent refers to a communication/recommendation, dated 17.08.2017 of the third Respondent/Tahsildar, Thirupuvanam, addressed to the Second Respondent/Revenue Divisional Officer, Sivagangai, wherein, a view was expressed for an extension of two months time being granted to and in favour of the Sixth Respondent for the cutting of the Seemai Karuvelam trees.



14. In response, the Learned Government Advocate for the Respondents No.1 to 5 submits that as per tender proceedings conditions, dated 08.03.2017, of the Second Respondent/Revenue Divisional Officer, Sivganga, it is clearly made mention of that, as mentioned in column-8 of the list/annexure, till 24.03.2017 only, the tender will remain valid and beyond that date, if the successful bidder was not in a position to cut the trees, again the trees will have to be removed only after obtaining permission from the Second Respondent/Revenue Divisional Officer, Sivaganga.

15. In this connection, the Learned Government Advocate for the Respondents No.1 to 5, points out that the Sixth Respondent received work order, dated 08.03.2017, on 09.03.2017 and had not cut and removed the trees, as per the dead line fixed in column-8 of the list/annexure. After the schedule date on 24.03.2017, the Sixth Respondent had approached the third Respondent/Tahsildar, Thirupuvanam and sought for extension of time, which was purportedly recommended by the Tahsildar, by means of proceedings dated 17.08.2017, addressed to the Second Respondent/Revenue Divisional Officer, whereby and where under, a positive recommendation for granting two months extension of time was made. The said recommendation made by the third Respondent/Tahsildar, Thirupuvanam, was not accepted by the Second Respondent.

16. The Learned Government Advocate for the Respondents No.1 to 5 brings it to the notice of this Court that the Second Respondent is ready and willing to conduct fresh auction in respect of cutting of the Seemai Karuvelam trees in the present subject matter in issue for the reasons that even though the Sixth Respondent was a successful bidder in the public auction, inasmuch as he could not cut and remove the Seemai Karuvelam trees in question and added, owing to the yet another crystalline fact that the Petitioner had offered a sum of Rs.15 lakhs for cutting and removal of the Seemai Karuvelam trees in question and also if the higher offer made by the Petitioner amounting to Rs.15 lakhs is accepted, then, there is even possibility of a swelling of the coffers of the Government in a healthy manner.

17. Be that as it may, as far as the present case is concerned, this Court, on perusal of the contents of the Seemai Karuvelam trees tender notification, dated 08.02.2017, published in Daily Thanthi (Tamil Daily), is of the earnest opinion that the said notice of auction does not expressly mention about the survey numbers, although the places were mentioned. Significantly, in the afore stated Tamil Daily auction notice (in respect of cutting of Seemai Karuvelam trees), there was no mention of the survey numbers and the extent of the said survey numbers. Strangely, in the Auction schedule/List, the first name in Serial No.1, the name of the respondent 'Fakir Mohammed', was mentioned and the bid amount asked for by him was stated as Rs.2,25,000/- (Rs.2,35,000/-).

18. Moreover, in the auction schedule, in the last column, it was mentioned as 24.03.2017, which refers to the dead line date, before that, the successful bidder is to remove the Seemai Karuvelam trees from the property in question.

19. It is seen from the Second Respondent's conditions proceedings, dated 08.03.2017, at Serial No.6, the place was mentioned as Idaiyankulam Kanmai in Survey No.33 and the total extent was mentioned as 23.18.0 Hectares. In respect of Kaalvai, the Survey number was mentioned as 27 and the total extent was mentioned as 2.62.5 Hectares. In respect of Survey No.108/1, the extent was mentioned as 0.04.0. In respect of Survey No.109/1, the extent was mentioned as 0.05.5. In short, the total extent was described as 25.09.0 Hectares.

20. Added further, the Learned Counsel for the Sixth Respondent refers to the Division Bench order of this Court in **W.P. (MD) No.4068 of 2017** between **K.PASUMPONRAJA v. THE DISTRICT COLLECTOR, SIVAGANGAI DISTRICT** and three others, wherein at paragraph Nos.5 to 9, it is observed as follows:-

"5. It is a well known fact that in W.P.(MD) No.16485 of 2015, this Court has directed to remove all Seemakaruvellam trees which are in existence throughout Tamil Nadu. Under the said circumstances, the Respondents have taken proper steps for removing the same. It is also equally an admitted fact that in the instant case, the third Respondent has issued the notification dated 08.02.2017 for conducting auction.

6. The main contention put forth on the side of the Petitioner is that in the impugned notification required particulars are not found place so as to facilitate the general public for taking part in auction.

7. In fact this Court has perused the impugned notification, wherein clear particulars are found place to identify the places.

8. Considering the fact that in the impugned notification sufficient particulars are available so as to participate in the public auction and also considering that already auction has been conducted and one Akbar has become a successful bidder, this Court is of the view that the present Writ Petition is nothing, but frivolous and only with the oblique motive, the Petitioner has come forward with the present Writ Petition and therefore the same is liable to be dismissed.

9. In fine, this Writ Petition is dismissed without costs. Consequently, connected Miscellaneous Petitions are dismissed."

Therefore, it is the submission of the Learned Counsel for the Sixth Respondent that the present Writ Petition filed by the Writ Petitioner is ex-facie not maintainable in the eye of Law.

21. The primordial stand of the Sixth Respondent is that the Division Bench of this Court in **W.P.No.22465 of 2013** between **S.GNANAESWARAN v. DEPUTY GENERAL MANAGER (COMMERCIAL), AIRPORTS AUTHORITY OF INDIA, CHENNAI-27**, at paragraph Nos.5 to 8, has observed as under:-

"5. Insofar as the aforesaid preliminary objection is concerned, we may refer to the judgment of a Division Bench of this Court in *Oveyam Ranjan v. Union of India* [(2013) 3 MLJ 675], which in turn relied upon the observation of the Honourable Supreme Court in various judgments, including in *Villianur Iyarkkai Padukappu Maiyam v. Union of India* [(2009) 7 SCC 561], to conclude that in matters of award of contract, a non participant, who is a third party, cannot maintain a public interest litigation. Interestingly, the matter once again pertained to the Airport Authority of India, where the petition was dismissed as non-maintainable. In the said decision, the Honourable Supreme Court observed that where a Writ Petition assails a contract purely commercial in nature, such a challenge cannot be maintained by a third party, ostensibly under the garb of a public interest litigation on the basis that it was a challenge to the policy decision.

6. We may also note that in *Michigan Rubber (India) Limited v. State of Karnataka and others* [(2012) 8 SCC 216], the Honourable Supreme Court observed that the scope of interference of Court in contractual matters is very limited and that the tender issuing authority/ Airport Authority of India has fully justified its policy decision and no bias or malafide on the part of any authority or person connected thereto has been established by the Petitioners.

7. We are, thus, of the view that the preliminary objection to the maintainability of this petition is justified and the Petitioner, through this public interest litigation, cannot seek to assail the terms, on which the Respondent - authority should award its tender or what conditions should be prescribed, when he is not a participating party in the tender.

8. The public interest litigation is held to be not maintainable."

Therefore, the present W.P.(MD)No.18113 of 2017 filed by the Petitioner 'styled under the caption Public Interest Litigation' is not maintainable, because of the contract entered into between the Sixth Respondent and the concerned authority, being commercial in nature/character.



22. It is to be borne in mind that ordinarily in respect of commercial contracts, the parties are to be relegated to a position, whereby they may be permitted to approach the competent forum for redressal of their grievance, ofcourse, in the manner known to Law and in accordance with Law.

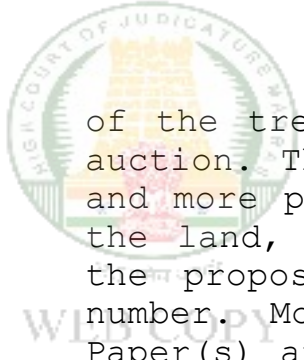
23. Insofar as the present case is concerned, the Writ Petitioner, who has filed the present Writ Petition under the caption 'Public Interest Litigation' has come out with a plea that he is ready and willing to offer a sum of Rs.15 lakhs to show his *bona fide* in regard to the cutting of Seemai Karuvelam/Veli Karuvelam trees in question at Kalukarkadai Kanmai, Thirupuvanam Taluk, Sivagangai District, to a total extent of 25.09.00 Hectares.

24. In fact, on 22.09.2017, in W.M.P.(MD)No.14872 of 2017 in W.P.(MD)No.18113 of 2017, this Court, had, at paragraph No.3, observed the following:-

"There shall be an interim injunction, subject to the condition that the petitioner shall deposit double the amount deposited by the private respondent. The amount shall be deposited within a period of one week from today with the Revenue Divisional Officer, Sivagangai."

25. The petitioner filed WMP(MD)No.15889 of 2017 in W.P.(MD) No.18113 of 2017 before this Court and prayed for grant of extension of two days time to deposit the sum of Rs.4,70,000/- with the Revenue Divisional Officer, Sivagangai and the same came to be dismissed as not pressed.

26. Considering the fact that the Sixth Respondent originally was a successful bidder for an amount of Rs.2,35,000/-, which is a low/meager/scanty one, in the considered opinion of this Court and this Court, taking note of a pivotal fact that the proper revenue should go to the Government and there cannot be any loss in revenue, legitimately due to the Government, in the interest of justice and fair play, by also taking into account of the fact that the Sixth Respondent even though was a successful bidder had not cut and removed the trees before 24.03.2017, deems fit and proper to quash the proceedings, dated 08.03.2017 of the Second Respondent and directs the Second Respondent to conduct a fresh auction, in respect of the Seemai Karuvelam trees cutting operation, in the present subject matter in issue and it is open to the respective parties to take part in the public auction and assert their rights, ofcourse, in the manner known to Law and in accordance with Law. It is open to the Second Respondent to fix the date for fresh auction of the cutting of the Seemai Karuvelam trees and impose the necessary conditions by fixing the necessary upset price. The Second Respondent is directed to fix the upset price after taking into account the necessary factor of the value



of the trees, which are to be cut in the proposed, fresh public auction. The Second Respondent shall fix the date, time and place and more particularly, is directed to specify the clear extent of the land, in which, the Seemai Karuvelam trees are to be cut by the proposed 'Successful Bidder' and also to quote the survey number. Moreover, a wide publicity/advertisement in Tamil News Paper(s) and English News Paper(s), is directed to be given in an utmost transparent manner and in this regard, the Second Respondent shall take necessary deigent steps.

27. Before parting with the case, this Court, directs the Second Respondent/Revenue Divisional Officer, Sivagangai, to return the sum of Rs.2,35,000/- to the Sixth Respondent, forthwith.

28. With the aforesaid Direction(s) and Observation(s), this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

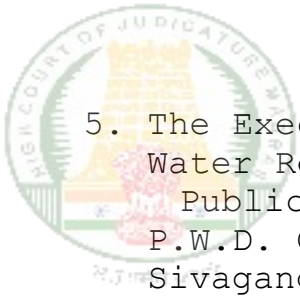
Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The District Collector,
District Collector Office,
Sivagangai,
Sivagangai District.
2. The Revenue Divisional Officer,
O/o. Revenue Divisional Office,
Sivagangai, Sivagangai District.
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Sivagangai District.



5. The Executive Engineer,
Water Resource Organization /
Public Works Department,
P.W.D. Office, Thiruppuvanam,
Sivagangai District.

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+ 2 ccs TO Mr.R.Udhayakumar , Advocate in SR No. 90799
+ 2 ccs TO Mr.T.Lajapathi Roy , Advocate in SR No. 90795,90815
+ 1 cc TO The Special Government Pleader in SR No. 90881

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**W.P. (MD) No.18113 of 2017
and
W.M.P. (MD) Nos.14571 and
14572 of 2017
04.12.2017**