



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

WEB COPY

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A(MD)No.1211 of 2017
and
C.M.P(MD)No.8501 of 2017

Y.Sastha Adhithyan

... Appellant/4th Respondent

Vs.

1. S.Katturajan

... 1st Respondent/Petitioner

2. The District Revenue Officer,
Sivagangai District,
Sivagangai.

3. The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

4. The Tahsildar,
Ilayankudi Taluk,
Ilayankudi,
Sivagangai District.

... Respondents 2 to 4/
Respondents 1 to 3

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 28.08.2017 made in W.P(MD)No.16108 of 2017, on the file of this Court.

Prayer in WP(MD)No.16108/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus call for the records relating to the order No. Na.Ka.A4/436/2017 dated 11.07.2017 passed by the 2nd respondent and order No. Moo.Mu.B2/14108/2017 dated 11.08.2017 passed by the 1st respondent and quash the same and consequently direct the respondents 1 to 3 to permit the petitioner to cut and remove the Seemaikaruvil trees in the kanmoi and odai comprised in Survey No.126/1, 2, 125/6 and 564 in Pukkulam Village, Visavanur Group, Surandai Sub Division Ilayankudi Taluk, Sivagangai District.



WEB COPY

For Appellant : Mr.D.Ramesh Kumar
For R - 1 : Mr.K.Seemaraj
For RR 2 to 4 : Mrs.J.Padmaavathi Devi,
Special Government Pleader.

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

Challenging the order passed in W.P(MD)No.16108 of 2017 on 28.08.2017, this writ appeal is preferred by the appellant/fourth respondent

2. The said Writ Petition came to be filed by the first respondent/writ petitioner to issue a Writ of Certiorari Mandamus, to call for the records relating to the order No.Na.Ka.A4/436/2017, dated 11.07.2017 passed by the second respondent and order No.Moo.Mu.B2/14108/2017, dated 11.08.2017 passed by the first respondent and to quash the same.

3. This is the classic case of non-application of mind by the officials of the State Government.

4. The brief facts of the case are as follows:-

(i) There was a move to remove the seemaikaruvel trees from kanmois, water bodies and poramboke lands, for which, the fourth respondent, namely, the Tahsildar conducted auctions on 13.02.2017, 14.02.2017, 16.02.2017 and 18.02.2017. In the said auctions, one Mr.Yoganathan was the successful bidder to remove the seemaikaruvel trees from kanmoi and odai comprised in Survey Nos.126/1, 2, 125/6 and 564 in Pukkulam Village, Ilayankudi Taluk, Sivagangai District. The period for which the said Yoganathan was permitted to remove the Seemaikaruvel trees was from 07.03.2017 to 10.03.2017 (four days) and from 11.03.2017 to 20.03.2017 (ten days). The said successful bidder was permitted to cut and remove the Seemaikaruvel trees for 14 days ending with 20.03.2017.

(ii) As per the auction conditions, in the event the successful bidder is unable to cut and remove the trees, time can be extended by the Revenue Divisional Officer, Sivagangai and there were other occasions, on which also, the Revenue Divisional Officer was empowered to extend the time for cutting and removing the trees.

(iii) In this case, unfortunately, the successful bidder Yoganathan died on 21.03.2017 in an accident ie., very next day after the initial period granted to him was over. The said Yoganathan also had deposited a sum of Rs.19,025/- for cutting and



removal of the Semaikaruvel trees. As the bidder died on 21.03.2017, ie., the next date after his time was over, the legal heirs are entitled to continue the job, whereas one Katturaja, who is the first respondent/writ petitioner, had represented to the authorities claiming himself to be the brother-in-law of the deceased Yoganathan and obtained the work for cutting and removing the Seemaikaruvel trees and he was awarded contract and granted time from 03.07.2017 to 31.07.2017. The said Katturaja also had deposited a sum of Rs.24,600/- in this regard. However, the first respondent/writ petitioner had represented a petition before the Revenue Divisional Officer, Sivagangai, who is the third respondent. The third respondent by his order, dated 03.07.2017, passed an order granting permission to the first respondent/writ petitioner-S.Katturaja to cut and remove the Seemaikaruvel trees. Later, the third respondent himself had re-called the said order and passed another order on 11.07.2017 awarding the said contract in favour of the appellant/fourth respondent-Sastha Adhithyan on the ground that he had produced the death certificate and legal heir certificate of the deceased Yoganathan, who was the original bidder.

(iv) Aggrieved by the said order, the first respondent/writ petitioner-Katturaja preferred an appeal before the District Revenue Officer, Sivagangai, who is the second respondent. The District Revenue Officer, vide order, dated 11.08.2017 confirmed the order of the Revenue Divisional Officer and awarded the contract of cutting and removing the Seemaikaruvel trees to Sastha Adhithyan, S/o.Yoganathan. Aggrieved by the same, the first respondent/writ petitioner-Katturaja has preferred the Writ Petition.

(v) In the said Writ Petition, after considering the facts on merits, the learned Single Judge had directed that fresh auction should be conducted by the authorities giving liberty to both the said first respondent/writ petitioner-Katturaja and the appellant/fourth respondent-Sastha Adhithyan to participate in the auction and the auction was permitted to be conducted following the procedure under the Tamil Nadu Transparencies in Tenders Act, 1988.

(vi) Aggrieved by the said order of the learned Single Judge, the Writ Appeal has been preferred by the appellant/fourth respondent.

5. The contentions of the learned counsel appearing for the appellant/fourth respondent are that:-

(i) Though the authorities had received the entire auction amount, the work could not be completed due to the death of his father and the first respondent/writ petitioner was awarded the contract without following due procedure.



(ii) As the entire auction amount is paid by the father of the appellant/fourth respondent, on his death, the appellant/fourth respondent ought to have been permitted to continue the contract being the legal heir.

(iii) It is also stated that for 14 days, when his father was alive, whatever the trees that were cut are still lying on the Kanmoi itself and the same were not removed and sold by him.

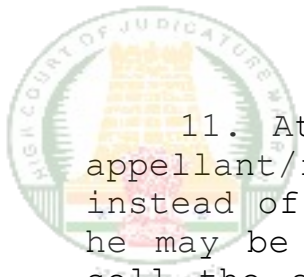
6. In short, it is the contention of the appellant/fourth respondent that out of the said contract, though he expended money for cutting and removing the trees, he has not seen the fruits of the same. In the meanwhile, because the award was given in favour of the first respondent/writ petitioner, he was prevented from entering into the Kanmoi, therefore, he prayed that he has to be given an extension of the work being the legal heir.

7. Per contra, it is stated by the learned counsel appearing for the first respondent/writ petitioner that the first respondent/writ petitioner had also paid a sum of Rs.24,600/- being the cost of seemaikaruvel trees to be removed and the deposit is with the official respondents. He has further submitted that admittedly, the first respondent/writ petitioner-Katturaja was never allowed to cut the trees even for one day.

8. Heard the submissions made on either side and perused the materials available on record.

9. From the above, it is clear that those trees cut by the original bidder Yoganathan were not removed and sold and a sum of Rs.19,025/- was received from the said Yoganathan as well as a sum of Rs.24,600/- was received from the said Katturaja and the same are with the revenue authorities. The first respondent/writ petitioner-Katturaja was never allowed to enter into the field and the appellant/fourth respondent did not cut the trees. Therefore, the authorities are unnecessarily keeping the deposits made by appellant/fourth respondent and the first respondent/writ petitioner with them. Now that, the learned Single Judge had directed, a fresh auction to be conducted as per the provisions of the Tamil Nadu Transparencies in Tenders Act, 1998. The respondents 2 to 4 have no authority to retain the money received by them from the appellant/fourth respondent-Sastha Adhithyan as well as from the first respondent/writ petitioner-Katturaja.

10. We have given anxious consideration to the above facts. The entire fiasco was happened only because of the attitude of the respondents 2 to 4. Therefore, we are of the view that both the appellant/fourth respondent-Sastha Adhithyan and the first respondent/writ petitioner-Katturaja ought to be refunded of their money deposit lying in the hands of the respondents 2 to 4.



11. At this juncture, the learned counsel appearing for the appellant/fourth respondent-Sastha Adhithyan requested that instead of refunding the money of the appellant/fourth respondent, he may be permitted to remove the cut trees from the Kanmoi and sell the same or else, he would be put to serious prejudice and irreparable loss. Since he had invested a huge amount under the impression that the work will be continued, he seeks atleast to clear the already cut trees lying there for more than a year and to sell the same and realise his money, for this, the learned Special Government Pleader appearing for the respondents 2 to 4 has got no serious objection.

12. Considering the submission made by the learned counsel appearing for the appellant/fourth respondent, the appellant/fourth respondent-Sastha Adhithyan is granted two weeks time to clear the cut trees from the date of receipt of copy of this order.

13. In respect of the deposit made by the first respondent/writ petitioner-Katturaja is concerned, the respondents 2 to 4 are directed to refund the amount lying in their deposit within a period of four weeks from the date of receipt of a copy of this order.

14. The respondents 2 to 4 are further directed to take immediate steps for conducting an auction by following the procedure as provided in the Act, in the manner know to law, however, not beyond four weeks. In the meanwhile, no party should be permitted to cut down the Karuvelam trees. Liberty is given to both the appellant/fourth respondent and the first respondent/writ petitioner to participate in the auction whenever it is floated.

15. With these observations, the Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The District Revenue Officer,
Sivagangai District,



2. The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

3. The Tahsildar,
Ilayankudi Taluk,
Ilayankudi,
Sivagangai District.

+ 1 CC TO Mr.D.RAMESHKUMAR, ADVOCATE IN SR No. 83572
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84048

PS

TE/SKN/SAR-1 : 03/10/2018 : 6P/6C

W.A(MD)No.1211 of 2017
11.09.2018