



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2018

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.1443 of 2018

and

C.M.P(MD)No.10057 of 2018

Vadakku Kodai Melalagiyan Channel
Land Holders Association,
Vagaikulam, Ambasamudram,
Tirunelveli District,
Rep. by its President,
Poovaiah

... Appellant/Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Assistant Engineer,
Public Works Department,
Water Resource Management,
Thamiraparani Irrigation Division,
Ambasamudram,
Tirunelveli District.

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 26.09.2018 made in W.P(MD)No.20493 of 2018, on the file of this Court.

Prayer in WP(MD). 20493/ 2018 :

This Writ Petition is filed under Article 226 of the Constitution of India, for issuance of writ of mandamus directing the 2nd respondent to forbear from auctioning publicly the fishing rights in Vagaikulam Pond at Ambasamudram, Tirunelveli District.

For Appellant : Mr.R.Subramanian

For Respondents : Mrs.J.Padmaavathi Devi,
Special Government Pleader.

JUDGMENT

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

This writ appeal is directed as against the order, dated 26.09.2018 passed in W.P(MD)No.20493 of 2018.

2. The said Writ Petition was filed by the appellant/writ petitioner to issue a Writ of Mandamus, directing the second respondent to forbear from auctioning publicly the fishing rights in Vagaikulam pond in Ambasamudram.

3. By order, dated 26.09.2018, the learned Single Judge of this Court dismissed the Writ Petition on the ground that the same is not maintainable.

4. Aggrieved over the same, the present Writ Appeal is preferred.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Even in the typedset of papers, it is seen that the appellant/writ petitioner's Association had already filed a suit in O.S.No.204 of 2010 on the file of the Additional District Munsif Court, Ambasamuthram, seeking the relief of permanent injunction restraining the respondents, including the second respondent herein, from interfering and conducting auction for fishing right in respect of Vaigaikulam pond. The said suit was also decreed ex-parte.

7. It is the grievance of the appellant/writ petitioner that inspite of the decree passed by the civil Court, the second respondent herein is continuing to issue notification for conducting auction in respect of Vagaikulam pond.

8. Though it is argued that the decree was granted only against the Commissioner, Town Panchayat, who is the second defendant in the suit, now, the notification is issued by the third defendant in the suit, who is the second respondent in the Writ Appeal. Even then, if the second respondent herein has been arrayed as third defendant in the suit and if the decree is only granted against the second defendant in the suit, it is open to the appellant/writ petitioner to go for an appeal against the said decree and he cannot be permitted to seek any remedy before this Court under Article 226 of the Constitution of India on the same cause of action.

9. If it is the grievance of the appellant/writ petitioner that the decree is disobeyed, it is open to him to file an Execution Petition or take out a contempt petition. As rightly pointed by the learned Single Judge, this Court cannot be



converted into an Executing Court.

10. In view of the above, there is no reason to interfere with the order passed by the learned Single Judge and we are of the considered view that the same has to be confirmed.

11. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Assistant Engineer,
Public Works Department,
Water Resource Management,
Thamiraparani Irrigation Division,
Ambasamudram,
Tirunelveli District.

+1 CC To MR.R.SUBRAMANIAN, Advocate SR. NO. 89164
+1 CC TO The Special Government Pleader SR.NO. 89437

W.A (MD) No.1443 of 2018
08.10.2018

PS
TR/SKN/SAR-I (25.10.2018) 3P 5C