

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.38173 of 2004

Rajiv Gandhi Centre for Aquaculture,
A Registered Society of Marine Products Export
Development Authority,
Rep. by its Project Manager,
Dr.S.Kandan
No.5/133, Hidayath Complex Main Road,
Thirumullaivasal - 609 113.

..Petitioner

vs

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Ministry of Environment & Forests,
Fort St.George, Chennai - 600 009
 2. The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 600 015.
 3. The District Forest Officer,
Thanjavur.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus, calling for the records on the file of the respondents relating to the order of the first respondent dated 29.10.2004 in Letter No.22373/FR. 10/2003-2 and quash the same and consequently direct the respondents to grant the permission to the petitioner in pursuance of the application dated 15.07.2003.

For Petitioner : Mr.S.Natarajan

For Respondents : Mr.J.Ramesh, AGP
for R1
Mr.G.B.Rajesh, GA
for R2 & R3

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondents relating to the order of the first respondent dated 29.10.2004 in Letter No.

22373/FR.10/2003-2 and quash the same and consequently direct the respondents to grant the permission to the petitioner in pursuance of the application dated 15/07/2003.

2. The petitioner is a Registered Society set up by the Government of India and functioning under the Marine Products Export Development Authority of the Ministry of Commerce & Industry, Government of India. The petitioner society was set up in order to establish technology development center in Aquaculture in various locations in India for developing and disseminating appropriate technologies for scientific aquaculture. The petitioner has been assigned the task of undertaking research and development studies in aquaculture technologies and other practical aspects of hatchery and culture technologies for shrimp, lobster, crab, mussels, oysters, marine fin fish, etc.

3. For the above said purpose, the petitioner society came to be established, after detailed study of the location and the ambiance that would be suitable for the nature of the works to be undertaken by the petitioner society. The petitioner chose a seabass hatchery project at Thoduvai, Thirumullaivasal, Sirkali Taluk. The petitioner commenced its project at the site comprised of lands situated in survey Nos. 738/1A & 738/3A to an extent of 5.13 acres in Thirumullaivasal village, Sirkali Taluk after obtaining the said site on lease in the year 2000 from M/s.Amba Aqua Limited, who were having their shrimp hatchery at the above said site since 1994. Subsequently, the petitioner has purchased the said lands from M/s.Amba Aqua Limited on 05.02.2004 and the petitioner is the present owner.

4. In order to develop the aquaculture, the petitioner has to draw seawater through reserved forest land to the hatchery sight right from the date of purchase of the land from M/s.Amba Aquaculture. So, the petitioner made representations dated 01.03.2002, 23.10.2002 to the respective respondent seeking for their permission for the same. However, the Environment and Forests Department, by its impugned order dated 29.10.2004 rejected the claim of the petitioner. The impugned order dated 29.10.2004 is extracted herein below:

"With reference to your letter first cited, I am directed to state that as per the provision of Forest (Conservation) Act 1980, diversion of forest areas to any non-forest purpose would require prior approval of the Government of India. In this case the pipelines to the hatchery are laid through the forest area without obtaining concurrence of Forest Department amounts to

violation under Forest © Act, 1980. I am therefore to inform you, that your request cannot be complied with."

5. The learned counsel appearing for the petitioner would submit that the petitioner in the present writ petition has challenged the impugned order dated 29.10.2004. However, he would submit that without quashing the impugned order, permission may be granted to the petitioner Society to make an application to the concerned authority seeking approval to draw seawater through reserved forest land to the hatchery sight. The concerned authority, may consider the same and pass appropriate orders on merits and in accordance with law within a reasonable period of time.

6. The learned Government Advocate appearing for the respondent would submit that the respondents would consider the request made by the learned counsel for the petitioner.

7. On a perusal of the impugned order, it could be concluded that the petitioner has drawn water, for the purpose of aquaculture, directly from the sea, through pipelines that passes through the reserved forest area from the year 1994 without proper approval of the concerned authority. I do not find any irregularity or illegality in the impugned order passed by the first respondent. Hence, this court is not inclined to interfere with the order passed by the first respondent. However, liberty is granted to the petitioner to file a proper petition before the concerned authority within a period of two weeks from the date of receipt of a copy of this order. If any such petition is filed before the authority, they may consider the same and pass orders on merits and in accordance with law within a period of Twelve weeks from the date of the petition that would be filed by the petitioner.

8. With the above directions, the writ petition stands dismissed. No costs.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

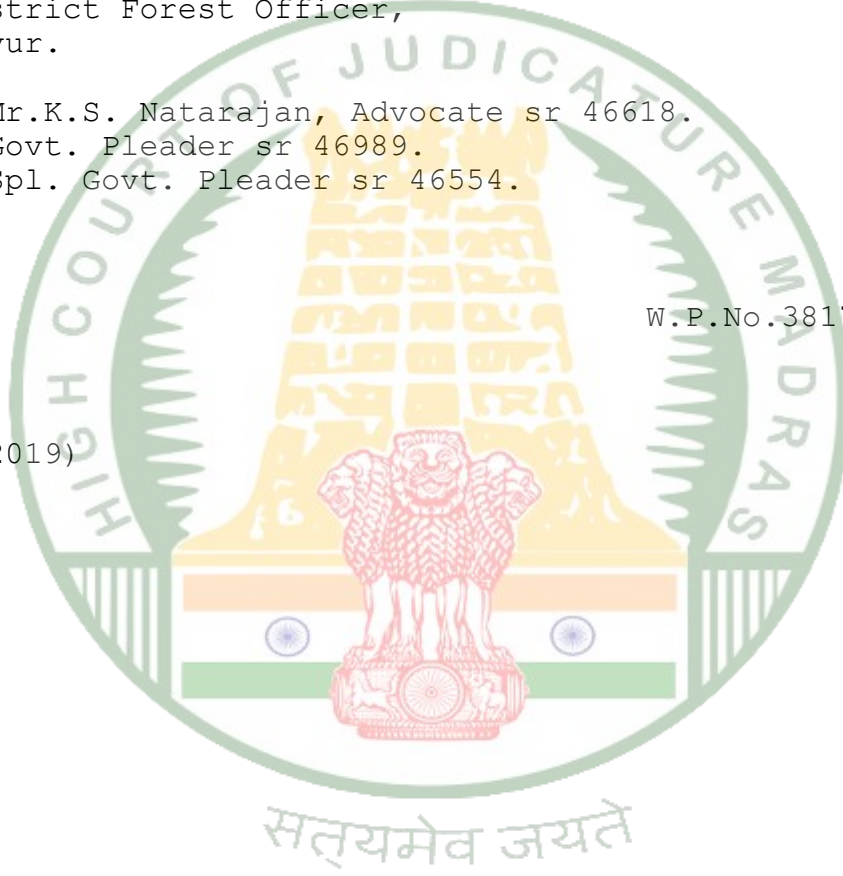
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To

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Ministry of Environment & Forests,
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 2. The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 600 015.
 3. The District Forest Officer,
Thanjavur.
- +1 CC to Mr.K.S. Natarajan, Advocate sr 46618.
+1 CC to Govt. Pleader sr 46989.
+1 CC to Spl. Govt. Pleader sr 46554.

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NRL (CO)
SP (09/07/2019)



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