

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2019

CORAM :

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.15219 of 2016
and
WMP Nos.13270 and 13271 of 2016

Tamilselvi

.. Petitioner

Vs.

1. The Member Coordinator,
Assistant Director,
Fisheries, District Level Committee,
Villupuram.
2. The District Collector,
Villupuram District
3. The Forest Range Officer,
Tindivanam Forest Range Office,
Villupuram District.
4. The Tahsildar,
Office of the Tahsildar,
Marakkanam, Villupuram District
5. The Village Administrative Officer,
No.221, Nadukuppam Village,
Tindivanam Taluk,
Villupuram District

..Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent, i.e., the Member Co-ordinator, Assistant Director Fisheries District Level Committee, Villupuram culminating in File No.638/B/2014 dated 08.10.2015, quash the same and further direct the Respondents not to take any coercive steps from evicting the Petitioner from the Shrimp Farm in Nadukuppam Village, Marakkanam Taluk, Villupuram District.

For Petitioner : Mr.C.Saravanan for
Mr.K.Balakrishnan

For Respondents: Mr.S.N.Parthasarathy
Government Advocate

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate for the Respondents. No counter is filed on behalf of the Respondents 1 to 5.

2. The Petitioner is a Agriculturist possessing ten acres of Nanjai land in Nadukuppam Village and that her lands are situated near Marakkanam Seashore and it was fully covered with the sea water. Her lands are not fit for cultivation hence, she had decided to start Shrimp Farm in her patta land in Survey No.614/2, 691, 518, 593 and 585, 8,9,10 in Nadukuppam [East] Village at Marakkanam Taluk, Tindivanam Taluk, Villupuram District and started the Shrimp Farm during the year 2014 and that she had not occupied any 'Poramboke Land.'

3. The Petitioner had applied before the 1st Respondent / Member Co-ordinator, Assistant Director, Fisheries for the grant of licence and the said application is pending with the 1st Respondent in respect of the patta land, which is in her possession at Nadukuppam [East] Village, Marakkanam Taluk, Villupuram District. She had paid the tax to the 5th Respondent for the patta land in Survey Nos.614/2 to 691/1, 518 and 593. The 5th Respondent / Village Administrative Officer, Nadukuppam issued an Adangal, Chitta and tax receipts in her favour stating that she is in possession and enjoyment of the patta land in the aforesaid survey numbers.

4. It comes to be known that in the year 2004, the Tahsildar, Tindivanam Taluk had issued notice under Section 6 of the Tamilnadu Land Encroachment Act, 1905 [Act 3 of 1905] to evict one S.R.Avani and 25 others, since they occupied the Government Poramboke Land and the said notice was assailed in W.P.no.29308 of 2004 etc., and by a Common Order dated 30.10.2006, this Court had passed the following order:

'on the sole ground the impugned orders are liable to be set aside. Accordingly, they are set aside. However, the respondents are entitled to contemplate eviction proceedings if any only after considering the

individual explanations / representations made by the petitioner and after affording opportunity to the petitioner. It is made clear that the District Collector concerned shall consider those representations made collectively or individually for grant of lease and shall pass orders on merits in accordance with law within a period of eight weeks.'

5. The real grievance of the Petitioner is that the 2nd Respondent / District Collector, had not issued any enquiry notice to the Petitioners therein, pursuant to the orders passed by this Court in W.P.No.29308 of 2004 batch of cases etc., Furthermore, it is projected on the side of the Petitioner that no notice for eviction was issued by the Respondents from the year 2014 on the ground that registration of the Shrimp Farm was not effected with the 1st Respondent from the year 2014. All of a sudden, the 1st Respondent / Member Co-Ordinator, Assistant Director, Fisheries District Level Committee, Villupuram without following due process of Law and ignoring the order of this Court in W.P.No.29308 of 2004 is endeavouring to evict the Petitioner from Shrimp Farm in Survey Nos.614/2 to 691/1, 518, 593 and 585, 8, 9, 10 an extent of 4 acre in Nadukuppam Village, Marakkanam Union.

6. Apart from that, the Petitioner has put up Thatched Shed and obtained electricity service connection from the TNEB during the year 2014 in the aforesaid place for the purpose of storing the prawn feed and other equipments. If the Respondents are permitted to evict the Petitioner from the Shrimp Farm in Survey Nos.614/2 to 691/1, 518, 593 and 585, 8, 9, 10 in Nadukuppam Village at Marakkanam Taluk, she will be put to much hardship and inconvenience, which cannot be compensated by any means.

7. The Petitioner in the present Writ Petition is assailing the notice dated 08.10.2015 issued by the 1st Respondent on the ground that the Notice dated 08.10.2015 was issued against the provision of the Aqua Culture Authority Act, 2005 and furthermore, when the Application filed for Registration of Shimpfarm is pending with the 1st Respondent, the issuance of present Notice by the 1st Respondent is per se an illegal one.

8. The Learned Counsel for the Petitioner strenuously contends that the Petitioner's Shimp Farm is situated in Patta Land and that there is no pollution to the running water in Nadukuppam Village.

9. The Learned Counsel for the Petitioner comes out with a plea that this Court in W.P.No.39568 of 2005 had issued an Order of Injunction against the District Forest Officer, Villupuram not to prevent its Members from taking water in the Kazhuveli to

the Shrimp Farms situated in the Coastal Area.

10. As a matter of fact, the Petitioner had made a detailed representation dated 06.3.2016 to the 1st Respondent / Member Co-ordinator, Assistant Director, Fisheries District Level Committee, Villupuram wherein a specific plea is taken that as per Section 11(d) of the Coastal Aqua Culture Authority Act, 2005, an Order of Removal or Demolition of any Coastal Aquaculture Farms, which is causing pollution is to be passed after hearing the occupier of the farm. However, it is represented on behalf of the Petitioner that in the present case, the notice dated 08.10.2015 was issued to her, but no such hearing was provided to her.

11. The Petitioner, takes a stand that this Court in W.P.No.20429 of 2005 on 04.08.2015 had issued a direction to 'Stop Prawn Culture Activity' and according to the Petitioner, this order pertains only to 'Shrimp Farming' in the Government Land and in short, the 1st Respondent / Member Coordinator, Assistant Director, Fisheries District Level Committee, Villupuram had not followed the Law relating to eviction.

12. In fact, the Petitioner in her detailed representation dated 06.03.2016 addressed to the 1st Respondent in a crystalline fashion had stated that she is not carrying Shrimp Farm in any Forest Wet Land or Government Poramboke Land and therefore, the issuance of Notice is an unwarranted one and ultimately prayed for dropping all further proceedings pursuant to the aforesaid notice dated 08.10.2015.

13. In this connection, it may not be out of place for this Court to make a relevant mention that this Court in W.P.No.33578 and 30241 to 30243 of 2015 on 25.01.2016 at Paragraph Nos.3 to 5 had observed the following and disposed of the Writ Petitions:

"3. The affidavit filed by the 5th Respondent has categorically stated that as on date, no prawn culture activity is in progress and that the area is submerged in water. The shrimp farming is stated to be in water catchment area of Buckingham Canal (South end) and not only the area is marooned, but restarting any prawn culture activity is not possible for at least three months. The affidavit stated that all steps have been taken to ensure that prawn culture activity does not restart.

4. The affidavit also points out that the objections to the notices have been dealt with and that will also be the fate of the remaining applications. In fact, three weeks' time had been granted earlier as a measure of interim protection to facilitate the disposal of the objections.

5. The position today is that no prawn culture is on, the petitioners have extended themselves beyond their alleged patta area to carry on that activity and thus, the revenue authorities have to demarcate and ensure that the petitioners confine themselves to their area and that too, not for prawn culture activity. Naturally, till this work is over, the petitioners cannot be dispossessed.'

14. At this juncture, this Court aptly points out the decision of M.Ganesan V. the Government of Tamilnadu, rep. By its Secretary, Animal Husbandry and Fisheries Department, Madras and Others reported in 2015-4-L.W. At Page 27 wherein at Special Page 28 and 29, at Paragraph Nos.7 to 9 it is observed as under:

'7. It is also pointed out to us that there have been subsequent development in view of the legislation by the Government of India being the Coastal Aquaculture Authority Act, 2005, which was published in the Gazette on 23.06.2005. It came into force on 16.12.2005. Section 13 of the said Act provides for registration for coastal aquaculture and we would reproduce the relevant portion as under:

"13(1) Save as otherwise provided in this section, no person shall carry on, or cause to be carried on, coastal aquaculture in coastal area of traditional coastal aquaculture in the traditional coastal aquaculture farm which lies within the Coastal Regulation Zone referred to in sub-section (9) and is not used for coastal aquaculture purposes on the appointed day unless he has registered his farm with the Authority under sub-section (5) or in pursuance of sub-section(9), as the case may be.

(2) Notwithstanding anything contained in sub-section (1), a person engaged in coastal aquaculture, immediately before the appointed day, may continue to carry on such activity without such registration for a period of three months from that day and if he makes an application for such registration under sub-section(4) within the said period of three months till the communication to him of the disposing of such application by the Authority"

8. In exercise of power conferred by Section 24 of that Act, Coastal Aquaculture Authority Rules, 2005 were framed and Rule 10 provides for the manner of considering application for registration. In terms of Rule 12(3), the application for renewal of registration is to be made to the District Level Committee, which, upon examination, is to forward it to the Authority

through the State Level Committee. It is, under these provisions, that the 6th respondent has obtained the certificate.

9. Learned counsel for the petitioner submits by referring to the Judgment of the Hon'ble Supreme Court in Bhavani River Sakthi Sugars Ltd., Vs. ABC, (1998 (6) SCC 335) that in matters of environment through public interest litigation, mere grant of permission would not suffice and this Court should examine the environmental impact.'

15. Also, this Court in the decision reported in 2015- 4-L.W. 168 at Special Page 169 between Vasuki Mohana Sundaram V. the Coastal Aqua Cultural Authority, Sastri Bhavan, II Floor, Sastri Bhavan Annexure, 26, Hudders Road, Chennai - 600 006 and Others at Paragraph Nos.4 to 6, had observed as follows :

'4.It is admitted that there are more than 100 shrimp farms which are illegally carrying out aqua culture, detrimental to marine eco system. 25 shrimp farmers have been issued license by the District Collector, but on review of the issue in the District Level Coastal Aquaculture Authority Committee Meeting (being constituted as per the Coastal Aquaculture Authority Act, 2005), all licenses have now been declared as invalid and not renewed. Such Aquaculture activity shall not be carried on without prior approval of the State Government within wetlands as per Rule 4 (2) (i, ii, viii, x) of the Wetland (Conservation and Management) Rules, 2010. The functioning of the shrimp farms leads to release of waste water without any treatment, which is prohibited under Rule 4(1)(v & vii) of the said Rules within the wetland and the wetland cannot be converted into a non-wetland without satisfaction of the Central Government as per Rule 4(5) of the said Rules.

5.On a perusal of the affidavits of both the 4th and 5th respondents and on hearing the learned counsel for the parties, it emerges that there are two actions necessary--

a)The action for verification of the entitlement to hold the land is liable to be expedited and demarcation process to proceed quickly.

b)If no valid license is in existence, it is necessary action has to be taken to stop the prawn culture activity.

Thus, the two pronged action is required for this purpose to be taken in accordance with law. We may note

on the issue of prawn culture, on the requirements, we have considered the larger issue in W.P.No.12235 of 1995 decided on 10.12.2014 in (M.Ganesan vs. Government of Tamil Nadu).

6.Learned counsel appearing for the respondents assures that necessary action in this behalf will be taken and a compliance report shall be filed within two months from the date of receipt of this order.'

16. Further more, in the Order in W.P.No.39568 of 2005 [filed by Dr.Ambedkar Shrim Farm Producers Sangam] dated 15.12.2015 against the Government of Tamilnadu rep. By its Secretary, Fisheries Department, Fort St. George, Chennai and others, the relief was sought for by passing an order in directing the 3rd Respondent / the District Forest Officer, Villupuram District or his Subordinate not to prevent the Petitioner members while taking water from the Kazhuveli situated in and around the Shrim Farms belongs to the Petitioner members in Survey Nos.1,5/5, 5/9, 5/10, 10/10, 119/4, 198/1, 131, 651, 655, 658, 681/1, 681/2 and 682 at Nadukuppam, Anumanthai, Ooorani Village, Tindivanam Taluk, Villupuram District and this Court, disposed of the said Writ Petition by following the orders passed on 18.11.2015 in W.P.No.33633 of 2015 between Jeevarathinam V. the Coastal Aquaculture Authority, Sastri Bhavan, II Floor, Shastri Bhavan Annexure, 26, Haddows Road, Chennai - 600 006 and others.

17. In the Order dated 18.12.2015 in W.P.No.33633 of 2015 between Jeevarathinam V. the Coastal Aquaculture Authority, Shastri Bhavan, II nd Floor, Shastri Bhavan Annexure, 26 Haddows Road, Chennai - 600 006 reported in 2015 SCC OnLine Madras 12604, this Court observed the following:

'We are informed that appeals have been filed before the Appellate Authority, which are pending consideration and are required to be decided expeditiously. Along with the appeals, it is stated that interim stay applications have also been filed.

2. The learned Additional Government Pleader appearing for the respondents states that the appeals will be decided before the next date fixed in the main matter, which is listed for compliance on 15th December, 2015.

3. The aforesaid statement is taken on record and the writ petitions, accordingly, stand disposed of. No costs. Consequently, all connected Miscellaneous Petitions are closed. '

18. In view of the fact that in the notice dated 08.10.2015 issued by the 1st Respondent / the Member Coordinator, Assistant Director, Fisheries District Level Committee, Villupuram to the

Petitioner, the Petitioner on 06.03.2016, had furnished a detailed reply wherein as a occupier, she was directed to stop the activity Shrimp Farm immediately and as on date, the objections of the Petitioner dated 06.03.2016 is not yet disposed of by the 1st Respondent, of course, in the manner known to Law and in accordance with Law, therefore, this Court, at this stage, without traversing upon the merits of the matter and also not expressing any opinion in the subject matter in issue, simpliciter, directs the 1st Respondent / the Member Coordinator, Assistant Director, Fisheries District Level Committee, Villupuram to look into the detailed representation of the Petitioner dated 16.03.2016 and to dispose of the same [if not already disposed of] by passing a qualitative and quantitative reasoned speaking order [including the aspect of putting an end to stop the Prawn Culture Activity if there is no live / valid licence in existence] after due application of mind and by keeping in mind the ingredients of Section 11[d] and other relevant Provisions of the Coastal Aquaculture Authority Act, 2005, principles laid down in the decisions as referred supra and the connected earlier orders passed by this Court in the subject matter in issue. The 1st Respondent shall provide an opportunity of hearing to the Petitioner and to pass a reasoned speaking order, as aforesaid supra within a period of four weeks from the date of receipt of a copy of this order.

19. An advance notice may be given to the Petitioner by the 1st Respondent specifying the date of enquiry, time and place where the enquiry is to be scheduled and that the Petitioner is to take part in the enquiry without offering any lame-duck excuses whatsoever. The Petitioner is directed to lend her helping hand co-operation and assistance to the 1st Respondent in disposing of the matter [if already her representation dated 16.03.2016 is not yet disposed of] within the time adumbrated by this Court. It cannot be gainsaid that the final order to be passed by the 1st Respondent must be a one, free from any bias and in an objective and dispassionate manner, ofcourse, uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition.

With the aforesaid observations and directions, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

ssd

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Member Coordinator,
Assistant Director,
Fisheries, District Level Committee,
Villupuram.
2. The District Collector,
Villupuram District
3. The Forest Range Officer,
Tindivanam Forest Range Office,
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4. The Tahsildar,
Office of the Tahsildar,
Marakkanam, Villupuram District
5. The Village Administrative Officer,
No.221, Nadukuppam Village,
Tindivanam Taluk,
Villupuram District

+1cc to Mr.K.Balakrishnan, Advocate, S.R.No.3214

W.P.No.15219 of 2016
and

WMP Nos.13270 and 13271 of 2016

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