

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.04.2019
Pronounced On	12.06.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.2706 of 2014
and
M.P.No.1 of 2014

1.M/s.Amman Oil Mill and Refineries,
Rep.by its Proprietor Mr.K.Selvakumar,
S.F.No.472/3,5,6 Malayathupalayam,
D.No.84/88, Udayam Road,
Navakadu, Muthur, Kangeyam Taluk,
Tiruppur District – 638 105.

2.K.Selvakumar

...Petitioners

VS

1.M.Saradhambal

2.Lakshmi

3.M.C.Kuppusamy

4.The District Collector- Tiruppur District,
Collector Office, Palladam Road,
Tirupur.

5.Revenue Divisional Officer,
Ellis Nagar, Pollachi Road,
Dharapuram.

6.The Thasildar,
Kangayam Taluk Road,
Coimbatore Road, Kangayam.

7.The President – Muthur Town Panchayat,
Muthur Town panchayat Office,
Kangayam Taluk,
Tiruppur District.

8.The Pollution Control Officer,
Tiruppur Regional Officer,
Avinashi Road, Tiruppur.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to pass an order to strike the plaint in O.S.No.11 of 2014 pending on the file of the District Munsif Court, Kangeyam.

For Petitioners : Mr.V.S.Senthil Kumar

For Respondents : No appearance

ORDER

The learned counsel for the petitioners /6th and 7th defendants alone is present. There is no representation on behalf of the 1st to 3rd respondents / plaintiffs, though notice has been served on them and their names have been printed in the cause list today. Hence, the present Civil Revision Petition is taken up for hearing exparte.

2.I have gone through the documents and considered the arguments advanced by the learned counsel for the petitioners.

3.The issue that arises for consideration is whether this present Civil Revision Petition is maintainable before this court?

4.The petitioners are the 6th and 7th defendants in O.S.No.11 of 2014. The said suit has been filed by the 1st to 3rd respondents against the petitioners/ 6th and 7th defendants in the above suit.

5.The suit has been filed for the following reliefs: -

- (a)To cancel the 6th defendant license and not give any permission to run the 6th defendant Oil Mill " Amman Oil Mill and Refineries" by the 1st to 5th defendants or their agent.
- (b)To grant a permanent injunction restraining 6th and 7th defendants from running Oil Mill " Amman Oil Mill and refineries".
- (c)1 to 5th defendants to restraining any new permission or new license to the 6th defendant property in the change of any other name.
- (d)Award the suit cost to the plaintiff.

6.The other respondents are the officials/officers from the various departments concerned.

7.According to the petitioners/6th and 7th defendants, the suit is barred under Section 9 of the C.P.C in view of Section 46 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 58 of the Water (Prevention and Control of Pollution) Act, 1974 which read as under:-

Water (Prevention and Control of Pollution) Act, 1974	Air (Prevention and Control of Pollution) Act, 1981
"58. Bar of jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to	"46. Bar of jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate Authority constituted under this Act is empowered by or under this Act to respect of any action taken or to be taken in pursuance of any power conferred by or under this determine, and no

Water (Prevention and Control of Pollution) Act, 1974	Air (Prevention and Control of Pollution) Act, 1981
be taken in pursuance of any power conferred by or under this Act."	injunction shall be granted by any court or other authority in Act."

8.The learned counsel for the petitioners/ 6th and 7th defendants therefore submitted that the learned District Munsif Court, Kangayam erred in entertaining the suit and numbering it.

9.The learned counsel for the petitioners / 6th and 7th defendants referred to the decision of this Court rendered in **Aditya Masala, Nani Agro Foods Private Limited vs M.Selvaraj** 2007-1-MLJ-611 wherein dealing with an identical situation, the Court referred to the case decision rendered in **M.Nandagopal vs The Chairman, Tamilnadu Pollution Control Board and others** ILR (1997) 2 Madras 1274.

WEB COPY

10.The Court has extracted, the decision rendered in **M.Nandagopal vs The Chairman, Tamilnadu Pollution Control Board and others** *supra* which reads as under:-

"8. There is a great purpose behind these provisions. It is common knowledge that any litigation in a Civil Court will not reach its logical conclusion within a year or two. It takes several years. These are enactments which are intended to ensure the pollution free water and pollution free air and pollution free environment, to the humanity and the people at large in India. It is common knowledge that every day, pollution of water, air and environment is increasing in such measure that if the volume and speed of this is not prevented or abated and controlled, it may prove to be fatal to the humanity within a short period. Therefore, keeping in view this catastrophe which may occur, if it is neglected, these enactments have been passed and the jurisdiction of the Civil Court has been taken away, as otherwise, the very purpose of the Act would be defeated, if the Board and the authority were to litigate before the Civil Courts, which will take nearly a decade to come to a logical end and after a decade, probably, the pollution might assume such an alarming proportion that it may even go beyond our capacity to control and consequently the very objective of the law would be defeated these final aspects of life and serious consequences the presiding officers of the Civil Courts shall bear in mind and make a little effort to know and acquaint themselves with the aims and objects of the enactments and provisions contained therein before they embark upon entertaining the suits ignoring the specific prohibition contained in the aforesaid enactments. **In spite of this, if the Civil Courts go on entertaining the suits and granting interim orders preventing the Boards and the authority to perform their functions and discharge their duties in exercise of their powers under the Act, the same will prove to be fatal to the people and defeat the aims and objects of the Act. Therefore, with a view to ensure that the Civil Courts do not embark upon such expedition, we have considered it necessary to issue a direction to the Civil**

Courts in the State that they should not embark upon entertaining the suits against the Pollution Control Board and the authority in respect of the matters which fall under the Provisions of the Water Act, Air Act and Environment Act. All the Civil Courts are directed accordingly. We also further direct that such of the suits which have been entertained by the Civil Courts in respect of the matter falling under these enactments, shall be taken up within a fortnight from the date of receipt of a copy of this order and disposed of the same in the light of the aforesaid directions and in the light of the observation contained in this order and bar of the jurisdiction contained in the aforesaid three enactments."

11.The reasoning given in the above passage seems to indicate that the jurisdiction of the civil court is ousted even though under Section 9 the jurisdiction of the civil Court stands ousted only where cognizance of suit is either expressly or impliedly barred.

12.If the ratio from the above decision is to be accepted, it would offend the very fundamental principle viz, "***ubi jus ibi remedium***" ie. where there is a right there is a remedy, unless there is really an alternative remedy under these enactments.

13.I have also tried locating the same through the various website publishing judgments of the Courts. However, I was also unable to locate the above case with the above citation.

14. Only if a statutory remedy is available under the two special enactments mentioned it can be inferred that the jurisdiction of civil court will stand ousted.

15. The special dispensation under these enactments were not intended to redress civil and criminal disputes arising from any breach of any of the laws. For instance, while dealing with Section 133 of the Cr.P. Code the Hon'ble Supreme Court in **Kachrulal Bhagirath Agrawal vs State of Maharashtra, (2005) 9 SCC 36 : 2005 SCC (Cri) 1191** held as follows:-

11. The guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present. "All power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs and all must exist." The conduct of the trade must be injurious in praesenti to the health or physical comfort of the community. There must, at any rate, be an imminent danger to the health or the physical comfort of the community in the locality in which the trade or occupation is conducted. Unless there is such imminent danger to the health or physical comfort of that community or the conduct of the trade and occupation is in fact injurious to

the health or the physical comfort of that community, an order under Section 133 cannot be passed. **A conjoint reading of Sections 133 and 138 of the Code discloses that it is the function of the Magistrate to conduct an enquiry and to decide as to whether there was reliable evidence or not to come to the conclusion to act under Section 133.**

16. The Court referred to the decision rendered in **Vasant Manga Nikumba vs Baburao Bhikanna Naidu** [1995 Supp (4) SCC 54 : 1996 SCC (Cri) 27] wherein it was observed that *"nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse, etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately, irreparable danger would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisances and on the other hand applies when the*

nuisance is in existence. It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is a more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. (See State of M.P.v.Kedia Leather & Liquor Ltd.[(2003) 7 SCC 389 : 2003 SCC (Cri) 1642])”

17.In **AR Ponnusamy vs Thoppalan** 2003(2) CTC 516, it was held that only if an order passed under the enactment viz., Water (Prevention and Control of Pollution) Act and the Air (Prevention and Control of Pollution) Act, 1981 is not appealed against, the jurisdiction of the Court under Section 9 of the C.P.C. will not be taken away.

18.It was also held that the Civil Court has jurisdiction to entertain and consider those matters which have not been agitated before the Appellate Authority. This view appears to be logical.

19.The Parliament has enacted the National Green Tribunal Act, 2010. The Act came into force on October 18th 2010.

Simultaneously, other enactment enactments including Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 dealing with the pollution were amended.

20. The above enactment is in the background of the 186th Report dated 23.09.2003 had also emphasized need for a separate environmental courts in view of the advancement in science and technology. Relevant passage from the said Law Commission Report reads as hereunder:

“What we mean to say is that none of the above Courts are courts having exclusive jurisdiction as regards environmental issues and the result is that there is delay in their disposal as compared to the time within which any special Environmental Court dealing only with issues relating to environment could have taken. It cannot be disputed that environmental matters have to be taken up early, monitored from time to time and be finally disposed of by a procedure quicker than that obtaining now. Further, the Courts today lack independent expert advice on environmental matters by a statutory panel attached to the Court and depend mostly on the expert evidence that may be adduced by the parties.”

21. Ultimately, the Law Commission recommended the establishment of Environmental Courts. The recommendation of the law commission reads as under:

"In view of the involvement of complex scientific and specialized issues relating to environment, there is a need to have separate 'Environment Courts' manned only by the persons having judicial or legal experience and assisted by persons having scientific qualification and experience in the field of environment

In order to achieve the objectives of accessible, quick and speedy justice, these 'Environment Courts' should be established and constituted by the Union Government in each State. However, in case of smaller States and Union Territories, one court for more than one State or Union Territory may serve the purpose."

22. It is only under this law one can say that the jurisdiction of the civil Court is ousted. Under Section 14 of the Act, the Tribunal shall have jurisdiction **over all civil cases** where substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactment specified in the Schedule 1. Section 14, 15 of the Act reads as under:

14. Tribunal to settle disputes.—

- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any

legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

"15. Relief, compensation and restitution.—

(1) The Tribunal may, by an order, provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area

or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about

the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

"29. Bar of jurisdiction.—

- (1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.
- (2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the

Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."

"33. Act to have overriding effect.—

The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

22. In the light of the above provisions of the NGT Act 2010, it is evident that the jurisdiction of the civil courts are barred. Therefore, though the view taken in **Aditya Masala Nani Agro Foods vs M Selvaraj** (2007) 1 MLJ 611 following the view of the court in **M. Nandagopal vs The Chairman, Tamil Nadu Pollution Control Board** though are not correct, nevertheless in the light of the provisions of the National Green Tribunals Act, 2010, a civil suit is barred.

23. Consequently, I am of the view that the Present Civil

Revision Petition deserves to be allowed and is hereby allowed. No cost. Miscellaneous petition is closed.

12.06.2019

Index :Yes/No
Internet :Yes/No

jen/kkd

1.The District Munsif Court, Kangeyam.

2.The District Collector- Tiruppur District,
Collector Office, Palladam Road,
Tirupur.

3.Revenue Divisional Officer,
Ellis Nagar, Pollachi Road,
Dharapuram.

4.The Thasildar,
Kangayam Taluk Road,
Coimbatore Road, Kangayam.

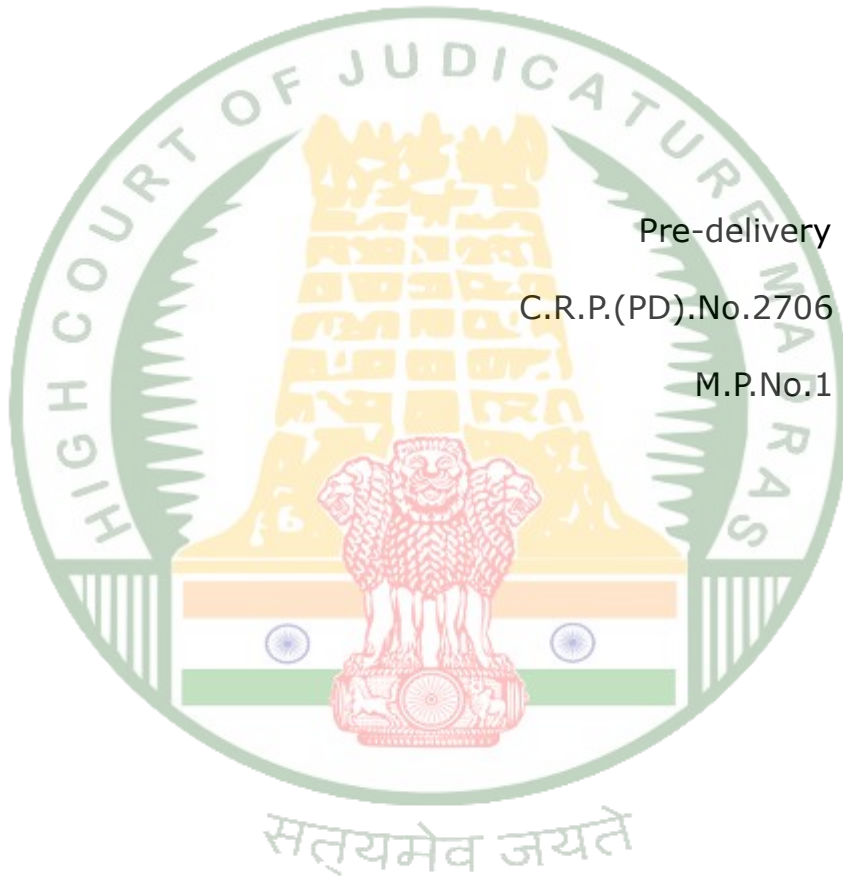
5.The President – Muthur Town Panchayat,
Muthur Town panchayat Office,
Kangayam Taluk,
Tiruppur District.

6.The Pollution Control Officer,
Tiruppur Regional Officer,
Avinashi Road, Tiruppur.

7.The Section Officer,
V.R.Section, High Court, Madras.

C.SARAVANAN, J.

jen/kkd



Pre-delivery order in

C.R.P.(PD).No.2706 of 2014
and
M.P.No.1 of 2014

WEB COPY 12.06.2019

Pre-delivery order in

C.R.P.(PD).No.2706 of 2014
and
M.P.No.1 of 2014

Most respectfully submitted by
Jen



WEB COPY