



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.07.2019
CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Appeal (MD) No.606 of 2019
and
C.M.P (MD) No.4959 of 2019

1.The Director of Fisheries,
Tamil Nadu Fishermen Welfare Board,
Chennai.

2.The District Collector,
Madurai District,
Madurai.

3.The Assistant Director of Fisheries,
Madurai Zone,
Fisheries Office,
Petchiamman Padithurai,
Madurai - 01.

.. Appellants/Respondents

Vs.

P.Mokkai

..Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P(MD)No.20634 of 2018 dated 04.10.2018.

Prayer in WP(MD). 20634/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st Respondent consider the representation of the petitioner dated 14-09-2018 and extent the lease to further period for 2019-2020 as per the G.O.Ms.No.332 (Animal husbandry and fisheries (FDS.IV) Department dated 17-11-93).

For Appellant : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondents : Mr.K.P.S.Palanivelrajan

**JUDGMENT**

[Judgment of the Court was delivered by **SENTHILKUMAR RAMAMOORTHY, J**]

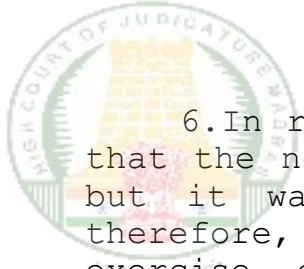
The appellants are the respondents in the writ petition. The said writ petition was filed by the respondent herein for issuance of a Writ of Mandamus to direct the first respondent to consider his representation, dated 14.09.2018, and extend the lease to further period for 2019-2020, as per the G.O.Ms.No.332 (Animal Husbandry and Fisheries (FDS.IV) Department, dated 17.11.93).

2.The Writ Court directed the respondents therein to accept the payment in respect of the years 2017-2018 and 2018-2019 and to pass appropriate orders for grant of extension of lease to the writ petitioner for the following year, namely, 2019-2020. The present writ appeal has been filed challenging the said order.

3.We have heard the learned Special Government Pleader on behalf of the appellants and the learned counsel on behalf of the respondent.

4.The facts that are relevant for the purpose of disposal of the present writ appeal are that the appellants granted the lease of fishing rights to the respondent under agreement, dated 02.08.2016, for a period of three years. The said agreement further provided that the lease could be cancelled in the event of default in payment of the lease amount. It is the admitted position that the lease amount for the first year was paid by the respondent, but that the lease amount for the second and third years were not paid. Consequently, letters dated 07.07.2017 and 20.09.2017 were issued calling upon the respondent to pay the outstanding amount. However, it is the admitted position that the said amounts were not paid. According to the appellants, on account of such default in payment of lease amount, the lease was cancelled, by order, dated 01.11.2017. However, the respondent states that the cancellation order was not received. Thereafter, the respondent sent representation, dated 14.09.2018, requesting that the lease be extended for the period 2019-2020 and in view of the refusal of the appellants to do so, the writ petition came to be filed.

5.The learned Special Government Pleader submitted that the lease was cancelled by the aforesaid order, dated 01.11.2017, on account of the admitted failure on the part of the respondent to pay the lease amount for the second and third year. In this regard, he submitted that clauses 9 and 14 of the lease agreement, dated 02.08.2016, empowers the appellants to cancel the lease agreement in case of any default in payment. He further submitted that even if the cancellation order, dated 01.11.2017, was not received by the respondent, as contended herein, it was nevertheless the duty of the respondent to remit the lease amount, within the stipulated time.



6. In response, the learned counsel for the respondent submitted that the non-payment of the lease amount was not wilful or wanton, but it was only because there was no water in the tank and therefore, the respondent was unable to obtain any return from the exercise of fishing rights. He further submitted that the respondent approached the Writ Court along with the payment for the second and third year and he was also willing to pay the increased amount of 10% for the following year, namely, 2019-2020. Further, he contended that as per G.O.Ms.No.332, dated 17.11.1993, fishing lease shall be for a period of five years. Therefore, he submitted that the lease in favour of the respondent may be extended for a further period of one year as prayed for in the writ petition.

7. We examined the relevant records and considered the oral submissions carefully.

8. Perusal of the lease agreement discloses that the lease agreement may be cancelled, if the lease amounts are not paid within the stipulated period. In this case, it is the undisputed fact that the lease amount for the second and third year was not paid by the respondent. Consequently, the appellants were entitled to cancel the lease. Even if the respondent did not receive the cancellation order dated 01.11.2017, as correctly contended by the learned Special Government Pleader, the respondent was nevertheless contractually bound to make payment of lease amount within the stipulated time. In view of the admitted non-payment thereof, the respondent is not entitled to demand that the lease amount should be accepted beyond the stipulated date and that the lease period should be further extended on that basis. We are of the view that a Writ of Mandamus cannot be issued for the purpose of extending the lease, which was admittedly due to expire by June 2019, because there is no statutory duty to extend such lease. In this regard, the contention of the learned counsel for the respondent that the respondent is entitled to extension on the basis of G.O.Ms.No.332 cannot be countenanced when the respondent has admittedly defaulted in the payment of lease rent for the second and third year of the lease that was granted under agreement, dated 02.08.2016. Consequently, the respondent cannot claim any benefits under the said Government Order. Therefore, the order of the Writ Court is liable to be set aside.

In the result, this Writ Appeal is allowed, however, by granting liberty to the respondent to participate in future auctions of fishing rights by the appellants. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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To

- 1.The Director of Fisheries,
Tamil Nadu Fishermen Welfare Board,
Chennai.
- 2.The District Collector,
Madurai District,
Madurai.
- 3.The Assistant Director of Fisheries,
Madurai Zone,
Fisheries Office,
Petchiamman Padithurai,
Madurai - 01.

+1cc to Mr.K.P.S.PALANIVELRAJAN,Advocate, SR.No.77512

+1cc to THE SPL.GOV.T.PLEADER SR.NO.77710

skn

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