



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.20647 of 2018

and

W.M.P. (MD) No.18406 and 18407 of 2018

1.K.Muthuramalingam

2.S.Balan

.. Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by the Principal Secretary,
Department of Forests and Environment,
Secretariat, Fort St. George,
Chennai-9.

2.The Collector,
Thoothukudi District,
Thoothukudi.

3.The Revenue Divisional Officer,
Tiruchendur,
Thoothukudi District.

4.The Thasildar,
Tiruchendur Taluk,
Thoothukudi District.

5.The Executive Officer,
Udangudi Town Panchayat Board,
Udangudi, Tiruchendur Taluk,
Thoothukudi District.

6.K.P.Sakthivel

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order No.Na.Ka.A5/1396/2018, dated 14.09.2018 passed by the third respondent and quash the same as illegal and consequently to direct the first respondent to consider an enactment for the protection of trees similar to Karnataka Preservation of Tree Act, 1976 to regulate the felling down of trees in public places.



For Petitioner : Mr.T.Lajapathi Roy
for Mr.V.Rajiv Rufus

For R1 to R4 : Mr.A.K.Baskara Pandian
Special Government Pleader

For R5 : Mr.K.M.U.Muthu
Additional Government Pleader

For R6 : Mr.R.Anand

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

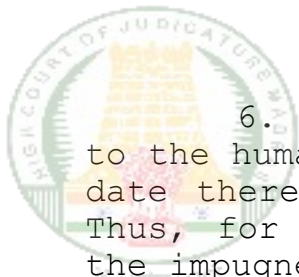
Heard Mr.T.Lajapathi Roy, learned counsel for Mr.Rajiv Rufus, learned counsel appearing for the petitioner, Mr.A.K.Baskara Pandian, learned Special Government Pleader, appearing for the respondents 1 to 4, Mr.K.M.U.Muthu, learned Additional Government Pleader appearing for the fifth respondent and Mr.R.Anand, learned counsel for the sixth respondent.

2. The reason for the petitioner for approaching this Court is that the sixth respondent has given a petition before the fifth respondent to initiate action under Section 133 Cr.P.C., to remove a tree, which according to the sixth respondent is a nuisance. Photographs produced before the Court clearly show that the tree is in backside of the sixth respondent house site, which he has purchased recently. Photographs also show that there is demolition and reconstruction done by the sixth respondent and the construction work is in progress.

3. The sixth respondent's grievance is that there is a likelihood of the tree will fall on his property and cause danger to life. Therefore, the nuisance has to be abated.

4. On seeing the photographs, we find that tree is very aged and there is a obscure shape, because of some defective growth, but the tree is still alive and it appears to be hale and healthy.

5. As rightly pointed out by the learned counsel for the petitioner that the third respondent has misunderstood the scope of his jurisdiction under Section 133 Cr.P.C., and such contingency has never arisen in the instant case. Further more, we find that the tree is only standing behind the petitioner's property and adjacent to the tree, there are other persons, from whom there appears to be no objection. Representation has been given by the first petitioner to the authorities, dated 24.09.2018, in which there is a list of signatories and as many as several people have been signed so as to preserve the tree.



6. Considering the fact that there is no danger to be caused to the human life nor to the property of the sixth respondent, as on date there will be no jurisdiction to invoke Section 133 Cr.P.C.. Thus, for the above reason, this writ petition stands allowed and the impugned proceedings are quashed. The apprehension of the first respondent is that the tree having an obscure shape will become a place for worship and religious sentiment will play and a small temple will be constructed and ultimately it will occupy a portion. Therefore, we direct the respondents 3 to 5 to ensure that no form of prayer is offered near the tree, no person should affix any photographs on the tree or tie any material or cloth on the tree etc., which is commonly done with a view to add the some sort of sanctity to the tree. In fact if all these are done, it would amount to causing damage to the tree. Therefore, we direct the respondents 3 to 5 to erect barricade around the tree so that the tree will not be damaged by any villagers.

7. In this writ petition, apart from the challenge to the proceedings of the third respondent invoking his power under Section 133 Cr.P.C., the petitioner also prays for a direction upon the first respondent namely, the Principal Secretary, Department of Forest and Environment to consider the enactment of law for protecting the trees similar to Karnataka Preservation of Tree Act, 1976. Since we are inclined to dispose of the writ petition, we permit the learned counsel for the petitioner Mr.Rajiv Rufes, to intervene in W.P.(MD)No.19944 of 2019 and assist the Court and place all materials in his possession as to why there is a need for the State of Tamil Nadu to enact a law for preservation of trees.

8. The third respondent is directed to address the District Officer to inspect the tree and if any treatment is required to give for any borer decease etc., the same shall be done.

9. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary,
Department of Forests and Environment,
Secretariat, Fort St. George, Chennai-9.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Collector,
Thoothukudi District,
Thoothukudi.

3.The Revenue Divisional Officer,
Tiruchendur, Thoothukudi District.

4.The Thasildar,
Tiruchendur Taluk,
Thoothukudi District.

5.The Executive Officer,
Udangudi Town Panchayat Board,
Udangudi, Tiruchendur Taluk,,
Thoothukudi District.

+1 CC to Mr.R.ANAND, Advocate (SR-96545[F] dated 06/11/2019)

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04.11.2019

VB(18.11.2019) 4P 7C