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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12358 of 2016

and

W.M.P.No.10692 of 2016

P.Saravanan

... Petitioner

Vs

1. The Chief Engineer,
O/o Public Works Department,
Central Office, Puducherry.
2. The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry.
3. The Assistant Engineer,
Irrigation Sub Division IV,
PWD, Bahour, Puducherry.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the orders made in 3782/PW/EE1/JE(P)-85/15-16/97 dated 08.01.2016 passed by the 2nd respondent and the order made in No.627/PW/ID/ISD-IV/AE/2015-16 dated 29.03.2016 by the 3rd respondent and quash the same and consequently direct the respondents to receive the lease amount from the petitioner so as to enable him to complete lease period of three years with effect from 14.05.2015.

For Petitioner :Mr.G.Ethirajulu

For Respondents:Mr.J.Kumaran

Additional Government Pleader
[Puducherry]

ORDER

The order impugned dated 29.03.2016 cancelling the lease agreement executed between the petitioner and the respondents, conferring fishing rights in favour of the petitioner is under



challenge in the present writ petition.

2. Pursuant to the public notice, the petitioner participated in the auction for exercise of fishing right in Bahour Lake situated at Bahour Commune and he was declared as a successful bidder, the petitioner remitted EMD amount of Rs.10,87,500/- and as per the agreement, the lease amount of Rs.33,99,000/- for first year, Rs.35,68,950/- for second year and Rs.37,47,398/- for third year.

3. The petitioner states that he remitted a sum of Rs.23,11,500/- as balance amount of lease for the first year. Accordingly the bid was confirmed in favour of the petitioner, parties signed the agreement and possession was handed over for exercise of fishing right by the petitioner.

4. The learned counsel for the petitioner contended that, there was a delay in handing over the possession of the lake, enabling the petitioner to exercise the fishing right granted to him. The said delay caused financial loss to the petitioner and the applications submitted in this regard by the petitioner, during the relevant point of time was also not considered.

5. The respondents directed the petitioner to pay the lease amount. The petitioner explained the financial loss caused to him on account of the delay in handing over the lake for exercise of fishing rights, offered Rs.10 Lakhs immediately and permit him to continue the fishing in the lake. However, the offer was rejected by the 2nd respondent and they have not even received the sum of Rs.10 Lakhs offered by the petitioner. Contrarily, the second respondent cancelled the lease granted in favour of the petitioner and therefore, the petitioner was constrained to move the present writ petition.

6. This Court granted an interim order of Status Quo and consequently, the petitioner was allowed to continue the fishing rights. However, the petitioner was not allowed to exercise his fishing rights after 21.01.2016. Thus, the petitioner sustained huge monetary loss, as he was not permitted to continue the fishing for the full tenure of three years.

7. The learned counsel for the petitioner is of an opinion that, once the bid was confirmed and the agreement was entered into between the parties, the successful bidder must be allowed to exercise the fishing rights for the tenure agreed between the parties and in the present case, the lease was cancelled during the middle of the tenure, thereby causing financial loss to the petitioner. Thus, the petitioner is entitled for refund of deposit with interest.



8. The learned Additional Government Pleader appearing on behalf of the respondents disputed the said contentions by stating that the lease period was three years from the year 2014 to 2017. As per Clause 10 of the lease agreement, the petitioner has not paid the lease amount and therefore the lease agreement was cancelled by invoking the said Clause. When the lessee has not paid the lease amount as per the agreement, the respondents are empowered to cancel the lease agreement and thus there is no infirmity as such in respect of the order impugned, cancelling the agreement passed by the respondents.

9. The learned Additional Government Pleader contended that, pursuant to the interim order granted in the present writ petition, the petitioner was allowed to exercise his fishing right till December 2016. However, the petitioner himself voluntarily not continued fishing from January 2017, despite the fact that there was no restraint from the competent authorities.

10. Profit or Loss in the business is incidental. Earning more gain or sustaining loss alone cannot be the ground for considering the issues raised. Fishing rights are extended based on the agreement and therefore, the terms and agreements play a pivotal role. The petitioner states that he sustained monetary loss due to the actions of the respondents. However, such contentions on merits has to be adjudicated with reference to the documents and evidences. Such an elaborate adjudication cannot be undertaken by the High Court in a writ proceedings under Article 226 of the Constitution of India.

11. The power of Judicial review conferred under Article 226 of the Constitution of India is to scrutinize the process through which a decision is taken by the competent authorities in consonance with the provisions of the statute, rules or regulations, but not the decision itself.

12. In the present case the respondents have taken a decision and cancelled the lease agreement. It is not in dispute that by invoking the Clause in the agreement, the order of cancellation is passed. Thus, the process is followed by exercising the powers conferred under the terms and conditions of the contract. If at all any mitigating factors prevails between the parties such factors are to be adjudicated with reference to the facts and circumstances and by scrutinizing the documents and evidences to be placed by the parties.

13. The petitioner states that he paid the lease amount at the initial stage. However there was a delay in handing over the lake for the purpose of exercising his fishing rights. Per contra, the learned Additional Government Pleader appearing on



behalf of the respondents states that pursuant to the interim order, he was permitted to continue the exercise of fishing rights even after cancellation of the lease agreement and the petitioner left the lake voluntarily in January 2017. These factors cannot be decided by this Court in a writ proceedings in the absence of adjudication. Such disputes cannot be resolved and the parties may approach the competent forum or Court of law for the purpose of adjudication with reference to the terms and conditions of the agreement and the contractual obligations between the parties.

14. It is not as if, the High Court can grant the relief of refund of the lease amount deposited merely based on the affidavit filed by the petitioner in the writ petition. However, such averments in the affidavit is also disputed by the respondents. Thus, the petitioner is at liberty to approach the competent forum / Court of law for the purpose of claiming relief for which he is entitled if any. As far as the impugned order of cancellation is concerned, the authorities competent invoked the clause in the agreement and cancelled the agreement. However, even after the cancellation of the agreement, pursuant to the interim order granted by this Court, the petitioner was allowed to exercise the fishing right and he had exercised.

15. If at all the petitioner seeks relief before any other forum the period during which the present writ petition was pending is to be taken into consideration for the purpose of condoning the delay, if any such petition to condone the delay is filed.

16. Thus, the petitioner is not entitled for the relief as such sought for in the present writ petition and consequently, the writ petition stands dismissed. No costs. Consequently connected Writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

nti/vs

To
1. The Chief Engineer,
O/o Public Works Department,
Central Office, Puducherry.



2. The Executive Engineer,
Irrigation Division,
Public Works Department,
Puducherry.

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3. The Assistant Engineer,
Irrigation Sub Division IV,
PWD, Bahour, Puducherry.

+1cc to Mr.G.Ethirajulu, Advocate SR.No.59669

+1cc to Government Pleader SR.No.59406

W.P.No.12358 of 2016
and
W.M.P.No.10692 of 2016

PMK (CO)
GMY (06/12/2021)