



W.P.(MD).No.7604 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2022

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.7604 of 2013

and

M.P.(MD)Nos.1 and 2 of 2013

P.Sivasubramanian

... Petitioner

Vs.

1.The District Collector/
Inspector of Panchayats,
Kanyakumari District,
Nagercoil.

2.The Assistant Director of Panchayat,
Rajakkamangalam Panchayat Union,
Kanyakumari District,
Nagercoil.

3.The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

4.The President,
First Grade Panchayat,
Rajakkamangalam,
Kanyakumari District.

5.The Inspector of Police,
Rajakkamangalam Police Station,
Kanyakumari District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the tender notification, dated 06.03.2013, on the file of the 4th respondent published in Dinathanthi Tamil daily on 13.03.2013 and to quash the same and further, to forbear the respondents in anyway forming the public market in the portion of the property in Old Survey No.13720/A1/5/1, 5/2, 5/3, R.S No. 917 at Neendakarai "B" Village, Agasteeswaram Taluk, Kanyakumari District and to restore the land in its original position.

For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the tender notification issued by the 4th respondent hearin for conducting shandi in a particular locality.

2.According to the petitioner, the place for which auction notice has been issued is a subject matter of civil suit in O.S.No.53 of 1996 on the file of Principal District Munsif Court, Nagercoil. The petitioner hearin had filed the said suit for the relief of declaration and permanent



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injunction. The said suit was dismissed by the trial court on 30.04.2003.

Challenging the same, the present writ petitioner has filed A.S.No.26 of 2004 before Second Additional Sub Court, Nagercoil. The learned Subordinate Judge has reversed the judgement and decree of trial court and granted a decree as prayed for on 28.04.2005. In this said suit, the State of Tamil Nadu represented by the District Collector Nagercoil is the first defendant.

3.The 4th respondent in the writ petition has floated the impugned tender to conduct the shandy only in the survey numbers which are subject matter of the above said suit. Hence, the present writ petition has been filed challenging the said auction notice. Though the auction notice is only for a period of one year, the petitioner has contended that the shandy is being admitted to be allowed in which the title of the petitioner had been declared and the authorities have been permanently enjoined from disturbing the possession of the writ petitioner.

4.Per contra, the learned Additional Government Pleader for the



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respondents has contented that the authorities have already taken steps to file a second appeal and the second appeal is in SR stage. Considering the fact that the judgement in the first appeal was delivered on 28.04.2005, the respondent authorities have not taken steps to number the second appeal for the past 17 years. The title and possession of the writ petitioner have been confirmed by a Civil Court in A.S.No.26 of 2004. In view of the above said facts, the respondent authorities are forbearred from forming public shandy in the portion of the property in old Survey No.13720/A1/5/1, 5/2, 5/3, R.S No. 917 at Neendakarai "B" Village, Agasteeswaram Taluk, Kanyakumari District . In case, if the respondent authorities succeed before this Court in second appeal, they are at liberty to proceed further in accordance with law.

5. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.08.2022

Index : Yes / No
Internet : Yes / No

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To

WEB COPY

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R.VIJAYAKUMAR ,J.

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Order made in
W.P.(MD).No.7604 of 2013

11.08.2022