



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.9842 of 2022

and

W.M.P. (MD) .Nos.7072, 7074 & 7076 of 2022

S.M.Ulaganathan

.. Petitioner

Vs

- 1.The District Collector,
Office of the Collectorate,
Sivagangai District, Sivagangai.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Sivagangai.
- 3.The Tahsildar,
Office of the Tahsildar,
Sivagangai.
- 4.The District Forest Officer,
Office of the District Forest Officer,
Sivagangai.
- 5.The Executive Engineer,
Public Works Department,
Saruganiyar Water Division,
Sivagangai.
- 6.The Assistant Executive Engineer,
Public Works Department,
Saruganiyar Water Division,
Sivagangai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings in Ka.No.2128/VAPA/V1/KOO7VALAKU/2022 dated 18.04.2022 and quash the same and consequently directing the fifth respondent to allocate the work of the removal of the seemai karuvelam tree as per the earlier proceedings of the second respondent dated 01.11.2017 in Na.Ka.A2/582/2017.



For Petitioner

: Mr.Sricharan Rangarajan
for Mr.Ramsundarvijayraj

For Respondents

: Mrs.D.Farjana Ghoushia
Special Government Pleader

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ORDER

Mrs.D.Farjana Ghousia, learned Special Government Pleader accepts notice on behalf of the respondents.

2. By consent of parties, the main writ petition itself is taken up for final disposal.

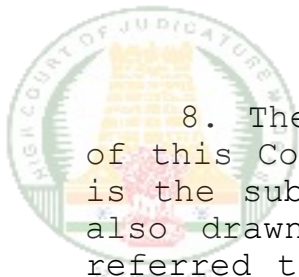
3. This writ petition has been filed challenging the impugned proceedings dated 18.04.2022 passed by the fifth respondent under which, according to the petitioner, the respondents have decided to fell the Seemai Karuvelam trees by engaging contractors pertaining to Kaanur Kanmoi, Sivagangai District.

4. It is the case of the petitioner that he has already been awarded the contract for felling of the afore mentioned trees in the said Kanmoi in the year 2017. Thereafter, according to the petitioner, he was prevented from felling the trees for no fault of him on account of the obstruction caused by the Forest Department.

5. It is also the case of the petitioner that a Full Bench of this Court by its order dated 16.03.2022 in a batch of writ petitions in W.P(MD)No.16485 of 2015 etc., batch, made it clear that only through the Public Works Department or by engaging contractors, felling of trees was permitted.

6. According to the petitioner, as per the impugned communication, the respondents have now decided to engage a contractor for felling of the trees in the subject kanmoi. According to the petitioner, since a contract has already been awarded in favour of the petitioner for felling of the trees in the very same kanmoi and the petitioner has been fighting for his rights ever since 2017 to execute the contract, the respondents cannot engage a third party contractor for felling of the trees and the contract must be awarded only to the petitioner.

7. It is the contention of the petitioner that neither the respondents have called for an auction nor they have permitted the petitioner to fell the trees in the kanmoi which is detrimental to the petitioner's interest and will amount to breach of contract committed by the respondents.



8. The learned counsel for the petitioner drew the attention of this Court to the impugned communication dated 18.04.2022, which is the subject matter of challenge in this writ petition. He has also drawn the attention of this Court to the Full Bench order referred to supra and after referring to the same, he would submit that the respondents cannot engage a third party contractor when the petitioner's contract is in subsistence. He would also submit that for no fault of the petitioner, he has been prevented from executing the contract which has been awarded to him in the year 2017.

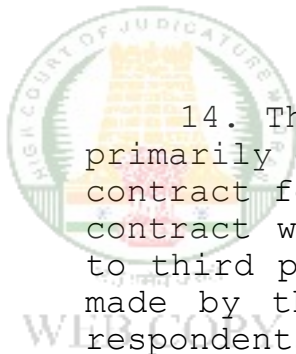
9. However, the learned Special Government Pleader appearing for the respondents on instructions would submit that the impugned communication is only an internal communication. Further, he would submit that the petitioner failed to obtain an interim order in the earlier writ petition filed by the very same petitioner before the first vacation Court in W.P(MD)No.9457 of 2022. For the very same cause of action, the petitioner has once again filed the present writ petition in W.P(MD)No.9842 of 2022.

10. However, the same is disputed by the learned counsel for the petitioner who would submit that the impugned order in that writ petition is different from the impugned order in this writ petition.

11. The learned Special Government Pleader appearing for the respondents would further point out that the Division Bench of this Court in its order dated 07.03.2019 in W.P(MD)No.5335 of 2019 where the present petitioner was the fifth respondent, was enjoined from cutting and removing the trees. He would submit that the injunction order is still in force.

12. However, according to the learned counsel for the petitioner, the said order got merged with the Full Bench order referred to supra wherein permission was granted to the respondents to fell the trees either by themselves or through contractors.

13. The learned Special Government Pleader appearing for the respondents would submit that as on date, no final notification has been issued as to who is going to fell the trees, whether it is the Public Works Department or the third party contractors. He would further submit that in case, pertaining to the survey numbers for which contract has been awarded to the petitioner in the year 2017 for the felling of trees, is going to be awarded to contractors, the same will be intimated to the petitioner prior to awarding any contract, in the form of auction notification and it is also stated that only in accordance with law, the notification will be issued.



14. The apprehension of the petitioner in this writ petition is primarily on the ground that the respondents are attempting to award contract for felling of trees pertaining to survey numbers for which contract was awarded in favour of the petitioner in the year 2017, to third party contractors. Since a categorical statement has been made by the learned Special Government Pleader appearing for the respondents on instructions that in case the respondents decide to award contract, through a public notification only the same will be done, the interest of the petitioner is very much protected according to this Court. Further, the petitioner is already facing an injunction order against him passed by the Division Bench of this Court in W.P(MD)No.5335 of 2019 which admittedly is still in force. He has to take necessary steps to vacate the interim order granted on 07.03.2019.

15. After recording the submissions made by the respective counsels, the following directions are issued by this Court:

(a) The respondents will have to issue public notification pertaining to survey numbers for which the petitioner has been awarded contract for felling of trees in Kaanur Kanmoi, Sivagangai District in the year 2017, in case the respondents decide to award the contract to third party contractors;

(b) The petitioner will have to take necessary steps to vacate the interim order granted by a Division Bench of this Court against him in W.P(MD)No.5335 of 2019 on 07.03.2019;

(c) The undertaking given by the learned Special Government Pleader on instructions from the respondents that as on date, no final decision has been taken with regard to whether the respondents are going to fell the trees by themselves or through third party contractors, is recorded;

(d) It is made clear that the subject writ petition pertains to only the survey numbers for which the contract has been awarded to the petitioner for felling of trees in the year 2017 under the contract dated 01.11.2017. It does not prohibit the respondents to fell the trees either by themselves or through contractor in respect of other survey numbers.

(e) In case the respondents themselves decided to fell the trees without engaging third party contractors, they are at liberty to do so and there is no requirement for the intimation to be given to the petitioner.

(f) All the remedies are left open to the petitioner in case the petitioner seeks remedy for breach of contract.



16. With the above directions, the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer/
Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PM

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.*

To

- 1.The District Collector,
Office of the Collectorate,
Sivagangai District, Sivagangai.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer, Sivagangai.
- 3.The Tahsildar,
Office of the Tahsildar, Sivagangai.
- 4.The District Forest Officer,
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- 5.The Executive Engineer,
Public Works Department,
Saruganiyar Water Division, Sivagangai.
- 6.The Assistant Executive Engineer,
Public Works Department,
Saruganiyar Water Division, Sivagangai.

+1 CC to M/s.S. RAMSUNDARVIJAYRAJ, Advocate (SR-23943[F]
dated 20/05/2022)

+1 CC to M/s.SPL.GP (SR-24050[F] dated 23/05/2022)

W.P. (MD)No.9842 of 2022

19.05.2022

NSN (CO) GC (02.06.2022) 5P 9C

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