



W.P.(MD)No.18720 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.12.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.18720 of 2019

and

W.M.P(MD)No.15079 of 2019

S.Akbar

... Petitioner

/Vs./

1.The District Collector,
District Collectorate Office,
Sivagangai, Sivagangai District.

2.The Revenue Divisional Officer,
Sivagangai, Sivagangai District.

3.The Tahsildar,
Thiruppuvanam Taluk,
Sivagangai District.

4.M.Ayothi

... Respondents

(4th Respondent is impleaded
as per the order of the Court dated 10.12.2024)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records made in the impugned order in Na.Ka.No.A2/5433/2017 dated 30.07.2019 passed by the second respondent and quash the same.



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For Petitioner : Mr.M.V.Venkateshan
For R1 to R3 : Mr.D.Gandhi Raj
Special Government Pleacer
For R4 : Mr.C.Vakeeswaran

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 30.07.2019 thereby, imposed a penalty of Rs.8,64,000/- for the illegal cutting of Nattukaruvela Trees in the Panankulam Kanmai and Nelmudikarai Kanmai situated at Kalukerkadai Revenue Village, Thirupuvanam Taluk, Sivagangai District.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The petitioner participated in the tender invited by the second respondent for cutting of Seemaikkaruvel trees to an extent of 165.63.5 and about 43.43.5 hectares comprised in Survey Nos.54/1 and 55/5 of Panankulam Village, Thiruppuvanam Taluk, Sivagangai District. The



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petitioner was being the highest bidder offering a sum of Rs.30,30,000/- and he was awarded cutting order for a period of one month. Subsequently, time was extended by an order dated 26.07.2017. While being so, one Pasumpon Raja filed a Public Interest Litigation challenging the proposed public auction of cutting of trees and the same was dismissed by this Court on 09.03.2017. Thereafter, the fourth respondent also filed another Public Interest Litigation challenging the public auction. In that application, this Court granted an interim order on 06.02.2018. While being so, the second respondent by an order dated 06.12.2017 imposed a penalty on the petitioner to the tune of Rs.8,64,000/- for the illegal removal of 45 tonnes of Nattukaruvela trees. Challenging the said order, the petitioner has filed a writ petition in W.P.(MD)No.5919 of 2018 and this Court by an order, dated 22.03.2018 set aside the order of the second respondent and remitted the matter back to the second respondent for passing fresh order after issuance of show cause notice and opportunity of hearing to the petitioner.

4. Once again, the second respondent passed the very same order dated 30.07.2019 without considering the explanation submitted by the



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petitioner. In the meanwhile, a criminal complaint was lodged as against the petitioner before the Inspector of Police, Thiruppuvanam police station and the same was registered in Cr.No.414 of 2017. After completion of the investigation, final report has been filed before the learned Judicial Magistrate, Manamadurai in C.C.No.33 of 2018 for the offences under Section 379 r/w 34 of IPC and it is pending trial. The fourth respondent and one J.Pasumpon filed writ petitions in W.P.No. 18601/2017, W.P.No.4068/2017 and W.P.No.3917 of 2018 were dismissed on 03.08.2018.

5. In view of the interim order passed by this Court, the petitioner also could not able to cut and complete the cutting order which was awarded in favour of the petitioner. Therefore, the petitioner filed W.P. (MD)No.11007 of 2019 for extension of time. By an order dated 30.04.2019 this Court directed the second respondent to consider the representation submitted by the petitioner, dated 12.03.2019 seeking extension of time. The fourth respondent has filed another writ petition W.P.No.15860 of 2019 to take action as against the second respondent for not collecting any penalty without knowing the fact the earlier order dated 06.12.2017 was set aside.



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6. The learned counsel for the petitioner would submit that without even assigning the quantum of trees, which are already cut down by the petitioner, the second respondent imposed a penalty of Rs.8, 64,000/-. The second respondent also failed the valued trees which were cut down and imposed the penalty. That apart, though the criminal case registered there was no seizure of any trees of Nattukaruvela from the petitioner and no seizure of vehicle along with trees. Even the second respondent awarded penalty of Rs.8,64,000/- he also relied upon Rule 4 of the Tamil Nadu Panchayats (Action against illicit cutting of Tree) Rules, 2001. Accordingly, the Executive Authority or the Commissioner of the Secretary, as the case may be, within two days from the receipt of the report of illicit cutting of tree from the Panchayat Assistant/Rural Welfare Officer, Grade-II, shall inspect the site of the offence, satisfy himself about the truth of the report, take measurements of the trunk of the tree in question, conduct enquiries in the vicinity, record statements of any possible witnesses, if available and to assess the quantum. It is also relevant to extract the Rule 4 of Tamil Nadu Panchayats (Action against illicit cutting of Tree) Rules, 2001.

“4. Assessment of value of the tree and compounding



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of offences.-The Executive Authority or the Commissioner of the Secretary, as the case may be, within two days from the receipt of the report of illicit cutting of tree from the Panchayat Assistant/Rural Welfare Officer, Grade-II, shall inspect the site of the offence, satisfy himself about the truth of the report, take measurements of the trunk of the tree in question, conduct enquiries in the vicinity, record statements of any possible witnesses, if available, who might disclose the identity and the name of the offender, if mentioned in the report of the Panchayat Assistant/Rural Welfare Officer, Grade-II or revealed from the evidence of the witnesses, the Executive Authority or the Commissioner or the Secretary, as the case may be, shall decide whether to prosecute the offender or to compound the offence as per Rule 2 of the Tamil Nadu Panchayats (Composition of Offences) Rules, 2000. In case the cut tree parts are seized by the Panchayat Assistant / Rural Welfare Officer, Grade-II and handed over to the Executive Authority or the Commissioner or the Secretary, as the case may be and where he decides to compound the offence, the Panchayat Assistant / Rural Welfare Officer, Grade - II, as the case may be, shall assess the value of the tree parts by following the procedure prevailing in the in the Revenue Department and communicate the same to the Executive Authority or the Commissioner or the Secretary, as the case may be. The



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Executive Authority or the Commissioner or the Secretary as the case may be, shall measure the cut tree parts, assess all the value of the tree parts and decide quantum of penalty by way of compounding fee to be imposed which shall represent the compensation for the offence committed and shall be in terms of number of times the value of tree which shall not be less than twice the value of the tree assessed and then pass orders for compounding of the offence. The orders so passed shall be communicated to the offender by means of a written notice, to be served on him in the manner specified in the Annexure, informing him of the offence committed, enquiries made thereon, the decision made requiring the offender to pay the value of the cut tree parts assessed and the amount of the compounding fee imposed. These amounts shall be mentioned separately in the said notice for remittance by the offender within a time to be specified in the notice of the period being not less than fifteen days, or in default, face imminent prosecution. If it is decided to confiscate the seized tree parts, the offender shall not be asked to pay the value of the tree parts seized. So, such a notice shall also indicate whether the seizure of the tree parts involved in the offence will be returned to the offender or will be confiscated. Incase, the offender remits the amount mentioned in the above notice, into the Funds of the Village Panchayat or the Panchayat Union Council or



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the District Panchayat, as the case may be, within the period prescribed, it shall be at the discretion of the administration, either to accept the compounding of the offence or to proceed with the prosecution. The fact of compounding the offence and the payment of amount by the offender shall be reported to the Tahsildar. Where an offender after receiving the notice referred to above, fails to respond to the notice within the period specified thereon or where the Executives Authority or the Commissioner or the Secretary, as the case may be, desires to prosecute the offender instead of adopting the method of compounding the offence, the Executive Authority or the Commissioner or the Secretary, as the case may be, shall lay a complaint with concerned Judicial Magistrate.”

7. On a perusal of the counter affidavit and on the submission made by the learned Special Government Pleader appearing for the respondents 1 to 3 revealed that on receipt of the complaint from various persons, criminal case has been registered as against the petitioner and in pursuant to the same, the petitioner was imposed penalty. Further, the criminal case in C.C.No.33 of 2018 is still pending.



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8. Subsequently, challenging the public auction of cutting or trees Public Interest Litigation has been filed and obtained interim order, therefore, the petitioner could not able to complete the cutting order, however, subsequently, the time was extended to cut down the trees. However, the petitioner was imposed penalty for cut down Nattukaruvela trees 45 tonnes and by penalty at 10 times of value. In total 8,64,000/-.

9. On perusal of the records revealed that there is no piece of evidence to show that the petitioner had cut down Nattukaruvela trees by weighing 45 tonnes, there was no seizure of Nattukaruvela trees and no vehicle has been seized from the petitioner while transporting Nattukaruvela trees. It is against the Rule 4 of the Tamil Nadu Panchayats (Action against illicit cutting of Tree) Rules, 2001. That apart, this Court specifically directed the second respondent to conduct an enquiry after giving an opportunity of hearing on the show cause notice in W.P.(MD)No.5919 of 2018 dated 22.03.2018 after receipt of the explanation from the petitioner. Now, enquiry was conducted by the second respondent. There is no material produced to substantiate the weighing of cutting of trees as 45 tonnes. Further, no rule permits the



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second respondent to impose a penalty of 10 times of the value allegedly cut down the trees by the petitioner. Even before this Court, no material is produced to substantiate the penalty imposed by the second respondent. The fourth respondent has no role to play in this writ petition, while challenging the order passed by the second respondent imposed the penalty. Since the second respondent failed to assess the quantum of trees which were allegedly cut down by the petitioner and failed to substantiate 10 times of penalty. The rule does not permit.

10. In view of the above, the impugned order passed by the second respondent cannot be sustained and it is liable to be quashed. Accordingly, the impugned order passed by the second respondent, dated 30.07.2019 is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2024

Index : Yes / No
Internet : Yes/No
NCC : Yes / No
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To

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G.K.ILANTHIRAIYAN, J.

am

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Dated:
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