

W.P.(MD)No.4046 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.4046 of 2025

and

W.M.P(MD)No.2906 of 2025

Dr.Muthu

... Petitioner

Vs.

1. The Executive Magistrate/Tahsildhar

Manalmelkudi

Manalmelkudi(Taluk)

Pudukottai District

2. Sahayamary

3. Anbu Arasu

4. Selvarani

(Respondents 2 to 4 impleaded vide Court

dated 21.02.2025 ub WMP(MD) No.3279 of 25)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, seeking a **Writ of Certiorarified Mandamus**, calling for the records pertaining to the Impugned Order issued by the Respondent vide R.C.No. 5076/2024/A9 on 07.02.2025 and quash the same as illegal and consequently directing the respondent to permit the petitioner to run the prawn farm situated in Survey No. 349/3, 349/7, 349/9, 349/10 and 349/13 situated at Raja Thoppu Village, Manalmelkudi Taluk, Pudukkottai District.



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For Petitioner : Mr.M.Anandakumar
for Mr.V.Selvakumar

For Respondents : Mr.N.Senthil Ayyanar
No.1 Government Advocate
Nos. 2 to 4 : Mr.M.Suresh
for Mr.L.Prabakaran

ORDER

This Writ Petition has been filed to quash the impugned Order passed by the respondent vide R.C.No. 5076/2024/A9 on 07.02.2025 and quash the same as illegal and consequently direct the respondent to permit the petitioner to run the prawn farm situated in Survey No. 349/3, 349/7, 349/9, 349/10 and 349/13 situated at Raja Thoppu Village, Manalmedikudi Taluk, Pudukkottai District.

2. The learned counsel appearing for the petitioner would submit that the petitioner is running a prawn farm in Survey Nos. 349/3,349/7,349/9,349/10 and 349/13 situated at Raja Thoppu Streetm Manalmedi Taluk, Pudukkottai District. Every year the petitioner is renewing the required permission without fail. The District Collector, Pudukkottai issued a public notice instructing all prawn farms in Manalmedikudi and Avudaiyarkovil Taluks to register or renew their

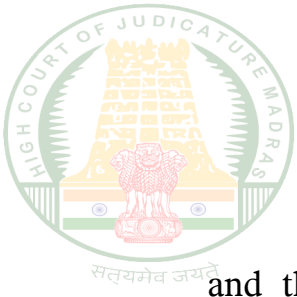


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registration immediately immediately the petitioner submitted an application on 30.12.2024 along with necessary documents and the registration renewal process is in progress. Due to some previous enmity against the petitioner complaint was lodged to the respondents alleging that the prawn farm is causing sanitation issues in Raja Thoppu Village. Based on the false complaint the respondent issued notice on 28.01.2025 under Section 152(1) of BNSS and notice under Sections 326(C), and Section 270(Public Nuisance) and Section 279(Fouling Water of Public Spring or Reservoir) of BNSS Act. Thereafter the petitioner also gave an explanation and thereafter without following procedure under Section 157 of BNSS and without recording evidence the authority has straight away passed the impugned order, therefore there is a procedural violation and no any opportunity was given to the petitioner and without following the natural justice order has been passed. Therefore the order passed by the first respondent is liable to be quashed.

3. The learned Government Advocate appearing for the first respondent would submit that the petitioner without having licence is running prawn farm and without following rules causing water pollution



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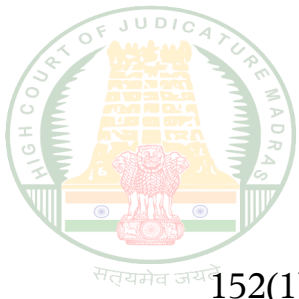
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and thereby complaint was lodged and the District Collector issued public notice. Based on the complaint they issued notice under Section 152(1) of BNSS. Thereafter the petitioner appeared and submitted his explanation and only after hearing the petitioner they had passed the order. However no evidence has been taken in this regard. The petitioner without exhausting remedy before the Revenue Divisional Officer straight away filed this petition, therefore the present petition is liable to be dismissed.

4. The learned counsel appearing for the respondents 2 to 4 would submit that this petitioner without license and without following procedures under pollution laws was running prawn farm and they are causing nuisance to the public and thereby lodged complaint and the respondents also have taken appropriate steps

5. Heard both sides and perused the materials available on record.

6. The main contention of the petitioner is that no opportunity was given to the petitioner after issuing notice to the petitioner under Section



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152(1) of BNSS. Opportunity was not given to the petitioner and evidence was also not taken before passing final orders, hence the order passed by the first respondent is liable to be set aside. In support of his contention he relied on the judgment of this Court in the case of ***Ind Bharah Powergencom Ltd .vs. The Revenue Divisional Officer-cum*** , wherein this Court in has observed as follows:

52. A conspectus of the materials available in this proceeding in the light of the illuminating judicial pronouncements, would pave way to emerge with following points which indicate that the impugned order suffers from certain legal infirmities:

.....

e) The Executive Magistrate shall take evidence as in a summons case in terms of [Section 138](#), after the persons appear to show cause against the order passed under [Section 133 Cr.PC](#) and on considering the materials available, the Executive Magistrate shall make the conditional order absolute. In the present case, there is no such recording of evidence of the parties concerned and even at the inception, a final order has been passed without taking evidence and without any enquiry.



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7. On careful perusal of the above said judgment it is clear that the Executive Magistrate shall take evidence as in a summons case in terms of Section 138, after the persons appear to show cause against the order passed under Section 133 of Cr.P.C now Section 153 of BNS and on considering the materials available the Executive Magistrate shall make the conditional order absolute. In the case on hand also the first respondent has passed order without taking evidence. Therefore the said case law is squarely applicable to the present facts of the case.

8. The learned Government Advocate appearing for the first respondent also relied on the judgment of this Court in A.Arul .vs. The District level committee, Coastal Aquaculture Authority, Rep. by its Chairman, The District Collector, First Floor, Collectorate, Tiruvallur in W.P.Nos.15353 and 15390 of 2020, wherein this Court after referring to the judgment of the Hon'ble Apex Court has stated that since the petitioner has not obtained any permission under the Act dismissed the petition.



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9. So far as the judgment relied on by the learned Government Advocate is concerned there is no discussion about the provision under Section 157 of BNSS . In the present case the dispute is in respect of non taking of evidence under Section 157 of BNSS, therefore the case law relied by the learned counsel appearing for the petitioner is squarely applicable to this case and the case law relied on by the learned Government Advocate is not applicable to the present facts of the case. In view of the above discussions, this Court is of the opinion that the order passed by the first respondent is liable to be set aside.

10. Further it is represented by the learned Government Advocate there there is revisional remedy available to the petitioner to approach the Revenue Divisional Officer but the petitioner without exhausting the revisional remedy straight away approached this Court. Therefore the petitioner is at liberty to approach the revisional authorities in accordance with law since the first respondent has not passed order after recording evidence.



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11. In the result, the Writ Petition stands allowed and the order passed by the first respondent is set aside and the matter is remanded back to the first respondent for passing fresh order after taking evidence. The first respondent is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition stands closed.

06.03.2025

NCC : Yes / No
Index : Yes / No
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To

The Executive Magistrate/Tahsildhar
Manalmelkudi
Manalmelkudi(Taluk)
Pudukottai District



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P.DHANABAL, J.

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