



W.P(MD)No.6646 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2025

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

W.P(MD)No.6646 of 2025

and

W.M.P(MD)No.4911 of 2025

P. Balasubramanian,

... Petitioner

Vs

**The Executive Magistrate-Cum-Thasildar,
Manamelkudi Taluk,
Pudukkottai District.**

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned final order issued by the respondent in R.C. No.5076/2024/A9 dated 13.02.2025 and quash the same as illegal.

For Petitioner : Mr.A.Arul Jenifer

For M/s.KBS Law Office,

For Respondent : Mr.M.Karunanithi

Government Advocate (Crl.Side)



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ORDER

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This Writ Petition has been filed seeking to quash the impugned final order issued by the respondent in R.C. No.5076/2024/A9, dated 13.02.2025.

2. The learned counsel appearing for the petitioner would submit that the petitioner is running a prawn farm in Survey Nos. 358/1, 358/2, 358/3 and 358/4, belong to the Thanjavur Chathiram Administration. Every year the petitioner is renewing the required permission without fail. The District Collector, Pudukottai issued a public notice instructing all prawn farms in Manalmelkudi and Avudaiyarkovil Taluks to register or renew their registration immediately. Immediately the petitioner submitted an application on 04.02.2025 along with necessary documents and the registration renewal process is in progress. Due to some previous enmity against the petitioner, a 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



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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 (Crl.Side) appearing for the respondent would submit that the petitioner without having licence is running prawn farm and without following rules causing water pollution 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.



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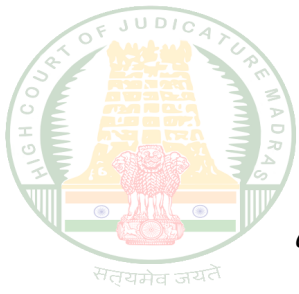
4. Heard both sides and perused the materials available on record.

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



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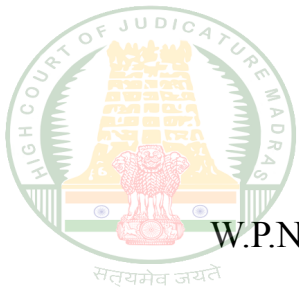


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appear to show cause against the order passed under Section 133 Cr.PC and on considering the materials available, the Executive Magistrate shall make the conditional order absolute. In the present case, there is no such recording of evidence of the parties concerned and even at the inception, a final order has been passed without taking evidence and without any enquiry.'

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 Cr.P.C, after the persons appear to show cause against the order passed under Section 133 of Cr.P.C now Section 153 of BNSS and on considering the materials available the Executive Magistrate shall make the conditional order absolute. In the case on hand also the 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 (Crl.Side) 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



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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.

9. So far as the judgment relied on by the learned Government Advocate (Crl.Side) 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 (Crl.Side) 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 respondent is liable to be set aside.

10. Further it is represented by the learned Government Advocate (Crl.Side) that there is a 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.



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Therefore the petitioner is at liberty to approach the revisional authorities in accordance with law since the respondent has not passed order after recording evidence.

11. In the result, the Writ Petition stands allowed and the order passed by the respondent is set aside and the matter is remanded back to the respondent for passing fresh order after taking evidence. The 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.

04.04.2025

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR

To

1. The Executive Magistrate-Cum-Thasildar,
Manamalkudi Taluk,
Pudukkottai District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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P.DHANABAL, J.

LR

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