

(2008) 08 MAD CK 0041

In the Madras High Court

Case No : Writ Petition (MD) No. 3631 of 2005 and M.P. (MD) No's. 626 and 3833 of 2005

C. Rathinavel

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 2(2), 29, 35, 38, 39

Citation : (2008) 08 MAD CK 0041

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C. Rajesh, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The writ petitioner claims to be a manufacturer of Lime Powder for white washing and other purposes. According to him,

the coral reef are one of the raw materials for the said purpose. The coral reef were collected by the fishermen and in turn being sold to the

petitioner. He also claims that the coral reef are a lifeless substance and he has also filed a writ petition before the Principal Bench being W.P. Nos.

14547 to 14552 of 2002 to forbear the respondents from interfering with the collection of coral reef in storage and used by the petitioner on the

ground that the coral reef being treated as mineral. According to him, the writ petitions are still pending.

2. The petitioner also states that whenever he brings coral reef purchased from the fishermen, the second respondent, who is the Wildlife Warden,

Gulf of Mannar Marine National Park is stopping the same and also threatening

the petitioner with penal action. He also submits that the coral reef will not come under the Wild Life Protection Act.

3. The writ petition was admitted on 25.4.2005 and an interim order was granted on 25.04.2005. The second respondent has filed a detailed counter affidavit dated 30.11.2005. He has also filed an W.V.M.P. No. 626 of 2005 for vacating the interim injunction granted by this Court.

When this matter came up, the main writ petition was directed to be posted and accordingly it is posted today for final disposal.

4. The second respondent had categorically stated that a reading of Section 2(2) read with Section 39(b) of the Wild Life (Protection) Act, 1972

will clearly show that even the skeleton of the animal will be an animal article which is only called as Coral. By virtue of Section 39(b) an animal

article, is a Government property of the Central Government and dealing with such article including possession, is made an offence and the persons

who are in possession of the same were directed to handover the same to the authorised officers and in terms of Section 39(3) which reads as

under:

No person shall, without the previous permission in writing of the Chief Wild Life Warden (a) acquire or keep in his possession, custody or control

or (b) transfer to any person, whether by way of gift, sale or otherwise, or destroy or damage, such Government property.

5. u/s 2(2) of the Wild Life (Protection) Act, the term animal article is defined which is as follows:

animal article"" means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the

whole or any part of such animal (has been used, and ivory imported into India and an article made therefrom)

6. In the light of the same, the second respondent sought for dismissal of the writ petition. Paragraphs 12 to 15 of the counter affidavit of the

second respondent can be usefully extracted as below:

12. I state that by considering the importance of coral reefs in marine ecosystem and in order to restore the depleting marine resources it had been

brought under schedule I of Wild Life Protection Act 1972 by way of amendment. The notification is issued for the betterment of the people who

depend on the marine ecosystem for their livelihood. Unless the coral reefs

whether it is alive dead is protect in the interest of the people who depend on the marine system, it will seriously affect the entire system because of the threat to the fish production. Even the dead corals is very important in its natural eco-system for revitalizing the habitat. The notification would ultimately help balancing the marine eco system including fish production without getting the species endangered that lives on and depend on the coral reefs. The benefit accrued out of protection of coral reef is huge compared to the negligible benefit arrived to certain individuals through its exploitation etc and issue of such notification is in the larger interest of the people in general and the same is in conformity with the provisions of the Act.

13. The protection of coral reefs provide livelihood for the millions of poor fisher folk apart from supply of fish for the common public as the coral reefs are considered as feeding, breeding and nursery grounds for most of the commercial fishes especially prawns, crabs, ornamental fishes etc., Hence, the employment opportunity provided in the lime industry is very negligible compared to the larger Benefits and Interest of the public including poor fisher folk, the Notification dated 11.07.2001 and 05.12.2001 issued for over all betterment of the marine ecosystem and the same would provide more fish production leading to maintaining the healthiness of marine environment.

14. I respectfully state that the present contention of the writ petitioner in this writ petition is self-contradictory to the contention raised by him in the earlier writ petition in W.P. Nos. 14547/2002. It is a specific averment in the aforesaid writ petition that the coral reef is not a mineral, it is a living animal and that the Mines and Mineral department should not interfere with their activities. It is the present contention in this writ petition that the very same coral reef is not a living animal, but the same is a mineral. The writ petitioner is not entitled to blow hot and cold and they do not have a specific stand.

15. I respectfully state that the other contention that the area is not a National Park and that the State Government has no power to issue a notification u/s 35 of the Wild Life Protection Act is untenable. The term "National Park" is also defined under the Act. National Park means "an area declared, whether u/s 35 or Section 38 or deemed, under Sub-section (3) of

Section 66, to be declared as a "National Park" from the definition of National Park, it is very clear that if an area is included in the notification issued u/s 38 or deemed, under Sub-section (3) of Section 66 is a National Park for all purposes and therefore, the provisions of the Wildlife Protection Act, 1972 will apply for all these areas, in this case, already the area is notified u/s in G.O. 962 Forest and Fishing dated 10.09.1986 and therefore, the area is fully enjoyed the protection under the Wildlife Protection Act, 1972. The other contention that the coral reef is not a living animal, but the same is a lifeless substances breaks from the coral reef and falls on the sea floor and therefore, the provisions under Wildlife Protection Act are inapplicable is not correct. The coral reef also comes under the definition of "habitat" since the coral reef is not only an animal article, but it also act as a habitat and provides surviving environment for many of the marine organisms. As per Section 29 of the Wildlife Protection Act, 1972, no person shall destroy, exploit or remove any wild life including forest product from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wildlife Warden. The coral reef also act as a habitat and it provides surviving environment for many of the marine organism. Therefore, the petitioner is prevented from destroying such habitat as per Section 29 of the Wildlife Protection Act 1972. It is not the case of the writ petitioner that he has been a habitat. As per notification of the Union of India which has been upheld by this Hon'ble Court, coral reef comes under Schedule-I provided under the Act.

7. The learned Counsel for the respondents also submits that a Division Bench of this Court in Writ Appeal No. 723 to 725 of 2004 dated

29.03.2005 held in paragraph 43, which reads as follows:

We therefore make it clear that as long as the writ petitioners do not catch and kill alive animal by severing their external skeleton. But only

purchase the coral reef bring the outer skeleton of the dead sea animal which is washed shore after the death of the reef buildings coral the authority

have no right to interfere with the activities as they do not violate provisions of

the Act.

8. However, the State has taken up the matter on Appeal to the Supreme Court in SLP Civil Nos. 15768 to 15770 of 2005. The Hon"ble

Supreme Court by an order dated 12.08.2005 had granted stay of operation of judgment of the Division Bench.

9. In the light of the stay granted by the Supreme Court and in the light of the averments made by the second respondent and in view of the

provisions of the Wild Life (Protection) Act 1972, no case is made out by the petitioner. Hence, this Writ Petition is dismissed. Interim Injunction

granted is also vacated. No costs. Consequently, Miscellaneous Petitions are also closed.