

(2015) 03 MAD CK 0043

In the Madras High Court

Case No : Writ Petition (MD) Nos. 15294/2014 and M.P. (MD) Nos. 2, 4 of 2014 in W.P. (MD) Nos. 15294 of 2014, 1, 2 of 2014 in W.P. (MD) No. 15593/2014

Sivakumar

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 4 LW 867 : (2015) WritLR 879

Hon'ble Judges : S. Tamilvanan and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : Mahabob Athiff for Ajmal Associates, for the Appellant; B. Pugalendhi, Spl. Govt. Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

S. Tamilvanan, J.—The common issue raised in all these writ petitions relates to the conduct of public auction to uproot and remove "Julia Flora" Trees (Karuvelam Trees) standing in various water tanks/kanmois, situated in various Panchayats in Ramanathapuram District. Hence, all the writ petitions were heard together and disposed of by this Common Order. The common prayer of the petitioners in all these writ petitions is to quash the Public Auction Notices issued by the Block Development Officers of Ramanathapuram, Thiuvedanai, R.S. Mangalam and Kamuthi Panchayat Unions, pursuant to the orders of the District Collector, Ramanathapuram, and consequently direct the respondents to hold auction for the right to cut and sell "Julia Flora" Trees (karuvelam trees) available in the Government tanks and bunds in Ramanathapuram District, through Revenue Authorities, as per the Board of Revenue Standing Orders, in a transparent and fair manner.

2. Heard the learned counsel appearing for the petitioners, the learned Special Government Pleader appearing for the official respondents and the learned counsel appearing for private respondents.

3. Mr. G. Thalaimutharasu, learned counsel appearing for the petitioners in W.P. (MD) Nos. 20591 and 21070 of 2014 submitted that as per RSO 18-A of the Standing Orders of the Board of Revenue, in respect of Sale of Trees by Auction, the District Collector is empowered to delegate powers only to the concerned Revenue Divisional Officers or Tahsildars, as per sub-clause 5 of RSO 18-A and not to the Block Development Officer and according to him, in the present case, the delegation of power is given to the Block Development Officers to conduct auction for uprooting and removing karuvelam trees, which is contrary to the above said provision of law. Learned counsel for the petitioners further submitted that as per the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001, there should be minimum of 10 days time, be given for conducting auction, after the publication of tender and it should not exceed 21 days but, in the instant case, without providing sufficient days, within four days auction dates were fixed. In support of his contention, the learned counsel drew the attention of this Court to the publication, dated 13.12.2014, made by the Block Development Officer, Thiruvadanai Panchayat Union, Ramanathapuram District, in respect of auction to be conducted on 17.12.2014, for cutting Karuvelam trees and therefore it is totally against law.

4. The learned counsel further contended that if auction is conducted by Block Development Officers for various village tanks and kanmois, on the same day, at various places, it would be difficult for the bidders to participate at all places and that would also affect the revenue to the Government and the respondents have not followed the mandatory procedure, according to law, hence, it affects the rights of the petitioners in participating the public auction being conducted for cutting of karuvelam trees, which would also adversely reduce the revenue to the Government.

5. Learned counsel appearing for the petitioners in other writ petitions also advanced their arguments in the same line as that of the arguments advanced by Mr. G. Thalaimutharasu, learned counsel appearing for the petitioners in W.P. (MD) Nos. 20591 and 20170 of 2014.

6. Per contra, Mr. Bharathidasan, learned counsel appearing for some of the village panchayats, who are respondents 8, 4 and 6, respectively, in W.P.(MD) Nos. 15294, 18842 and 19789 of 2014, submitted that there is no violation on the part of the first respondent, the District Collector, in delegating the power to the Block Development Officers and according to him, the District Collector can delegate the power in favour of the concerned Revenue Divisional Officers, if trees are available in the land vested with Government and if trees vested with panchayats, such power shall be delegated to the Block Development Officers and hence, there is no error on the part of the District Collector in delegating power to the Block Development Officers to conduct auction, according to law. Mr. Bharathidasan, learned senior counsel, further submitted that as per RSO 18(3) of the Standing Orders of the Board of Revenue, right for cutting the trees on some categories of poramboke lands vests in the pachayats and for which,

referred the relevant provisions of the Standing Order, which reads as follows:

"3. Right over Trees on some Categories of Poramboke lands which vest in the panchayats.--Some categories of poramboke like cattle stands, cart-stands, burning and burial grounds, topes and unreserved forests vest in Panchayats. The right of Government over the trees in such poramboke stand transferred to the Panchayats. In the case of porambokes entrusted to Panchayats for use the Panchayats have the same right over the trees as those in respect of trees on lands vested in the Panchayats. The Panchayats will have no rights on trees on lands which are not vested or entrusted to them."

7. Referring to the Tamil Nadu Panchayats (Determination of Claim to Trees Growing on Public Roads or Other Property vesting in or Other Property vesting in or Belonging to Village Panchayats) Rules, 2001 (G.O.Ms. No. 1908, Rural Development (C-4) Department, dated 28.03.2001), Mr. Bharathidasan, learned counsel appearing for village panchayats, submitted that if the land is vested with the village panchayat, ultimately it comes under the concerned panchayat and therefore the Block Development Officers of the concerned Panchayat Union is the Competent Authority under the District Collector and therefore the writ petitioners cannot say that the Block Development Officer is not the competent authority or the District Collector/first respondent cannot delegate the power to auction karuvelam trees to be uprooted and he argued that all the writ petitions are not legally sustainable.

8. According to the learned Special Government pleader, the procedure is being followed properly by the official respondents. He also produced an affidavit filed by the Assistant Director, Rural Development and Panchayat Raj Department, Ramanathapuram District, wherein it is stated that necessary action was taken by the District Administration to remove "karuvelam trees" (julia flora), standing in the water bodies in Ramanathapuram District, as per the direction issued by this Court in the order, dated 09.01.2014, passed in W.P.(MD) Nos. 18748 and 0779 of 2013, by issuing the impugned tender notification.

9. While we were hearing the arguments of both the learned counsel, it was brought to the notice of this Court that "karuvelam trees", relating to the writ petitions in W.P.(MD) No. 18824 and 19769 of 2014 are concerned, auctions were already conducted and confirmed in favour of the highest bidders and trees were also uprooted and removed, since there was no interim orders in those writ petitions. In view of the completion of work, the relief sought for in those writ petitions has become infructuous. Having considered the facts and circumstances, the writ petition in W.P.(MD) Nos. 18824 and 19769 of 2014 are dismissed as infructuous. However, no order as to costs. Connected Miscellaneous petitions are ordered to be closed.

10. In this regard, Mr. G. Thalaimutharasu, learned counsel appearing for the petitioner in W.P.(MD) Nos. 20519 and 20170 of 2014 drew the attention of this Court to the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of

Leases and Sales in Panchayats) Rules, 2001 and submitted that sufficient time was not granted as per the said Rules. It is not in dispute that as per rule 14 of the Rules, there should be a minimum of 10 days and maximum of 21 days time given, for conducting the public auction from the date of publication. In this case, admittedly, even the minimum required 10 days time was not given, as is evident from the affidavit filed by the Assistant Director of Rural Development (Panchayats), Ramanathapuram.

11. Mr. G. Thalaimutharasu, learned counsel for the petitioners also drew the attention of this Court to the affidavit filed by the Assistant Director of Rural Development (Panchayats), Ramanathapuram, wherein he has stated that there are 1297 tanks out of which 823 tanks are under the control of the panchayat unions and remaining 477 tanks are under the control of Public Works Department. For the 823 panchayat tanks, valuation reports from respective Tahsildars have been obtained only for 262 tanks. The notification for public auction was made on 28.08.2014 and paper publications were effected in the Tamil Dailies "Thina Thanthi", "Dinamalar" and "Dinamani" between 28.08.2014 and 03.09.2014.

12. It is seen from the aforesaid averments that "karuvelam trees" standing in all the tanks were being auctioned though valuation reports were not obtained for all the tanks and it is not in dispute that without getting proper valuation report auction should not be conducted by any Block Development Officer. Similarly, without following the procedure laid down for public auction and by granting minimum 10 days and maximum 21 days for the public to participate in the auction, proper auction cannot be conducted. It is not in dispute that all the karuvelam trees standing in the tanks/kanmois are to be removed from the Kanmois, since they are detrimental to the interest of public, especially for agriculture operation as the said trees are sucking more water from the land.

13. On a perusal of the material papers available on record, it is clear that "karuvelam trees" relating to the writ petitions are in the lands vested with village panchayats under the concerned Block Development Officers of Ramanathapuram District and therefore in view of the Revenue Standing Order 18(3), the District Collector/first respondent is empowered to delegate the power to the Block Development Officers concerned to conduct public auction, which cannot be considered as an illegal act or an act contrary to law. However, as contended by the learned counsel for the petitioners, the value of the trees should be assessed and only based on the upset price decided by the authorities, auction should be conducted, after providing reasonable opportunity to the public by making advertisement, in accordance with law. It is open to the petitioners and other parties to participate in the auction, like any other competitors.

14. On the facts and circumstances, we find it just and reasonable to set aside the auctions that were conducted in respect of karuvelam trees relating to 28 tanks in Thiruvadanai Block, relating to W.P(MD) No. 20591 of 2014, 10 tanks in R.S. Mangalam Block, relating to W.P(MD) No. 21070 of 2014, 92 tanks in

Ramanathapuram Block relating to W.P(MD) No. 15294 of 2014, 23 tanks in R.S. Mangalam Block relating to W.P(MD) No. 15593 of 2014 and 23 tanks in R.S. Managalam Block relating to W.P(MD) No. 21423 of 2014 and direct the respondents to conduct fresh auction, as per the Standing Orders of the Board of Revenue and standing order and the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001, by making publication in advance by providing not less than 10 days and maximum of 21 days time, after publication, as contemplated under the Rules and before the publication value of the trees should be assessed. If there is any earlier valuation, as stated in the affidavit dated 16.03.2015, filed by the Assistant Director of Rural Development (Panchayats), Ramanathapuram, for which fresh valuation is not required. It is made clear that the writ petitioners are also entitled to participate in the auctions to be conducted. The respective Block Development Officers shall conduct the auction, under the guidance of the District Collector, Ramanathapuram, in the manner known to law, and complete the auction, by confirming the same based on the claim of successful bidders. After confirmation, the successful bidders are entitled to uproot the trees, as per the procedure known to law. With the above observations, the writ petitions in W.P.(MD) Nos. 15294, 15593, 20591, 21070 and 21423 of 2014 are disposed of. No order as to costs. Connected miscellaneous petitions are ordered to be closed.