

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29144 & 29152 of 2018

and

W.M.P.Nos.34085 & 34087 of 2018

Purushothaman
S.Ilayaraja

... Petitioner in W.P.No.29144 of 2018
... Petitioner in W.P.No.29152 of 2018

Vs.

- 1.The District Collector,
Collector,
Thiruvallur.
- 2.The Member Secretary,
Coastal Aquaculture Authority,
GDR Tower,
12-A, Bharathi Street,
Vanuvampattai,
Madipakkam Post,
Chennai – 600 091.
- 3.The Revenue Divisional Officer,
Ponneri,
Thiruvallur District.
- 4.The Tahsildar,
Gummidipoondi,
Thiruvallur District.

5.The Assistant Director of Fisheries,
Ponneri,
Thiruvallur District.

6.The Assistant Director of Agriculture Department,
Gummidipoondi Taluk,
Thiruvallur District.

... Respondents 1 to 6 in
both W.P's

7.Gowrishanker

... 7th respondent in W.P.
No. 29144 of 2018

8.Giridharan

... 7th respondent in W.P.
No.29152 of 2018

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records culminating in the Notice dated 11.10.2018 under Na.Ka.No.112/A2/2018 issued by the 5th respondent and quash the same and consequently direct the 5th respondent not to harass or interfere with the petitioners shrimp farm activities in their own patta land by considering the petitioners representation dated 22.10.2018.

For Petitioners : Mr.R.Shanmugam (in both W.Ps)

For R1 to R6 : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.G.Krishnaraja
Additional Government Pleader
(in both W.P.s)

For R7 : No appearance (in W.P.No.29144 of 2018)
: Mr.Balan Haridas
(in W.P.No.29152 of 2018)

COMMON ORDER

The *lis* on hand has been instituted to quash the order passed by the Assistant Director of Fisheries Department, Tiruvallur dated 11.10.2018 asking the petitioners to close down the Prawn Culture Unit which is organised without getting due permission from the Competent Authority under the Statutes and Rules in force.

2. The learned counsel for the petitioner Mr.R.Shanmugam would submit that the order impugned has been passed without jurisdiction and beyond the scope of the provisions of the Coastal Aquaculture Authority Act, 2005 [hereinafter referred as 'Central Act'] and the rules framed thereunder. The Fisheries Department can regulate the Aquaculture farms organised within the Coastal Regulations Zone. In the present case, the land belongs to the petitioners is falling beyond the Coastal Regulation Zone which is admitted by the respondents. That being so, the question of obtaining permission from the Coastal Authorities under the Central Act would not arise at all. Permission needs to be obtained from the Coastal Authorities only for the Prawn Culture farms organised within the Coastal Regulation Zone. Since, the subject land not being a land situate within the limits of

Coastal Regulation Zone, seeking permission would not arise at all.

3. The learned counsel for the petitioners would further submit that nearly about 300 Aquaculture farms are in operation in Tiruvallur District in Tamil Nadu alone and all such Prawn Cultures are allowed to carry on their activities and therefore, the ill motivated complaint given by the 7th respondent against the petitioners farm ought not to have been entertained by the Authorities for the purpose of issuing the impugned order.

4. The learned counsel for the petitioner would urge this Court by stating that the Coastal Aquaculture Authority in letter dated 04.02.2021, issued certain guidelines for culture of *Litopenaeus vannamei* in fresh water/inland farms. As per the said guidelines issued by the Coastal Aquaculture Authority, no Act is enacted nor rules are framed for the purpose of regulating Aquaculture farms across the State of Tamil Nadu outside CRZ and therefore, very action initiated against the petitioners under the provisions of the Coastal Aquaculture Authority Act, 2005 is untenable.

5. The learned Counsel for the petitioner also referred the counter affidavit filed by the respondents and would submit that the Counter proceeds mainly on the presumption that the land belongs to the petitioners situate within the Coastal Regulation Zone, but the fact is otherwise and therefore, the impugned order is without jurisdiction and liable to be set aside.

6. Mr.Balan Haridas, learned counsel for the 7th respondent in W.P.No.29152 of 2018, would strongly oppose the contentions of the petitioner by stating that the learned counsel for the petitioners has misconstrued and misinterpreted the provision of the Act and Rules. The contention that the impugned order is without jurisdiction is incorrect. As per the Act, No Objection Certificate from the Pollution Control Board is mandatory and in the present case, the petitioners have not even obtained any permission from the competent authorities. Therefore, the writ petitions are liable to be rejected.

7. The Aquaculture Farms are causing damages to the agricultural activities in that locality and more so, affecting the ground water. Since the

Aquaculture Farms causing environmental damages and resulting in destruction of agricultural lands, the Aquaculture activities are to be closely monitored and to be regulated with reference the Act by the authorities. The authorities competent are not initiating any action against the illegal Aquaculture Farms functioning without any permission under the Act.

8. Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of the Fisheries Department would oppose the contentions of the petitioners by stating that a Committee headed by the District Collector has been constituted under the Act to conduct an inspection and to grant permission. The Coastal Aquaculture Farms carrying persons shall ensure that the agricultural lands, Salt Pan, Mangroves, Wetlands, Forest Lands for Villages common purposes and National Parks and Sanctuaries shall not be converted for construction of Coastal Aquaculture Farms as per the Coastal Aquaculture Authority Act, 2005 and the guidelines issued thereunder.

9. In the present case, the petitioners have not obtained any permission for developing Aquaculture Farm and the 7th respondent filed a complaint stating that the Aquaculture activities in the patta land belongs to the petitioners is damaging the agricultural activities in that locality. Shrimp

Farm owners have not respected the community rights of the people in that locality and the conflict frequently arises on account of such Prawn Culture Farms in that locality.

10. With reference to the arguments made by Mr.Balan Haridas, learned counsel for the 7th respondent, that the provisions of the Tamil Nadu Aquaculture (Regulation) Act, 1995 is to be followed, the learned Additional Advocate General would submit that the said Act has been repealed by the Tamil Nadu Repealing Act, 2023, which was notified in the Tamil Nadu Government Gazette on 7th March, 2023. Thus, the State Act is not in force and the Coastal Aquaculture Authority Act (Central Act) is being implemented for the purpose of controlling the Aquaculture activities across the State of Tamil Nadu.

11. Section 2(d) of the Coastal Aquaculture Authority Act, 2005 defines “Coastal Area” means the area declared as the Coastal Regulation Zone for the time being, in the notification of the Government of India in the Ministry of Environment and Forests (Department of Environment, Forests and Wildlife) No. S.O.114(E), dated the 19th February, 1991 and includes such other area as the Central Government may, by notification in the

Official Gazette, specify”.

12. Section 2(d) is to be read along with Rule 5(i) of the Coastal Aquaculture Authority Rules, 2005. Rule 5 provides Functions of the Authority. Rule 5(i) contemplates that the Authority shall “ensure that the agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purposes and the land meant for public purposes and national parks and sanctuaries shall not be converted for construction of coastal aquaculture farms so as to protect the livelihood of coastal community”.

13. Therefore, under Section 2(d) of the Coastal Aquaculture Authority Act, 2005, the Aquaculture activities must be carried on within a distance of two kilometres from the High Tide Line (HTL) of seas, rivers, creeks and backwaters. Any Aquaculture activity beyond the distance of two kilometres from the HTL is illegal and authorities are bound to initiate action and close down the Aquaculture Farms and prosecute the offenders.

14. The Act unambiguously stipulates that the Aquaculture activities are to be carried on within a distance of two kilometres from the High Tide

Line (HTL) of seas, rivers, creeks and backwaters. While so, the authorities are incompetent to grant permission beyond the permissible limit as contemplated under Section 2(d) of the Act. Permissions are to be granted in consonance with Rule 5(i) of the Coastal Aquaculture Authority Rules, 2005.

15. Section 11 of the Coastal Aquaculture Authority Act, 2005 provides Functions of Authority. Accordingly, the authority shall make regulations for the construction and operation of aquaculture farms within the coastal areas. Again Section 11(a) indicates that construction and operation of Aquaculture Farms must be within the Coastal Areas as defined under Section 2(d) of the Act. Such Aquaculture Farms must be registered as Coastal Aquaculture Farms under Section 11(c). Therefore, the Act provides restrictions for developing Aquaculture Farms within the coastal area as defined under Section 2(d) of the Act and Rule 5(i) provides such Aquaculture Farms shall not be made by converting the agricultural lands, salt pan lands, mangroves, wetlands, forest lands, land for village common purposes and the land meant for public purposes and national parks and sanctuaries. The area of operation of aquaculture farms are stipulated under the Act. Conversion of agricultural lands and other classified lands are

prohibited under the Coastal Aquaculture Authority Act. Therefore, the permission is to be granted only within the ambit of the provisions of the Act and the authorities competent must exercise their powers within the scope of the Act and any erroneous or excess exercise of powers would result in prosecuting the Officials, who has given such permission.

16. In the present case, Mr.P.Kumaresan, learned Additional Advocate General brought to the notice of this Court that 2709 Aquaculture Farms are functioning in the State of Tamil Nadu. Out of which 2227 farms are registered. 348 applications submitted seeking permissions are under consideration of the Department and 134 Aquaculture Farms are identified as illegal and actions are initiated pursuant to the directions issued by the National Green Tribunal, Southern Zone, Chennai in Original Application No.82 of 2016 dated 11th August, 2020.

17. The National Green Tribunal in the Original Application No.82 of 2016 dated 11th August, 2020 has passed the following orders:

“9. So under such circumstances, we are compelled to pass an order directing the District

Collector who is the authority under the Coastal Aqua Culture Authority Act to grant permission to close down those units which are operating without getting the permission from the concerned authorities and disconnect the electricity connection of those units as mere pendency of their application for registration will not ratify their illegal act and file an action taken report to this Tribunal in compliance with the direction issued by this Tribunal today.”

18. The Committees were already constituted in exercise of the powers conferred by Sub-Section (1) and (3) of Section 4 of the Coastal Aquaculture Authorities Act, 2005. The Committee consisting District Collector as Chairperson and other members as contemplated under the Act is convening meeting periodically and initiating actions to regulate the activities of Aquaculture Farms across the State of Tamil Nadu.

19. Farms in consonance with the provisions of the Act and guidelines are also to be periodically monitored by conducting inspections by the competent authorities of the Fisheries Department. The consequences of these Aquaculture Farms are resulting in environmental damages and

agricultural activities are affected.

20. In this context, the Supreme Court of India in the case of ***S.Jagannath vs. Union of India and Others*** reported in (1997) 2 SCC 87, held as follows:

“40. We may refer to constitutional and statutory provisions which mandate the State to protect and improve the environment. Article 48-A of the Constitution of India states that “the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen, the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The Environment (Protection) Act, 1986 (the Act) was enacted as a result of the decisions taken at the United Nations' Conference on Human Environment held at Stockholm in June 1972 in which India participated. The Indian delegation was led by the then Prime Minister of India. The Statement of Objects and Reasons to the Act is as under:

“The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations' Conference on Human Environment held in Stockholm in June 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident”.”

21. It is not only the Coastal Aquaculture Authorities Act, 2005. Since the aquaculture farms are causing environmental damages, all other relevant laws are to be looked into while granting permission and monitoring the activities of the Aquaculture Farms across the State of Tamil Nadu.

22. In the present case, the petitioners are running Aquaculture Farms without any permission. Therefore, immediate actions are warranted in respect of all illegal Aquaculture Farms across the State of Tamil Nadu. The respondents are directed to immediately take action to close down all illegal Aquaculture Farms and prosecute the offenders in the manner contemplated under Section 14 of the Coastal Aquaculture Authorities Act, 2005. Section 14 of the Coastal Aquaculture Authorities Act contemplates punishment for carrying on coastal aquaculture without registration. Accordingly, if any person carrying on coastal aquaculture or traditional coastal aquaculture or causes the coastal aquaculture or traditional coastal aquaculture to be carried on in contravention of Sub-Section (1) of Section 13, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to one lakh rupees, or with both. Therefore, the authorities competent has to register a complaint in respect of all such illegal Aquaculture Farms in the State of Tamil Nadu and prosecute the offenders in the manner contemplated under the Act and Rules. The said exercise is directed to be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

23. In the event of failure on the part of the authorities in initiating the action, the Government has to step-in and initiate appropriate disciplinary proceedings against the officials for their lapses, dereliction of duty and negligence under the Service Rules in force.

24. With the above directions, the present Writ Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

29.01.2024

veda/Jeni

Index : Yes

Neutral Citation : Yes

Speaking order

Note: Registry is directed to communicate a copy of this order to the Chairman, Tamil Nadu Pollution Control Board, Guindy, Chennai – 32.

To

- 1.The District Collector,
Collector,
Thiruvallur.
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GDR Tower,
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- 6.The Assistant Director of Agriculture Department,
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Thiruvallur District.
- 7.The Chairman,
Tamil Nadu Pollution Control Board,
Guindy, Chennai – 32.

W.P.Nos.29144 & 29152 of 2018

S.M.SUBRAMANIAM, J.

veda/Jeni

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