



W.P(MD)No.4495 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.4495 of 2023

and

W.M.P(MD)No.4222 of 2023

and

W.M.P(MD)No.6054 of 2023

S.Perumal

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by it's Addl. Chief Secretary,
Water Resource Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Executive Engineer,
Public Works Department,
Thamirabarani Division,
Palayankottai,
Tirunelveli District.

3.The Junior Engineer,
Public Works Department/W.R.O,
Manimutharu Canal Section,
Panankulam-627 154,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings issued by the 1st respondent dated



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28.10.2022 in எண்.7174 / க்யூ - 1 / 2015 - 6 and quash the same as unsustainable under law and consequently direct the 1st respondent to grant exemption to the leasehold fisheries rights of Sri Vigna Vinayagar in Sadayaman Kulam and Vilvarayan Kulam in Venkatrengapuram Village, Cheranmahadevi Taluk, Tirunelveli District from the purview of G.O.No.16, Public Works Department, dated 14.01.2011.

For Petitioner : Mr.C.Dhanaseelan
For Respondents : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The Writ Petition has been filed in the nature of a certiorarified mandamus seeking interference with the proceedings of the first respondent, dated 28.10.2022 in எண்.7174 / க்யூ - 1 / 2015 - 6 and to direct the first respondent to grant exemption to the lease hold fisheries rights of Sri Vigna Vinayagar in Sadayaman Kulam and Vilvarayan Kulam in Venkatrengapuram Village, Cheranmahadevi Taluk, Tirunelveli District, from the purview of G.O.No.16, Public Works Department, dated 14.01.2021.

2.In the affidavit filed in support of the writ petition, it has been stated that the writ petitioner is a devotee of Sri Vigna Vinayagar Koil at Venkatrengapuram Village, Cheranmahadevi Taluk, Tirunelveli District, and also a Committee member of the said temple. There are two irrigation tanks



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viz., “Sadayaman Kulam” and “Vilvarayan Kulam” in the Village. The Sadayaman Kulam is in S.No.201. It measures 11.35.0 Hectares and the Vilvarayan Kulam is in S.No.62/2. It measures 18.41.5 Hectares.

3.It had been contended that the Zamindar had originally granted right to all the villagers to fish in the said Kulam. Thereafter, during the British period, this right was recognized as a leasehold right to catch fish. It was claimed that this right was enjoyed for more than 100 years. It was also claimed that this right was recorded in the Village Settlement in the year 1909, since the lease was for 30 years. After Independence, the lease was recognized by G.O.Ms.No. 341. It was claimed that in the year 1984, in the records prepared on 30.11.1985, the recognition of fisheries right was recognized under Section 20 of the Estate Abolition Act, 1948 with respect to the two Kulams. It had also been stated that the revenue authorities are also collecting yearly lease amount. The amount is used for maintenance of the Temple. It has been stated that there are no other income for the Temple. All the villagers have elected a Committee for the administration of the Temple.

4.In the year 2011, G.O(Ms)No.16, Public Works (w-2)Department, was passed on 14.01.2011 holding that individuals and organizations cannot conduct auction for fisheries right without orders of the Government, for the



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tanks under the control of Water Resource Organization, Public Works Department.

5.The petitioner had filed W.P(MD)No.14002 of 2011 seeking a mandamus to exempt the petitioner from the purview of aforementioned Government Orders. The said writ petition was disposed of since a representation had not been given to the Government and granting liberty to the petitioner to forward the representation. The petitioner then sent a representation to the first respondent on 11.06.2013. It had been stated that another writ petition in W.P(MD)No.18514 of 2013 had been filed seeking a restraint against the respondents from interfering with the fisheries right. That was disposed of on 03.12.2019 claiming that orders must be passed in the earlier representation. Thereafter, an auction notice was issued by the third respondent. The petitioner then filed W.P(MD)No.2443 of 2021 and stay was granted by this Court. Finally, the first respondent passed the order impugned dated 28.10.2022 whereby they had rejected the representation of the petitioner herein. Questioning that particular order, the present writ petition has been filed.

6.A counter affidavit had been filed by the respondents wherein they had stated that after the enactment of Tamil Nadu Farmer's Management of



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Irrigation Systems Act, 2000, all Government Orders and legislations relating to irrigation system in the State would be nullified. It was therefore stated that the petitioner cannot take recourse to Section 20 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. It had also been stated that the petitioner has not challenged G.O.(Ms)No.16, Public Works Department, dated 14.01.2011. It had also been stated that if the temple requires assistance for revenue ,then they can approach HR&CE Department. It had also been stated that the very purpose of G.O(Ms)No.16, was to strengthen the bunds and shutters of the water resources. It had been further stated that Unique ID numbers had been given for Sadayaman Kulam as TNTP 04 T0979 and for Vilvarayan Kulam as TNTP 07T0794. This would indicate that the said Kulams were assigned only as water resources under the Public Works Department. It had been stated that after considering all aspects, the request of the petitioner was rejected by the impugned order.

7.The learned counsel for the petitioner has placed reliance on the fact that the right of the petitioner had been recognized even after independence, by a noting, wherein the permanent fisheries rights had been granted for Sadayankulam and Vilvarayan Kulam for 30 years and thereafter permanently by the authorities. It had been stated that the application of G.O(Ms)No.16, should not be recognized and it was therefore contended that the right of the



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petitioner's to seek exemption from G.O(Ms)No.16, is always available and should be recognized by this Court.

8.The learned counsel for the petitioner also pointed out the Section 20 of the Act and particularly the proviso, wherein it was very specifically provided that there is exemption for Kulams which had been recognized.

9.The learned Additional Advocate General on the other hand pointed out that Unique ID numbers were granted for the two Kulams and stated that they had been brought under the purview of the Public Works Department. It was contended that the petitioner had not questioned G.O(Ms)No.16 and therefore contended there was no issue of the petitioner's right being recognized by the respondents.

10..The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in (1976) 2 SCC 495, *State of Mysore and Others-vs-K.Chandrasekhara Adiga and Another* in Para Nos.10 and 23 are extracted hereunder:

“10. A Division Bench of the High Court accepted the contentions of Respondent 1. It held that the as signment of Kumki lands is not regulated by the Grant Rules, 1960, but by the



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Madras Board's Standing Orders which constitute "a complete and exhaustive law with regard to kumki lands." In the result, it allowed the writ petition and quashed the condition in the assignment order with respect to trees. It was further made clear that "the assignment in favour of the petitioner bestows on him the right to all the trees on the kumki land of which there was an assignment.

23. Although styled as 'privileges', kumki rights are recognised by these statutory Rules and the Standing Orders aforesaid. They are property rights notwithstanding the fact that their scope is restricted and their exercise is subject to these statutory Rules. Therefore, these rights could be curtailed, abridged or taken away only by law and not by an executive fiat. "

In the instant case, the rights have taken away by the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948 and not by an executive fiat. Thus, this judgment would not come to the rescue of the petitioner.

11.The learned counsel for the petitioner also placed reliance in (2007) 7 SCC 482, *A.A.Gopalakrishnan-vs-Cochin Devaswom Board And Others*. Para No.10 is extracted hereunder:

"10.The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/ Sebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of



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temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

Hence, the legislature had passed a law protecting the tanks. They are now vested with the Public Works Department. The apprehension of the Hon'ble Supreme Court had been addressed. This judgment is not applicable to the facts of this Case.

12.The learned Additional Advocate General relied on 2000-1-L.W.154, *The Government of Tamil Nadu by its Collector of Ramanathapuram at Madurai and others-vs-Peria Pallivasal Abiramam by its Trustee and Another*. Para No.24 is extracted hereunder:

".... 24.For the purpose of the present suit, which is restricted to the possession of the oorani and the fishery right, Section 20 is the appropriate provision and Section 18 may be ignored as it deals only with buildings. A perusal of Section 20 shows that even though an occupier's claim may



be sustained to have been exercising a particular pre-existing right which requires to be recognised, if in the opinion of the Government that in public interest the exercise of such right by the claimant should be terminated, it may do so by giving three months notice as provided under Section 20(2). Therefore, it has to be declared in this suit cannot be absolute, but subject to the rights of the Government as contained in the Act and the orders passed by the Government from time to time under the Act. In G.O.Ms.1108, Commercial Taxes and Religious Endowments Department dated 27.10.1980, the Government examined the rights of the religious institutions to obtain ryotwari patta for ooranies. It was prohibited by virtue of Section 14-A of the Act inserted by Amendment Act 49 of 1974. The rights of such institutions admitted into possession of a non-ryotwari land by the land owners, were examined in detail. It was decided that permission granted under Section 19-A need not be reopened in respect of religious institutions. But certain conditions were imposed while permitting them to remain in possession. After considering the various suggestions and objections, in the operative portion of the order the following three conditions were imposed:

(i)The oorani should be thrown open to the public without let or hindrance.

(ii)The Government shall have reversionary right to the land and oorani when it ceases to serve the purpose of the oorani.



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(iii) *The oorani is to be maintained in good condition.....”*

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The directions laid down apply to the facts of this case. The petitioner cannot claim exclusive rights. It should be “*thrown open to the public*”.

13.The learned Additional Advocate General also relied on 2018-4-L.W. 629, *The Chokkampatti Panchayat, Through its President, Chokkampatti, Tenkasi Taluk, Tirunelveli District and others-vs-Mauthanayagam & Others*. Para Nos.18, 20 and 22 are extracted hereunder:

“..... 18.*Introduction of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948) is not only for the purpose of abolition of intermediaries but also to confer rights or ownership to the ryots. The fact that the plaintiffs were not given ryotwari patta, during settlement, would show that the plaintiffs or their predecessor-in-interest were not recognised as ryots for the purpose of giving them ryotwari patta under the Act. It is true that the the order granting or refusing to grant ryotwari patta is not final and the Civil Court can always entertain a suit to decide as to whether a person is entitled to claim title or not. In this case, except the sale deed under Ex.A1, the plaintiffs have not produced any document to prove their possession so as to conclude that they are in possession of the property. If the plaintiffs claim title under Ex.A1 and prove continuous possession by independent evidence, it is true that the Civil Court can independently decide irrespective of the fact that ryotwari patta was not granted to the*



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plaintiffs under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act (26 of 1948).....

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In the instant case, except for a few stray documents, the petitioner has not established the claim for exclusive rights. The tanks are vested with the Public Works Department and they alone have the right to regulate fishing in the tanks.

14.The Tamil Nadu Farmer's Management of Irrigations Systems Act, 2000 must also be referred wherein it had been stated that the provisions of the Act, are in addition to and not contrary to any other law.

15.In the facts of the case, it is seen that no records have been produced to establish that the petitioner has a vested right to have fishing rights over the said ponds. Those rights stood vested with the Public Works Department. The Public Works Department had granted Unique ID numbers for the two ponds. Once that is done the ponds vest only with the Public Works Department. There cannot be claim for hereditary rights to continue to fish in the said ponds. The has to be opened up and rights can be optioned the petitioner have every right to participate in the auction. The impugned order does not suffer any infirmity.

16.As pointed out by the learned Additional Advocate General very importantly, the petitioner had not questioned G.O.Ms.No.16 which is fulcrum



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C.V.KARTHIKEYAN, J.

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