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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19484 of 2014
and
M.P.(MD)No.2 of 2014

Arulmigu Agamaveera Vinayagar Thirukovil,
Nettur, through its,
Assistant Commissioner/Executive Officer,
Nettur, Alangulam T.K.
Tirunelveli District. ... Petitioner

Vs.

1.The State represented by its
Secretary, Public Works Department,
St.George Fort,
Chennai.

2.The Assistant Engineer,
Water Resources Organization,
Public Works Department,
Chitter Basin Division,
Tenkasi, Tirunelveli District.

3.The Assistant Executive Engineer,
Water Resources Organization,
Public Works Department,
Chitter Basin Division
Tenkasi. .... Respondents

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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 relating to the impugned order of the 2nd respondent in No. Ko. 12.U.Po (Pa) dated 13.11.2014 in so far as anneaxure NO.1 Serial NO.7 and quash the same as illegal and un constitutional.

For Petitioner : Mr.S.Chellapandian

For Respondent : Mr.D.Gandhiraj,
Spl. Government Pleader for R1 to R3.

ORDER

Heard the learned counsel for the writ petitioner, the learned Special Government Pleader for the respondents 1 to 3.

2.The writ petitioner is a temple. It had all along been auctioning the fishing rights in respect of the petition mentioned tanks. The petitioner's rights came under cloud on account of issuance of G.O.(Ms)No.16, Public Works Department dated 14.01.2011 and the consequential communication dated 13.11.2014 issued by the second respondent. Challenging the same, the writ petition came to be filed.

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3. The stand of the temple is also supported by the Hindu Religious and Charitable Endowment Department. The learned counsel for the petitioner draws my attention to the extract of the property register maintained by the temple. It reads as follows:-

> *" நெட்டுர் கிராமத்தில் இருக்கும் காசிக்குவாயத்தான் குளம் (1) கிடாரக் குளம் (2) புங்கன் குளம் (3) அய்யனார் குளம் (4) தெற்குபறையன் குளம் (5) நாரணம்மாள் பெரிய குளம் (6) நெட்டுர் பெரிய குளம் (7) கடங்கனேரி குளம் இவைகளின் மச்சமாசி மாசூல் அருள்மிகு ஆகமவிரவிநாயகர் திருகோவிலுக்கு பாத்தியப்பட்டது."*

4.Copies of the receipts issued from time to time also described the petitioner's remittence as "நிரந்தர மீன் பாசி வரி" (perpetual fishery right tax).

5.While dealing an identical issue in W.P.(MD)Nos.4693 and 16534 of 2015, I had held as follows:-

> *"5.The petitioners are temples and obviously, they will not fall within the purview of Clause 4(iv) of the impugned G.O. But the other clauses in the said G.O empower the department*

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to conduct fishery auctions. That is why, the petitioners herein call upon this Court to render a declaration that this G.O will not be applicable to temple tanks. I have earlier taken the view that unless a person has ownership over a tank, one cannot claim the fishery right alone which flows out of the ownership over the tank. I am now of the view that I have stated the proposition a little too widely. Fishery right is an right in immovable property. The petitioners-temples have been enjoying fishery rights over a century and more. In fact, the receipts issued by the authorities describe the remittance made by the petitioners as one towards perpetual fishery right (நிரந்தர மீன்பாசி வரி). The question that calls for consideration is whether such a right in immovable property can be taken away by an executive intervention issued in the form of G.O. The answer has to be in the negative.

6.Following the order passed in WP(MD)Nos.1913 & 1914 of 2020 dated 06.02.2020, a joint meeting of the officials at the Secretary level was convened on 10.03.2020. The minutes drawn on the occasion are as follows :

> *"Customary right for fishing has ordinarily been given to the temple even during the British rule. Even if the water body was maintained by the Public Works Department the fishing right was given to the temple and has been in vogue for more than a hundred years.*
>
> *The Principal Secretary / Commissioner has suggested that if the fishing right between the Public Works Department and the temple settled, 50% of the*

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auction amount will be given to the Public Work Department for maintenance of the particular tank.

The Principal Secretary, Fisheries Department stating that there is no issue between Hindu Religious and Charitable Endowments Department and Fisheries Department regarding fishing right of the temples.

The Principal Secretary, Public Works Department has stated that to restore the fishing right of the temples, a policy decision has to be taken at Government level and necessary appropriate action will be taken."

The government is yet to take final decision in the matter. If the government takes any decision adverse to the temples, it has to be through a statutory intervention and not otherwise. Since such a decision has not been taken till date, I hold that the G.O Ms No.16 dated 14.01.2011 is inapplicable to the petition-mentioned water bodies.

6.This writ petition is disposed of on the same lines. No costs.

Consequently, connected miscellaneous petition is closed.

29.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Public Works Department,
St.George Fort,

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Chennai.

G.R.SWAMINATHAN, J.

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2.The Assistant Engineer,
Water Resources Organization,
Public Works Department,
Ramanathi Basin Sub Division,
Ambasamudram,
Tirunelveli District.

3.The Assistant Executive Engineer,
Water Resources Organization,
Public Works Department,
Ramanathi Basin Sub Division,
Ambasamudram.

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