



W.P(MD)No.10621 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10621 of 2015

and

M.P.(MD)Nos.1, 2 and 4 of 2015

Arulmighu Pasunkili Ayyan Sastha Temple,
Gopalamudram,
Ambasamudram Taluk,
Tirunelveli District,
Represented Through its Managing Trustee. ... Petitioner

Vs.

- 1.The Secretary to the Government,
Public Works Department,
Govt. of Tamilnadu,
Secretariat, Chennai - 9.
- 2.The Executive Engineer,
Public Works Department,
Tirunelveli Canal Division,
Tirunelveli.
- 3.The Assistant Engineer,
Public Works Department,
Cheranmahadevi Sub Division,
Cheramahadevi,
Tirunelveli District.



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4. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai - 34.

5. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli.

... Respondents

*(R4 and R5 are impleaded vide order dated
30.08.2023 in W.M.P.(MD)No.10851 of
2017 in W.P.(MD)No.10621 of 2015)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, challenging the G.O.M.S. 16 PW(W2) Department dated 14.01.2011 and the letter No.Ko 10/2015 dated 15.07.2015 issued by the 3rd respondent which is discriminatory in nature and to quash the same and further forbearing the respondents from conducting auction for fishing right in Nambineri kulam Tank in S.No.364, Vahai Kulam Tank in S.No.281, Velavan Kulam Tank in S.No.147, Koththan Kulam Tank in S.No.156 situated at Gopalasamudram Village, Ambasamudram Taluk, Tirunelveli District.

*(Prayer is amended vide order dated
30.08.2023 in M.P.(MD)No.3 of 2015 in
W.P.(MD)No.10621 of 2015)*



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For Petitioner : Mr.T.Selvan

For Respondent : Mr.D.Gandhiraj,
Spl. Government Pleader for R1 to R3.
Mr.R.Ragavendran,
Govt. Advocate for R4 and R5.

ORDER

Heard the learned counsel for the writ petitioner, the learned Special Government Pleader for the respondents 1 to 3 and the learned Government Advocate for the respondents 4 and 5.

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 15.07.2015 issued by the third respondent. Challenging the same, this writ petition came to be filed.



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3.The validity of said government order has already been upheld.

Therefore, this Court cannot go into the issue of validity. Realizing the said position, the learned counsel for the petitioner submits that he would be satisfied, if it is held that the said government order is not applicable in the case of the petition mentioned tanks. 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:-

“கோபால சமுத்திரம் கிராமத்தில் இருக்கும் நம்பநேரி குளம் (1) வாகைக்குளம் (2) வேலன் குளம் (3) கொத்தன் குளம் (4) இவைகளின் மச்சமாசி மாகுல் ஸ்ரீ பசுங்கிளி அய்யன் சாஸ்தாங் கோவிலுக்கு பாத்தியப்பட்டது. வருஷம் 1 ந.90 கிஸ்தி செலுத்தபட்டு வருகிறது. 1362ம் பசலியில் பாசிக் குத்தகை ரூ.740/-.”

4.Copies of the receipts issued from time time to time also described the petitioner's remittance as “நிரந்தர மீன் பாசி வரி” (perpetual fishing right tax).



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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 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 :



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“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 auction amount will be given to the Public Works 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.



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

Consequently, connected miscellaneous petitions are closed.

15.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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