

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9690 OF 2013

Masoli Sahakari Matsya Vyavasayik
Sahakari Sanstha Maryadit,
Dharmapuri, Tq. Parli Vaijnath,
Dist. Beed through its Chairman
Shaikh Rafique Shaikh Abdul Aziz
Age: 37 years, occu.: Fisherman,
R/o: Dharmapuri, Tq. Parli-Vaijnath,
Dist. Beed.

...PETITIONER

versus

1. The State of Maharashtra,
Through Secretary,
Co-operative Milk and Fishery
Department, Mantralaya, Mumbai-32
2. The Grampanchayat Office Dharmapuri,
Tq. Parli -Vaijnath Dist. Beed,
Through its Gramsevak.
3. The Grampanchayat Office Dharmapuri,
Tq. Parli Vaijnath, Dist. Beed,
Through its Sarpanch.
4. Deputy Commissioner of Fishery,
Aurangabad Division, Aurangabad. ...RESPONDENTS

.....

Mr. R.T. Nagargoje, Advocate for petitioner
Mr. S.M. Ganachari, AGP for respondents No. 1
Mr. Ram Deshpande, Advocate holding for
Mr. Vivek M. Lomite, Advocate for respondents No. 2 and 3

.....
**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 25th JULY, 2016.

Order :-

1. Mr. Nagargoje, learned counsel for petitioner submits that the members of petitioner - society are fishermen. The said society is registered as fishery society at Dharmapuri Village Tank on

03-12-1979. From the date of registration till June-2013 said tank is allotted to the petitioner-society and there is no other society in the jurisdiction of said tank. There are 83 members of the petitioner-society, who are fishermen. According to learned counsel, respondents No. 2 and 3 passed resolution on 07-06-2010 to the effect that petitioner is the only society registered upon said Dharmapuri Tank and decided to allot the tank to the petitioner society. The petitioner society has deposited "Theka Amount" with respondents No. 2 and 3 and no default has been committed by the petitioner society. On 31-05-2013 and 07-06-2013 petitioner - society has submitted an application within time before respondents No. 2 and 3 along with demand draft for renewal. The said demand draft is returned and the application is rejected. According to learned counsel, petitioner was and is ready and willing to pay "Theka amount" as would be decided by the Grampanchayat with consultation of Fisheries Department as per circular dated 28-03-1989. According to learned counsel, said circular is still in force. Learned counsel for petitioner further relies on the Government Resolution dated 15-10-2001. According to learned counsel for petitioner, impugned auction needs to be quashed and set aside.

2. Mr. Deshpande, learned counsel for respondents No. 2 and 3 submits that Government Resolution dated 15-10-2001 is not applicable to the tanks owned by the Gram Panchayat, however, the same would be applicable to the Fisheries Department. According to learned counsel, it is prerogative of the Gram Panchayat to auction the

tank and to allot it to the one, who is willing and who is the highest bidder in auction. Learned counsel submits that even Government Resolution dated 15-10-2001 is superseded by subsequent Government Resolution. According learned counsel Mr. Nagargoje, Government Resolution dated 26-06-2014 is stayed by the Government.

3. We have heard learned Assistant Government Pleader also. According to learned Assistant Government Pleader, Government Resolution dated 26-06-2014 has been stayed by the Government vide its order dated 16-05-2016, hence, Government Resolution dated 15-10-2001 and 04-01-2002 are in force. In respect of the tank under control of Gram Panchayat, Fisheries Department merely issued recommendation letter as per Government Circular of Rural Development Department dated 28-03-1989.

4. We have considered the submissions canvassed by learned counsel for respective parties. It would be clear that Government circular dated 28-03-1989 applies, there is also policy evolved by the State vide Government Resolution dated 15-10-2001. As per petitioner and respondent-State, said Government Resolution dated 15-10-2001 is still in force and subsequent Government Resolution dated 26-06-2014 is stayed. The Government Resolution dated 15-10-2001 would also apply incase of the Gram Panchayat while allotting fishing tank. The Gram Panchayat will be entitled to fix the "Theka Amount" in consultation with Fisheries Department as per circular dated 28-03-1989. If there are two or more societies registered on the tank then auction of the tank is permissible and if there is only one society

registered under said tank, it is to be allotted to the said society by fixing price.

5. It is not pointed out to whether there is any other society registered upon said tank. As such, Government resolution dated 15-10-2001 and circular dated 28-03-1989 will have to be read conjointly. It also needs to be considered that auction notice was of the year 2013, three years have lapsed. There is nothing on record to show any subsequent change i.e. whether any other society is registered or whether any right is created in favour of some other party. Considering the fact that the auction notice was stayed by this Court in the year 2013, itself, we pass following order:

- (i) The impugned auction notice is quashed and set aside.
- (ii) Respondents No. 2 and 3 shall proceed with allotment of said tank as per circulars and Government Resolutions prevailing and applicable to the Gram Panchayat tank, with consultation of Fisheries Department, if so desires.
- (iii) The petitioner is at liberty to file an application to the Gram Panchayat, which would be considered on its merits and in accordance with law.

6. With aforesaid directions, writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

MTK

Sd/-

[S. V. GANGAPURWALA, J.]