

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26249 of 2017

and

WMP.No.27913 of 2017

V.Arumugam

... Petitioner

vs.

1. The District Collector,  
Namakkal District,  
Namakkal.

2. The Block Development Officer,  
Mallasamuthiram Panchayat Union,  
Mallasamuthiram,  
Tiruchengode Taluk,  
Namakkal District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.No.2303/2017/A2, dated 26.09.2017 and quash the same and consequently direct the respondents to extend the lease period for another period of three years for fishery right in Chinnayeri, Palamedu situated in S.No.94, Palamedu Panchayat, Mallasamuthiram Panchayat Union, Namakkal District.

For Petitioner : Mr.C.Prakasam

For 1st Respondent : Mr.S.Diwakar,  
Special Government Pleader

For 2nd Respondent : Mr.V.Jayaprakash Narayanan

\* \* \* \* \*

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned order, dated 26.09.2017 passed by the 2nd respondent and for a consequential direction to the respondents to extend the lease period for another period of three years for fishery right in Chinnayeri, Palamedu situated in S.No.94,

Palamedu Panchayat, Mallasamuthiram Panchayat Union, Namakkal District.

2. According to the petitioner, the 2nd respondent/Block Development Officer, Mallasamuthiram Panchayat Union called for public auction for giving fishing right in Chinnayeri situated in S.No.94, Palamedu Panchayat, Mallasamuthiram Panchayat Union for the period 2017 - 2018 (01.07.2016 to 30.08.2018) and fixed the time for public auction to be held on 29.06.2017. But, no auction was conducted by the 2nd respondent on that day on administrative grounds. Though the petitioner was declared as a successful bidder in an earlier occasion for harvesting fish in the said Yeri, as he incurred heavy loss in harvesting fish, he was not able to pay the bid amount and the respondents assessed the arrears to the tune of Rs.5,24,269/- upto December 2016.

3. In this connection, the petitioner approached this Court in W.P.No.13719 of 2016 and this Court, by an order dated 23.02.2017, held as follows:

"It would be suffice to state that since there may be health hazard issues on the Village due to receding of water and in consequence of fishes dying in large numbers, the authorities shall permit the petitioner to harvest the fishes subject to the petitioner paying a sum of Rs.5,24,269/- as stated supra. In so far as the protection is concerned, the authorities concerned will act independently and take appropriate action against the alleged disturbers and pass orders in accordance with law."

4. It is the further case of the petitioner that due to set-back in the harvest of fish due to health hazards and poor availability of water, fishes are dying and though the respondents are aware of this fact, they proceeded with public auction. The petitioner made representations to the respondents on 12.06.2017 and 29.06.2017 objecting conduct of public auction and seeking extension of the period of harvest the fish, and the same are pending.

5. Pursuant thereto, the 2nd respondent passed an order dated 26.09.2017, rejecting the petitioner's request on the ground that he cannot seek extension beyond the period of five years as per G.O.Ms.No.169, Rural Development Department, dated 16.08.1999. Aggrieved by the same, the petitioner is once again before this Court.

6. Learned counsel for the petitioner submitted that in terms of G.O.Ms.No.169, dated 16.08.1999, no person can get extension for further period, after a lapse of five years and on account of drought, the question of fishery right does not arise at all, even though the petitioner has complied with the earlier order and deposited more than Rs.5 lakhs. Unfortunately, the respondent has granted fishery rights only for a period of 30 days that too during summer. Learned counsel contended that the decision to conduct public auction and non-extension of fishery right for another period of three years, is illegal and hence, sought to set aside the impugned order.

7. In reply, learned counsel appearing for the 2nd respondent submitted that the petitioner was a successful bidder and fishing rights was granted to him for the period between 01.04.2012 and 31.12.2012 based on the public auction conducted on 22.11.2011. A Resolution has been passed by the then Panchayat Union Council, Mallasumudhiram Panchayat Union, Namakkal District to the effect that it would undertake the right of auctioning the fishing rights by the Panchayat Union instead of Village Panchayat. On the complaint made in this regard, the District Collector, Namakkal District vide proceedings dated 27.01.2012 cancelled the licence given to the petitioner on the ground of procedural violations and seeking to quash the same, the petitioner filed W.P.No.2166 of 2012 before this Court.

8. It is further stated by the learned counsel appearing for the 2nd respondent that the petitioner also filed W.P.No.31518 of 2015 seeking to forbear the respondents therein from in any manner interfering with the fishing rights of the petitioner in Palamedu Chinna Eri during the currency of the Licence, dated 23.11.2011 and this Court passed an interim order dated 06.10.2015 to the effect that the respondents shall not interfere with the fishing rights of the petitioner in any manner till the disposal of the Writ Petition on 08.01.2016.

9. According to the learned counsel for the 2nd respondent, it is true that the petitioner has paid a sum of Rs.5,24,269/- for harvesting fishes and that the period which was originally granted to the petitioner was extended from 14.03.2017 till 12.04.2017 and that the fishing rights came to an end on 12.04.2017. The petitioner had the benefit of fishing rights in 2011 and continued for more than five years, which lasted till 12.04.2017. It is stated that due to the pendency of W.P.No.17578 of 2017, no public auction was scheduled and that the said Writ Petition was disposed of on 05.09.2017 directing the respondents to consider the petitioner's representation dated 29.06.2017. The said representation was considered and rejected, which is the subject matter of the

present Writ Petition.

10. It is further submitted by the learned counsel for the 2nd respondent that in terms of Rule 11 of the Tamil Nadu Panchayats (Lease and Licensing of Fishery Rights in Water Sources vested and regulated by the Village Panchayat Union Council) Rules, 1999 (hereinafter referred to as 'Rules') fishery rights in the water sources shall be given, only after conducting public auction by the competent authorities. The said lease period shall be for a period of five years and the lease amount shall be raised every year at the rate of 10% over the previous year's lease amount.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. Facts mentioned supra are not in dispute. Admittedly, the petitioner was a successful bidder in 2011 and continued to have fishing rights for over five years. It is also true that the petitioner has paid more than a sum of Rs.5 lakhs pursuant to the order of this Court and the fishing lease period was extended upto 12.04.2017. Once there is a specific time limit prescribed under Rule 11 of the Rules, it cannot be extended by anyone, muchless this Court, unless and otherwise the Rules are amended.

13. In the case on hand, respondents have extended time, but, unfortunately, the petitioner could not reap fruits even during the extended time. Pendency of the Writ Petition has stalled further auction and that auction could not be conducted, for which the respondents could not be blamed. Hence, I find no substance in the arguments of the petitioner and the Writ Petition is rejected.

14. However, it is open to the respondents to proceed with the auction with regard to fishing rights and in case, if the bid amount is same, preference shall be given to the petitioner, as he has invested huge amount and has also suffered loss. The tender proceedings shall be conducted in terms of the Tamil Nadu Transparency in Tenders Act, 1998.

15. It is made clear that in the tender process, amount shall be directly sent through RTGS/NEFT one day prior to the date of auction and the tender should be opened in the presence of the parties. The tender process should be photographed/videographed and the signature of the tenderers should be taken in the records. It is further made clear that if any excess amount is lying with the respondents, the same shall be returned to the petitioner.

This Writ Petition is dismissed with the above direction and observations. No costs. Consequently, connected W.M.P.No.27913 of 2017 is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector,  
Namakkal District,  
Namakkal.
2. The Block Development Officer,  
Mallasamuthiram Panchayat Union,  
Mallasamuthiram,  
Tiruchengode Taluk,  
Namakkal District.

+1 cc to Mr.V.Jayaprakash Narayanan Advocate sr 81897  
+1 cc to Mr.C.Prakasam Advocate sr 82089  
+1 cc to Government Pleader sr 82885 & 81651

W.P.No.26249 of 2017

aa07/12/2017

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