

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

W.P.M.P.No.2 of 2018

IN/AND

WRIT PETITION No.16298 of 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

....to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 4th respondent in issuing the proceedings in R.C.No.2/ A/ 2015, dated 31-03-2017 in rejecting the lease hold rights of fishing for Ganapavaram Tank to the writ petitioner's society as illegal, arbitrary, and violation of principles of natural justice and also contrary to G.O.Ms.No.776, dated 31.10.1990 and consequently direct the respondents especially the 4th respondent herein to grant lease hold rights of fishing for Ganapaaram Tank for the year 2016-17 and subsequent years as per procedure to the petitioner's society, forthwith, pass such other"

2. The writ petitioner, Ganapavaram Fishermen Cooperative Society, Ganapavaram Village, Mylaaram Mandal, Krishna District, represented by its President filed this writ petition against five official respondents, viz., 1.The State of Andhra Pradesh, represented by its Secretary, Department of Fisheries, 2.The District Collector, Krishna District, Machilipatnam, 3. The Deputy Director of Fisheries, Machilipatnam, 4.The Assistant Director of Fisheries and Deputy Registrar of Fishermen Cooperative Society, Vijayawada and by impleadment in name of the Assistant Director of Fisheries, Sri P.Jaja Rao.

3. Heard the learned counsel for the petitioner and the learned Government Pleader for Fisheries appearing for the respondents and perused the prayer in the writ petition with supporting affidavit and other material on record.

4. It is stated in the affidavit filed in support of the petition that the respondents are withholding from renewal of the lease contrary to law and without any basis and the proceedings dated 31.03.2017 are illegal and seeks a consequential direction to grant the lease hold rights for the year 2016-17 and for subsequent years as per the due procedure.

5. The impugned proceeding dated 31.03.2017 issued by respondent No.4/ respondent No.5 supra to the petitioner speaks that there are allegations against the Managing Committee and for the examination of the grant of lease renewal for fasali 1426 as per the Andhra Pradesh Cooperative Societies Act, 1964 and to know whether the lease is as per the rules or not, directed to attend the office with the society records. In reference No.(3) cited of the petitioner's representation of February, 2017, it is stated by the petitioner-society that records were with auditor and after receiving the records, they should submit and the D.C.A.O., Vijayawada office informed that the records were not with them and records were given back in May, 2016 after audit and the petitioner-society is wasting the time with that ruse. In reference No.2 cited of the office summons of the Assistant Director dated 03.03.2017, it is stated that there are allegations against the society and seen the documents and after receiving those documents, the society will attend the enquiry and it is

delaying without production of records. It is further stated in reference No.5 cited resolution of the petitioner-society Managing Committee, dated 26.03.2017, that the records are with the advocate and should be submitted after disposal of the writ petition/ case and this is nothing but if not false delaying tactics. It is there from observed that as per the allegations against the petitioner-society for grant of lease of East tank of the Ganapavaram village, as per G.O.Ms.No.776 dated 31.12.1990, to know whether petitioner-society is genuine or not, as per reference (1) cited of the Deputy Director of Fisheries Development Officer, Tiruvur, dated 01.02.2017, the petitioner-society is directed to send the records and attend enquiry. However not submitted. Hence, informed that if the petitioner-society is even willing to pay the lease amount as per G.O.Ms.No.776 supra, in the light of the allegations against the petitioner-society, without verifying the records, lease hold rights should not be granted and action will be taken as per the said G.O. The sum and substance of the show cause notice is mainly for non-production of the records for verification, even petitioner-society is willing to pay the lease amount to renew the lease, it is postponing.

6. Before coming to the counter contest of the respondents, there is an implead petition by Sandipamu Adam and Kota Emmanenal in W.P.M.P.No.2 of 2018 saying they also made a

representation to the Fisheries Department, without intimation to the members of the society has given sub-lease to others and did not share the profits. In fact, there is no need to implead them in the writ petition, as the issue is only for non-renewal of the lease by the authorities under the guise of non-production of the records and thereby, whether there is a sub-lease and there is contribution of the lease amount to the members or not is an independent issue and not within the scope. Hence, the implead petition is dismissed.

7. Now, coming to the counter contest of the respondents supra, there are certain averments, which are outside purview of the show cause notice, saying, there are several irregularities etc., In fact as held by the Constitution Bench of the Apex Court in Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi¹ that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Once such is the case, several contentions raised for the first time in the counter of the respondents, which are not finding place in the writ petition impugned show cause notice, cannot be given credence at all.

¹ AIR 1978 SC 851

8. Having regard to the above and from perusal of the additional material to the writ petition filed by the petitioner that the records are already submitted to the respondents and the respondents also acknowledged and the submission of learned Government Pleader for Fisheries that the records are verified and returned. Thereby, once there is compliance, the respondents are bound to renew the lease, by collecting the lease amount.

9. Accordingly, W.P.M.P.No.2 of 2018 is dismissed and the Writ petition is disposed of. However, it is made clear that any action to be taken by the respondents otherwise against the petitioner-society, they have to follow the due process of law and such an action is left open. The Respondents are directed to renew the lease within one week from the date of receipt of copy of this order.

10. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 07.02.2018

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