



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**
W.P. (MD) No.4153 of 2019

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and
W.M.P. (MD) Nos.3252 and 3253 of 2019

A.Rajendran

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Represented by the Secretary,
Department of Fisheries,
Secretariat, Fort St.George,
Chennai - 600 009.
 - 2.The Deputy Director of Fisheries,
(Regional), Pachiamman Padithurai,
Madurai.
 - 3.The Assistant Director of Fisheries,
Inland Fishing, Vaigaidam,
Theni District.
 - 4.The Sub Registrar,
Theni.
 - 5.The President,
TFWI Theni Fishing Inland Cooperative Society,
Pallivasal Street, Muthuthevanpatti,
Theni.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent Na.Ka.No.1626/A/2018, dated 21.12.2018 and quash the same insofar as it relates to "Kannimar Koil Kulam, Veerapandi Village, Theni District" and direct the 3rd respondent to conduct fresh auction and till then permit the petitioner to catch the fishes available in the "Kannimar Koil Kulam" within a fixed period.

For Petitioner : Mr.K.P.S.Palanivel Rajan

For R1 to R3 : Mr.K.Mu.Muthu

<https://hcservices.ecourts.gov.in/hcservices/>

Additional Government Pleader

For R4 : M.Murugan



Government Advocate

For R5

: Mr.V.Malaiyendran for R5

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ORDER

Heard the learned counsel on either side.

2.The writ petitioner was granted the lessee to harvest the fish in Kannimar Koil Kulam, Veerapandi Village, Theni District, vide lease agreement dated 09.12.2014. The lease period ended on 30.06.2017. The petitioner wanted extension of the lease period. He submitted a representation dated 19.06.2017 in this regard. Since it was not considered, he filed W.P.(MD)No.18631 of 2017. This Court by order dated 06.10.2017 directed the Assistant Director of Fisheries, Inland Fishing, Vaigaidam at Theni to pass order within a period of two weeks.

3.The petitioner file W.P.(MD)No.21897 of 2017 for restraining the authorities from conducting any public auction for leasing out the fishing right. He wanted the authorities to renew his lease by accepting his offer to pay the lease rental at an enhanced rate. The said petition is still pending. In the meanwhile, in anticipation that he would be granted extension, he had let fishlings in Kannimar Koil Kulam. The petitioner wanted to harvest them and therefore, he filed W.P.(MD)No.3147 of 2019. The said writ petition came up for hearing before this Court on 22.02.2019 and on the said date, on instructions the learned Special Government Pleader submitted that lease had already been issued in favour of the third party in December 2018 itself. The stand of the Government was that the possession of the tank was already given to a new lessee. Recording the said submission, this Court directed the official respondents to handover a copy of the said proceedings, so that the petitioner can challenge the same. W.P.(MD)No.3147 of 2019 was closed on that basis.

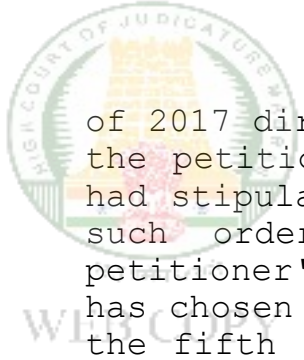
4.Challenging the proceedings dated 21.12.2018, issued by the Assistant Director of Fisheries, Inland Fishing, Vaigaidam, (third respondent herein) in favour of the fifth respondent, W.P.(MD) No.4153 of 2019 came to be filed.

5.The official respondents as well as the fifth respondent filed their respective counter affidavits.

6.The learned counsel appearing for the writ petitioner reiterated the contentions set out in the affidavit filed in support of this writ petition. Likewise, the learned counsel appearing for the respondents reiterated the stand reflected in their pleadings.

7.I carefully considered the rival contentions.

8.1 cannot approve the conduct of the third respondent for two reasons. This Court by order dated 06.10.2017 in W.P.(MD)No.18631



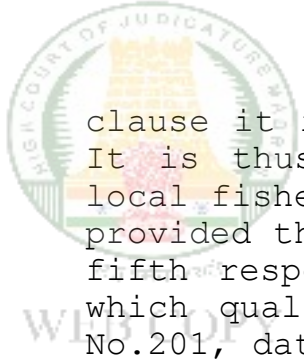
of 2017 directed the third respondent herein to consider the case of the petitioner for extension of his lease. Even though this Court had stipulated a time limit of two weeks for passing such order, no such order came to be passed. Even without disposing the petitioner's request for extension of lease, the third respondent has chosen to award the lease for the year 2018 to 2021 in favour of the fifth respondent. I record My displeasure over the conduct of the third respondent in not complying with the direction given by this Court in W.P.(MD)No.18631 of 2017.

9. When W.P. (MD) No. 3147 of 2019 was taken up for hearing, it was rendered infructuous by contending that the license was already issued in favour of the respondent/Society on 21.12.2018 itself. But when the counter affidavit was filed, it was admitted that even though the fifth respondent herein had remitted the charges, it was actually issued only on 25.02.2019.

10. Now the question that arises for consideration is whether this Court should interfere with the proceedings issued in favour of the fifth respondent. At the very commencement of the hearing, the learned counsel appearing for the fifth respondent stated that the fifth respondent would pay a sum of Rs.1,10,000/- irrespective of the outcome of the writ proceedings. This undertaking given by the fifth respondent's counsel was noted by this Court. The first issue is whether the third respondent was justified in straightaway awarding the lease in favour of the fifth respondent without holding a public auction. The learned Special Government Pleader submitted that as per G.O. (Ms) No. 201, Animal Husbandry, Dairying and Fisheries (FS-6) Department, dated 19.10.2017, the Government has mandated that the local fishermen Co-operative Society shall be given priority for taking lease of fishing rights of intensive inland fish culture tanks before leasing through public tender by paying the upset price upfront.

11. The learned counsel appearing for the writ petitioner states that the authority must issue an auction notification indicating the upset price and if the Co-operative Society pays the upset price upfront then they can be awarded the lease. His further contention is that the process adopted in this case was faulty because no such tender notification was issued. He would also point out that the procedure set out in G.O. (Ms) No. 201, dated 19.10.2017 was not followed in this case.

12. I am unable to agree with the aforesaid submission of the learned counsel appearing for the petitioner. Even though the G.O. cannot be said to have been perfectly worded, the object of the G.O. is fairly evident. It categorically states that the local fishermen Co-operative Society shall be given priority for taking lease of fishing right if they pay upset price upfront. In the relevant



clause it is clearly stated "before leasing through public tender". It is thus obvious that without resorting to public tender, the local fisherman Co-operative Society can be awarded the lease right provided they pay the upset price upfront. In the present case, the fifth respondent is the only local fisherman Co-operative Society which qualified for being granted the lease in terms of G.O.(Ms) No.201, dated 19.10.2017. The third respondent herein had fixed the upset price at Rs.45,540/- and by the impugned communication, dated 21.12.2018 called upon the fifth respondent to pay the same upfront. The fifth respondent had paid it upfront on 22.12.2018. It is true that as contended by the learned counsel appearing for the writ petitioner, the procedure adopted in this case does not conform to the sequence of events envisaged in paragraph No.4 of G.O.(Ms) No.201, dated 19.10.2017. But I am of the view that they are directory in nature and would not vitiate the award of the lease granted in favour of the fifth respondent.

13. Even though I am not interfering with the impugned communication, in view of the conduct of the third respondent, the petitioner will have to be given some reliefs. As already pointed, the direction given by this Court was not complied with. The petitioner in anticipation had let fishlings in the tank in question. Likewise even though the fifth respondent was given the formal lease right only on 25.02.2019, they had chosen to take possession even on 23.12.2018 itself. It is obvious that the petitioner's fishlings had already been let in the Kannmai and that is why when this Court reminded the fifth respondent that they should not unjustly enrich themselves, the fifth respondent offered to pay a sum of Rs.1,10,000/- to compensate the writ petitioner. I am of the view that the writ petitioner cannot ask for more in this case because his lease period had expired in July 2017 itself. He had no business to let fishlings in the tank in question in late 2018. He could not have been acted in anticipation that he would be granted extension of lease. But since the order passed by this Court was not complied with and since the official respondents misled this Court in closing W.P.(MD)No.3147 of 2019, in terms of the undertaking given by the fifth respondent, this Court directs the fifth respondent to pay a sum of Rs.1,10,000/- to the writ petitioner within a period of seven days from the date of receipt of a copy of this order. If the fifth respondent does not act in terms of the undertaking given to this Court, license to the fifth respondent would stand cancelled automatically. At the same time, the official respondents cannot be allowed to go scot free because what the third respondent had done is a clear contempt of the Court. Therefore this Court directs the third respondent to pay a sum of Rs.1,000/- to the writ petitioner as token costs. This amount shall be paid within a period of seven days from the date of receipt of a copy of this order.

14. With these directions, this writ petition stands disposed



of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar(CS)

To

- 1.The State of Tamil Nadu,
Represented by the Secretary,
Department of Fisheries,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Deputy Director of Fisheries,
(Regional),
Pachiamman Padithurai,
Madurai.
- 3.The Assistant Director of Fisheries,
Inland Fishing,
Vaigaidam,
Theni District.
- 4.The Sub Registrar,
Theni.

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate (SR-56620[F] dated 26/03/2019)

+1 CC to M/s.V.MALAIYENDRAN, Advocate (SR-56700[F] dated 26/03/2019)

+1 CC to M/s.SPL GP (SR-56948[F] dated 27/03/2019)

W.P. (MD) No. 4153 of 2019
26.03.2019

IAS

KK/SAR-/28.03.2019/5P-8C