



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.1116 and 1117 of 2019

and

C.M.P (MD) Nos.9969, 9971, 9973 and 9975 of 2019

W.A(MD)No.1116 of 2019:

Thangaiya

... Appellant/4th respondent

Vs.

1.M.Subramanian

... 1st Respondent/writ petitioner

2.The Executive Engineer,
Public Work Department,
Water Resource Organization,
Thamirabarani Basin Division,
Tirunelveli District.

3.The Joint Commissioner,
HR & CE Department, Tirunelveli.

4.The Executive Officer,
Arulmigu Kulathoor Ayyan Sastha Temple,
Nainarkulam,
Tirunelveli.

... Respondents 1 to 3 /Respondents 1 to 3

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order of the learned Single Judge dated 03.04.2019 in W.P(MD)No.3481 of 2019.

PRAYER IN W.P(MD)No.3481 of 2019.

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Ka.No.833/17/Tha4/ dated 15.10.2018 and the consequential order in Lr.No.DB/JD01/273/C.204/2018/ dated 30.12.2018 and quash the same as illegal, consequently directing the first respondent to conduct public auction to lease out fishing rights in Nainarkulam Tank, Tirunelveli Town for the year 2018-2019.

For Appellant : Mr.R.Anand for
Mr.P.Samuel Gunasingh

For R-1 : Mr.T.Lenin Kumar

For R-2 to R-4 : Mr.S.Angappan,
Government Advocate



W.A (MD) No. 1117 of 2019:
Thangaiya

... Appellant/Petitioner

Vs.

1. The District Collector,
Tirunelveli,
Tirunelveli District.

2. The Executive Engineer,
Public Works Department,
Water Resource Organization,
Thamirabarani Basin Division,
Tirunelveli District.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order of the learned Single Judge dated 03.04.2019 in W.P(MD)No.24157 of 2018 and further direct the second respondent herein to modify the order made in Ka.No.833/17/T4 dated 15.10.2018 by extending the period of lease for a continuous period of five years in the light of Government Order in G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993 in connection with the fishery rights of Nainarkulam Tank, Tirunelveli.

PRAYER IN W.P(MD)No.24157 of 2018:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the second respondent to modify his order made in Ka.No.833/17/T4 dated 15.10.2018 by extending the period of lease for a continuous period of five years in the light of Government Order in G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993 in connection with the fishery rights of Nainarkulam Tank, Tirunelveli granted in favour of the petitioner.

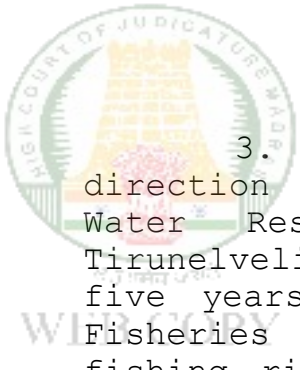
For Appellant : Mr.R.Anand for
Mr.P.Samuel Gunasingh
Mr.T.Lenin Kumar for S.Angappan
For R-1 & R-2 : Mr.S.Angappan
Government Advocate

COMMON JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard the learned counsel appearing on either side.

2. The writ appeals have been filed against the common order passed by the learned Single Judge in W.P(MD)Nos.3481 of 2019 and 24157 of 2018 dated 03.04.2019.



3. The appellant filed W.P(MD)No.24157 of 2018 seeking for a direction upon the Executive Engineer, Public Works Department, Water Resource Organization, Thamiramabrani Basin Division, Tirunelveli District, to extend the lease for a continuous period of five years in the light of G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993 in connection with the fishing rights granted in favour of the appellant in respect of Nainarkulam Tank, Tirunelveli.

4. The first respondent in W.A(MD)No.1116 of 2019 filed W.P (MD)No.3481 of 2019 challenging the proceedings issued by the Executive Engineer, dated 30.12.2018 on the ground that extension of lease granted in favour of the appellant to enjoy the fishing rights in Nainarkulam Tank, Tirunelveli Town, was illegally extended and the fishing right should have been brought for public auction.

5. Both the writ petitions were clubbed together and taken up for final disposal by the learned Single Judge.

6. The learned Single Bench after hearing the parties and also hearing the Executive Engineer, who was present in Court, recorded his assurance that the lease will not be extended beyond 30.06.2019 and lease will be granted on an year to year basis and notification will be issued for conducting public auction and closed the writ petitions.

7. The appellant is aggrieved by such an order and come to this Court by filing the above writ appeals.

8. The argument advanced by the learned counsel for the appellant is based upon the Government Order in G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993. By relying upon the conditions stipulated in the said G.O., it is submitted that lease period was enhanced from one year to five years in all the irrigation tanks uniformly for fish culture and lease of fishery rights and based on the said G.O., the appellant is entitled to enjoy the fishing rights for a period of five years ie., upto 2020 as he was declared as a successful licensee in the public auction conducted on 25.09.2015.

9. It is further submitted that when the lease was not extended on an earlier occasion, the appellant approached this Court and filed W.P(MD)No.13079 of 2016, to direct the Public Works Department to consider his representation in terms of G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993 and renew the fishing rights in favour of the appellant for a period of five years. The said writ petition was disposed of with certain observations by order dated 26.07.2016, which according to the appellant is in favour of the appellant.



10. It is submitted that after the disposal of the said writ petition, fishing right was extended to the appellant by order dated 12.07.2017 passed by the Executive Engineer. We find from the said order that the said right was granted only for a period of one year on payment of increased lease amount of 10% over and above the existing lease amount. In the meantime, the first respondent in W.A(MD)No.1116 of 2019 filed W.P(MD)No.14384 of 2018 praying for issuance of a Writ of Mandamus to direct the official respondents therein to conduct public auction for fishery rights in respect of Nainarkulam Tank, Tirunelveli by considering his representation dated 14.06.2018.

11. The said writ petition was disposed of by order dated 05.07.2018 directing the representation to be considered on its own merits and take further action in accordance with law within the time frame fixed by the Court.

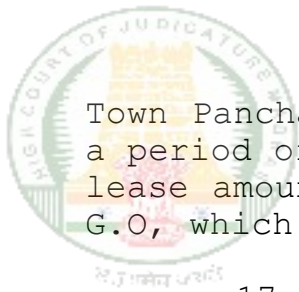
12. In the meantime, based upon the directions issued in W.P (MD)No.(MD)No.13079 of 2016, dated 26.07.2016, the Department by proceedings dated 15.10.2018, extended the lease period of the appellant for a further period of one year ie., for the year 2017-2018 on payment of 10% over and above the previous lease amount. This order was put to challenge by the first respondent in W.P(MD) No.24157 of 2018 and the said writ petition was closed by the impugned order.

13. It is seen that though the appellant had been claiming that he is entitled for grant of fishing rights for a continuous period of five years based on G.O.Ms.No.332, Animal Husbandry and Fisheries Department, dated 17.11.1993, the same was not done in the case of the appellant. But, it was granted on an year to year basis on payment of additional sum for every year.

14. The legality of the procedure adopted by the Public Works Department is in great doubt. Admittedly, the right to catch fishes in a public tank has to be offered to all eligible persons by affording opportunity to participate in the public auction and unless and until there is competitive bidding, the interest of revenue will not be protected.

15. In our considered view, G.O.Ms.No.332 was passed in the year 1993 and it is to be taken as directory and not mandatory. Even assuming that it is binding on the Department, the same is never binding on this Court. By efflux of time, there has been lot of changes and the Government after having enacted the Transparency in Tenders Act, cannot adopt such procedure by granting lease to an individual and renewing the same on payment of additional sum for every year.

16. This Court had an occasion to consider such extension of lease in its judgments of shops owned by the Corporations, Municipalities,



Town Panchayats and Panchayats and held that extension of lease for a period of three years by accepting 15% over and above the existing lease amount, is illegal and the local bodies referred to the above G.O, which has now been stayed.

17. Further more, the Honourable Division Bench held that such power conferred on the local bodies is arbitrary and by resorting to such procedure, the same individual will continue to be a purposeful lessee. The same analogy is applied in the case on hand. However, the facts are clear that the licence had been granted on an year to year basis and the appellant has been enjoying such right ever since 2015 and his period of licence will come to an end on 30.06.2019. Therefore, no further extension will be granted to the appellant.

18. For the above reasons, the writ appeals fail and the same are dismissed. The Public Works Department is directed to conduct public auction for the fishing right in the said tank by issuing paper publication giving wide publicity and it is open to the appellant, the first respondent in W.A(MD)No.1116 of 2019 and all other eligible persons to participate in the said auction. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

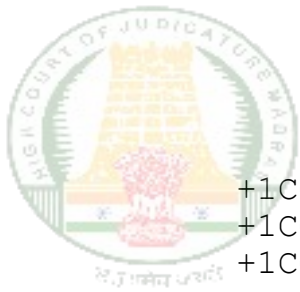
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Sub Assistant Registrar(CS)

pm

To

- 1.The District Collector,
Tirunelveli,
Tirunelveli District.
- 2.The Executive Engineer,
Public Work Department,
Water Resource Organization,
Thamirabarani Basin Division,
Tirunelveli District.
- 3.The Joint Commissioner,
HR & CE Department,
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- 4.The Executive Officer,
Arulmigu Kulathoor Ayyan Sastha Temple,
Nainarkulam, Tirunelveli.



+1CC TO MR.P.SAMUEL GUNASINGH, Advocate Sr. No.96227
+1CC TO MR.T.LENIN KUMAR, Advocate Sr. No.95780
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 96071

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JUDGMENT MADE IN
W.A. (MD) Nos. 1116 and 1117 of 2019
and
C.M.P (MD) Nos. 9969, 9971, 9973 and 9975 of 2019
04.11.2019

AL (CO)
TR (21.11.2019) 6P 8C