

In the High Court of Judicature at Madras

Dated : 28.2.2020

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33614 & 35581 of 2015 &
all connected pending MPs

B.Velayutham

...Petitioner in
WP.33614/2015

Akkaraipatti Varuvai Grama
Thazhthapattor Meenavar
Sangam rep.by its President
Akkaraipatti, Namakkal

...Petitioner in
WP.35581/2015

Vs

1.The District Collector, Namakkal
District, Namakkal.

...R1 in both
WPs

2.The Executive Engineer, Public
Works Department, WRO Sarabanga
Division, Namakkal District.

...R2 in WP.
33614/2015 &
R4 in WP.
35581/2015

3.The Assistant Executive Engineer,
Public Works Department, WRO
Sarabanga Division, Namakkal District

....R3 in both WPs

4.The President, Thottiyapatti Village
Panchayat, Vennanthur Union,
Rasipuram Taluk, Namakkal District.

...R4 in WP.
33614/2015 &
R5 in WP.
35581/2015

5.The President, Akkaraipatti Village
Panchayat, Vennanthur Union,
Rasipuram Taluk, Namakkal District.

...R5 in WP.
33614 of 2015

6.The Superintending Engineer,
Public Works Department, WRO
Sarabanga Division, Namakkal District.

...R2 in WP.35581 of 2015

W.P.No.33614 of 2015:

PETITIONS under Article 226 of The Constitution of India praying for issuance of Writs of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 3rd respondent in his proceedings in Ka.No.523/Ko 15/2015/EVA/ dated 15.9.2015, quash the same as illegal, incompetent and ultravires and consequently direct the 3rd respondent to conduct public auction for the fishing rights in Semur lake, Akkaraipatti Village, Rasipuram Taluk, Namakkal District; and

W.P.No.35581 of 2015:

to call for the records relating to the Letter Ka.No.523/Ko-15/2015/Eva.A/ dated 15.9.2015 issued by the third respondent, quash the same as being illegal, arbitrary and unconstitutional and consequently issue a direction to the first and second respondents to consider the request made by the petitioner for extension of fishing lease in the Semur Periya Eri, Akkaraipatti, Namakkal in accordance with G.O.Ms.No. 332 dated 17.11.1993 and grant the same with all consequential rights and benefits to the petitioner and award costs.

For Petitioner in
WP.No.33614 of 2015 : Mr.R.Jayaprakash

For Petitioner in
WP.No.35581 of 2015 : Mr.C.K.Chandrasekar

For R1 to R3 in सत्यमेव जयते
W.P.No.33614 of 2015

and R1 to R4 in
W.P.No.35581 of 2015 :Mrs.A.Sri Jayanthi, SGP

For R4 in
W.P.No.33614 of 2015
and R5 in

W.P.No.35581 of 2015 :Mr.V.Jayaprakash Narayanan

For R5 in
W.P.No.33614 of 2015 : Mr.B.Siddeswaran

COMMON ORDER

I have heard the learned counsel on either side.

2. There are two writ petitions listed before this Court and both of them challenge the same Notification issued by the third respondent dated 15.9.2015. By the said Notification, the fishing rights in respect of Semur Eri, which is in Akkaraipatti Village, Rasipuram Taluk, Namakkal District was granted in favour of the Thottiyapatti Village Panchayat .

3. The learned counsel for the petitioner in W.P.No.33614 of 2015 submits that grant of fishing rights in favour of Thottiyapatti Village panchayat is not sustainable in law. Apart from that, even assuming that the Thottiyapatti Village Panchayat can be granted fishing rights, it should have been granted to the Akkaraipatti Village Panchayat where the lake is situated.

4. The petitioner in W.P.No.35581 of 2015 is an association of fishermen stated to be belonging to scheduled caste community. It is submitted that the only avocation, which is known to the members of their association is inland fishing, that they have been completely sidelined and that the fishing rights have been assigned to the Thottiyapatti Village Panchayat in gross violation of the mandate in G.O.Ms.No.332 dated 17.11.1993, which states that if no associations are available to whom the fishing rights can be granted, it should be granted to people belonging to scheduled caste community in the village.

5. In the considered view of this Court, it may not be necessary for this Court to adjudicate the correctness of the grant made by the third respondent in favour of the Thottiyapatti Panchayat, as the rights granted from 01.7.2015 to 30.6.2016 (fasli 1425) had already expired.

6. At the time of entertaining W.P.No.33614 of 2015, on 16.10.2015, an order of interim stay has been granted. Consequently, neither the petitioner nor the Thottiyapatti village panchayat could undertake the fishing operations. Considering the fact situation that was prevailing, the President of Thottiyapatti Village Panchayat filed (i) WMP.No.2380 of 2016 in W.P.No. 33614 of 2015 and (ii) WMP.No.2384 of 2016 in W.P.No.35581 of 2015 to vacate the interim order. However, on 17.2.2016, a common order was passed directing the Public Works Department (PWD) to undertake the fishing operations, collect the revenue and keep it in a separate account. It appears that this order could not be implemented because there was no water.

7. The learned Special Government Pleader appearing for the State submits that the said order had been complied with, that the PWD was able to collect Rs.23,950/- and that the said amount had been kept in a separate deposit.

8. One more objection raised by the both the petitioners is by contending that the lake in question is within the jurisdiction of the Akkaraipatti Village Panchayat. In this regard, Mr.R.Jayaprakash, learned counsel for the petitioner in WP.No.33614 of 2015 has drawn the attention of this Court to the Salem District Gazette dated 03.6.1995, in which, it has been shown that S.Nos.1 to 330 fall within the limits of Akkaraipatti Revenue Village and that the survey number, in which, the tank is situated, is 215 and that therefore, the tank is situated in Akkaraipatti Village. It has been further shown that S.Nos.331 to 408 in Akkaraipatti Revenue fall within the Thottiyapatti Village Panchayat. Hence, it is submitted that people, who are residing within the jurisdiction of Akkaraipatti Village Panchayat alone should be considered for grant of fishing rights or any association that might have been formed by the public of the Akkaraipatti Village Panchayat.

9. In the counter affidavit filed by the third respondent, it has been stated that the Tahsildar, Rasipuram, vide letter dated 14.9.2015, stated that Semur Big Tank in S.F.No.215, Akkaraipatti Village, Rasipuram Taluk lies in Thottiyapatti Village Panchayat only, that O.Sowdhapuram Village Panchayat does not have any rights in Semur Big Tank and that the Tahsildar, Rasipuram also recommended to grant lease of fishing rights to the Thottiyapatti Village Panchayat in terms of G.O.Ms.No.332 dated 17.11.1993 and Revenue Standing Order No.211. Further, the third respondent referred to the certificate issued by the Block Development Officer, Vennandur, who was in charge of 24 village panchayats including the Akkaraipatti Village Panchayat, the Thottiyapatti Village Panchayat and the O.Sowdhapuram Village Panchayat stating that Semur Big Tank in S.F.No.215 is in the Thottiyapatti Village Panchayat only.

10. The controversy now raised before this Court by both the writ petitioners cannot be adjudicated in a writ petition and it is for the Revenue Administration to decide as to within which village, Semur Big Tank falls. The issue is left open to the decision of the District Collector. Hence, this Court is inclined to make certain observations because the counter affidavit filed by the third respondent does not deal with the Salem District Gazette dated 03.6.1995, which is a Notification issued by the District Collector regarding the numbers of panchayat village consisted of the panchayat union at Salem

District. Therefore, it is for the District Collector who has to take a decision in the matter. In view of the fact that the period, for which, the fishing rights was granted in favour of the Thottiyapatti Village Panchayat had already expired, the challenge to the impugned proceedings has become academic. Hence, the writ petitions have to be disposed of by issuing certain directions, which will take care of future requirements.

11. In the result, the writ petitions are disposed of by directing the first respondent to take a decision as to within which village panchayat, Semur Big Tank falls and for such a reason, an opportunity shall be granted to both the Presidents of the Thottiyapatti Village Panchayat and the Akkaraipatti Village Panchayat and after taking a decision on that, the PWD shall be intimated about the same, which, in turn, shall follow the guidelines for grant of fishing rights and take a decision in the matter in accordance with law. No costs. The interim orders already granted shall stand vacated and all connected pending miscellaneous petitions are closed.

12. It is submitted that a sum of Rs.23,950/- has been collected and is lying in deposit.

13. It is made clear that based on the decision to be taken by the District Collector, the amount shall be disbursed to the concerned village panchayat.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

- 1.The District Collector,
Namakkal District, Namakkal.
- 2.The Executive Engineer,
Public Works Department, WRO Sarabanga
Division, Namakkal District.
- 3.The Assistant Executive Engineer,
Public Works Department, WRO
Sarabanga Division,
Namakkal District.

4.The President,
Thottiyapatti Village Panchayat,
Vennanthur Union,
Rasipuram Taluk, Namakkal District.

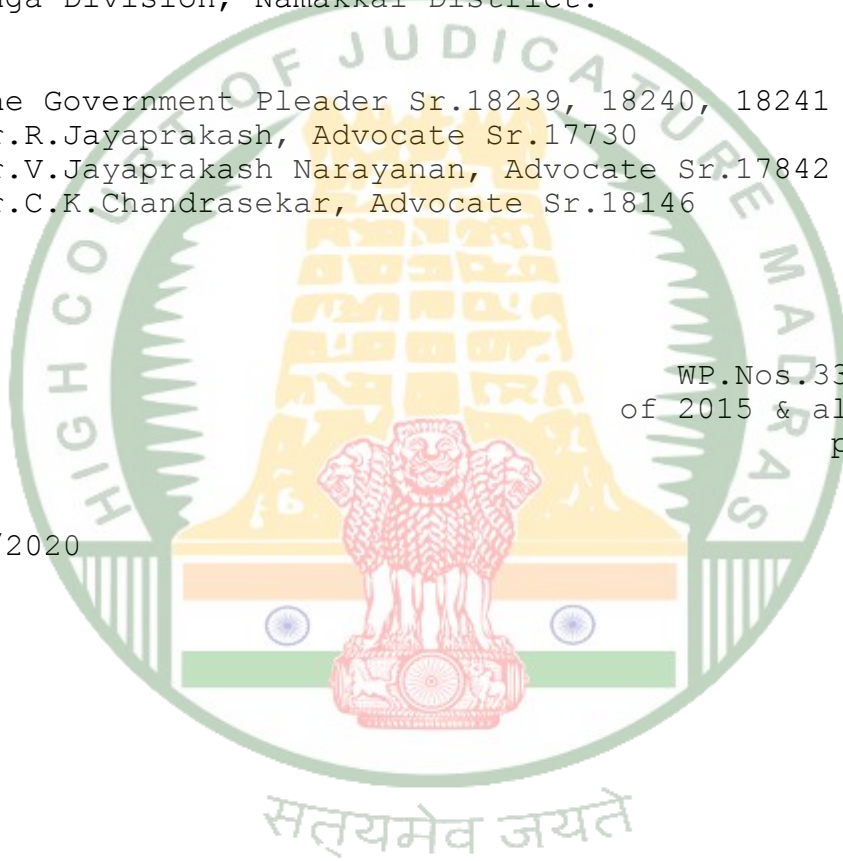
5.The President, Akkaraipatti Village Panchayat,
Vennanthur Union,
Rasipuram Taluk, Namakkal District.

6.The Superintending Engineer,
Public Works Department, WRO
Sarabanga Division, Namakkal District.

+1cc to the Government Pleader Sr.18239, 18240, 18241
+1cc to Mr.R.Jayaprakash, Advocate Sr.17730
+1cc to Mr.V.Jayaprakash Narayanan, Advocate Sr.17842
+1cc to Mr.C.K.Chandrasekar, Advocate Sr.18146

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of 2015 & all connected
pending MPs

srg 05/03/2020



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