

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.5819 of 2012

&

M.P.Nos.2 & 3 of 2012

G.Ramu ... Petitioner

VS.

1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

2.The Block Development Officer,
Thalayampallam village Panchayat,
Nariyapattu Post,
Thiruvannamalai Taluk and District.

3. Thalamyapallayam Village Panchayat,
Represented by its President,
Nariyapattu Post,
Thiruvannamalai Taluk and District.

4.The Auctioning Officer/Electrical Worker,
Thalaymapallam Village Panchayat,
Nariyapattu Post,
Thiruvannamalai Taluk and District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the 2nd respondent in his notification Na.Ka.Ua3/265/2012 dated 30.01.2012 and quash the same in respect of S.No.17 of the said notification concerned and forbearing the respondents or their subordinates or their agents from in manner auctioning the fisheries right in Sitheri, Thalaymapallam Village, Nariyapattu Post, Thiruvannamalai Taluk and District so as to affect the fishing right of the Ayacuttudars of Sitheri, contrary to customary and traditional fishing rights of the Ayacuttudars of Sitheri.

For Petitioner : Mr.J.Ramakrishnan

For Respondent 1 : Mr.R.S.Selvam,
Government Advocate

For Respondents 2 & 3 : Mr.P.S.Sivashanmugasundaram

For Respondent 4 : No appearance

ORDER

This writ petition has been filed challenging Sl.No.17 of the Auction notification dated 30.01.2012 issued by the second respondent with regard to the auction of the fishing rights at the tank called "Sitheri" at Thallayampallam Village, Nariyapattu Post, Thiruvannamalai Taluk and District.

2. It is the case of the petitioner that he is a permanent resident of Thalayampallam Village in Thiruvannamalai District. According to him, agriculture is his family avocation and he owns 0.29.0 hectares of land in S.No.33/1B2 and also 0.52.5 hectares of land in S.No.33/1C in Thalayampallam Village. According to him, there are also other agricultural families in the same village. It is his case that there is a tank called Sitheri in his village which is in existence from the time immemorial and it is the main source of irrigation to the lands owned by the villagers called Ayakattudars.

3. It is the case of the petitioner that ayakattudars have been maintaining the tank "Sitheri" as well as other irrigation channels in Thalayampallam village. According to the petitioner, inland fishing in the said sitheri which is the only livelihood for the ayakattudars (villagers) and this right to fish coupled with the right to lease the fishing in "Sitheri" has also been vested with the ayakattudars of Thalayampallam Village. According to the petitioner, the benefits accrued from the leasing of fishing rights have been utilized by the ayakattudars for the benefit and upliftment for the people in the village.

4. According to the petitioner, all of a sudden without any notice, the fishing rights of the ayakattudars were sought to be interfered with by the second respondent who issued the impugned notification dated 30.01.2012. By the said notification, the second respondent has called for interested persons who shall be awarded fishing rights in the tank "Sitheri" at Thalayampallam Village. Aggrieved by the impugned notification dated 30.01.2012 issued by the second respondent, this Writ petition has been filed.

5. A counter has also been filed by the second respondent wherein he has denied that the petitioner and other villagers are maintaining the irrigation channels including the tank "Sitheri". It is also stated in the counter affidavit that there is no custom and convention or tradition in the village regarding the right of leasing Fishing rights at "Sitheri" tank. It is also stated in the counter affidavit that the supply channels of "Sitheri" were repaired and developed under MGNREG Scheme during 2007-08 and 2009-10 at the cost of Rs.3,50,000/- and Rs.3,55,000/- respectively.

6. Further it is stated in the counter affidavit that the impugned notification has been issued in accordance with Tamil Nadu Panchayat Act, 1994 and is not in violation of Article 13 of the Constitution of India. It is also their case that "Sitheri" and fishing rights therein also comes within the provision of Section 133(1) of the Tamil Nadu Panchayat Act, 1994 and the respondents have been vested with the powers of maintaining tanks including "Sitheri". It is also the case of the second respondent that the villagers will not be put to hardship and loss by the proposed auction and such auction will not hamper enjoyment of irrigation source by the villagers.

7. Heard Mr.J.Ramakrishnan, learned counsel for the petitioner, Mr.R.S.Selvam, learned Government Advocate for the first respondent and Mr.P.S.Siva Shanmugasundaram, learned counsel for the respondents 2 and 3. Despite service of notice on the fourth respondent and their name having been printed in the causelist today, no one has entered appearance on their behalf.

8. Section 133 of the Village Panchayat Act, 1994 empowers the Panchayat to maintain irrigation works in a village. The plea made by the petitioner that from time immemorial, the villagers have been using the tank "Sitheri" as well as other irrigation channels in the village and the custom has been recognised cannot be accepted, since the alleged custom of usage is not statutorily protected. Section 133(3) of the Tamil Nadu Panchayat Act, 1994 makes it clear that the fishery rights power in a village once transferred by the Government to the panchayat is vested only with the village panchayat. The Petitioner cannot seek protection just because the petitioner and other villagers have been enjoying the fishing rights in the tank "Sitheri" for a long period time. There must be a statutory force behind their claim. In the case on hand, there is no statutory protection available to the villagers regarding their fishing rights over the tank "Sitheri".

9. The second respondent has also stated in their counter affidavit that there is no custom recognising the petitioner and other villagers to enjoy the fishing rights absolutely in their village. Further, the second respondent has also stated that the supply channels of the "Sitheri" were repaired only by the Government under the MGNREG scheme during 2007-08 and 2009-10 at a cost of Rs.3,50,000/- and Rs.3,55,000/- respectively.

10. Under the impugned notification, the second respondent has issued the notification for the purpose of auctioning the fishing rights in the village. If at all the petitioner is interested in fishing rights, there is legal bar

for him to participate in the auction. This being the case, the impugned notification is a valid notification and has been issued in accordance with law.

11. For the foregoing reasons, this Court is of the considered view that there is no merit in this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
2. The Block Development Officer,
Thalayampallam village Panchayat,
Nariyapattu Post,
Thiruvannamalai Taluk and District.
3. The President,
Thalayampallam Village Panchayat,
Nariyapattu Post,
Thiruvannamalai Taluk and District.
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Thalayampallam Village Panchayat,
Nariyapattu Post,
Thiruvannamalai Taluk and District.

+1cc to Mr.J.Ramakrishnan, Advocate SR.No.2036

+1cc to Special Government Pleader SR.No.2719

W.P.No.5819 of 2012

RP(CO)
GMY(14/02/2020)