



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)No.108 of 2020

and

W.M.P. (MD) Nos.61 & 63 of 2020

S.Arumugam

... Petitioner

Vs.

- 1) The Executive Engineer,
Public Works Department,
Tamirabarani Basin Division,
Tirunelveli -2
Tirunelveli District.
- 2) The Assistant
Executive Engineer,
Public Works Department,
Tamirabarani Basin Division,
Tirunelveli - 2,
Tirunelveli District.
- 3) The Assistant Engineer,
Public Works Department/
Water Resources Department,
Kodagan Channel Division,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, challenging the impugned auction notification issued by the 3rd respondent in his proceedings in Ka.No.Ko.25/2019 dated 24.12.2019 and set aside the same as illegal and consequently direct the respondents to renew the lease for 2019-2020 to the petitioner, in the light of G.O.Ms.No.332, Animal Husbandry and Fisheries (FDS.IV) Department, dated 17.11.1993.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader



O R D E R

The Writ Petition has been filed by the petitioner challenging the impugned auction notification issued by the 3rd respondent in his proceedings in Ka.No.Ko.25/2019 dated 24.12.2019 and also for renewing his lease for 2019-2020, with respect to his fishing rights in Chathiram Pudukulam Pond.

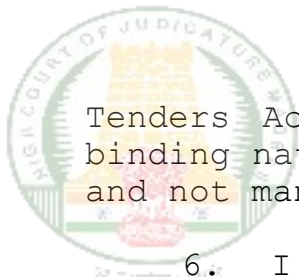
2. The petitioner is a lessee under the respondent Department, for fishing rights in Chathiram Pudukulam Pond, Tirunelveli District, having taken the same in auction for the year 2015-2016. There was a Government Order issued by the respondents in G.O.Ms.No.332, Animal Husbandry and Fisheries (FDS.IV) Department, dated 17.11.1993, which enables for the renewal of lease for a period of five years. Hence, the petitioner herein filed a writ petition in W.P.(MD) No.17633 of 2016 seeking for a direction to the first respondent to renew his lease, by

virtue of the above Government order, for the years 2015-2016 to 2019-2020.

3. Thereafter, the first respondent has extended the lease period of the petitioner for the next year (i.e.) 2016-2017 by order dated 12.01.2017. Further, the lease for the period 2017-2018 was also extended in favour of the petitioner on payment of 10% of excess amount over the previous year. Again, auction for the year 2018-2019 was also extended in favour of the petitioner with a raise of 10% of excess amount over the previous year. The lease period for the year 2018-2019 got over by 30.10.2019. Therefore, the petitioner applied for renewal of lease for the year 2019-2020. Since there was no response from the respondents, the petitioner filed W.P.(MD) No.24966 of 2019, in which, a direction was given to consider the petitioner's representation dated 03.10.2019 for renewal of the lease.

4. While so, the third respondent herein had issued the impugned notification, dated 24.12.2019 calling for the auction of fishing rights for the period starting from 10.01.2019 to 30.05.2020, fixing the date as 07.01.2020 at 10:00 a.m. The said notice is now challenged by the petitioner on the ground that, before deciding his representation dated 03.10.2019 as directed by this Court, the respondents ought not to have issued the auction notice.

5. Upon instructions, the learned Special Government Pleader appearing for the respondents states that, regarding G.O.Ms.332, Animal Husbandry and Fisheries (FDS.IV) Department, dated 17.11.1993, based on which the petitioner has made his claim, though it has not been specifically withdrawn or quashed by this Court, it has been held that after coming into force of the Transparency in



Tenders Act, 1988, the above Government Order will not have any binding nature. Besides, the said Government Order is only directory and not mandatory.

6. I have given careful consideration to the submissions made by the respective counsels appearing on either side and also perused the records available before this Court.

7. The Government has taken a concrete decision to lease out the water bodies by open public auction. The petitioner cannot be allowed to rely on the aforesaid Government Order which is more than two decades old. The Division Bench in W.P.(MD) No.1116 and 1117 of 2019, dated 04.11.2019 has held that the extension of lease for a period of three years by accepting 15% over and above the existing lease amount is illegal. If the local bodies are allowed to extend the lease on payment of 10% or 15% of the enhanced amount, only selected individuals would continue to be lessees. Such an exercise cannot be allowed. The respondents are correct in issuing the public auction notice. The learned Special Government Pleader also produced the copy of the order dated 03.01.2020 passed by the Executive Engineer, Public Works Department, Tamirabarani Basin Division, Tirunelveli, who had rejected the request of the petitioner for the extension of his lease period.

8. At this juncture, the learned counsel for the petitioner represented that, had the order of rejection from the respondent come earlier, he would have been in a position to participate in the auction as per the impugned notice. The impugned notification dated 24.12.2019 had fixed the date of auction only on 07.01.2020 which is an open auction. Any person interested in participating is only asked to pay a sum of Rs.1,000/- at the venue and take part in the auction. Therefore, there is no impediment for the petitioner to participate in the auction like any other similar lessee. The respondents are also directed to permit the petitioner to take part in the auction on the fixed date without imposing any restrictions. It is open to the petitioner to participate in the auction to be held on 07.01.2020.

9. With the above directions and observations, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

- 1) The Executive Engineer,
Public Works Department,
Tamilabbarani Basin Division,
Tirunelveli -2
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Public Works Department/
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Kodagan Channel Division,
Palayamkottai,
Tirunelveli District.

+1 CC to M/s.J.JEYAKUMARAN, Advocate (SR-445[F] dated 07/01/2020)

Order made in
W. P (MD) No. 108 of 2020
Dated: 06.01.2020

JMN(13.01.2020) 4P : 5C