



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.21072 of 2014

and

WMP(MD).Nos.2 of 2014,1 of 2015 and 13832 of 2018

TNV 57, Chittar Puliyoor Channel
Sundarapandiapuram Village Water Users Association
Represented by its President
Gopalasubramaniam

... Petitioner

Vs.

1.The Executive Engineer
Public Works Department
Water Resources Organization (WRO)
Chittar Basin Division No.1
Tenkasi, Tirunelveli District

2.The Sub Divisional Officer
Public Works Department
Water Resources Organization (WRO)
Chittar Basin Division No.1
Tenkasi, Tirunelveli District

3.The Assistant Engineer
Public Works Department
Water Resources Organization (WRO)
Chittar Basin Division No.1
Tenkasi, Tirunelveli District

4.P.Velmurugan

... Respondents

(The fourth respondent is impleaded vide Court order dated 21.07.2020 in W.M.P(MD).No.14569 of 2018)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent in No.Ko./2014/Vu.Po.(The)/dated 04.12.2014 quash the same.



For Petitioner : Mrs.Hema Sampath
Senior Counsel
For Mr.R.J.Karthick

For R1 to R3 : Mr.K.Chella Pandian
Additional Advocate General
Assisted by
Mr.M.Rajarajan
Additional Government Pleader

For R4 : Mr.J.Ashok

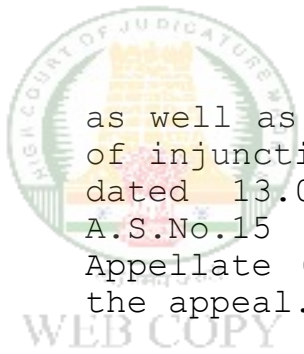
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O R D E R

Heard the learned Senior Counsel appearing for the writ petitioner; learned Additional Advocate General appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent.

2.The writ petitioner is the Water Users Association of Sundarapandiapuram Village. The subject matter pertains to the fishery rights in respect of what is known as Periyakulam Tank in the said village. The Public Works Department by the impugned communication dated 04.12.2014 informed the petitioner's association that in view of G.O.No.16, Public Works Department, dated 14.01.2011, the fishery rights in respect of the tank can be exercised only by the Public Works Department and that the private bodies have been barred from auctioning the same. The said communication is put to challenge in this writ petition.

3. The learned Senior Counsel appearing for the writ petitioner took me through the materials enclosed in the typed set of papers. She pointed out that there was a contest between the ayacutdhars of the said water body and the management of the temple which according to the Senior Counsel owns the tank. The ayacutdhars were granted fishery rights by the Deputy Commissioner, Hindu Religious and Charitable Endowment Department. The temple filed an appeal before the Commissioner, HR & CE in R.P.No.135 of 1972. The Commissioner, HR & CE while noting that the patta in respect of the tank stood in the name of the temple, the villagers have been enjoying the fishery rights. After giving such a specific finding, the appeal was dismissed. The learned Senior Counsel would point out that this order was passed way back on 01.03.1974. Thereafter, the temple did not challenge the rights of the ayacutdhars in respect of the fishery rights. But, it is stated that the amount raised by the auctioning of fishery rights is being utilized for maintaining the temple. When the local body tried to interfere with the said rights, the ayacutdhars once again moved the Civil Court and filed O.S.No.411 of 1993 before the District Munsif, Tenkasi. Though the ayacutdhars sought for the relief of declaration



as well as the injunction, the Civil Court granted only the relief of injunction while denying the relief of declaration. The Judgment dated 13.04.1998 was questioned by the local body by filing A.S.No.15 of 2000 before the Principal Sub Court, Tenkasi. The Appellate Court by Judgment and Decree dated 02.02.2001 dismissed the appeal.

4.Relying on all these materials, the learned Senior Counsel strongly contended that at no point of time, the tank in question was under the control of the Public Works Department. Her further contention is that only if the tank has been under the control of Public Works Department, G.O.No.16 Public Works Department, dated 14.01.2011 would kick in and not otherwise.

5.The stand of the petitioner had been strongly controverted by the department who have filed a detailed counter affidavit.

6.The learned Additional Advocate General appearing for the department took me through the materials enclosed in the typed set of papers and also the averments set out in the counter affidavit.

7.I carefully considered the rival contentions and also went through the materials on record.

8.Of course as evident from the order dated 01.03.1974 passed by the Commissioner, HR & CE, though the temple appears to have been the pattadhar in respect of the tank in question, the fishery rights had been exercised only by the villagers /ayacutdhars. But then, the revenue records clearly indicate that at least from the year 1984 onwards, the Public Works Department has been shown as having control over the tank in question. If the temple had been represented before me, may be I would have taken a different view. But the temple is not in the picture. Therefore, I am not able to sustain the stand of the writ petitioner association. When the petitioner's association moved the civil Court seeking the relief of declaration as well as injunction, declaratory relief was specifically denied. In any event, it is well settled that no private person or body can claim title rights over any water body. It is too well settled a preposition. Now the contest is between the petitioner association and the Public Works Department.

9. A mere look at the Village Note as well as Settlement Register and 'A' Register extract shows that the tank in question has been standing only in the name of the Public Works Department. Therefore, I hold that G.O.No.16, Public Works Department, dated 14.01.2011 would automatically kick in. The validity of the said G.O has been upheld. The impugned communication merely seeks to enforce the said G.O as far as this tank is concerned.

10.In this view of the matter, I find no ground to interfere with the order of the Civil Court. The impugned communication is impugned in this writ petition. Accordingly, this



writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (LA&MC)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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Chittar Basin Division No.1
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AP(03/09/2020) 4P 4C