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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2813 of 2016

and

W.M.P.Nos.2353 and 2354 of 2016

Sampangi

... Petitioner

Vs

1.The District Collector,
Vellore District, Vellore.

2.The Tahsildar,
Vellore District, Vellore.

3.The Executive Engineer,
PWD, Melpalaru,
Vellore District, Vellore.

4.The Assistant Executive Engineer,
PWD, Melpalaru, Vellore,
Vellore District.

5.The Section Officer,
PWD, Irrigation Water Board,
Vellore District, Vellore.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for file relating to Public auction published in கோ.24/அ(பீ)/2016 dated 06/01/2016 from the file of 5th respondent and quash the same and forbearing the respondent 3 to 5 from conducting fishery auction of Unai Vaniyambadi Lake fixed either on 29/01/2016 or any other subsequent date till the enquiry by 2nd respondent is conducted.

For Petitioner : Mrs.R.T.Sundari

For Respondents : Mr.K.M.D.Muhilan
Government Advocate



ORDER

The public auction notification issued on 06.01.2016 by the 5th respondent is under challenge in the present writ petition.

2.The petitioner states that one Duraisamy Naidu, Royappa Naidu, Kondama Naidu, Janakirama Naidu, Seetharama Naidu, Lakshmi Akkal and Chellammal are owing about 50 acres of patta land in the sub mergble area of Periya Eri. When the lake is full, the entire 50 acres of land could not be cultivated and in order to compensate the agricultural loss, the Government has granted Fishing Right in favour of those persons on 15.09.1916 on payment of kist by the land owners.

3.The petitioner states that those persons were enjoying the Fishing Right. After the demise of those persons, the legal heirs are in continuous enjoyment of the Fishing Right.

4.Earlier, the petitioner filed W.P.No.4688 of 2009 for issue of Fishery patta in their name. This Court also passed an order, directing the respondents to pass fresh orders.

5.The respondents considered and based on the Government policy, a public auction notification was issued in the year 2016 inviting applications from the eligible persons. The said notification is under challenge in the present writ petition.

6.The learned counsel appearing on behalf of the petitioner states that the Fishing Right has been given to the forefathers of the petitioner in the year 1916 and they are continuously enjoying the Fishing Right and paying kist and thus, the right conferred in the year 1916 cannot be taken away.

7.The learned counsel appearing on behalf of the respondents disputed the contentions by stating that all along the petitioner is preventing the authorities from proceeding with the public auction. In one way or the other, they are going on filing writ petitions and the authorities are unable to proceed with the public auction in spite of the fact that the Government issued orders to conduct public auction to generate revenue from and out of the grant of Fishing Rights.



8.Mr.M.Palani, Tahsildar, Annaikattu, Vellore District, who appeared in person along with the file, informed this Court that for many years, the Eri was dry and only during the year 2015, the water level increased. Therefore, the authorities invited applications for open tender in the year 2016. However, the auction was not proceeded with, on the ground that the present writ petition is pending.

9.It is contended that the Periya Eri is about 45 hectares and a very big lake. The Fisheries Department is investing for cultivating of fishes and therefore the Fishing Right is to be granted only through public auction. The Fishing Right as allegedly in favour of the petitioner was of the year 1916 and such a right cannot be continued hereinafter as the Government introduced policy for conducting public auction.

10.This Court is of the considered opinion that the Fishing Right was granted during pre-independence era. Thus, the laws enacted subsequent to the independence of our Great Nation is to be implemented in all respects. Any such Fishing Right granted in the year 1916, cannot be continued for an indefinite period and more specifically, in favour of the family members. Such a right if at all given in the year 1916, that becomes null and void and cannot be extended in favour of the petitioner.

11.The learned Government counsel appearing on behalf of the respondents further states that for 45 hectares of Eri, the petitioner is paying a sum of Rs.26/- (Rupees Twenty Six only) to the Department for Fishing Rights.

12. This being the position, the respondents have taken a decision to conduct public auction and if the petitioner is otherwise qualified, she is at liberty to participate in the public auction in the manner known to law.

13. This Court is of the considered opinion that the Fishing Right granted as per the petitioner in the year 1916 cannot be continued. The said right was cancelled by the competent authorities admittedly on 02.03.2009. The cancellation of Fishing Right was challenged by the writ petitioner in the earlier writ petition and the authorities were directed to pass fresh orders. Subsequently actions were initiated and public auction were notified.



14. This being the factum, the petitioner has not established any right recognizable under any law and thus, the petitioner is at liberty to participate in the public auction to be notified by the authorities by following the procedures as contemplated. The respondents are directed to conduct auction for grant of Fishing Rights in the said Periya Eri in the manner known to law and as expeditiously as possible.

15. With these directions, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ars/mka

To

1. The District Collector,
Vellore District, Vellore.
2. The Tahsildar,
Vellore District, Vellore.
3. The Executive Engineer,
PWD, Melpalaru, Vellore District, Vellore.
4. The Assistant Executive Engineer,
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PWD, Irrigation Water Board,
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6. The Tahsildar,
Annaikattu, Vellore District.

W.P.No.2813 of 2016

BP(CO)
SB(01/11/2021)