



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **G.R. SWAMINATHAN**

W.P. (MD)Nos.18327 and 18656 of 2020

and

W.M.P. (MD)Nos.15313, 15314, 15616 and 15617 of 2020

WEB COPY

M.Selvam : Petitioner in both cases

Vs.

1.The Assistant Director of Fisheries,
Office of the Assistant Director of Fisheries,
Dindigul District.

2.The President,
Sivagnanapuram Village Panchayat,
Nilakottai Taluk, Dindigul District.

3.The Assistant Engineer,
Public Works Department,
Water Resources Organisation,
Water Channel Division -II,
Batlagundu, Dindigul District.

4.The District Collector,
Dindigul District,
Dindigul.

: Respondents in both cases

(R4 was *suo motu* impleaded vide order of this Court 04.02.2021)

PRAYER in W.P. (MD)No18327 of 2020:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari Mandamus, to call for the records relating to the impugned tender notification of the 3rd respondent in Lr.No.Ko-9/2020/Vu.Po(Ka.B-II) dated 30.11.2020 quash the same insofar as Alangulam Kanmoi and Sirukulam Kanmoi fixing the date of public auction on 10.12.2020 is concerned and consequently, to forbear the respondents herein from in any manner interfering with the right of fishing lease granted to the petitioner on 13.10.2020 in respect of Alangulam Kanmoi and Sirukulam Kanmoi in the 2nd respondent Village Panchayat.

PRAYER in W.P. (MD)18656 of 2020:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari Mandamus, to call for the records relating to the impugned tender notification of the 3rd respondent in Lr.No.Ko-9/2020/Vu.Po(Ka.B-II) / dated 30.11.2020 and the impugned re-tender notification of the 3rd respondent in Lr.No.Ko-9/2020/Vu.Po. (Ka.B-II) dated 09.12.2020 and quash the same insofar as Alangulam Kanmoi and Sirukulam Kanmoi



fixing the date of public auction on 16.12.2020 is concerned and consequently, to forbear the respondents herein from in any manner interfering with the right of fishing lease granted to the petitioner on 13.10.2020 in respect of Alangulam Kanmoi and Srikulam Kanmoi in the 2nd respondent Village Panchayat.

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For Petitioner	:Mr.K.Appadurai
For R1, R3 and R4	:Mrs.M.Rajeswari Government Advocate
For R2	:Mrs.V.P.M.Vaishnavi Government Advocate (in both cases)

COMMON ORDER

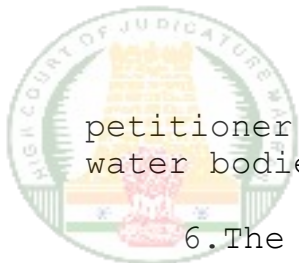
The District Collector, Dindigul, is *suo motu* impleaded as fourth respondent in these Writ Petitions.

2.Heard the learned Counsel appearing on either side. With their consent, these Writ Petitions are taken up for final disposal.

3.The case on hand pertains to the fishery rights in respect of the petition mentioned water bodies. There is no dispute that these water bodies belong to the Public Works Department. But, then, the President of Sivagnanapuram Village Panchayat, within whose limits, these water bodies are located, had auctioned the fishing rights. The auction was held on 13.10.2020. The petitioner was said to be the highest bidder and the second respondent issued the proceedings conferring the fishing lease rights in favour of the petitioner. It appears that based on the same, the petitioner had also planted fishlings. Thereafter, the third respondent issued the impugned tender notification, dated 30.11.2020 for holding the auction for the same water bodies. However, it is stated that no auction was conducted pursuant to the impugned tender notification.

4.The question that arise for my consideration is whether the notification issued by the third respondent is valid or not. The Deputy Block Deputy Officer, having jurisdiction over the second respondent Panchayat, is present in person before me. I posed a specific question to the said Officer, as to the ownership of the water bodies. It is admitted that the water bodies in question are belonging only to Public Works Department. However, it is claimed that as a matter of practice, the Panchayats have been auctioning the fishing right. It may be the past practice. But, then, mere practice cannot validate something that is not legal.

5.Admittedly, the Public Works Department has not issued any proceedings authorizing the Village Panchayat to conduct the auction. Therefore, the auction held by the second respondent cannot said to be legal. But, this Court has to take note of the fact that pursuant to the auction of the second respondent, the



petitioner had invested his money by planting the fishlings in the water bodies.

6.The learned Counsel for the petitioner as well as the learned Government Advocate appearing for the second respondent submitted that the second respondent was very much authorised to conduct the said action, in view of Tamil Nadu Panchayat (Lease and Licensing of Fishery Rights in Water Sources Vested and Regulated by Village Panchayat and Panchayat Union Councils) Rules, 1999, (G.O.Ms.No.169, dated 16.08.1999)

7.I posed a direct question to the learned Counsel for the petitioner as well as the learned Government Advocate for the second respondent that as to when the irrigation sources in question were entrusted to the Village Panchayat. No document of such entrustment is forthcoming. Therefore, it is not open to the writ petitioner as well as the second respondent to fall back on those Rules.

8.Though there is considerable force in the contention of the learned Government Advocate appearing for the respondents 1, 3 and 4 that the petitioner should not be allowed to reap the benefits of an illegal act, I am of the view that the petitioner cannot also be blamed. Of-course, it is alleged that there is collusion between the petitioner and Panchayat President. But, then, this is mere allegation, which is not borne out by any records. Therefore, I permit the petitioner to harvest the fish within a period of four weeks from today. I make it clear that the petitioner will not reduce the water level. The third respondent will take possession of the water bodies in question after four weeks from today.

9.Since I have held that the second respondent has committed an illegality by auctioning the fishing right, I direct the second respondent to transfer the auction amount deposited by the petitioner to the account of the third respondent. It is open to the the District Collector, Dindigul, to take note of the act committed by the second respondent and take whatever action, as he deems fit in accordance with law.

10.These Writ Petitions are dismissed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



To

1.The Assistant Director of Fisheries,
Office of the Assistant Director of Fisheries,
Dindigul District.

2.The Assistant Engineer,
Public Works Department,
Water Resources Organisation,
Water Channel Division -II,
Batlagundu, Dindigul District.

3.The District Collector,
Dindigul District, Dindigul.

+1 CC to M/s.GP (SR-3494[F],3767 dated 05/02/2021)

+1 CC to M/s.K.APPADURAI, Advocate (SR-3604[F] dated 05/02/2021)

W.P. (MD)Nos.18327 and 18656 of 2020
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SVN(CO)
KB(04.03.2021) 4P 6C