



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.10.2021

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.18135 of 2021

and

W.M.P. (MD)No.14980 of 2021

Muthuchamy

... Petitioner

Vs.

1.The District Collector,
Theni District, Theni.

2.The Executive Engineer, PWD/WRO
Manjalar Basin Division,
Periyakulam, Theni District.

3.The Assistant Engineer, PWD/WRO
Irrigation Section,
Periyakulam, Theni District.

4.The Assistant Director of Fisheries,
Theni District at Vaigaidam,
Theni District.

5.The Revenue Divisional Officer,
Periyakulam,
Theni District.

6.The Tahsildar,
Periyakulam Taluk,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents herein, their officials, subordinates and their men from in any manner conducting tender-cum-public auction for lease of fishing rights in Thamaraiikulam, Periyakulam Taluk, Theni District.

For Petitioner : Mr.K.Appadurai

For Respondents : Mr.K.S.Selva Ganesan
Counsel for State



ORDER

The petitioner seeks to prevent the respondents from conducting a tender-cum-public auction for lease of fishing rights in Thamaraiikulam, Periyakulam Taluk, Theni District.

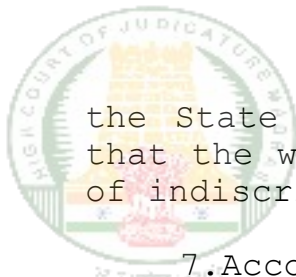
2.The petitioner is a registered association of ayacutdars who undertake agricultural activities by relying upon the Thamaraiikulam kanmoi. It is stated that about 2000 families rely upon the Thamaraiikulam kanmoi as the source for agriculture and other purposes. The petitioner states that the State issued G.O.Ms.No.16, PWD Department, dated 14.01.2011 and thereby provided for remitting 50% of the amount collected from the auction of fishing rights for associations of agriculturists. However, the petitioner contends that such amounts are not being paid to the petitioner's association. In addition, the licensees/lessees of fishing rights have caused damage to the tank bund. The rectification work in such regard has been carried out by the petitioner's association by incurring considerable expenditure.

3.In these circumstances, it is stated that the respondents are taking steps to conduct a public auction of fishing rights. Such public auction is opposed on the grounds indicated above. After submitting a representation in such regard, the present writ petition is filed.

4.Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice on behalf of all the respondents. On instructions, he submits that a sum of about Rs.14.64 lakhs was deposited on 31.07.2020 in terms of G.O.Ms.No.16 dated 14.01.2011. He also submits that the petitioner may make a claim for proportionate payment in respect of the Thamaraiikulam kanmoi.

5.However, the petitioner contends that considerable expenditure has already been incurred towards rectification of the damage caused to the tank bund by the licensees/lessees of fishing rights and, therefore, the association is entitled to be reimbursed in respect of such expenditure.

6.The State is required to consider and balance competing claims and interests. On the one hand, a legitimate and significant claim is made by agriculturists who are dependent on the water from the water bodies for agricultural activities. On the other, fishermen are dependent on the revenue generated from their fishing activities for their livelihood. The interest of such fishermen also cannot be disregarded by the State. The third dimension is the necessity to derive income from public resources so as to finance the State's activities and meet its expenses. Therefore, an appropriate balance has to be struck so as to not prejudice any of



the State should incorporate necessary safeguards such as ensuring that the water level in the relevant tank is not reduced on account of indiscriminate fishing activity.

7. Accordingly, the petitioner is permitted to make a claim for amounts due and payable to the association in terms of G.O.Ms.No.16 dated 14.01.2011. If such claim is made, the Public Works Department is directed to consider and initiate action on such claim within a period of three months from the date of receipt of such claim. In addition, the petitioner is permitted to indicate the amounts expended towards rectification of the Thamaraiikulam kanmoi or its bund and make a claim for reimbursement in such regard. If such claim is made, the said claim should be considered and disposed of within the above mentioned three month period.

8. W.P.(MD).No.18135 of 2021 is disposed of on these terms without any order as to costs. Consequently, W.M.P.(MD)No.14980 of 2021 is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj

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

1. The District Collector,
Theni District, Theni.
2. The Executive Engineer, PWD/WRO
Manjalar Basin Division,
Periyakulam, Theni District.
3. The Assistant Engineer, PWD/WRO
Irrigation Section,
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Theni District at Vaigaidam,
Theni District.

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5.The Revenue Divisional Officer,
Periyakulam,
Theni District.

6.The Tahsildar,
Periyakulam Taluk,
Theni District.

+1 CC to M/s.K.APPADURAI, Advocate (SR-31671[F] dated 07/10/2021)

+1 CC to M/s.SPL.GP (SR-31964[F] dated 11/10/2021)

W.P (MD) No.18135 of 2021
07.10.2021

MGJ(26.10.2021) 4P 9C