



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.P. (MD)Nos.23786 of 2018, 1317 of 2019 and 19415 of 2020

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W.M.P. (MD)No.21536 of 2018 in W.P. (MD)No.23786 of 2018

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W.M.P. (MD)Nos.1124 & 1125 of 2019 in W.P. (MD)No.1317 of 2019

&

W.M.P. (MD)Nos.16197 & 16198 of 2020 & 741 of 2021

W.P. (MD)No.23786 of 2018:-

R.Karuppaswamy

... Petitioner

Vs.

1.The District Collector,
Madurai District.

2.The Commissioner,
Madurai Corporation,
Madurai.

3.The Chief Engineer (WRO),
Public Works Department,
Madurai Division, Madurai.

4.The Superintending Engineer (WRO),
Public Works Department,
Madurai Division, Madurai.

5.The Executive Engineer (WRO),
Public Works Department,
Madurai Division, Madurai.

6.The Assistant Director,
Fisheries Department,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents to prohibit commercial fish farming in all the tanks situated within Madurai Corporation limit and further to direct the respondents to do all acts to preserve the water level of the tanks within Madurai City Municipal Corporation at optimum level by keeping the sluices/shutters in good conditions and also by



restoring all the branch channels bringing in and taking out the water from tanks on removing encroachments and repairing branch channels by considering the representation dated 20.11.2018.

For Petitioner : Mr.G.Prabhu Rajadurai
For R1 & R3 to R6 : Mr.VR.Shanmuganathan
Special Government Pleader
For R2 : Mr.T.S.Mohamed Mohideen
Standing Counsel

W.P. (MD)No.1317 of 2019:-

A.Ramaraj ... Petitioner

Vs.

1.The District Collector,
Madurai District.

2.The Assistant Director of Fisheries,
Fisheries Department,
Madurai.

3.A-2407 Madurai South Taluk Inland Fishermen
Co-operative Society,
Rep. by its President P.Jeyaraman,
Avaniyapuram,
Maudrai.

... Respondents

[R3 is impleaded vide order dated 07.01.2020, made
in W.M.P. (MD)No.23482/2019 in W.P. (MD)No.1317/2019]

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the impugned order in Na.Ka.No.1604/E/18-1, dated 01.19, on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
For R1 & R2 : Mr.VR.Shanmuganathan
Special Government Pleader
For R3 : Mr.T.Lajapathi Roy

W.P. (MD)No.19415 of 2020:-

Aiveththanenthal Grama Vivasaya Kudimakkal Sangam,
Reg. No.171/2017,
Rep. by its President,
Sivanandi,
S/o.Sivaramanathan,
No.30, Karuthan Servai Street,
Avaniyapuram Madurai South,
Madurai - 625 012.

... Petitioner



Vs.

1.The Director of Fisheries,
Chennai.

2.The Deputy Director of Fisheries,
Office of the Deputy Director of Fisheries,
Madurai,
Madurai District.

3.The Assistant Director of Fisheries,
Fisheries Department,
Madurai

4.The District Collector,
Madurai District,
Madurai.

5.The Commissioner,
Madurai Corporation,
Madurai.

6.A-2407, Madurai South Taluk Inland Fishermen
Co-operative Society,
Rep. by its President,
P.Jayaraman,
S/o.Perumal,
Avaniyapuram, Madurai.

7.Ramesh Ramalingam, S/o.Akkini Servai

8.Ramakrishnan, S/o.Muthukaruppan

9.S.Balu, S/o.Shanmugavel

10.Sethuraman, S/o.Muthaiah

11.M.Palanichamy, S/o.Muthuvel

... Respondents

[R7 to R11 are impleaded vide order dated 09.02.2021, made
in W.M.P. (MD)No.2032/2021 in W.P. (MD)No.19415/2020]

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the third respondent, vide his proceeding in Na.Ka.No.857/E/2020, dated 05.11.2020 and quash the same as illegal.



For Petitioner : Mr.C.Mayilvahana Rajendran
For R1 to R4 : Mr.VR.Shanmuganathan
Special Government Pleader
For R5 : Mr.T.S.Mohamed Mohideen
Standing Counsel
For R6 : Mr.T.Lajapathi Roy
For R7 to R11 : Mr.D.Saravanan

* * * * *

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

W.P.(MD)No.23786 of 2018 has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to prohibit commercial fishing within the Madurai Corporation limit and preserve the water level of the tanks at optimum level, by keeping the sluices / shutters in a good condition.

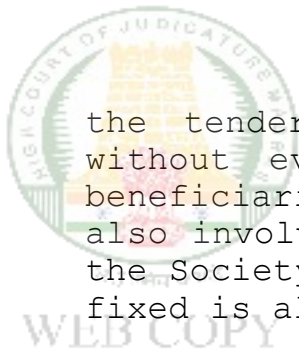
2.W.P.(MD)No.1317 of 2019 has been filed challenging the impugned order passed in the month of January, 2019, by which, tanks are sought to be auctioned.

3.W.P.(MD)No.19415 of 2020 has been filed challenging the order dated 05.11.2020, by which, respondent No.6 was declared as successful bidder.

4.As the issues involved are interlinked and common, these writ petitions are disposed of by this common order.

5.The grievance, which is sought to be exposed by the petitioners, is that due to the decision made to permit the third parties to indulge in fishing over the water-bodies coming within the control of the Public Works Department, situated either within the Madurai Corporation or on its periphery, water depletion, water contamination and pollution take place. The check dam serves many purposes, including increasing the occupier of the locality acting as percolation tanks. Therefore, such activities, which invariably involved rearing of fishing by usage of chemical and other materials and letting the water to augment fishing are required to be prevented, as there is scarcity of water both for drinking and agricultural purposes.

6.The learned counsels made reliance upon the scientific materials in support of their contentions. Incidentally, it is submitted that respondent No.6 is acting only on paper having been



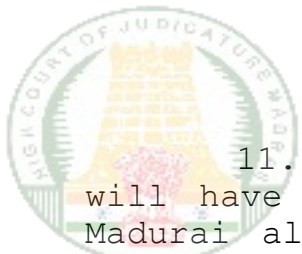
the tenderer in view of the policy decision of the Government without even fixing the upset price. The members are not the beneficiaries and there is not even an account for the accounts. It also involves sub-letting. Income does not get into the account of the Society, but only to the few named individuals. The upset price fixed is also very low.

7.The learned counsel for respondent No.6 submitted that inasmuch as fingerlings are already let out and the licence is in currency. The interest of respondent No.6 requires to be protected. Even in the agreement, it has been clearly specified about the action that could be taken in the case of any violation. Therefore, there is sufficient protection, which is available and thus, no orders are required.

8.The issues sought to be raised are certainly involving public interest. Water is always on scarcity. All that we can do is to distribute water in a fair manner, so as to facilitate the usage by one and all. It should be used for both drinking and agricultural purposes. In fact, all the living beings rely upon water being the life source. A commercial venture would certainly take a back seat, when it needs to share the water. Though there are conditions attached to the agreement entered into between the officials of the Fisheries Department and respondent No.6, the property will have to be given for using the water for drinking purpose and agricultural purpose. Usage of water does not merely involve the manner in which it is used. Speculation is a very important factor for preservation of water. In fact, this is one area, this Country is grossly found lacking. There is neither a scientific study done nor knowledge about preservation of water by taking adequate measures including harvesting of rain water.

9.In such view of the matter, while not disturbing the right of respondent No.6 to undertake the fishing for this year and there has to be a review afresh by the Fisheries Department for the next year, we are of the view that the very action of the Fisheries Department itself is required to be questioned, as it has not considered the other aspects involved. We may add that even the Public Works Department has become a mute spectator. It is the primary duty to see to it that the water is shared for both the drinking purpose and the agricultural purpose. Nobody shares the deficiencies of available water, as it depends on the monsoon and the rainfall.

10.Accordingly, for ensuing year, before undertaking the process of giving licence, the Fisheries Department will have a detailed consultation with the Public Works Department. The observation made by us would apply with much more rigour to the tanks situated at Madurai Corporation, as the need is obviously higher.



11. In such view of the matter, the consultation as indicated will have to be extended to the officials of the Corporation of Madurai also. With respect to fixation of upset price, we have already held in **W.A. (MD) Nos. 1251 and 923 of 2020, dated 03.02.2021**, which is extracted hereunder:-

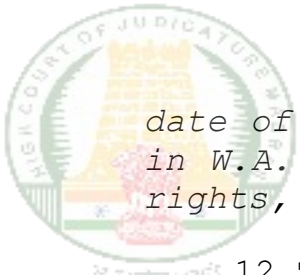
''10. For the ensuing years, we call upon the official respondents, including the Secretary to Government, Fisheries Department, to adopt a different methodology as suggested by the learned Single Judge, by fixing the upset price and thereafter, call for tender. The highest amount offered by the successful bidder will have to be offered to the Bodi Fisherman Society. It is better to follow this methodology in future in all cases, as the Government would not lose the revenue and in any case, fixation of the upset price is a starting point and the same will not be the actual price that will fetch in an auction. It is a price, which will facilitate somebody to take part in the auction, being the minimum value of the subject matter of the licence.

11. The incidental issue is with respect to the impleaded respondents. On a perusal of the status report filed by respondent No. 4, it is clear that various violations took place. These violations are with respect to contamination with the water and reaction to facilitate the highest fishing. The rights of the appellant in W.A. (MD) No. 923 of 2020 is certainly subject to the rights of the impleaded respondent. Therefore, the official respondents shall make sure that their rights are not affected, which is inclusive of contaminating the water by polluting it for facilitating the larger capture of fishing and letting the water out, much to the suffering of the farmers. If such activities are carried on, the respondents are expected to cancel the licence.

12. There is one another issue which we need to consider. This is with respect to other living beings. The learned Special Government Pleader appearing for the official respondents will have to instruct the officials to make sure that the appellant in W.A. (MD) No. 923 of 2020 shall not involve in any illegalities, by using crackers to shy away the birds, which go there to catch fish.

13. We find considerable force in the said submissions made. The official respondents will make sure that the birds are not made to go away by the usage of crackers.

14. The official respondents shall undertake the exercise as aforesaid within a period of four weeks from the



date of receipt of a copy of this judgment. If the appellant in W.A. (MD)No.923 of 2020 is not inclined to take the fishing rights, it can be brought up for auction.''

12.The aforesaid direction will have to be complied with strictly by the Fisheries Department, provided the decision has been taken in consultation with the Public Works Department and the Corporation of Madurai, as the case may be. We make it clear that insofar as the tanks situated in Madurai Corporation is concerned, the respondents viz., the Fisheries Department and the Public Works Department and the Madurai Corporation are expected to take a conscious decision before agreeing upon to give rights of fishing to any third parties.

13.All the Writ Petitions are disposed of accordingly. We make it clear that this year, respondent No.6 is permitted to undertake the exercise of doing fishing. However, considering the seriousness of the allegations made, we direct the Registrar of Co-operative Societies concerned to conduct an enquiry through his officials with respect to functioning of respondent No.6 with specific reference to the management of funds. Respondent Nos.7 to 11 in W.P.(MD)No.19415 of 2020 is also at liberty to give their compliant in this regard. Appropriate action will be taken within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Smn2

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 Director of Fisheries,
Chennai.

2.The District Collector,
Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Deputy Director of Fisheries,
Office of the Deputy Director of Fisheries,
Madurai,
Madurai District.

4.The Assistant Director of Fisheries,
Fisheries Department,
Madurai.

5.The Commissioner,
Madurai Corporation,
Madurai.

6.The Chief Engineer (WRO),
Public Works Department,
Madurai Division, Madurai.

7.The Superintending Engineer (WRO),
Public Works Department,
Madurai Division, Madurai.

8.The Executive Engineer (WRO),
Public Works Department,
Madurai Division, Madurai.

9.The Registrar of Co operative Societies,
No.170, N.V. Natarajan Maligai,
EVR Periyar High Road, Kipauk,
Chennai -600 010.

+1 CC to Mr.T.S.MOHAMED MOHIDHEEN, Advocate (SR-6326[F] dated
19/02/2021)

+1cc to SPL GP Sr.No.6164

+1cc to Mr.T. Lajapathi Roy, Advocate Sr.No.6256

+1cc to R. Murali, Advocate Sr.No.6271

+1cc to M/s. T.S. Sathyaselvi, Advocate Sr.No.6307

+1cc to Mr. G. Prabhu Rajadurai, Advocate Sr.No.6249

Common order made in
W.P. (MD)Nos.23786 of 2018, 1317 of 2019 and 19415 of 2020
18.02.2021

VB (09.03.2021) 8P 16C