



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

Coram

The Hon'ble Mr. Justice PARESH UPADHYAY
and

The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No.24 of 2022
and C.M.P.No.326 of 2022

S.V.Govindarajalu Naidu

...Appellant

Vs

1. The State of Tamil Nadu
rep. by the Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 9.

2. The Block Development Officer,
Village Panchayat,
Kaveripakkam Panchayat Union,
Arakkonam Taluk, Ranipet District.

3. The Section Officer,
Public Works Department
(Water Resources Department),
Panappakkam, Arakkonam Taluk,
Ranipet District.

4. R.Munusamy

...Respondents

Appeal preferred under Clause 15 of Letters Patent against
the order dated 06.10.2021 made in W.P.No.260 of 2012.

Prayer in W.P.No.260 of 2012:

Writ Petition filed Under Article 226 of the Constitution
of India praying for issuance of Writ of Certiorarified Mandamus
calling for the records of the first respondent in G.O.Ms.No.16
dated 11.01.2011 and quash the same insofar as it pertains to
the petitioner and to forbear the respondents from interfering
with the petitioner's Fishery right in respect of the Water Tank
situated in Siruvalayam Village, Arakkonam Taluk, Vellore
District.



WEB COPY

For Appellant .. Mr.P.Krishnan

JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

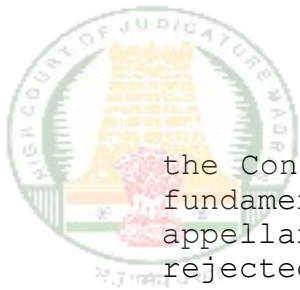
Challenge in this appeal is made to the order dated 06.10.2021 recorded on W.P.No. 260 of 2012. This appeal is by the original writ petitioner.

2. Learned advocate for the appellant has submitted that the order impugned in the writ petition was in gross violation of principles of natural justice since before passing the said order no notice was issued to the appellant. It is submitted that had the notice been given to the petitioner / appellant, proper facts could have been pointed out to the authorities. It is submitted that this aspect is not properly considered in the impugned order and this appeal be entertained. It is noted that learned advocate for the appellant has taken this Court through the material on record including the order dated 21.12.2011 in W.P.No. 29487 of 2011 and M.P.No. 1 and 2 of 2011.

3. Having heard learned advocate for the appellant and having considered the material on record this Court finds that the appellant was granted fishing right in the year 1916 by order dated 26.11.1916. Initially the fishery of the Siruvalayam tank was for 21 rupees 14 anas and 0 paisa, with some revision in it, that has continued for all these years, even decades after being Republic. In the year 2011, the Government thought it fit to have the scheme of auctioning of right so as to put that arrangement in consonance with the fundamental right guaranteed under the Constitution of India. It is that order dated 11.01.2011 (page no. 33) which was questioned in the writ petition terming that to be violative of Article 19(1)(g) of the Constitution of India inter-alia contending that notice ought to have been given to the petitioner / appellant.

4. Learned Single Judge has by detailed reasons rejected the petition inter-alia holding that, the conferment of fishing right which was pre-independence era could not have been continued like this. Further, the said arrangement was also against payment of Rs.173/- per annum. We find that rejecting the petition in this factual back ground can not be said to be erroneous in any manner which may call for any interference in this appeal. This appeal therefore needs to be dismissed.

5. We also find that, by the impugned order, not only there was no violation of fundamental right, on the contrary continuing such an arrangement for decades together even after



the Constitution of India being in force itself was violative of fundamental right qua other citizens vis-a-vis the present appellant. On merits, therefore this argument needs to be rejected.

WEB COPY

6. Sofar reliance on the order of this Court dated 21.12.2011 in W.P.No. 29487 of 2011 and M.P.No. 1 and 2 of 2011 is concerned, we find that it was an interim stay order qua one petitioner who according to learned advocate for the present appellant is similarly situated to the present appellant. Interim order of learned single Judge would not be a guiding factor for us to decide this appeal. That argument therefore is rejected.

7. Since we have found that continuing such an arrangement over a century, for decades after Constitution of India being adopted, itself was unconstitutional arrangement and therefore such arrangement can not be continued.

8. This writ appeal is dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

9. Learned advocate for the appellant has requested that at least this year, this right may be continued. Since we have found that this arrangement itself was against the Constitution of India, having held like this, we cannot accept the request. Therefore, the said request is rejected.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mmi/5

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai - 9.
- 2.The Block Development Officer,
Village Panchayat,
Kaveripakkam Panchayat Union,
Arakkonam Taluk, Ranipet District.



3.The Section Officer,
Public Works Department
(Water Resources Department),
Panappakkam, Arakkonam Taluk,
Ranipet District.

WEB COPY

+1cc to Mr.P.Krishnan, Advocate SR. No.4142

W.A.No.24 of 2022

GPL (CO)
PR (07/02/2022)