

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.32289 of 2015

&

M.P.No.1 of 2015

His Holiness Sri-la-Sri Sathyagnana
Mahadeva Desiga Paramachariya Swamigal
Adheenakartha Velakurichi Adheenam
Thirupugalur, having headquarters
at Velakurichi Adheenam, Thirupugalur,
Nagapattinam District.

..... Petitioner

vs.

1.The State of Tamilnadu,
rep. by its Secretary to Government,
Revenue Department,
Fort St George,
Chennai-600 009

2.The Director,
Survey and Settlement Department,
Chepauk,
Chennai-600 005

3.State of Tamilnadu,
rep. by its Secretary to Government,

Public Works Department,
Fort St George,
Chennai-600 009

4.The Chief Engineer,
Operation and Maintenance,
Water Resources Department,
Public Works Department,
Chennai-600 005

5.The Assistant Executive Engineer,
Public Works Department,
Manimutharu Perungal Section K.P.,
Manimutharu-627 421,
Tirunelveli District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring that the respondents 3 to 5 are not entitled to bring the fishery right as far as the Pattarkulam situated at South Kallidaikurichi based on G.O.Ms.No.16, Public Works(W-2)Department, dated 14.01.2011 for auction and thereby declare that the auction notice dated 28.09.2015 passed vide proceedings in Na.Ka.No.2Po/Perungal/Ko-3/2015 is not in accordance with G.O.Ms.No.16, Public Works(W-2)Department, dated 14.01.2011 as null and void in respect of Patarkulam is concerned.

For Petitioner : Mr.A.R.Nixon

For Respondents: Ms.Senthil Selvi,GA

ORDER

This writ petition has been filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Declaration, declaring that the respondents 3 to 5 are not entitled to bring the fishery right as far as the Pattarkulam situated at South Kallidaikurichi based on G.O.Ms.No.16, Public Works (W-2) Department, dated 14.01.2011 for auction and thereby declare that the auction notice dated 28.09.2015 passed vide proceedings in Na.Ka.No.2Po/Perungal/Ko-3/2015 is not in accordance with G.O.Ms.No.16, Public Works (W-2) Department, dated 14.01.2011 as null and void in respect of Patarkulam is concerned.

2.The case of the petitioner is that the petitioner was given fishery right in the year 1912 of Pattarkulam situated at Therkkukallidaikuruchi Village of Ambasamudram Taluk, Tirunelveli District. According to the petitioner, in the year 1912, re-settlement patta has been given in the name of Vellakurichi Adheenam (Mutt) for

exercising fishing rights. The petitioner was all along in exclusive possession and enjoyment including fishing right over the Pattarkulam for the last several decades. While so, the Government of Tamil Nadu issued G.O.Ms.No.16, Public Works(W-2) Department, dated 14.01.2011, in consequence with Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000, taking away the fishing rights which were granted long back by the Fisheries Department to PWD and Revenue Department and 50% of the lease amount should be paid to the various agricultural associations formed under Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000.

3.The petitioner who was holding the fishing right in respect of Pattarkulam, made an application under the Right to Information Act with respect to fishing rights of the said Pattarkulam. The fifth respondent /PWD Department by their letters dated 04.08.2014 and 15.12.2014 intimated to the petitioner that it belongs to PWD Department and that the representation made by the petitioner has

been forwarded to the Assistant Engineer, Manimutharu Dam, Perungal Section K.P., Manimutharu, who, in turn, by his letter dated 29.12.2014, informed the petitioner that they have not auctioned the fishing right in respect of Pattarkulam of Perungal irrigation of Manimuthur. However, later, the fifth respondent issued the impugned public auction notice dated 28.09.2015 for conducting public auction in respect of fishing rights in Pattarkulam also. Aggrieved over the same, the petitioner has preferred the present Writ Petition.

4. Pursuant to the direction of this Court, the learned Additional Advocate General produced "A" Register pertaining to Therkku Kalidaikuruchi village of Ambasamudram taluk, wherein, at Sl.No.79 South Kallidaikuruchi village, the S.Nos.189A and 189B were shown as Pattarkulam owned by the Public Works Department and S.No.199 B was re-classified as Government Poramboke.

5. The learned counsel for the petitioner has submitted that

the petitioner could not have any objection in respect of classification of the land as Government Poramboke but he would contend that as per re-settlement patta issued in the year 1912, Mutt has been in exclusive possession and enjoyment of Pattarkulam including fishing rights and thereby, the Public Works Department has no control over the said Pattarkulam and hence, the impugned notice is liable to be quashed.

6. Heard the submissions of the learned counsel on either side and perused the entire materials available on record.

7. I have gone through the materials placed before this Court. In order to conduct the auction in respect of fishing rights through the Public Works Department relating to the ponds in Tamil Nadu under the maintenance of PWD, the Government issued G.O. G.O.Ms.No.16, Public Works(W-2)Department, dated 14.01.2011, classified the categories of water bodies under the control of the respective departments, viz., PWD and Revenue Department. As per

the above Government Order, so far as the tanks under the control of Public Works Department where the fishery rights leased out by the Fisheries Department or Revenue Department, 50% of the lease amount should be paid to the Public Works Department for the purpose of maintaining tank. So far as the tanks under the control of Public Works (Water Resources) Department, the right to granting of lease is given to the Public Works Department and 50% of the lease amount should be paid to the various agricultural associations formed under Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000. Therefore, by virtue of G.O.Ms.No.16, dated 14.01.2011, the PWD is having sole authority in respect of fishing rights over Pattarkulam and it has been maintained by Perungal Section PWD/WRO, Manimuthar. It is pertinent to note that the petitioner has not challenged the G.O.Ms.No.16, dated 14.01.2011, but only challenged the auction notice dated 28.09.2015.

8. In fact, a similar issue came for consideration before this

Court in the case of ***“S.V.Govindarajalu Naidu Vs. the State of Tamilnadu, rep. by its Secretary to Government and 2 Others”*** in WP No.260 of 2012 dated 06.10.2021, wherein, it was held that the fishing rights shall be conducted in public auction and all eligible persons are entitled to participate in the open auction for the purpose of getting fishing rights. A relevant portion in para no.7 and 8 of the said order, is extracted here under:

“7. This Court is of the considered opinion that during pre-independence era, such fishing right was granted considering the fact that there was no competition during the relevant point of time. The vast acres of tanks are allowed to be utilized for the purpose of fishing by the Settlement Officers as there was no competitors for fishing during those days. However, no such order can be utilized for an indefinite period and by many generations. Already the petitioner and their family members have exercised the fishing right for more than 100 years, that itself is an extraordinary concession. Under these circumstances, the petitioner cannot pay merely a sum of Rs.173/~ for one

year and exercise the fishing rights in such a vast acres of tank. It causes greater revenue loss to the State. Now, many people are ready and willing to participate in the open auction for fishing rights and now it has become a competitive world and therefore, the Government is bound to give an opportunity to all the persons, who are ready and willing to do the fishing rights. All eligible persons are entitled to participate in the open auction for the purpose of getting fishing rights.

8. This being the facts and circumstances, the petitioner has not established any right for the purpose of granting the relief. However, the petitioner is at liberty to participate in the public auction in the event of issuing notification by the competent authority.”

9. In view of the above, the claim of the petitioner to declare that the respondents 3 to 5 are not entitled to bring the fishery right in respect of Pattarkulam situated at South Kallidaikuruchi

village based on G.O.Ms.No.16, Public Works(W-2)Department, dated 14.01.2011, is not sustainable and the consequential relief to quash the impugned the auction notice is also not sustainable. Hence, this Court does not find any merits in the Writ Petition in order to entertain the same. Accordingly, the Writ Petition is liable to be dismissed.

10. Further, as could be seen from the counter affidavit, during the pendency of the present Writ Petition, pursuant to the auction notice, dated 28.09.2015, a public auction in respect of fishing rights in Pattarkulam has been conducted on 06.11.2015, wherein, two competitive bidders had participated and the highest rate was quoted by one Thiru K.Manilasuyaatchi for Rs.8070/-. Therefore, virtually the matter has become infructuous and there is nothing survives for adjudication in this Writ Petition.

11. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : yes/no
Internet : yes/no

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In the meantime, the Government has also issued another Government Order relating to sharing of income from the leasing out of fishery rights in G.O.Ms.No.16, Public Works Department, dated 14.01.2011.