



WEB COPY



W.P.No.16879 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**W.P.No.16879 of 2022
and WMP No.16178 of 2022**

- 1.S.Sathyamoorthi
- 2.Elaiyaraja
- 3.L.Kantha
- 4.P.Muniappan

... Petitioners

Versus

1. The Executive Engineer (WRO),
Public Works Department,
Upper Pennaiyar Basin Division,
Dharmapuri-5.
2. The Assistant Director of Fisheries,
Inland Fisheries,
Krishnagiri.
3. FMR.1, Kaveripattinam Paruvatharajakula
Fisherman Co-operative Society,
Rep by its President,
No.59/203, Agaram Road,
Kaveripattinam Post,
Krishnagiri District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus forbearing the respondents and their men or agent or anybody claiming through them from interfering with the petitioners' lease hold rights of fishing at Vilangamudi Jambu Eari, Krishnagiri District till completion of lease period on 30th June 2023.



W.P.No.16879 of 2022

For Petitioners : Mr.M.S.Palaniswamy

For Respondents : Mr.T.Seenivasan,
Spl.Govt.Pleader
For R.1 and R.2

Mr.C.Selvaraj
AGP
For R.3

ORDER

This writ petition has been filed for a Mandamus forbearing the respondents from interfering with the petitioners' lease hold rights of fishing at Vilangamudi Jambu Eari, Krishnagiri District till completion of lease period on 30th June 2023.

2. Heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing on behalf of the third respondent and the learned Special Government Pleader appearing on behalf of the respondents 1 and 2. By consent of both the parties, this writ petition has been taken up for final disposal at the admission stage itself.

3. According to the petitioners, they have entered into a lease agreement on 18.04.2018 with the respondents and they were granted fishing rights at Vilangamudi Jambu Eari, Krishnagiri District for a period of five years from June 2017 to 30.06.2023. According to the petitioners, the respondents, even before the



W.P.No.16879 of 2022

expiry of the lease period, are now interfering with the petitioners' fishing rights

and in such circumstances, this writ petition has been filed.

4. A counter affidavit has been filed by the second respondent stating that only pursuant to the direction given by the Division Bench of Madurai Bench of Madras High Court in its order dated 03.02.2021 made in W.A.(MD)Nos.1251 and 923 of 2020, the respondents have decided to auction the fishing rights for the subject lake. According to them, in the said decision, in order to get the best market price, the respondents were directed to conduct auction in respect of fishing rights for the lake by fixing an upset price. In the counter affidavit, the respondents in paragraph No.7 have admitted that the petitioners were handed over the possession of the subject lake only in June 2018.

5. Learned counsel for the petitioners reiterated the contentions raised in the affidavit filed in support of the writ petition and the learned Special Government Pleader also reiterated the contents of the counter affidavit filed by the second respondent in their respective submissions.

6. Admittedly, the petitioners were granted lease in respect of fishing rights at Vilangamudi Jambu Eari (lake), Krishnagiri District for a period of five years.



W.P.No.16879 of 2022

They have also paid the lease rentals amounting to Rs.4,52,175/-(Rupees four lakhs fifty two thousand one hundred seventy five only) in advance to the respondents for a period of five years. Admittedly, the petitioners were in possession of the lake for carrying out fishing activities, as seen from paragraph No.7 of the counter affidavit filed by the second respondent, only in June 2018. Therefore, the period of five years will come to an end only in June 2023. However, based on the judgment of the Division Bench of Madurai Bench of Madras High Court dated 03.02.2021 made in W.A.(MD)Nos.1251 and 923 of 2020, the respondents claim that they have to conduct auction for granting fishing lease for the subject lake also by fixing an upset price. The operative portion of the order dated 03.02.2021 passed in W.A.(MD)Nos.1251 and 923 of 2020 reads as follows:-

“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



W.P.No.16879 of 2022

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 license.”

7. The aforesaid direction is only a general direction that in future, it is advisable for the respondents to follow the aforementioned methodology referred to in the above said order. The said order does not give right to the respondents to terminate the lease when the lease is still in existence, as in the instant case, where lease expires only in June 2023. The Division Bench in the aforesaid order has only directed the respondents to call for tender for future lease and not to terminate the existing leases where the period has not come to an end. In the instant case, excepting for relying upon the decision rendered by the Division Bench of Madurai Bench of Madras High Court dated 03.02.2021 passed in W.A.(MD)Nos.1251 and 923 of 2020, which is not applicable to the facts of this case, the respondents have not raised any other ground for preventing the petitioners from continuing with the lease which expires only in June 2023 (period of five years). The respondents have also admitted in the counter affidavit as stated supra that the petitioners were put in possession of the lake only in June 2018 and therefore, the petitioners are entitled to have the benefit of the lease upto June 2023.

8. For the foregoing reasons, this Court is of the considered view that there



W.P.No.16879 of 2022

is merit in the contentions raised by the petitioners in this writ petition and the writ petition will have to be allowed as prayed for.

9. Accordingly, the writ petition is allowed by forbearing the respondents from interfering with the petitioners lease hold rights of fishing at Vilangamudi Jambu Eari, Krishnagiri District till completion of lease period on 30th June 2023.

10. Learned counsel for the petitioners, on instructions, would submit that on expiry of the lease period i.e., on 30.06.2023, the petitioners shall not, at any cost, seek for further extension.

No costs. Consequently, connected miscellaneous petition is closed.

05.07.2022
2/2

sr
Index: Yes/No
Speaking Order/Non-Speaking Order



W.P.No.16879 of 2022

To

WEB COPY

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Upper Pennaiyar Basin Division,
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WEB COPY



W.P.No.16879 of 2022

ABDUL QUDDHOSE, J

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W.P.No.16879 of 2022

2/2

05.07.2022