

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :29.09.2022 & 30.09.2022

ORDER PRONOUNCED ON : 20.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.6840 & 7061 of 2012, WP(MD).No.14375 of 2011 and
WP(MD).No.13547 of 2015**

and

**and WMP(MD).No.15847 of 2022, MP(MD).Nos.2 & 3 of 2012 and
MP(MD).Nos.1 &3 of 2012, MP(MD).No.1 of 2013, WMP(MD).No.15843
of 2022 and MP(MD).Nos.2 of 2011 and 1 of 2012
and MP(MD).No.1 & 2 of 2015**

WP(MD).No.6840 of 2012

1.S.Thillai Nadarajan (died)

2.T.Mahesh

(2nd Petitioner is substituted
vide Court order dated 20.06.2022)

....Petitioners

Vs

1.The District Collector
Tirunelveli District
Tirunelveli

2.The Executive Engineer
Public Works Department
Water Resources Organisation
Chittar Basin Division
Tenkasi, Tirunelveli

3.The Junior Engineer
Public Works Department
Water Resources Organisation
Irrigation Section
Taluk Office Campus, Tenkasi
Tirunelveli District

4.The Inspector of Police
Achanpudur Police Station
Achanpudur Post
Shenkottai Taluk
Tirunelveli District

5.The State of Tamil Nadu
Represented by its
Secretary to Government
Public Works (W2) Department
Secretariat, Chennai 600 009

....Respondents.

(5th Respondent impleaded vide Court
Order dated 29.09.2022)

WP(MD).No.7061 of 2012

1.M.Muthiya Pandi (died)

2.M.Saravanan
(2nd Petitioner is substituted
vide Court order dated 29.08.2022)

....Petitioners

Vs

1.The District Collector
Tirunelveli District
Tirunelveli

2.The Executive Engineer
Public Works Department
Water Resources Organisation
Chittar Basin Division
Tenkasi, Tirunelveli

3.The Junior Engineer
Public Works Department
Water Resources Organisation
Irrigation Section
Taluk Office Campus, Tenkasi
Tirunelveli District

4.The Inspector of Police
Achanpudur Police Station
Achanpudur Post
Shenkottai Taluk
Tirunelveli District

5.The State of Tamil Nadu
Represented by its
Secretary to Government
Public Works (W2) Department
Secretariat, Chennai 600 009

....Respondents.

(5th Respondent impleaded vide Court
Order dated 29.09.2022)

WP(MD).No.14375 of 2011

A.Ramajeyam

....Petitioner

Vs

1.State of Tamil Nadu
Represented by Secretary to Government
Public Works Department
Fort St.George
Chennai -9

2.The Executive Engineer
Public Works Department
Thamirabarani Division
Panangulam
Nanguneri Taluk
Tirunelveli District

3.Murugan
President of Water Users Association
Thamirabarani Division, Panangulam
Nanguneri Taluk
Tirunelveli District

....Respondents.

WP(MD).No.13547 of 2015

Kanyakumari Mavatta Meen Thozhilaalar Sangam (CITU)
Reg.No.104/KKM
Represented by its General Secretary
14/D41, Police Station Road
Krishnankoil
Nagercoil-1
Kanyakumari District

...Petitioner

Vs

1.The State of Tamil Nadu
Represented by its Secretary to Government
Public Works Department
Fort St.George
Chennai 600 009

2.The Secretary to Government
Animal Husbandry and Fisheries Department
Fort St.George
Chennai 600 009

3.The Secretary to Government
Revenue Department
Fort St.George
Chennai 600 009

....Respondents

Prayer in W.P(MD).No.6840 of 2012 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned government order issued by the 5th respondent in G.O(Ms).No.16 Public Works (W2) Department, dated

14.01.2011 and the consequential auction notice issued by the 3rd respondent in his proceeding in Ka.No.Ko.T19/E.Po/Tenkasi/ dated 03.05.2012 and quash the same and consequently forbear the respondents from in any way conducting auction in respect of Kulasekaraperi Tank, Achanputhur Village,Shenkottai Taluk, Tirunelveli District during the subsistence of the petitioner's lease.

Prayer in W.P(MD).No.7061 of 2012 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned government order issued by the 5th respondent in G.O(Ms).No.16 Public Works (W2) Department, dated 14.01.2011 and the consequential auction notice issued by the 3rd respondent in his proceeding in Ka.No.Ko.T19/E.Po/Tenkasi/ dated 03.05.2012 and quash the same and consequently forbear the respondents from in any way conducting auction in respect of Udayaselvan Tank, Vadakarai Keel Pidakai Village, Shenkottai Taluk, Tirunelveli District during the subsistence of the petitioner's lease.

Prayer in W.P(MD).No.14375 of 2011 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned G.O. vide G.O(Ms).No.16 Public Works (W2) Department, dated 14.01.2011 passed by the first respondent and quash the same and direct the respondents 1 and 2 to permit the exploitation of fishing right in Naduvakulam Tank located at Naduvakulam Village, Nanguneri Taluk, Tirunelveli District by the Ayacutdars of the Tank as it is being done for the past several decades.

Prayer in W.P(MD).No.13547 of 2015 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records passed by the first respondent in Government Order in G.O(Ms).No.16 Public Works (W2) Department, dated 14.01.2011 and G.O.Ms.No.72, Public Works (W2) Department dated 06.05.2014 and quash the same and consequently direct the respondents herein to implement the Government Order in G.O.Ms.No.332, Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993 effectively.

(Prayers in WP(MD).Nos.6840 and 7061 of 2012 have been amended vide Court order dated 29.09.2022)

For Petitioners	: Mr.M.Saravanakumar in WP.Nos.6840 and 7061 of 2012
	: Mr.Niranjan S.Kumar For Mr.V.Balaji in WP.No.14375 of 2011
	: Mr.K.Vamanan in WP.No.13547 of 2015
For R1 to R3	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.B.Saravanan, Additional Government Pleader in WP.Nos.6840 and 7061 of 2012 and R1 and R2 in WP.No.14375 of 2011 and R1 to R3 in WP.No.13547 of 2015
For R3	: No appearance in WP.No.14375 of 2011
For R4	:Mr.P.Kottaichamy Government Advocate (Crl.Side) in WP.Nos.6840 and 7061 of 2012

COMMON ORDER

All the above writ petitions have been filed challenging G.O.(Ms).No. 16 Public Works (W2) Department, dated 14.01.2011 under which certain organisations and individuals were banned from conducting public auction of fishery rights in tanks which are vested with Public Works Department.

2.In WP(MD).Nos.6840 and 7061 of 2012, the consequential auction notices passed by the Junior Engineer of Irrigation Department, dated 03.05.2012 has also been challenged.

W.P(MD).No.14375 of 2011

3.The petitioner claims himself to be the President of Naduvakkulam Adi-Dravidar Farmers Sangam which is an unregistered body. According to the petitioner, Naduvakkulam Tank in Naduvakulam Village, Nanguneri Taluk, Tirunelveli District originally was a private tank of Dharumapuram Adheenam. Due to the introduction of Inam Abolition Act, the said Adheenam has lost his title to the Tank. According to the petitioner, though Adheenam has lost his title to the Tank, all the rights including the fishing right is retained by Dharumapuram Adheenam for several decades. All the villagers were under the bonafide impression that the tank belongs to Dharumapuram Adheenam. According to the petitioner, the members of an unregistered association are enjoying the fishing rights after paying the actual tax payable by the Dharumapuram Adheenam. The Dharumapuram

Adheenam has been paying some meagre amount as 'Pasi Kuthagai" for exploiting fishing rights for all these years and the Revenue Department has been issuing receipts for collecting the some amounts from the said Adheenam.

4.The learned counsel for the petitioner has further contended that the said unregistered association is auctioning fishing rights of Naduvakkulam Tank for the past several decades and the proceeds of the said auction are being utilized by the association in maintaining the Tank and its bunds. The learned counsel had further contended that the third respondent is the elected President of Water Users Association which is a statutory body created under Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000.

5.As per the impugned G.O, after public auction, 50% of the amount received would be shared with the said third respondent association. According to the petitioner, the Government has not taken into consideration the existence of small Tanks and the effective management of irrigation facility by the small group of individuals. Without considering the said interest of the small farmers, they have issued the impugned G.O. under which the complete ban has been imposed upon auctioning of the fishing rights by association like the petitioner association or by the individuals. Hence, the present writ petition.

6. According to the writ petitioner, the implementation of the impugned G.O, insofar as Naduvakkulam Tank is concerned, will take away the customary right of the farmer who are enjoying the fishing rights. The third respondent association is no way concerned with the fishing rights of Naduvakkulam Tank. However, 50% proceeds of the public auction are likely to be distributed in favour of the third respondent association. The government has not properly appreciated the conflicting interest by allowing a stranger to commercially exploit the fishing right by way of impugned G.O. He had further contended that by long practice and custom the members of the Adi Dravidars living in Naduvakulam and who are the Ayacutdars of Naduvakkulam Taluk have perfected their fishing rights. The Ayacutdars of Naduvakkulam Tank cannot be deprived of their civil rights by administrative orders ignoring the existence and enjoyment of such rights. Hence, the present writ petition has been filed for quashing the G.O.(Ms).No.16 dated 14.01.2011.

W.P(MD).No.6840 of 2012:

7. The present writ petition has been filed by an individual claiming that Kulasekaraperi Tank in Achanputhur Village, Shenkottai Taluk, Tirunelveli District belongs to Kelasekaraperi Sastha Temple. Hence, according to the petitioner, the said Kulasekaraperi Sastha Temple have auctioned the said fishery rights in favour of the writ petitioner. The proceeds

of the said auction amount are being utilised for the welfare of the Kulasekaraperi Sastha Temple and the balance amount is utilised for maintenance of the Tank and feeding channel etc., The petitioner had further contended that one Sankarapandian in a representative capacity of Kulasekaraperi Ayakattudars had filed O.S.No.291 of 2006 before the District Munsif Court, Tenkasi for the relief of declaration that the fishery rights in the said Tank exclusively belongs to the Tank Ayakattudars alone and for framing scheme for the proper administration of the lease amount for the maintenance of the Tank. Though the suit was dismissed by a judgement and decree dated 18.06.2010, the learned District Munsif in Paragraph No.17 of the judgement has categorically held that the fishery rights of the said Tank belongs to its 10 ½ Karaiwans of Kulasekaraperi Sastha Temple. Hence, according to the petitioner, he was the successful bidder in the year 2011-12 by way of an auction conducted by the said Karaiwans. However, during the subsistence of the said lease, the Government has passed G.O(Ms).No.16 dated 14.01.2011 banning all the individuals and association from auctioning the fishing rights in the Tank belonging to the Public Works Department. Based upon the said Government order, a consequential public auction notice has been issued by the third respondent herein for auctioning the fishery right in Kulasekaraperi Tank. Hence, the Government Order and the consequential public auction notice are under challenge in the present writ petition.

8. According to the learned counsel for the petitioner, the Tank belongs to the 10 ½ Karaiwans for Kulasekaraperi Sastha Temple and hence, the Government or Public Works Department will not have any right to issue the impugned Government order. He is the successful bidder from the auction conducted by the said owner of the Tank. Hence, he prayed for quashing the Government order and the auction notification issued by the third respondent who is the Junior Engineer of the Public Works Department.

W.P(MD).No.7061 of 2012:

9. The present writ petition has been filed by an individual contending that Udaya Selvan Tank is located at Vadakarai Keel Pidakai Village, Shenkottai Taluk is vested with its owner for the past several years and they have leased out the fishery rights in respect of the above said Tank in favour of the writ petitioner for the year 2011-12. According to him, he has invested huge sum of money. The petitioner had further contended that the Tank being owned by the private individuals, the impugned G.O order in G.O(Ms).No. 16, dated 14.01.2011 cannot cover the said Tank. He had further contended that a consequential impugned order has been passed by the third respondent herein under which he has notified public auction of the fishery rights of Udaya Selvan Tank. According to the petitioner, when a lease is subsisting in his favour in the year 2011-12, an new notification for conducting public

auction for the same Village would not arise. Hence, he has challenged the impugned G.O and a consequential public auction notice of the fishery right.

WP(MD).No.13547 of 2015:

10.The present writ petition has been filed by a registered Trade Union challenging G.O(Ms).No.16 Public Works(W2) Department, dated 14.01.2011 and G.O.(Ms).No.72, Public Works (W2) Department, dated 06.05.2014 and to direct the respondents to implement G.O.(Ms).No.332, Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993.

11.According to the writ petitioner association, the inland fishermen workers attached to various fishing Co-operative Societies are members of their association. The petitioner Sangam claims that it is a registered association with Registration No.104/KKM. According to the petitioner, the Government of Tamil Nadu has passed various orders and schemes giving preference to the Inland Fishermen Co-operative Societies. The petitioner had further contended that in view of Revenue Standing Order No.211 and G.O.Ms.332 dated 17.11.1993, preferential right should be given to fishermen Co-operative Societies in granting lease for fishing rights in inland water bodies. According to the petitioner, the said Fishermen Co-operative Societies are entitled to get lease even without undergoing the process of public auction.

12.The learned counsel for the petitioner had further contended that G.O.Ms.No.16 dated 14.01.2011 has been passed taking away the said preferential rights of Fishermen Co-operative Societies. A consequential Government Order in G.O.Ms.No.72, Public Works (W2) Department, dated 06.05.2014 has been passed creating a separate head of accounts for depositing of the amount which is collected through public auction of the Tanks which are vested with the Public Works Department. He had further contended that the policy decision of the Government is reflected in the Revenue Standing Order No.211 and G.O.Ms.No.332 dated 17.11.1993 granting preferential rights in favour of the Fishermen Co-operative Societies. However, the said preferential rights has been taken away by the Government Order impugned in the present writ petition. Hence, he prayed for quashing the impugned G.O and to implement the G.O.Ms.No.332 Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993.

13.The learned counsel for the petitioner had further contended that the petitioner is a trade union in which 7000 fishermen who are members of various Co-operative Fishing Societies are members. Hence, the petitioner trade union is taking up the cause of all the inland fishermen who are likely to be affected by the impugned Government Order. He had further contended that the impugned G.O, without superseding the Revenue Standing Order No.

211 and G.O.Ms.No.332 dated 17.11.1993, has virtually taken away the preferential right in favour of the Fishermen Co-operative Societies.

14.The learned counsel for the petitioner had further contended that the authorities are interpreting the impugned G.O in such a manner that all the preference in favour of the Fishermen Co-operative Societies has been abolished and the Government has proceeded to go for a public auction with regard to the fishing rights of all the Tanks that are vested with the Public Works Department. As long as the Revenue Standing Order No.211 or G.O. (Ms).No.332, Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993 are not superseded by way of Government orders, the authorities cannot go in for a public auction of the fishing rights. Hence, he prayed for allowing the writ petition and to quash the impugned Government Order.

Contentions of the learned Additional Advocate General for the respondents

15.The learned Additional Advocate General appearing for the official respondents had contended that no individual or an organisation can have any right to conduct public auction of fishery rights in a Tank which is owned and vested with Public Works Department or Fisheries Department. According to the learned Additional Advocate General, the Tank is owned by the Government. The management of the irrigation system of the said Tank are

governed by Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000. Under the said Act, an election is being conducted among the Ayacutdhars and the office bearers are elected for a particular term. The powers have been conferred upon the said organisation as per Sections 22 to 26 of the said Act. A perusal of the said provisions will clearly indicate that the said Act does not empower even the farmer organisation to have any right to conduct public auction of the fishing rights in the Tank concerned.

16.The learned Additional Advocate General had further contended that the individual and an unregistered organisation cannot have any right or title either for carrying out fishing operation or conducting public auction of the fishery right in the Tank that are vested with the Government. Hence, he prayed for dismissal of the writ petition.

17.In WP(MD).No.13547 of 2015, the learned Additional Advocate General appearing for the official respondents had contended that the State resources can be augmented only by way of granting public auction of the fishery rights in the Tank. The present writ petition has been filed by a trade union said to be representing the fishermen of the said locality is not maintainable. The trade union does not have any preference whatsoever even as contemplated under the Revenue Standing Order No.211 or G.O.(Ms).No. 332, Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993. Hence, according to the learned Additional Advocate General, the present

writ petition filed by a Trade Union is not maintainable and the same is liable to be dismissed.

18.The learned Additional Advocate General had further contended that the Division Bench Judgment of our High Court in W.A(MD).Nos.1251 and 932 of 2020 dated 03.02.2021 has upheld the order passed by the learned Single Judge in which a public auction was directed to be conducted in relation to a Tank vested with the Public Works Department. He pointed out that the writ petition was filed challenging granting of license in favour of the fishermen Co-operative Societies. In the said writ petition, the learned Single Judge was pleased to direct the authorities to conduct a public auction and thereafter, directed the Co-operative Fishermen Societies to match the highest bid. The said order has been confirmed by the Hon'ble Division Bench in WA(MD).No.1251 and 923 of 2020. Hence, he contended that the policy of the Government for going in for a public auction has been upheld by the Hon'ble Division Bench. Hence, he prayed for dismissal of the writ petition.

19.I have considered the submitted made on either side and perused the materials available on record.

Discussion:

20.In WP(MD).No.14375 of 2011, it is claimed that Naduvakkulam Tank was owned by Dharumapuram Adheenam at one point of time. In paragraph No.2 of the affidavit, the petitioner has admitted that after

introduction of Inam Abolition Act, the said Adheenam has lost his title over the said Tank. The petitioner has not explicitly stated who is the present owner of the Naduvakkulam Tank. The petitioner has only claimed that their unregistered association has been auctioning the fishing rights in the Tank for several years and by long practice and custom they have perfected their fishing rights.

21.In WP(MD).No.6840 of 2012, the petitioner has contended that the Tank belongs to 10 ½ Karaiwans of Kulasekaraperi Sastha Temple. Except certain observations of the learned District Munsif Court in O.S.No.291 of 2006, there are no records to indicate that the Tank is owned by the said Kulasekaraperi Sastha Temple. That apart, the Government is not a party to the said Civil Suit.

22.In WP(MD).No.7061 of 2012, the petitioner has placed ownership upon the Udaya Selvan Tank on an anonymous person, without even mentioning the name of the person who is the owner of the said Tank. Hence, it is clear that the petitioners in all the writ petitions were not able to establish the fact, from whom they are deriving their right to auction the fishery rights in the said Tank.

23.As per Section 2 of the Tamil Nadu Encroachment Act 1905, all the Tanks were declared to be the properties of the Government, except those they are covered under Section 2(1)(a), (b), (c),(d) and (e) of the Act.

Obviously the petitioners are not falling within any one of the exempted categories. The Protection of Tanks and Eviction of Encroachment Act, 2007 has been enacted for checking the encroachment, eviction of encroachment in tanks which are under the control and management of Public Works Department with a view to protect such Tank. As per Section 8(a) of the said Act, it is an offence to enter the land in the water spread and foreshore area of the tank without any lawful authority. Unless the petitioners establish their lawful authority, they cannot even enter into the Tank. Only when the petitioners can enter into the land, the question of having any right of conducting public auction of the fishery rights in the said Tank would arise.

24.In WP(MD).No.13547 of 2015, a perusal of the Revenue Standing Order No.211 and G.O.(Ms).No.332, Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993 discloses that some kind of preferential right has been conferred upon the Fishermen Co-operative Societies. In the present case, the writ petitioner is only a trade union claiming that the individual fishermen belonging to various Societies are members in their trade union. The trade union has no preferential right whatsoever either under Revenue Standing Order No.211 or under G.O.(Ms).No.332, Animal Husbandry and Fisheries (FS-IV) Department dated 17.11.1993. Hence, the petitioner trade union has no *locustandi* whatsoever to challenge the G.O.Ms. 16 dated 14.01.2011 and G.O.Ms.No.72, dated 06.05.2014. That apart, a

perusal of the impugned G.Os will clearly indicate that nowhere it has been held that the preference granted to the Fishermen Co-operative Societies under RSO.No.211 and G.O.Ms.No.332 dated 17.11.1993 have been abolished. The impugned G.O only pointed out that the individuals and certain un-authorised organisation cannot be permitted to conduct the public auction of the fishing rights. The rights of the Co-operative Fishermen Societies are protected under RSO.No.211 and G.O.Ms.No.332 dated 17.11.1993. Hence, I find that the present writ petition at the instance of a trade union is not maintainable.

25.As per Clause 4 (iv) of the impugned G.O.Ms.No.16, dated 14.01.2011, the Government has imposed a ban upon the association and individuals who are conducting public auction of the fishery rights in water resources of the Public Works Department without obtaining any permission from the Government. When the Tank belongs to the Government and the water in the said Tank is being regulated/managed by the statutory bodies created under Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000, the said Clause in the impugned G.O, cannot be faulted with.

26.The individuals, registered/unregistered bodies cannot have any right based upon any custom, usage or based upon Civil Court decree to enter into a water body vested with the Public Works Department/ Fisheries Department for fishing or conducting public auction of fishery rights. When

the Tank and the water body in the said Tank belongs to the State, fishing rights cannot be separated from the said Tank and continue to vest with certain individuals or organisations.

27.The repair, management and Kudimaramathu of the said Tanks are being carried out by the Government and the associations which are registered under Tamil Nadu Act 7 of 2001. In such circumstances, the financial resources for carrying out the said operations have to be vested only with the State. The individual or private organisation cannot be permitted to exercise such an unauthorised rights over the Tank belonging to the Public Works Department to the detriment of the State or and Farmers' associations. In fact, as per Clause 4 (iv) of the impugned G.O, 50% of the proceeds of the public auction has to be shared with the farmers' association and the balance 50% has to be shared by the Water Users Association, Distributor Committee and the Project Committee. It discloses that the State in its wisdom has passed the impugned Government Order not only to augmenting the revenue but also to distribute the State Revenue among the deserving people. Therefore, I do not find any merit in the submissions made on the side of the writ petitioners.

Conclusion:

28.In view of the above said discussion, the consequential impugned notification in W.P(MD).Nos.7061 and 6840 of 2012 in which auction notices

have been issued for conducting public auction of the fishery rights cannot be faulted with. All the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20 .10.2022

Internet : Yes/No
Index : Yes/No
msa

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Tirunelveli District
Tirunelveli

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Public Works Department
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R.VIJAYAKUMAR, J.

msa

Pre-delivery common order made in

W.P.(MD).Nos.6840 & 7061 of 2012, WP(MD).No.14375 of 2011 and
WP(MD).No.13547 of 2015
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and WMP(MD).No.15847 of 2022, MP(MD).Nos.2 & 3 of 2012 and
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20.10.2022