



W.P(MD)No.6993 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.09.2022
DELIVERED ON : 08.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.6993 of 2012
and
M.P(MD)Nos.2 of 2012 & 1 of 2013

A.Peer Mohamed

... Petitioner

Vs.

1.The District Collector cum Chief Executive Officer,
Fish Farmers Development Agency,
Tirunelveli, Tirunelveli District.

2.The Junior Engineer,
Office of the Irrigation Department,
PWD Office Campus,
Sengottai, Tirunelveli District.

3.The Assistant Executive Engineer/PWD/WRO,
Chittar River Basin,
Kudieruppu,
Tenkasi (Via), Tirunelveli District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the second respondent impugned Notice Ka.No:Ko.T19/JE/Sengottai, dated 03.05.2012, quash the same.



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For Petitioner : Mr.T.S.R.Venkatramana

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.P.Thambidurai
Government Advocate

ORDER

The present Writ Petition has been filed challenging a public auction notice issued by the second respondent herein, under which, tender was called for with regard to thirteen tanks for carrying out fishing activities for the period between 01.06.2012 to 31.05.2013.

2. According to the petitioner, the present writ petition has been filed challenging the auction notice with regard to two tanks, namely, Thanjavur Kulam and Niraikulam, which are found in serial Nos.3 and 4 of the above said impugned auction notice.

3. The petitioner has contended that both the above said tanks fall within Shengottai Taluk, which was originally under the administrative control of State of Travancore-Cochin. Both the tanks from time



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immemorial were maintained by the Ayacutdhars attached to the said tank.

They used to perform repair (Kudimaramathu) activities for the said tank.

Hence, they are entitled to auction the fishery rights of these two respective tanks and spend the money for the up keep and maintenance of the said tanks. The petitioner has further contended that this tradition and custom was followed in the erstwhile Travancore-Cochin State. Even after the merger of Shengottai Taluk with the State of Tamilnadu, the said traditions and customs have to be followed.

4. The learned Counsel appearing for the writ petitioner had relied upon a judgment of this Court reported in **2005 (1) CTC page 735** to contend that the custom and long usage will have the force of law and such custom or usage prevailing in Travancore-Cochin area, cannot be altered merely because the transferred territory now lies in the State of Tamilnadu.

5. The learned Counsel for the writ petitioner has contended that the petitioner's rights are protected by Article 372 of Constitution of India, which protects the existing laws and their adoption which had been in force in the territory of India immediately before the commencement of



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Constitution. The learned Counsel further contended that Section 11 of the Tamil Nadu (Transferred Territory) Extension of Laws Act, 1957, saves the previous operation and all rights, privileges, obligations or liability acquired, accrued or incurred under any corresponding existing law which has been replaced by Section 6. The learned Counsel also relied upon Section 119 of the States Reorganization Act, 1956, to contend that the laws prevailing in the erstwhile State from which the territories, newly added to another State, emerged, should continue to be in force, notwithstanding the change in the territories and formation and reorganization of new States.

6. The learned Counsel for the petitioner had further contended that in view of the long usage and custom of the Ayacutdhars auctioning the fishery rights in the said tank and utilizing the said amount for carrying out Kudimaramathu, the present public auction notice is not legally sustainable.

7. The learned Counsel for the petitioner has further contended that though the tank might have vested with the Government, the right to carry out fishing activities still continue with the Ayacutdhars and hence, the respondent authorities will not have any jurisdiction whatsoever to carry out



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the public auction of the fishery rights.

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8. The learned Counsel for the petitioner has further contended that though the auction notice is only for a period of one year between 01.06.2012 to 31.05.2013, since a larger issue relating to the right of the respondent authorities in auctioning the fishery rights is involved, the writ petition requires adjudication.

9. Per contra, the learned Additional Advocate General appearing for the respondent authorities had contended that the Shengottai Taluk is a part of the territory that was transferred from Travancore-Cochin to Madras under the States Reorganization Act, 1956. He also relied upon the "A" Register, Adangal and FMB Sketch of the Shengottai Taluk and contended that both the tanks which are subject matter of the writ petition have been taken over by the Government under the Tamil Nadu (Transferred Territory) Ryotwari Settlement Act, 1964 (Herein after called as "Act 30 of 1964"). Since the tanks have been taken over by the Government of Tamil Nadu, all the alleged rights, customs and usages that were prevailing during the administrative control of Travancore-Cochin State has got expired. The



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petitioner cannot contend that the said right, custom or usage is still prevailing. Even assuming if the writ petitioner is claiming any customary right of fishery rights over the said tank, the same cannot be adjudicated by this Court by exercising its power under Article 226 of Constitution of India.

10. The learned Additional Advocate General further contended that since the tank has vested with the Government, all the repair activities are being carried out only by the Government. He further pointed out that the writ petitioner himself has been the contractor for carrying out Maramathu activities for the restoration of Neraikulam tank as a president of Neraikulam Kudimaramathu Vivasayigal Sangam, which is a registered Association. He further pointed out that the petitioner himself has received a sum of Rs.28,73,875/- towards the cost of the maintenance of the above said tank. Hence, it is clear that the Maramathu activities are not been carried out by the petitioner or the Association which he is representing. The amount is being paid only by the Government and the petitioner is carrying out the said activities as President of the said Sangam. Thereafter, the petitioner cannot turn around and contend that the tank alone belongs to the



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Government and the right to carrying out fishing belongs to the petitioner.

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11. The learned Additional Advocate General further contended that the present writ petition has been filed in the individual capacity of the writ petitioner. However, a perusal of paragraph No.4 of the affidavit indicates that the Ayacutdhars attached to the tank are entitled to lease out or auction the fishery rights. It is not known whether he has filed the present writ petition in his individual capacity or as President of a Registered Association. Hence, he prayed for dismissal of the writ petition.

12. I have carefully considered the submissions made on either side.

13. The main contention of the writ petitioner is that the Ayacutdhars of two tanks, namely, Thanjavur Kulam and Nerai kulam have a right to carry out repair (Maramathu) activities of the said tank. The expenses relating to the said repair activities were borne by the Ayacutdhars by auctioning the fishery rights of the said tank. Hence, the Ayacutdhars of both the tanks alone are entitled to auction the fishery rights in the said tanks.



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14. The ancillary contention of the learned Counsel for the petitioner is that this custom / usage that was being followed right from the days when the tanks were vested with Travancore-Cochin State. Once the territory, namely, Shengottai got transferred to the State of Tamil Nadu, as per the provisions of the States Reorganization Act, all the customs and usages should be protected and honoured. Now let us consider both these contentions.

15. Though the petitioner has contended in the writ affidavit that the Ayacutdhars of both these tanks are entitled to carry out Maramathu activities in the tank, no document has been placed before this Court to prove the said fact. Not a single document has been produced to establish the right of the Ayacutdhars, while the tanks were in the administrative control of Travancore-Cochin State. Similarly, no document has been placed before this Court to prove that the Ayacutdhars of these two tanks had the exclusive privilege of auctioning the fishery rights of these two tanks. At the time of arguments, though the learned Counsel had contended that there was a grant from the erstwhile Travancore State, the document produced across the bar does not indicate so. Hence, it is clear that the petitioner has not



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established the alleged custom or usage of the Ayacutdhars to auction the fishery rights in the above said tanks or their privilege to utilize the said income to carry out Maramathu activities in these tanks.

16. The learned Counsel for the petitioner had relied upon Section 119 of the States Reorganization Act, 1956, which is extracted as follows:

"119.Territorial extent of laws.- The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within the State immediately before the appointed day".

17. A perusal of the above said Section indicates that the laws that were prevailing in the territory which were transferred to the new State will continue to have the effect unless they are altered by a competent Legislature or other competent authority.



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18. Section 2(h) of the States Reorganization Act, 1956, is extracted as follows:

2.(h) "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or in any part of the territory of India;"

19. A combined reading of Section 119 and Section 2(h) of the States Reorganization Act, 1956, will clearly reveal that Section 119 only protects the law as defined under Section 2(h) and does not protect any alleged custom or usage that was prevailing in the erstwhile State of Travancore-Cochin. Hence, the contention of the learned Counsel appearing for the petitioner that the custom and usage that was prevailing in the erstwhile State of Travancore and Cochin will have to be honoured by the present State is not legally sustainable.

20. The settlement proceedings have been extended to Kanyakumari District and Shengottai Taluk of Tirunelveli District by way of Act 30 of 1964. As per Section 5 and 6 of the said Act, Assistant Settlement Officers



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and Settlement Officers have been appointed to give effect to the provisions of the Act and to conduct proper survey as contemplated under the Tamil Nadu Survey and Boundaries Act, 1923. The authorities were also empowered to effect Ryotwari settlement. The documents produced by the learned Additional Advocate General clearly indicate that a notification of the settlement has been issued as contemplated under Section 9 of the Act 30 of 1964. As per the said notification, settlement activities have been carried out. As per the said settlement proceedings, both the tanks have been classified as Government Poromboke. The said classification under the Settlement Act have not been challenged by the petitioner or any one said to be connected with these tanks.

21. Section 2 of the Tamil Nadu Land encroachment Act, 1905 is extracted as follows:

"2.Right of property in public roads, etc., waters and lands.- (1) All public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nalas, lakes and tanks and all



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backwaters, canals and water-courses and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property-

(a) of any zamindar, poligar, mittadar, jagirdar, shrotriendar or inamdar or any person aiming through or holding under any of them or

(b) of any person paying kist, kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons or,

(c) of any person holding under ryotwari tenure, including that of a janmi in the Gudalur taluk of the Nilgiri District and in the transferred territory or in any way subject to the payment of land-revenue direct to Government, or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence,

and, as to lands, save also in so far as they are temple site or owned as house-site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force subject always to all rights of way and other public rights and to the natural and easement right of other land-owners, and to all customary rights legally subsisting.

(2) All public roads and streets, vested in any local



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authority shall, for the purposes of this Act, be deemed to be the property of Government".

22. A perusal of the above said Section clearly indicates that lakes and tanks have been declared to be property of the Government. Though there is a definition of "transferred territory" under Section 1-A of the said Act, no such exemption has been granted under Section 2 of the Act for the lakes or tanks falling within the transferred territory. Section 3-A empowers the authority to levy assessment on lands unauthorizedly occupied in the transferred territory. Hence, it is clear that the tanks and lakes have been declared to be the property of the Government under the Tamil Nadu Land Encroachment Act, 1905 and it has been extended to the transferred territories also.

23. Section 8-A of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 is extracted as follows:

"8. Offences and Penalties.- Whoever;-

(a) Enters the land in the water spread and foreshore areas of the tank without any lawful authority,"



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24. A perusal of the above said Section 8(a) clearly indicates that it is an offence to enter into the water spread area and the foreshore area of the tank without any lawful authority. The petitioner or the Ayacutdhars unless they are armed with any lawful authority cannot even enter into the tank. Only if they have got a right to enter into the tank, the question of carrying out fishing activities or auctioning the fishery would arise. The State has specifically declared that entering into the tank is an offence without any lawful authority. Therefore, it is clear that all the customs or usages alleged by the writ petitioner have already been abrogated by the Tamil Nadu Land Encroachment Act, 1905 and the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

25. The petitioner in the writ petition has not challenged the title of the Government over the tanks. The petitioner has simply contended that they have got a right to auction the fishery right in the said tank. The right to auction the fishing rights is attached to the ownership of the tank. The mere right to fishing can never be segregated and vested with a person different from that of the owner of the tank. As stated supra, the petitioner has not



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established his customary right or usage by filing any document prior to the States Reorganization Act, 1956. The petitioner is also not able to establish, in what manner that the said customs and usages are protected under the said Act. The learned Counsel for the petitioner had relied upon a judgment of this Court reported in **2005 (1) CTC 735**. A perusal of the above said order indicates that it is an order of interim injunction pending second appeal. The learned Judge of this Court has only held that the petitioner has made out a *prima facie* case and has further given a finding that the balance of convenience is in favour of the petitioner. On the facts and circumstances of the said case, the learned Judge has granted interim injunction restraining a particular temple from collecting any special entrance fee for Dharshan. The proposition of law laid down in the said interim order is not applicable to the facts and circumstances of the present case.

26. The petitioner having admitted the fact that the tank has vested with the Government, unless establishes his lawful authority or any legal right to auction the fisheries, cannot succeed in the present writ petition. The petitioner has received the cost of Maramathu activities from the respondent authorities for carrying out repair works in Neraikulam tank.



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Hence, it is clear that the said Maramathu activities are not carried out from the funds arising out of auctioning the fishing rights, but the Government is spending towards the Kudimaramathu activities of the respective tanks.

27. Viewed from any angle, the contention of the writ petitioner that they are entitle to auction the fishery rights is without any legal basis and the same is liable to be rejected. Public auction is being conducted by the respondent authorities only with an intention to augment the income of the Government. After surrendering auctioning rights to the writ petitioner or Ayacutdhars, the Government cannot be begging before them to carry out the repair works in the tank utilizing the said auction amount. Hence, the writ petition is devoid of any merits and the same is liable to be dismissed. The writ petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

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Index : Yes / No
Internet : Yes / No
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To

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Tirunelveli, Tirunelveli District.
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R.VIJAYAKUMAR, J.

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Order made in
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