



W.P.No.664 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.664 of 2020
and
WMP.No.774 of 2020

M.Jegan,
(Membership No.476).

...Petitioner

Vs.

1. The District Collector,
Coimbatore.
2. The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street, Coimbatore - 641 001.
3. The Assistant Director of Fisheries,
Veerappan Chatram, Erode.
4. K-1629, Kovai Vatta Meenavar Kooturavu Sangam,
Rep. by its President,
Having Office at Somu Lodge,
V.H.Road, Coimbatore 641 001.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to Singanallur Tank in proceedings bearing Na.Ka.No. 10417/2018/E4 dated 13.08.2019, quash the same as illegal and forbearing the respondents herein from interfering with the possession of the Singanallur lake.



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For Petitioner : Mr.C.Deepak Kumar

For Respondent : Mr.P.Sathish, AGP, for R1
: Mr.K.Magesh, for R2

ORDER

This Writ petition has been filed seeking quashment of the proceedings of the 1st respondent dated 13.08.2019 bearing Na.Ka.No.10417 /2018/E4, relating to Singanallur Tank and to consequently, forbear the respondents from interfering with the possession of the Singanallur lake.

2. The case of the petitioner is that the petitioner belongs to Schedule Caste and Besthavar Community. The petitioner and his community people are members of the 4th respondent society and their major occupation is fishing and are eking out their livelihood only by fishing in Singanallur Tank and Vellalore Tank at Coimbatore and the petitioner and his community members are exercising their right of fisheries in the aforesaid tanks for the past 30 years. There are 12 Water tanks in and around Coimbatore. Further, the 1st respondent, vide order dated 22.06.2009 bearing Na.Ka.No.7363/09/E6 granted fishing rights in Singanallur Tank to



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the 4th respondent society for a period of five years and the petitioner being the member of the 4th respondent society, is exercising his fishing rights in the above said tank and the said fishing rights was subsequently renewed for a further period of five years and the same got expired on 31.12.2018, however, the 1st respondent failed to renew the same thereafter. Thereby, the 4th respondent society members gave representations to the 1st and 2nd respondents seeking renewal of lease in respect of the Singanallur Tank in favour of the 4th respondent society and its members, upon receipt of which, the 1st respondent, vide proceedings dated 13.08.2019 bearing Na.Ka.No.10417/18/E4, allotted 11 tanks to the 4th respondent society and banned the right of fisheries in the Singanallur Tank, without any reason. Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, for more than 60 years, the petitioner and his predecessors are exercising their right of fishing in the said Singanallur tank and it is their only avocation and is purely carried out to meet their day to day needs and is not done with business motive and not on commercial basis. While so, the present act of the official respondents is only interfering with the petitioner and his community



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members from carrying on their livelihood. He further submitted that, the respondents failed to analyse the Biodiversity Act, as the main objective of the said Act is to safeguard the Biological resources, i.e, *plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material* and he placed reliance upon Section 41(1) of the said Act. It is the submission of the learned counsel that, the District Collector is not vested with any power to declare any of the Tank as Bio-diversity tank and none of the provisions of the Bio-diversity Act prevents the fishing rights of the common people. While so, refusing to grant fishing rights to the petitioner community members is not sustainable. Hence, he prayed for appropriate orders.

4. Per contra, the learned Additional Government Pleader appearing for the 1st respondent submitted that, in order to conserve the Biodiversity in Tanks, the Coimbatore City Municipal Corporation are taking steps to establish centre for Urban Biodiversity Conservation and Education and have also initiated efforts to create awareness about Urban Biodiversity in Singanallur Tank by declaring it as “Urban Biodiversity Conservation

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Zone” in July 2017. Hence, to conserve the biodiversity in Singanallur Tank and to safeguard the “Urban Biodiversity Conservation Zone” in letter and spirit, the 1st respondent permanently banned to renew the fishing rights lease of Singanallur Tank to the 4th respondent society. He further submitted that, the present impugned order of the 1st respondent does not prevent the 4th respondent society's entire fishing rights, and the fishing rights was restricted only in respect of Singanallur Taluk, however, the 4th respondent was granted fishing rights in respect of 11 other tanks. He further more submitted that, this Court, vide order dated 29.04.2019 made in W.P.No.12666 of 2019, directed the respondents to take necessary action to see that fishing is not done on commercial basis and further directed the respondents to implement the proceedings of the 1st respondent dated 14.08.2018 in letter and spirit and the respondents have not violated any of the Revenue Standing orders and the impugned order is perfectly in order. Hence, he prayed for dismissal of this Writ petition.

5. On the above said contentions, heard learned counsel for the 2nd respondent and perused the material documents placed on record.



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6. Whenever Revenue Department or Public Works Department or

Fisheries Department intends to lease out the tanks, rivers, estuaries, canals, etc., under their control for the purpose of fishing, preference would be given first to *the cooperative societies composed of fishermen or of Harijans engaged in fishing should first be given an opportunity of taking the fishery on lease for a reasonable rental fixed by the Collector of the District or the authority concerned. If the cooperative society is not prepared to take the lease for the amount offered, opportunity should be given to the Panchayat working in the area to take the lease on the same amount. If neither the cooperative society nor the Panchayat is willing to take the lease, the fishery should be disposed of by public auction in the manner indicated in paragraph 2 of RSO 211.*

7. Thus it is evident that the procedure to be adopted for granting the fishing rights by way of lease has been codified as early as in RSO 211, which had also been reiterated by the Government by issuing G.O.Ms.No. 332 dt. 17.11.1993 only with a subtle modification with regard to the lease period and the lease rentals. As aforesaid, the G.O.No.332 dt. 17.11.1993 has since been approved and no challenge has been made to the said order.



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8. Further, it is to be pointed out that when a particular tank has been declared as a Biodiversity Zone, it is incumbent on the part of the authorities to preserve the same so as to ensure that ecological balance is maintained. The reason for declaring a particular tank as a Biodiversity Zone is on the basis of certain inputs, which have been received by the authorities and only after analysing the various reports, which have been received from the various departments, the fishing rights have been banned in the said tank permanently. If a policy decision is taken by the Government not to permit a particular tank to be used for fishing, as it has been declared as a Biodiversity Zone, unless the said order is shown to be perverse, the same cannot be interfered with by this Court.

9. Further, it is not the case of the petitioner that the tank has been given on lease to some other entity. So long as there is no quarrel with regard to the enforcement of RSO 211 and also the passing of G.O.Ms. No.332 dt. 17.11.1993 with regard to the procedure to be adopted while giving lease of the fishing rights with respect to the tanks, rivers, estuaries, etc., belonging to the Revenue or Public Works Department or the Fisheries



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Department, it is equally within the domain of the appropriate authority, for reasons to be recorded, to ban fishing in a particular tank.

10. Further, no right accrues to the petitioner to claim that it has to be given the lease and in the absence of any provision, placed before this Court, which bars the District Collector to pass such order banning fishing activity in Singanallur tank by declaring it as a Bio-diversity Zone, the claim of the petitioner that the petitioner and his society is entitled to get fishing rights in the Singanallur tank is wholly misconceived.

11. For the reasons aforesaid, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

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NCC	: Yes / No
Speaking Order	: Yes / No
Index	: Yes / No



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