



Rev.Aplw(MD)No.36 of 2023 and Cont.P(MD)No. 484 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**Rev.Aplw(MD)No.36 of 2023
and W.M.P(MD)No.3073 of 2023
and
Cont.P(MD)No. 484 of 2023**

- 1.Balu
- 2.Balamurugan
- 3.Ramalingam
- 4.Chandran
- 5.Saravanan

... Petitioners

Vs.

- 1.The State represented by
the District Collector,
Madurai District,
District Collectorate,
Madurai - 625 020.
- 2.The Chief Engineer,
Public Works Department (Water Resource),
Bennyquick Building,
Chokkikulam,
Madurai - 625 002.
- 3.The Assistant Director of Fisheries,
Petchiamman Padithurai Road,
Madurai- 625 001.
- 4.The President,
A-2407 Madurai Taluk Fisherman Co-operative Society (South),
P.Jeyaraman



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5.The Vice-President,
Madurai Taluk Fisherman Co-operative Society (South)
Rajalakshmi

6.V.Sonai

7.R.Periyakaruppu Raja

8.A.Pachammal ... Respondents

Prayer : Review Application filed under Section 114 read with Order 47 Rule 1 C.P.C, to review the order passed in W.P.(MD)No.14767 of 2019, dated 11.01.2023 on the file of this Court.

For Petitioners : Mr.Vallinayagam
Senior Counsel for
Ms.T.Sathyaselvi

For R1 to R3 : Mr.K.Selvaganesan
Additional Government Pleader

For R4 : Mr.T.Lajapathi Roy
Senior Counsel
for M/s.Lajapathi Roy and Association

For R6 : Mr.C.Mayilvahana Rajendran

For R8 : Mr.M.Vivek kumar

For R5 and R7 : No appearance

ORDER

Heard the learned counsel on either side.



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2.Ms.Gnanam, Assistant Director of Fisheries, Madurai, is present in person, to assist this Court. One A.Pachammal filed W.P.(MD)No.14767 of 2019 to forbear respondents 4 and 5 in the writ petition from indulging in illegal fishing activities. The writ petition was disposed of on 11.01.2023, based on the consensus arrived at between the parties. Subsequently, the present review application came to be filed.

3. The learned Senior Counsel appearing for the Review applicant pointed out that this Court had insisted that the general body of Madurai Taluk Fisherman Cooperative Society must be convened and the resolution must be produced before this Court. However, what was produced was only the resolution passed by the Executive Committee.

4. The case of the Review applicants is that their rights have been deliberately infringed in view of the order under review. They also would point out that they were not impleaded as parties to the writ petition. They had been permitted by the Assistant Director, Fisheries Department, Madurai to engage in fishing activities, vide communication dated 30.09.2022. The said proceedings though in force as on date has been undermined by the order under review.



5. After hearing the learned Senior Counsel and the learned counsel appearing for the respondents, I am satisfied that the Review applicants also obtained certain rights in their favour only based on Executive Committee Resolutions. This has been confirmed by the Assistant Director, Fisheries Department, Madurai also. It is a case of for calling the kettle black.

6. There are totally six water bodies in question. Three of them are situated within the corporation limits. They are Periyakulam Kanmai, Ayyavaithanenthall Kanmai and Thenkkal Kanmoi. Three waterbodies are situated outside the corporation limits. They are Viraathanur Kanmai, Nilayoor Kanmai and Perungudi Kanmai. The three Kanmais outside the corporation limits have been leased out. Two of them namely Viraathanur Kanmai and Nilayur Kanmai had been leased out in favour of Madurai Taluk Fisherman Cooperative Society, while Perungudi Kanmai has been leased out in favour of a private party. We are now concerned with the three Kanmais within the corporation limit and the two Kanmai leased out in favour of the fisherman society. As far as the three Kanmois located within the corporation limits are concerned, the department follows what is known as share fishing method. The very object of forming a co-operative society is to ensure that all the members of are benefited. It cannot be that a small coterie or oligarchy controls the



society and they alone corner the benefits. All along the executive committee had been passing resolutions and forwarding the same to the department and the department has also been mechanically endorsing the same. Such state of affairs cannot be allowed to continue any further. I therefore, directed the Assistant Director, Fisheries Department, Madurai, to come up with some solution. Today, a report has been filed and it has been stated that the following method will be adopted:

" REPORT FILED BY THE 3RD RESPONDENT

The third respondent humbly submits these suggestions shall be included along with the existing share fishing procedures.

1.To conduct share fishing in the Fisheries department tanks, the members of the co-operative society shall give a formal application to the Assistant Director of Fisheries, Madurai.

2.Applications given by the cooperative society members shall be scrutinized by the Inspector of Fisheries / Sub Inspector of Fisheries concerned who are designated for this work.

3.Members for share fishing will be allotted by the Assistant Director of Fisheries in a rotation basis in a manner that every fishermen who has applied for share fishing will get equal opportunity in share fishing.

4.Share fishing and security order will be issued every three months.



5.The selection of tanks for the share fishing purely lies with the discretion of department officials who are designated for share fishing

6. A designated officer in the rank of Inspector of Fisheries / Sub Inspector of Fisheries will be appointed exclusively for share fishing in the water bodies which are not leased out, and revenue sharing between the fishermen will be monitored by the designated officer. Share fishing activity will be wholly done by the office of Assistant Director of Fisheries, Madurai by involving willing share fishermen in a rotation basis.

7. On the date of fishing, every member should carry the proof of identity ie., Fishermen cooperative society ID Card, TNFWB UNIQUE card or any other valid proof of identity. The designated officer or the executive staff (Fishery Overseer) of O/o. Assistant Director of Fisheries, Madurai authorized by the designated officer shall check the proof of identity randomly before laying fishing nets in the share fishing tanks.

8.To exploit the natural fishery of the tanks, the designated officer shall furnish the report of the fishing activity once in 15 days.

9.The designated officer will monitor the revenue sharing between the fishermen and will attend the grievances of the fishermen as and when raised by them.

It is therefore prayed that this Hon'ble Court may be pleased to ACCEPT THIS REPORT pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Madurai, on this the 3rd day of April, 2023. "



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7. Since the three kanmois situated within the corporation limits continue to vest with the department and the resource also belongs to the department and the department is only enlisting the assistance of the co-operative society for the purpose of carrying out fishing activities, the procedures out lined above shall be adopted. It is stated that the fisherman co-operative society comprises 951 members. There is a slogan 'the land belongs to the tiller', likewise, only those members who are willing to offer their physical labour can take the benefit of share fishing. The fisherman co-operative society is directed to convene their general body meeting on 21.05.2023 at 10 a.m. Mr.A.Jayaraman, the present President of the Society is directed to issue notice as per their by-laws to ensure that the meeting is convened on 21.05.2023 at 10 a.m. The notice will indicate the venue which would be sufficient to accommodate all the members. If in the meanwhile a special officer is appointed, the special officer will have to take the place of the president.

8. On 21.05.2023, the Assistant Director, Fisheries Department, Madurai shall inform the members of the society about the manner in which share fishing is proposed to be conducted in future. In other words, applications will be invited from all the members who are present in the general body meeting.



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Those who are willing to take part in the work, can offer their willingness.

Necessary applications will be collected from the members on the same day itself. The Assistant Director, Fisheries Department, Madurai, is directed to avail police protection. The Special Officer will also call upon the members to create bank accounts in their respective names. This creation of bank account is directed only to ensure that there is a transparent sharing of the proceeds. I make it clear that the benefit of sharing of the proceeds of share fishing will go only to those who offer their services. The services can be in the form of security service or the form of participating the fishing activities. Those who are taking part in such activities will be allotted to work on rotation basis. In other words, only those who are contributing their physical labour will be entitled to take salary as well as the share in the proceeds. 3% of the proceeds will go to the society's account which would be spent for the development of the society.

9. As regards the two tanks that have been leased out, what has happened runs counter to G.O.Ms.No.33 of 27.02.1995 and G.O.Ms.No.201 dated 19.10.2017. The object of the G.O. is to ensure that the benefit goes to the co-operative society and its members. However what has happened in practice is that a small section of fishermen who could mobilise funds have been allowed



to take the lease. This is clearly not the object of the G.O. If the society did not have the funds to pay to the department, then the department must have gone for open auction. The department could not have permitted a handful of fishermen to take the lease on the ground that they have been authorised by the society to take the lease. Such a practice was not contemplated by the G.O. In this case, on 21.08.2020, the department entered into lease only with the society. But the department knew fully well that the society is sub letting the fishing rights. This also cannot be allowed. The department must verify that the society is having the funds to make the payment. If the society is not having funds, then open auction should be resorted to. Since the present arrangement is come to an end by 30.06.2023, we need not rock the boat.

10. However, as regards Nilaiyur Kanmoi some clarity is required regarding the communication dated 14.02.2023 issued by the Assistant Director. As per the existing arrangements, 28 persons were originally taking part in the fishing activities. It was agreed that six more persons, A.Patchammal, A.Murugan, A.Palani, A.Nagu, A.Sonaimuthu and A.Kumaravel will also be inducted along with them. However, the communication dated 14.02.2023 states that they will be more like labour engaged for security and fishing activities. Now it is clarified by the learned Senior Counsel appearing for the



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President of the Society Thiru.Jayaraman, who is also present before this Court

that the said six persons will be treated on par with the remaining 28 person.

The said six persons undertake to remit their share.

11. The order under review is modified and this Review Application is disposed of accordingly. Contempt Petition is closed. Consequently, connected miscellaneous petition is closed. No costs.

03.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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To

- 1.The District Collector, Madurai District, District Collectorate,
Madurai - 625 020.
- 2.The Chief Engineer, Public Works Department (Water Resource),
Bennyquick Building, Chokkikulam, Madurai - 625 002.
- 3.The Assistant Director of Fisheries,
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