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W.P.(MD)NO.12123 OF 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.05.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.12123 of 2020

and

W.M.P.(MD)Nos.10429 & 10430 of 2020

Arulmighu Kulathur Ayyan Sastha temple,
Rep. by its Administrator / Trustee,
S.Gopalasubramaniam,
S/o.Samu Iyer,
Sundarapandiapuram Village,
Tenkasi Taluk,
Tenkasi District.

... Petitioner

Vs.

1. The Secretary to Government,
Public Works Department,
St. George Fort, Chennai.
2. The Assistant Executive Engineer,
Public Works Department,
Water Resources Organisation(WRO),
Chittar Basin Division No.1,
Tenkasi, Tenkasi District.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Tirunelveli,
Tirunelveli District.
4. The Sub-Inspector of Police,
Sambavarvadakarai police station,
Tenkasi District.



5. K.Vellapandi

6. M.Sudalai

7. S.Pazhani Kumar

8. S.Muthuvel

9. S.Sankarapandian

(R-5 to R-9 are impleaded vide order dated 02.02.2023

in W.M.P.(MD)No.556 of 2022)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned G.O.Ms.No.16, Public Works (W2) Department dated 14.01.2011 passed by the 1st respondent and the consequential impugned auction notice issued by the 2nd respondent in auction notice letter No.Ko.1/O.Po.1 (The)2020/ dt 02.09.2020 published in Dinamalar Daily dated 13.9.2020 and quash the same and consequently forbear the respondents 1 and 2 from interfering with the fishery right of the petitioner Temple over the Periyakulam Tank in Sundarapandiapuram Village, Tenkasi District.

For Petitioner : Mr.V.R.Shanmuganathan,
for Mr.Adith Narayan.

For R-1 & R-2 : Mr.M.Lingadurai,
Special Government Pleader.

For R-3 : R.Ragavendran,
Government Advocate.

For R-5 to R-9 : Mr.V.Kabilan

For R-10 : Mr.G.Prabhu Rajadurai

For R-4 : Mr.B.Thanga Aravindh,
Government Advocate (Crl. Side).

* * *

**ORDER**

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Heard the learned counsel on either side.

2. The writ petitioner is a temple. What is questioned is the validity of G.O.(Ms).No.16 Public Works (W2) Department dated 14.01.2011. By the said Government Order, private parties have been banned from conducting public auction of fishery rights in water bodies belonging to the Public Works Department. According to the petitioner, the respondents cannot come in the way of the petitioner from exercising fishery rights over the said water body known as Arulmighu Kulathur Ayyan Sastha temple tank.

3. The primary issue raised in this writ petition is no longer *res integra*. Vide order dated **20.10.2022** made in ***W.P.(MD)Nos.6840 and 7061 of 2012*** etc, a learned Judge of this Court had sustained the said Government Order. Paragraph Nos.25 to 27 of the said order read as follows:-



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“ 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



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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



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among the deserving people. Therefore, I do not find any merit in the submissions made on the side of the writ petitioners.”

4. This writ petition appears to have inspired by the observation made by me whiling dismissing ***W.P.(MD)No.21072 of 2014*** filed by TNV 57, Chittar Puliyoor Channel Sundarapandiapuram Village Water Users Association. I had indicated that if instead of villagers / ayacutdhars, the temple has been represented before me, I might have taken a different view and since the temple is not in the picture, I could not sustain the stand of the writ petitioner association. The said writ petition was dismissed on 25.08.2020. This writ petition came to be filed shortly thereafter.

5. The question that arises for consideration is whether the present writ petition deserves to be allowed. In the earlier order dated ***25.08.2020*** made in ***W.P.(MD)No.21072 of 2014***, I had specifically noted that the revenue records indicate that atleast from the year 1984 onwards the Public Works Department is having control over the tank in question. A mere look at the village note as well as the settlement register and 'A'



Register extract shows that the tank in question has been standing in the name of the Public Works Department and that G.O.Ms.No.16 dated 14.01.2011 would automatically kick in.

6. Vide order dated **02.01.2019** made in ***C.R.P.(MD)No.1659 of 2018 (Tirunelveli District Public Works Department (Water Resources and Irrigation), Tirunelveli District V. R.Esakkiammal)***, I had held as follows:-

“ 6.It was held by the Hon'ble Division Bench of this Court in the decision reported in (1960) 1 MLJ 276 (D.B) (State of Madras Vs. Kamakshiapillai) that the title to a fishery right flows from the right to the soil. The right to fishery in a tank, the bed of which is not owned by the claimants can be claimed and enjoyed only as against the owner of the bed of the tank. It cannot hang in the air. The person who can object to the said claim will be only the owner of the bed of the tank who is also entitled to the waters in the tank and also the produce that accrues to him in the tank unless somebody else has perfected his right thereto by any



prescriptive law of easements. The general principle is that fisheries are in their nature mere profits of the soil over which the water flows, and that title to a fishery arises from the right to the soil. Right to fishery has always been held to be immovable property.

7. In view of the aforesaid decision of the Hon'ble Division Bench, one can maintain an independent right to fishery only as an easementary right. In the very nature of things, an easementary right can be claimed only to support a dominant tenement. In this case, there is no dominant tenement to support. Hence, an easementary claim obviously cannot lie.”

7. Till date the writ petitioner has not obtained any definitive declaration that the water body in question belongs to department. Only if the petitioner obtains such a declaration, the fishery rights now canvassed before me can be upheld and not till then. The materials placed before me clearly indicate that the water body belongs to the Public Works Department. The validity of the Government Order has already been upheld in other writ proceedings. Therefore till such a declaration



as to the ownership of the water body is obtained by the petitioner, the contentions now advanced by the learned counsel appearing for the petitioner cannot be countenanced. This writ petition has to necessarily fail.

8. This writ petition stands dismissed. No costs. Consequently, connected MPs. are closed.

12.05.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Secretary to Government,
Public Works Department, St. George Fort, Chennai.
2. The Assistant Executive Engineer,
Public Works Department,
Water Resources Organisation(WRO),
Chittar Basin Division No.1, Tenkasi, Tenkasi District.
3. The Assistant Commissioner,
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G.R.SWAMINATHAN,J.

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