



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14682 of 2015 AND
M.P.(MD)Nos.1 to 3 of 2015

Arulmigu Selvavinayagar Marudhudayar Sastha Temple,
Kelacheval through its Thakkar,
Ambasamudram Taluk,
Tirunelveli District. ... Petitioner

Vs.

1. The Chief Engineer,
Water Resources Organization,
Public Works Department,
Chennai.
2. The Assistant Engineer,
Water Resources Organization,
Public Works Department,
Kannadiankal Division,
Cheranmadevi – 627 414. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Ko10/2015 dated 15.07.2015 and quash the same as illegal, ultravires and against law and thereby not to interfere in the fishing rights of the petitioner in respect of Keelathachankulam Tank in Melacheval Village, Ambasamudram Taluk, Tirunelveli District.



For Petitioner : Mr.S.Manohar
For Respondents : Mr.S.Ra.Ramachandran,
Additional Government Pleader.

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ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The petitioner is a Temple. Fishing rights have been perpetually enjoyed by the petitioner Temple.

3. The issue raised in this writ petition had already been decided by me in W.P.(MD)Nos.4693 and 16534 of 2015, I had held as follows:-

“5.The petitioners are temples and obviously, they will not fall within the purview of Clause 4(iv) of the impugned G.O. But the other clauses in the said G.O empower the department to conduct fishery auctions. That is why, the petitioners herein call



upon this Court to render a declaration that this G.O will not be applicable to temple tanks. I have earlier taken the view that unless a person has ownership over a tank, one cannot claim the fishery right alone which flows out of the ownership over the tank. I am now of the view that I have stated the proposition a little too widely. Fishery right is a right in immovable property. The petitioners-temple have been enjoying fishery rights over a century and more. In fact, the receipts issued by the authorities describe the remittance made by the petitioners as one towards perpetual fishery right (நிரந்தர மீன்பாசி வரி). The question that calls for consideration is whether such a right in immovable property can be taken away by an executive intervention issued in the form of G.O. The answer has to be in the negative.

6.Following the order passed in WP(MD)Nos. 1913 & 1914 of 2020 dated 06.02.2020, a joint meeting of the officials at the Secretary level was convened on 10.03.2020. The minutes drawn on the



occasion are as follows :

“Customary right for fishing has ordinarily been given to the temple even during the British rule. Even if the water body was maintained by the Public Works Department the fishing right was given to the temple and has been in vogue for more than a hundred years.

The Principal Secretary / Commissioner has suggested that if the fishing right between the Public Works Department and the temple settled, 50% of the auction amount will be given to the Public Works Department for maintenance of the particular tank.

The Principal Secretary, Fisheries Department stating that there is no issue between Hindu Religious and Charitable Endowments Department and Fisheries Department regarding fishing right of the temples.

The Principal Secretary, Public Works



Department has stated that to restore the fishing right of the temples, a policy decision has to be taken at Government level and necessary appropriate action will be taken.”

The government is yet to take final decision in the matter. If the government takes any decision adverse to the temples, it has to be through a statutory intervention and not otherwise. Since such a decision has not been taken till date, I hold that the G.O Ms No.16 dated 14.01.2011 is inapplicable to the petition-mentioned water bodies.”

4. This writ petition is disposed of on the same lines. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

25.09.2023

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



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W.P.(MD)NO.14682 OF 2015

G.R.SWAMINATHAN,J.

PMU

To:

1. The Chief Engineer,
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Chennai.
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