



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.4693 & 16534 of 2015

and

M.P.(MD)No.2 & MP(MD)Nos.1 to 4 of 2015

in WP(MD)No.4693 of 2015 : -

Arulmigu Thirucourtalanathaswamy Temple,
Courtallam through its
Executive Officer,
Courtallam,,
Tirunelveli District

... Petitioner

Vs.

- 1.The Secretary to Government,
Public Works Department, Chennai.
- 2.The Chief Engineer, Water Resources Organisation,
Public Works Department, Chennai.
- 3.The Assistant Engineer,
Water Resources Organization,
Public Works Department,
Chitraru Basin Sub Division, Tenkasi.
- 4.The Assistant Executive Engineer,
Water Resources Organization,
Public Works Department,
Chitraru Basin Sub Division,
Tenkasi.



5.55, Chitraru Aintharuvi Aaru Ilangi Village
Water Users Association, Ilanji,
Tenkasi Taluk through its President

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring that G.O (Home) No.16, dated 14.01.2011 issued by the first respondent is not applicable to the water tanks owned and maintained by the petitioner temple.

in WP(MD)No.16534 of 2015 : -

Arulmigu Subramaniasamy Thirukovil,
Rep.by its Joint Commissioner cum
Executive Officer,
Hindu Religious and Charitable Endowments
Department,
Thiruchendur, Tuticorin District.

... Petitioner

Vs.

1.The Secretary to Government,
Public Works Department,
St.George Fort, Chennai.

2.The Chief Engineer, Water Resources Organisation,
Public Works Department, Chennai.

3.The Assistant Engineer,
Water Resources Organization,
Public Works Department,
Kannadiankal Division,
Cheranmadevi – 627 414

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the G.O Ms No.16, Public Works Department dated 14.01.2011 and consequential impugned notice of the third respondent in Letter No.K010/2015 dated 28.04.2015 and also in letter No.K010/2015 dated 15.07.2015 and quash the same and consequently forbearing the respondents 1 to 3 herein from interfering with the fishery rights of the petitioner temple over the two tanks namely, Ommanallur Melakulam and Ommanallur Keelakulam situated at Ommanallur Village, Ambasamudram Taluk.

For Petitioner
in WP(MD)No.4693 of 2015 : Mr.S.Manohar

For Petitioner
in WP(MD)No.16534 of 2015 : Mr.M.Muthugeethayan

For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.S.Shanmugavel,
Additional Government Pleader

ORDER

Heard both sides.

2.The writ petitions have been filed by temples. In WP(MD)No.16534 of 2015, G.O Ms No.16 Public Works Department dated 14.01.2011 has been put to challenge. The validity of the said G.O has already been upheld by a learned Judge of this Court vide order dated 20.10.2022 in WP(MD)No.6840



of 2012 etc., In the other writ petition, the prayer sought for is that the aforesaid G.O should be declared as not applicable to the petition-mentioned water tanks. The counsel for the petitioner in WP(MD)No.16534 of 2015 called upon this Court to mould the relief and decide the writ petition as if the relief has been sought that the G.O is not applicable to the petition-mentioned water tank.

3.The learned counsel for the petitioners reiterated the contentions set out in the affidavits filed in support of the respective writ petitions. They also took me through the materials enclosed in the typed set of papers and called upon this Court to hold that the aforesaid G.O cannot be invoked in respect of the petition-mentioned water tanks. Counter affidavits have been filed in both the writ petitions and the learned Additional Advocate General took me through their contents. The core argument of the respondents is that the petition-mentioned water tanks undoubtedly belong to the Public Works Department and that therefore, the right of the department to conduct auction in respect of the fishery right cannot be questioned. It is further contended that following the promulgation of the Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000 (Tamil Nadu Act 7 of 2001), it has become necessary to share the revenue arising out of fishery rights with the Ayacutdars. In order to effectuate the statutory object of Tamil Nadu Act



7 of 2001, the impugned G.O has been issued. When its validity has already been sustained, these writ petitions deserve a summary dismissal. This is the contention of the respondents.

4.I carefully considered the rival contentions and went through the materials on record. G.O Ms No.16 dated 14.01.2011 was issued in order to distribute 50% of the income generated by auctioning the fishery rights among the three tiers constituting farmers organizations (Water Users Association, Distributary Committee and Project Committee). I posed a specific query to the learned Additional Advocate General as regards the statutory basis of the impugned G.O. He submitted that the G.O was issued in order to give effect to the statutory scheme set out in Tamil Nadu Act 7 of 2001. The Chief Engineer and the Engineer-in-Chief of Water Resources Organization, Public Works Department had submitted proposals to the Government in this regard. It is obvious that this G.O is traceable to the executive power of the State Government under Article 162 of the Constitution of India. It is not the case of the respondents that the said G.O partakes the character of a statutory rule. No specific statutory provision has been invoked for issuing the aforesaid G.O. Clause 4(iv) of the G.O forbids organizations and individuals from conducting fishery auctions in the tanks belonging to the Public Works Department/WRO without getting permission from the Government.



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 an right in immovable property. The petitioners-temples 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.



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7. These writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

13.09.2023

Index : Yes / No
Internet : Yes/ No
skm

To

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Public Works Department, Chennai.
3. The Assistant Engineer,
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Public Works Department,
Chitraru Basin Sub Division, Tenkasi.
4. The Assistant Executive Engineer,
Water Resources Organization,
Public Works Department,
Chitraru Basin Sub Division,
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Kannadiankal Division,



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G.R.SWAMINATHAN, J.

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