



W.P.(MD)Nos.21310 of 2017 batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos. 21310, 21311 of 2017 & 7011 of 2018 & 611 of 2016

and

W.M.P(MD)Nos.17572 to 17576 of 2017, 6702 to 6704 of 2018

& 496 to 498 of 2016

Arulmigu Marthanda Vinayagar Vagaiyara Temple,
Vazhuthur,
Ambasamudram Taluk,
Tirunelveli District,
Represented by its Executive Officer.

... Petitioner in W.P.(MD)No.
21310 of 2017

Arulmigu Vinayagamoorthy Temple,
Pananjadi,
Ambasamudram Taluk,
Tirunelveli District,
Represented by its Executive Officer.

... Petitioner in W.P.(MD)No.
21311 of 2017

Arulmigu Maha Ganapathy Temple,
Ammanpuram,
Tuticorin District,
Represented by its Executive Officer.

... Petitioner in W.P.(MD)No.
7011 of 2018



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Shanmugavelu,
Dharmakartha,
A/m.Sri Venkatachalapathy Temple,
Prancheri,
Ambasamudram Taluk,
Tirunelveli District,

... Petitioner in W.P.(MD)No.
611 of 2016

Vs.

1. The Secretary to Government,
Public Works Department,
Saint George Fort,
Chennai.
2. The Assistant Engineer,
Public Works Department,
Water Resources Organization,
Cheranmahadevi Basin Sub Division,
Ambasamudram Taluk,
Tirunelveli District.

... Respondents in all the
Writ Petitions

PRAYER in WP(MD)No.21310 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***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 auction notice of the 2nd respondent in Ka.No.Ko.17/U.Po/Cherai/, dated 06.11.2017 and quash the same and consequently forbear the 2nd respondent from interfering with the fishery right of the petitioner Temple over the Ooradikulam, Periakulam, Pudukulam, Sirukulam, and Pettaikulam.



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PRAYER in WP(MD)No.21311 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***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 quash the same and consequently, forbear the 2nd respondent from interfering with the fishery right of the petitioner Temple over the Ooradikulam and Thiruneelakandarkulam.

PRAYER in WP(MD)No.7011 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus***, to call for the records relating to the G.O.Ms.No.16, Public Works Department, dated 14.01.2011 of the 1st respondent and quash the same, in so for the Petitioner Temple is concerned and consequently forbear the 2nd respondent from interfering with the fishery right of the petitioner Temple over the Seenimavadikulam at Ammanpuram Village and Periyakulam and Siriyakulam at Veeramancikapuram Village, Tuticorin District.

PRAYER in WP(MD)No.611 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus***, calling for the records relating to Auction Notification of the 2nd respondent in his Proceedings in Letter No.Ko.10/2015/U, Po/Cheranmahadevi, dated 30.12.2015, in respect of item No.5, Prancheri, Tirunelveli District and quash the same and consequently forbearing the respondents in any manner from interfering with the



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fisheries right of A/m.Sri Venkatachalapathy Temple, Prancheri, Ambasamudram Taluk, Tirunelveli District.

In all Writ Petitions

For Petitioners : Mr.H.Arumugam

For Respondents : Mr.R.Suresh Kumar,
Additional Government Pleader

COMMON ORDER

Since the issue involved in these Writ Petitions are same and similar all the writ petitions are taken up together and disposed of by this Common order.

2. These writ petitions have been filed to quash the impugned G.O.Ms.No.16, Public Works Department, dated 14.01.2011 of the 1st respondent and consequently forbear the 2nd respondent from interfering with the fishery rights and pass appropriate orders.

3. The Executive Officer of the respective petitioners' temple have filed these writ petitions stating that the Tank in question belongs to the temple. Therefore, the fishing rights in the said Tank belongs to the temple.



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4. But the Learned Additional Government Pleader appearing for the respondents vehemently opposed and submitted that the Learned Single Judge of this Court vide order, dated 20.10.2022 in W.P.(MD)No.6840 of 2012 batch, had upheld the impugned G.O.Ms.No.16 dated 14.01.2011. As per Clause 4 (iv) of the impugned G.O.Ms.No.16, the Government has imposed a ban upon the association and individuals who are conducting public auction of the fishery rights in tanks of the Public Works Department without obtaining any permission from the Government. Moreover 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. 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 and the relevant Paragraph Nos.25 to 28 are extracted hereunder:

“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



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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 continue to vest with certain individuals or organizations.

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 unauthorized right 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



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the impugned Government Order not only to augmenting the revenue but also to distribute the State Revenue among the deserving people. Therefore, I do not find any merit in the submissions made on the side of the writ petitioners.

Conclusion:

28.In view of the above said discussion, the consequential impugned notification in W.P.(MD)Nos.7061 and 6840 of 2012 in which auction notices have been issued for conducting public auction of the fishery rights cannot be faulted with. All the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

5. However the Learned counsel appearing for the petitioners submitted that the issue whether the temple tanks would cover under the said G.O.Ms.No.16, was considered by the another Learned Single Judge of this Court in W.P.(MD)No.4693 of 2015, vide order, dated 13.09.2023 and has held that the G.O.Ms.No.16, Public Works Department, dated 14.01.2011 will not be applicable to the temple Tank and the said relevant paragraph is extracted hereunder:



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“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



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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.”



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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.

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

6. Since, the Learned Single Judge of this Court has held that it is a customary fishery right and hence the customary right cannot be taken away by the executive intervention. The G.O.Ms.No.16 is an Executive Orders and the is not applicable to temple tanks. Following the latest judgment rendered in W.P.(MD)No.4693 of 2015 dated 13.09.2023 on the issue, this Court is of the considered opinion that the said G.O.Ms.No.16 is not applicable to temple tanks.

7. Since the validity of the G.O.Ms.No.16 was already upheld, this Court is of the considered opinion that the said G.O.Ms.No.16 cannot be quashed. But the said G.O.Ms.No.16 is not applicable to the temple tanks.



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8. Accordingly, the impugned auction notices are quashed. These writ petitions are allowed as stated supra. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

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Internet : Yes

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To

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S.SRIMATHY, J

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Common Order made in
W.P.(MD)Nos.21310,
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