

W.P.(MD)No.154 of 2022

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Reserved On : 29.11.2024

Delivered On : 04.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.154 of 2022

and

W.M.P.(MD)Nos.120 and 121 of 2022

S.Seenichami

... Petitioner

Vs.

1.The Executive Engineer,
Public Works Department (WRD),
Upper Vaiper Basin Sub Division,
Rajapalayam,
Virudhunagar District.

2.The Assistant Engineer, (WRD),
Upper Vaiper Basin Division,
Sankarankovil,
Tenkasi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned Fishery Public Auction notice in Na.Ka.No:Ko23(4)/U.Po. (Sa)/2021, dated 21.12.2021, issued by the 2nd respondent with regard to Serial Number 6, Periyur Periya Kanmoi situated in Periyur Village, Sankarankovil Taluk, Tenkasi District and quash the same as illegal.

For Petitioner : Mr.R.J.Karthick

For Respondents 1 & 2 : Mr.S.Kameshwaran
Government Advocate



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ORDER

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Challenging the impugned Fishery Public Auction notice in Na.Ka.No:Ko23(4)/U.Po.(Sa)/2021, dated 21.12.2021, issued by the 2nd respondent with regard to Serial Number 6, Periyur Periya Kanmoi situated in Periyur Village, Sankarankovil Taluk, Tenkasi District, this Writ Petition has been filed.

2.A tank, named, Periyur Periya Kanmoi is situated in Survey Nos. 805 and 806, Periyur village, Sankarankovil Taluk, Tenkasi district and the writ petitioner is the president of Periyur Periyakulam Water Users Association. On 21.07.1942, the writ petitioner's grandfather, namely, Mr.Vellaiyathevar participated in the auction conducted by the learned District Munsif Court, Tenkasi, in O.S.No.47 of 1937 and purchased the fishery right of the said tank. On 31.08.1942, the sale certificate was also issued, declaring the writ petitioner's grandfather as certified auction purchaser, since then his father was in possession of the tank and he was doing fishing activities. Fishery patta No.1 and other revenue records were mutated in favor of the petitioner's father and he was paying taxes in his name. After his demise, the writ petitioner had survived him and had mutated the fishery right of the aforesaid tank and the fishery patta in his favor and is continuing to do fishing activities. During the period from 2011 and 2015, the respondents were taking steps to bring the said



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tank for public auction. Hence, the petitioner gave a representation to the respondents along with relevant documents, not to take any hasty steps in this regard, by bringing the aforesaid tank for public auction. On perusal of the documents submitted by the writ petitioner, the respondents dropped their action to conduct public auction with respect to the aforesaid tank. Even for the present year, the writ petitioner has let in fishlings. However, to his shock and surprise, the respondents are taking steps to bring the aforesaid tank, that is, the Periyur Periyakulam tank for public auction. Hence, once again on 03.12.2021, the petitioner gave a representation to the respondents, requesting not to bring the Periyur Periyakulam tank for public auction. However, even without issuance of notice or cancelling the petitioner's fishing patta, the public auction notice came to be issued by the second respondent vide impugned fishery public auction notice in Na.Ka.No:Ko23(4)/U.Po.(Sa)/2021, dated 21.12.2021 and the said Periyur Periyakulam tank was brought for public auction. Challenging the same, this petition is filed

3.The learned counsel for the petitioner submitted that by the strength of the Government Order in G.O.Ms.No.16, Public Work (W2) Department, dated 14.01.2011, the respondents have issued the impugned notice, by bringing the Periyur Periyakulam for public auction. However, the aforesaid Government Order will not cover the case of the tank in question. G.O.Ms.No.16, Public Works Department, dated



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14.01.2011, deals with those tanks under the Water Resources Organization. However, the Periyur Periyakulam tank had never ever been under the Water Resources Organization and the said tank was the subject matter of a civil suit in O.S.No.47 of 1937 on the file of the District Munsif Court, at Tenkasi and the fishery right of the Periyur Periyakulam was purchased in the Court auction by the petitioner's grandfather, namely, Thiru.Vellaiyathevar, in whose favor a sale auction certificate has also been issued by the said Court by sale certificate dated 31.08.1942, on the basis of which, a Fishery Patta No.1 was issued in favor of the petitioner's father and after his demise, the same has been mutated in favor of the petitioner and the petitioner is continuing to pay taxes in his name and doing fishing activities and by the strength of the said G.O., the petitioner's fishing rights over the same cannot be interfered with and pressed for allowing the Writ Petition, by setting aside the impugned portion of the aforesaid auction notice dated 21.12.2021.

4.Per contra, on the basis of the counter affidavit filed by the second respondent, the learned Government Advocate appearing for the respondents submitted that without challenging the Government Order in G.O.Ms.No.16 dated 14.01.2011, the petitioner cannot challenge the auction notice, since the Public Works Department has issued the said auction notice only in terms of the aforesaid G.O. He further insisted that

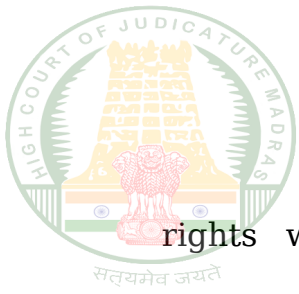


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if the aforesaid Periyur Periyakulam is auctioned for fishing rights by the respondent department, the public and the villagers will be benefited as the revenue will be higher to the Government. He further added that the public interest will prevail over private interest and further submitted that the petitioner has fishing rights only through the succession from his grandfather and he was not given with any orders by the respondent department and as such, the petitioner cannot claim fishing rights through the patta, which will run against the aforesaid G.O. and pressed for dismissal the Writ Petition.

5.Heard the learned counsel for the petitioner, the learned Government Advocate for respondents and carefully perused the materials available on record.

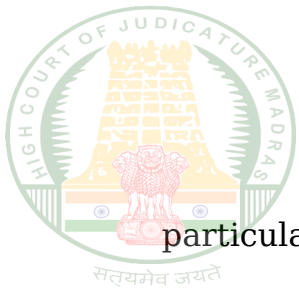
6.A careful reading of the Government Order in G.O.Ms.No.16, Public Works Department, dated 14.01.2011, would reveal that the said Government Order is with respect to all those tanks/water resources under the control of the Water Resources Organization. Pursuant to the enactment of the Tamilnadu Farmers Management of Irrigation Systems Act, 2000, the aforesaid Government Order came to be issued by the Government, for the purpose of auctioning the fishing rights over the said tanks/water resources. According to the petitioner, the said Government Order will not bind the petitioner, in view of the fact that the the fishery



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rights with respect to the Periyur Periyakulam has already been purchased by his grandfather by a Court auction, by the strength of the sale certificate dated 31.08.1942, with respect to the fishery rights over the Periyur Periyakulam in favor of his grandfather. Claiming that the impugned auction notice is an illegal attempt by the respondents to take away the aforesaid legal right of the petitioner, this Writ Petition is filed. The petitioner and his predecessor in title, that is, his father and his grandfather were carrying on the business of catching and breeding fish, particularly from fisheries within the Periyur Periyakulam tank, since 1942. The said fishery right was acquired by the petitioner's predecessor in title, by the strength of the sale certificate in favor of the petitioner's father grandfather, namely, Thiru.Vellaiyathevar vide sale certificate dated 31.08.1942, issued by the District Munsif Court, Tenkasi. Refusing to recognize the said sale certificate, the respondents have issued the impugned auction notice.

7.No doubt, the petitioner's predecessor in title, that is, his father and his grandfather had acquired the fishery right, by the strength of the sale certificate, dated 31.08.1942. Needless to state that Periyur Periyakulam is an immovable property and the same is vested with the State of Tamil Nadu. However, what has been purchased by the petitioner's grandfather is the fishery right in the aforesaid Periyur Periyakulam tank, that is, the right of breeding, catching and selling fish,



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particularly from fisheries within the Periyur Periyakulam tank. That would make it clear that the aforesaid sale certificate would entitle the writ petitioner to enter into the Periyur Periyakulam tank with a right to sell, catch and carry away a fish. It is a *profit a prendre*.

8.In Halesbury's Laws of England II (Hailsham Edition) pp.382 and 383, makes it clear that a *profit a prendre* has a right to take something from another person's land, such as, natural resources or the soil itself for the benefit of the owner of the right.

9.No doubt, the benefit, which arises out of land can be considered as nothing but an immovable property. Section 54 defines sale as:-

"Sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

Sale how made.--

Such transfer, in the case of tangible immovable property of the value of 100 rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than 100 rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property."



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10. In the instant case, delivery of the fishery right pertaining to the Periyur Periyakulam comprised in Survey Nos.805 and 806 of Periyur village, Tenkasi District, Karivalamnandhanallur Sub Registry, in favour of Thiru.Vellaiyathevar, came to be issued by the District Munsif Court, of Tenkasi, by issuing a sale certificate on two non-judicial stamp papers to the aggregate value of Rs.22.80/- dated 28.09.1942, as signed and sealed by him on 31.08.1942. Thus, the delivery of tangible immovable property, that is, the fishery right over the Periyur Periyakulam comprised in survey Nos.805 and 806 of Periyur village was effected by the learned District Munsif, of Tenkasi, in O.S.No.47 of 1937 in Execution Petition in E.P.No.53 of 1942 by placing the grandfather of the petitioner, that is, Thiru.Vellaiyathevar, in possession of the fishery right of the aforesaid Periyur Periyakulam tank. As a *profit a prendre* is always regarded as tangible immovable property, the immovable property in the instant *lis* is of value Rs.22.80/- as on 31.08.1942. Section 3(26) of the General Clauses Act, 1897, defines immovable property as follows:-

“immovable property shall include land, benefits to arise out of land, and the things attached to the earth or permanently fasten to anything attached to the earth:”

11. Section 3 of the Transfer of Property Act, 1882, defines immovable property as property that does not include standing timber,

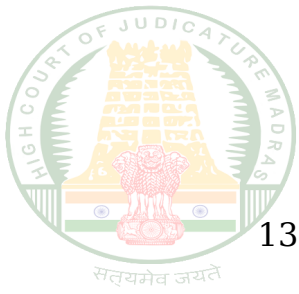


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growing crops or grass. When the definition of the immovable property as given under the General Clauses Act is read in conjunction with the definition given under the Transfer of Property Act, the same would make it clear that a *profit a prendre*, being a benefit arising out of land, obviously, the fishery right is also a profit which is arising out of the land and hence, the same could very well be construed as an immovable property within the meaning of the aforesaid definitions.

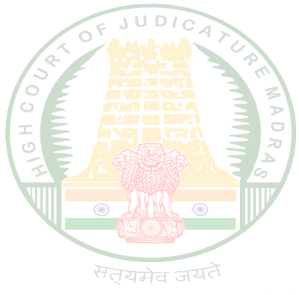
12.The Hon'ble Apex Court in the case of ***Santhosh Jayaswal and Another v. the State of Madhya Pradesh and Others*** reported in ***(1995) 6 SCC 520***, has dealt with the case of *profit a prendre* with respect to the grant amounted to lease of immovable property has held that the right to catch fish is a *profit a prendre* and the relevant portion of the same is extracted as follows:-

“8.Under Section 17 of the Registration Act, read with Section 2(16) of the Indian Stamp Act, 'lease' means a lease of immovable property and includes a patta, a kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy, or pay or deliver rent for immovable property etc. Right to catch fish is profit a prendre and benefit to arise out of land is an immovable property for purpose of stamp duty. It would, therefore, be clear that since it is a right given to the appellants to catch fish in the tank, it is a profit a prendre attached to or benefit to arise out of the land.”



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13. Since the petitioner's predecessors in title have acquired the fishery right in Periyur Periyakulam, by the strength of a sale certificate issued by the learned District Munsif Court, at Tenkasi, in E.P.No.53 of 1942 in O.S.No.47 of 1937 dated 31.08.1942, in terms of the mandates of the Hon'ble Division Bench of the Apex Court in the judgment extracted supra, it is needless to state that the fishery rights acquired by the petitioner's grandfather was nothing but a *profit a prendre* attached to or benefit, which has arisen out of the land comprised in Survey Nos.805 and 806 of Periyur village, Tenkasi District. It is needless to state that the right to catch fish is a *profit a prendre* and the benefit, which arises out of land in an immovable property. The writ petitioner has inherited the same through his grandfather followed by his father followed by him and he has also effected mutation in his favour with respect to the aforesaid fishery right, which he had acquired by inheritance and has been paying the necessary tax to the revenue authorities concerned and has effected mutation in his favour. The fishery rights, which was acquired by him in an appropriate sale proceedings in a court auction in E.P.No.53 of 1942 in O.S.No.47 of 1937, learned District Munsif Court, at Tenkasi, cannot be taken away by the respondent authorities by bringing the aforesaid Periyur Periyakulam under the mandates of G.O.Ms.No.16 dated 14.01.2011. Making it clear that the aforesaid G.O., is inapplicable to the petition mentioned water body, the impugned order dated 21.12.2021, is hereby quashed with respect to serial No.6.



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14. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

.03.2025

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

To

1. The Executive Engineer,
Public Works Department (WRD),
Upper Vaiper Basin Sub Division,
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2. The Assistant Engineer, (WRD),
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L.VICTORIA GOWRI, J.

Mrn

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