

W.P.(MD)No.4514 of 2022

WEB COPY

Reserved On : 03.12.2024

Delivered On : 04.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.4514 of 2022
and
W.M.P.(MD)No.3796 of 2022

Idol Arulmigu Thirunageswaramudaiyar,
Rep. Through its Thakkar/Executive Officer,
Nallur, Tiruchendur Taluk,
Tuticorin District.

... Petitioner

Vs.

The Junior Engineer,
Public Works Department /
Water Resources Organization,
Thenkal Basin Sub Division,
Thenthirupperai, Tuticorin District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned auction notification of the respondent in Ka.No.Koo.7/2021/U.Poo.1, dated 25.02.2022, in respect of Sl.No.5 and 6, namely, Nallur Melakulam and Nallur Kezhakulam and quash the same and further direct the respondent not to interfere with the right of the petitioner Temple in the above tanks.

For Petitioner : Mr.H.Arumugam
For Respondent : Mr.D.S.Neduncheliyan
Government Advocate



W.P.(MD)No.4514 of 2022

ORDER

WEB COPY

Challenging impugned auction notification of the respondent in Ka.No.Koo.7/2021/U.Poo.1, dated 25.02.2022, in respect of Sl.No.5 and 6, namely, Nallur Melakulam and Nallur Kezhakulam and direct the respondent not to interfere with the right of the petitioner Temple in the above tanks, this Writ Petition is filed.

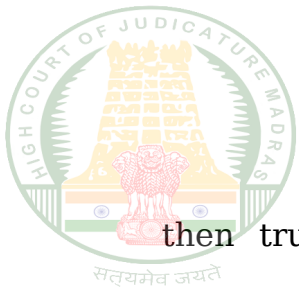
2.The petitioner temple is a public temple governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and the temple possess landed properties, however, there is no proper yield in those properties. That apart, the temple is the absolute owner of the tanks, namely, Nallur Melakulam and Nallur Keelakulam and its fishery rights at Nallur Village, Tiruchendur Taluk, Tuticorin District. The said right is confirmed with the Temple Property Register maintained by Hindu Religious and Charitable Endowments Department, dated 11.10.1966. The temple has a regular source of income only from leasing out the fishery right and the day to day pujas of the temple are being performed only out of the income from the said fishery right. The fishery right over the said tanks vest with the petitioner temple from time immemorial. The right of fishery is also recorded in the property register of the temple and also found in revenue records. The temple is specifically paying the kist for the fishery right to the Government



W.P.(MD)No.4514 of 2022

regularly without any default. The trustees of the petitioner temple used to let the right of fishery through public auction for every Fasli by issuing proper notice of auction with the concurrence of the Hindu Religious and Charitable Endowments Department. The auction amount has also been properly accounted with the Government and the Hindu Religious and Charitable Endowments Department. Thereafter, the petitioner issued fishery license and remit the amount with the Department and the said procedure is followed from time to time.

3.While so, the respondent on the strength of the Government Order in G.O.Ms.No.16 dated 14.01.2011, started to interfere with the right of the petitioner's fishing right with respect to the tanks vested with the temple. The writ petitioner claimed that the aforesaid Government Order is not applicable, so far as the fishery right vested with the temple is concerned. Similarly, placed temples have already filed several Writ Petitions, challenging the auction notices issued based on the said Government Order and this Hon'ble Court was pleased to pass an order of stay. More particularly, the said Government Order as well as the consequential auction notice issued by the Public Works Department has already been challenged in a Writ Petition in W.P.No.9431 of 2015 and this Court was pleased to order status quo and not to conduct auction and the said batch of Writ Petitions are pending. While being so, the respondent issued auction notification in the year 2019 and 2020 and the



W.P.(MD)No.4514 of 2022

then trustee, namely, E.Subramaniam filed a Writ Petition in W.P.(MD)No.3982 of 2019 and W.P.(MD)No.1264 of 2020 respectively and this Court was pleased to pass an order of stay. While being so, it is also informed that this Court in a similar issue arising out of another temple in W.P.(MD)Nos.1913 and 1914 of 2020, directed the Secretary of Hindu Religious and Charitable Endowments and the Public Works Department to have a joint meeting over the issue. In turn, the Public Works Department officials have also decided not to disturb the right of temple and forwarded the same to the Government. While the matter was sub judice before this Court, the respondents once again issued the impugned auction Notification in Ka.No.7/2021/U.Poo.-1/ dated 25.02.2022, for the period of 01.03.2022 to 31.08.2022 without complying with the order of this Court. Challenging the same, this Writ Petition is filed.

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

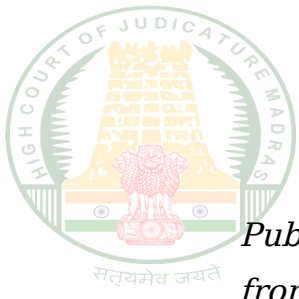
5.The Government of Tamil Nadu issued a Government Order in G.O.Ms.No.16, Public Works (W2) Department, dated 14.01.2011, by which the Public Works Department was given the right to lease out the fishing rights of all the tanks/water resources under the control of the Water Resources Organization. The said Government Order was



W.P.(MD)No.4514 of 2022

challenged by various organizations/persons, claiming that the aforesaid Government Order has been issued with the sole intention of taking away the preferential rights of the various organizations, more particularly, the right of fishing. However, this Court was pleased to uphold the aforesaid Government Order. In yet another set of Writ Petitions in W.P.(MD)Nos. 4693 and 16534 of 2015, this Court, by order dated 13.09.2023, passed a favorable order to the writ petitioner Temple therein and the relevant portion of the same is extracted as follows:-

“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



W.P.(MD)No.4514 of 2022

Public Works Department/WRO without getting permission from the Government.

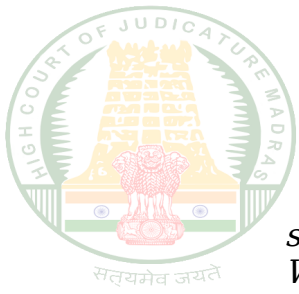
WEB COPY

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



W.P.(MD)No.4514 of 2022

WEB COPY

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.

7.These writ petitions are allowed."

6.Needless to state that the *lis* in hand is a similar Writ Petition filed by a Temple whose property register would reveal that a fishery right has been vested with the said temple with respect to Nallur Melakulam and Nallur Keelakulam at Nallur village, Tiruchendur Taluk, Tuticorin district and the same is also reflected in the revenue records of Nallur village, Tiruchendur Taluk, Tuticorin District. Recording the submission of the Principal Secretary, Public Works Department, that to restore the fishing right of the temples, a policy decision has to be taken



W.P.(MD)No.4514 of 2022

at the Government level and necessary appropriate action is likely to be taken. This Hon'ble Court in the above extracted case has proceeded to hold that until and unless the Government has taken any decision adverse to the temple in this regard, the aforesaid Government Order in G.O.Ms.No.16 dated 14.01.2011, is inapplicable to the petition mentioned water bodies, that is, the water bodies vested with the temples. Even in the instant case, the writ petitioner is a Temple, seeking to quash the auction notice brought by the Public Works Department with respect to the Periyakulam and Nallur Melakulam and Nallur Keelakulam vested with the writ petitioner temple.

7.Fully fortified by the judgment order extracted supra, I hereby set aside the serial Nos.5 and 6, pertaining to the auction notice of the respondent in Ka.No.Koo.7/2021/U.Poo.1, dated 25.02.2022. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

.03.2025

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



WEB COPY



W.P.(MD)No.4514 of 2022

To

The Junior Engineer,
Public Works Department /
Water Resources Organization,
Thenkal Basin Sub Division,
Thenthirupperai, Tuticorin District.



WEB COPY



W.P.(MD)No.4514 of 2022

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.4514 of 2022

.03.2025