BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**Writ Petition(MD)No.17419 of 2023**
**and**
**W.M.P(MD)Nos.14599 of 2023 & 7957 of 2025**

S.Achuthalingam ..Petitioner

Vs

1.The District Collector,
District Collectorate,
Thanjavur District.

2.The Executive Officer,
Arulmigu Boologanathaswamy Thirukoil,
Ammapettai,
Thanjavur District.

3.The Block Development Officer,
Ammapettai,
Papanasam Taluk,
Thanjavur District.

4.T.Sureshkumar
President of Keezhakovilpathu Panchayat,
Papanasam Taluk,
Thanjavur District.

... 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 on the files of 4th respondent pertaining to his

Tender Auction Notice dated 25.07.2023 for lease fishing rights insofar as it's relates to the Kaaterikulam, Poomaadikulam, Vannankulam, Sudukattukulam, Ayyanaar Koil Kulam, and Ponmettukuttai, which are mentioned in Serial Nos. 2, 4, 6, 7, 9, 11 and to quash the same and consequently, forbear the 4th respondent from auctioning of the lease of the fishing rights for the said ponds in future.

For Petitioner : Mr.A.Senthilkumar

For Respondents : Mr.A.Kannan
Addl. Govt. Pleader
(R1 to R3)

Mr.Bal.C.Char.Ananth (R4)

**ORDER**

The petitioner seeks to quash the impugned Tender Auction Notice dated 25.07.2023 issued by the fourth respondent, for leasing out the fishing rights in respect of the ponds, namely, Kaaterikulam, Poomaadikulam, Vannankulam, Sudukattukulam, Ayyanaar Koil Kulam, and Ponmettukuttai and to forbear the fourth respondent from auctioning of the lease of the fishing rights for the said ponds in future.

2. The petitioner states that in the Udaiyar Kovil Village, there is an existing temple under the name and style of Arulmigu Boologanatha Swamy Temple and sub temples, namely, Arulmigu Kalyani Ayyanar Thirukoil and Arulmigu Ponniamman Thirukoil. These temples have been in existence for over 500 years. The Arulmigu Boologanatha Swamy Temple possesses immovable properties as well as ponds known as Kaaterikulam, Poomaadikulam, Vannankulam, Sudukattukulam, Ayyanaar Koil Kulam, and Ponmettukuttai in the said village.

3. The petitioner claims that his grandfather, A.K.Annamalai Thenkondar, was the Hereditary Trustee and on his death, his father A.Selvaraj Thenkondar, succeeded to the said office. On the demise of the said Selvaraj Thenkondar, the petitioner succeeded as the Hereditary Trustee.

4. The petitioner pleads that in addition to the income from the immovable property, the temple generates the income by leasing out fishing rights in the aforesaid ponds. The cause of action for the writ petitioner is that the fourth respondent/President of the Keezhakovilpathu Panchayat attempted to bring the fishing rights in the ponds for public auction.

5. According to the petitioner, as the ponds belong to the temple, the fishing rights are also kept formed only by the temple and not by the Panchayat. Hence, this writ petition for the aforesaid relief.

6. I heard Mr.A.Senthilkumar, for the petitioner, Mr.A.Kannan, learned Additional Government Pleader, for the respondents 1 to 3 and Mr.Bal.C.Char.Ananth, for the fourth respondent.

7. Mr.A.Senthilkumar, for the petitioner, reiterated the contention raised in the affidavit and pleaded that as the ponds belong to the temple, the fourth respondent does not have the jurisdiction to bring the same for public auction.

8. Per contra, Mr.A.Kannan and Mr.Bal.C.Char.Ananth pleaded that the Revenue Divisional Officer, Kumbakonam, by way of a proceedings in Rc.No.18118/65 B3 dated 04.06.1965, had recorded as follows:

> "The Special Deputy Tahsildar (Loans) Papanasam has reported that the Trustee of Sri Ayyanarkoil temple has been enjoying the fishery right of all the five tanks and the income derived their from is reported to be utilised for the benefit of the temple. Accounts are maintained. The Panchayat has no objection in recognizing the fishery right in favour of

> the temple. The fishery right of all the five tanks is the before recognised in favour of Sri Ayyanarkoil temple subject to the condition that the Trustee of the temple should maintain proper accounts and that the income should be utilised for the benefit of the temple. In the event of any infringement of the above condition the fishery right shall be resumed and handed over to the Panchayat."

9. It is therefore pleaded that in the year 2007, the third respondent had written to the jurisdictional authority, pointing out the violation of the conditions under which the fishery rights had been granted to the temple, and therefore, they be resumed. It is further pointed out that as the temple has not administered the temple properly, the H.R. and C.E. Department had invoked Section 45 of the H.R. and C.E. Act, and had appointed an Executive Officer for all the temples listed therein. Hence, they plead that as the conditions imposed by the Revenue Divisional Officer, Kumbakonam, in the aforesaid proceedings have been violated, the Panchayat is entitled to bring the fishing rights to public auction.

10. Mr.A.Senthilkumar, in response, draws my attention to Section 132 of the Panchayat Act to point out that the executive order passed by the Revenue Divisional Officer, Kumbakonam, has been

superseded by the legislative enactment, and therefore, that provision would have to be followed in case the Panchayat wants to take over the customary right vested in the temple.

11. I have carefully considered the submissions of both sides, and I have gone through the records.

12. A perusal of the proceedings of the Revenue Divisional Officer shows that the Panchayat had "no objection" in recognizing the fishing rights in favour of the temple. The Revenue Divisional Officer, Kumbakonam, had, in line with the "No Objection" tendered by the Panchayat, recognized the fishery rights in the tanks in favour of the trustees of the temple. He imposed the condition saying that proper accounts will have to be maintained, and in case accounts are not maintained, the fishery rights can be resumed and handed over to the Panchayat. Even if I were to accept the submission of the learned counsel for the respondents, there should be some proceedings of the Revenue Divisional Officer showing that he had come to the conclusion that the accounts had not been properly maintained and, consequently, had decided to resume the rights and thereafter, confer it on the Panchayat. Unless and until the fishery rights granted in favour of the temple are cancelled and resumed and thereafter handed

over to the Panchayat, the Panchayat will not be entitled to bring the fishery rights for auction.

13. More importantly, the State of Tamil Nadu passed the Tamil Nadu Panchayat Act, 1994. Section 132 of the said legislation reads as follows:-

> "**132. Vesting of communal property or income in Village Panchayat**.- Any property or income including any fishery right which by custom belongs to, or has been administered for the common benefit of the inhabitants of the village or of the holders in 70 common of village land generally or of the holders of lands of a particular description or of the holders of lands under particular source of irrigation shall, if so declared by the Government, vest in the Village Panchayat and be administered by it for the benefit of the inhabitants or holders aforesaid."

14. It is the Government of Tamil Nadu, which is entitled to resume the fishery rights customarily administered by the holders and hand them over to the Panchayat. Furthermore, in order for Section 132 to apply, it must be shown that the fishery rights had been administered for the common benefit of the inhabitants of the village by the customary holders.

15. A perusal of the proceedings of the Revenue Divisional Officer shows that the fishery rights were enjoyed by the temple for its own benefit and not for the common benefit of the inhabitants of the village. I need not strain myself too much at this point, as the same has been settled by the judgment of this court in ***Alagar Iyengar vs. State of Tamil Nadu, 2002(2) T.L.N.J 155***. The Hon'ble Mr.Justice K. Sampath held that for a declaration to be made by the Government under erstwhile Section 83 of the Panchayat Act, 1958, which corresponds to Section 132 of the Panchayat Act, 1994, the condition precedent is that there should be a declaration by the Government that the fishery rights are vested for the common benefit of all the inhabitants of the village. In case that does not exist, then the question of invoking Section 83 of the old Act, consequently Section 132 of the new Act, does not arise.

16. Mr.A.Kannan's submission is that the Executive Officer had been appointed by the H.R. and C.E. Department, I have to presume that the accounts of the temple have not been maintained properly. Under Section 45 of the H.R. and C.E. Act, an Executive Officer is not appointed for the temple only on the ground of non-maintenance of account. Section 45(1) of the Act states that the Commissioner is entitled to appoint an Executive Officer to a temple when he finds

sufficient reason for the said appointment. The Supreme Court has upheld the power of the Commissioner to appoint an Executive Officer when sufficient reason exists in the famous case of the ***Commissioner of Hindu Religious Endowments, Madras vs. Sri.Lakshmindra Thirtha Swaminar of Sri Shirur Mutt, 1954 SCR 1005***. Therefore, the plea of Mr.A.Kannan if accepted, would be restricting the power of the Commissioner of the H.R. and C.E. Department to appoint an Executive Officer only in the cases where accounts are not properly maintained. Such is not the purport of the section.

17. In view of the above, I find that the respondents have not pointed out that the accounts of the temple had not been maintained and the rights were being resumed and handed over to the Panchayat. As the rights continue to vest with the temple, it is the temple alone that would be entitled to bring the fishery rights for auction. Since this right does not vest with the Panchayat as on today, the Panchayat does not have the jurisdiction to bring the property of another for auction. Therefore, the impugned Tender Auction Notice is liable to be quashed. The writ of certiorarified mandamus as sought is issued.

18. In the result, this writ petition is allowed. The impugned Tender Auction Notice issued by the fourth respondent pertaining to his Tender Auction on 25.07.2023 for leasing out the fishery rights insofar as the Kaaterikulam, Poomaadikulam, Vannankulam, Sudukattukulam, Ayyanaar Koil Kulam, and Ponmettukuttai, which are mentioned in Serial Nos. 2, 4, 6, 7, 9 and 11, is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

**30.04.2025**

NCC : Yes/No
Index : Yes/No
Internet:Yes
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**V.LAKSHMINARAYANAN, J.**

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