BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2025

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Writ Petition(MD)No.17602 of 2023
and
W.M.P(MD)Nos.14689 and 14690 of 2023

S.Sivanesan ..Petitioner

Vs

1.The District Collector,
Collector Office,
Thanjavur District.

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

3.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 3rd respondent pertaining to his Tender Auction Notice dated 25.07.2023 for lease fishing rights insofar as it's relates to the Pillaiyaar Koil Kulam, which is mentioned in Serial No.3 and to quash the same and consequently, forbear the

3rd respondent from auctioning of the lease of the fishing rights for the said pond in future.

For Petitioner : Mr.A.Senthilkumar

For Respondents : Mr.A.Kannan
Addl. Govt. Pleader
(R1 & R2)
Mr.Bal.C.Char.Ananth (R3)

ORDER

The petitioner seeks to quash the impugned Tender Auction Notice dated 25.07.2023 issued by the third respondent, for leasing out the fishing rights in respect of the Pillaiyar Koil Kulam and to forbear the third respondent from auctioning of the lease of the fishing rights for the said pond in future.

2. The petitioner states that in Keelakovilpathu Panchayat, there is a pond by name, Pillaiyarkoil Kulam. This pond has been in existence for over 500 years. The pond is opposite to Pillaiyar temple and hence, it has been called as Pillaiyarkoil Kulam. The same has been in possession of the petitioner's grandfather Chandrakasa Pasumpadiyar and his brother Ramadoss Pasumpadiyar through a registered sale deed dated 31.08.1917, along with adjacent lands nearly 7 acres 53 cents.

3. The petitioner claims that during the life time of his grandfather, the very same issue in respect of fishing rights went up to the District Collector and after enquiry, his grandfather's claim was upheld by the District Collector by his order dated 27.04.1966 and the order of the District Revenue Officer, dated 06.05.1966 and ever since, his grandfather had been in possession and enjoyment of the fishing rights in the said pond. During his life time, he executed a "WILL" in favour of the petitioner. After his demise, the petitioner has been enjoying the same rights nearly 50 years.

4. The petitioner pleads that the said pond had been deriving very small income by leasing out the fishing rights for every year. The income so generated is being spent on Pakkiri Swamigal and for providing food and accommodation for pilgrims every year, whenever they came to the village. The cause of action for the writ petitioner is that the third 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 pond belongs to him and the income derived from the pond has been spent for the religious purpose, the fishing rights are also kept farmed only by him 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 and 2 and Mr.Bal.C.Char.Ananth, for the third respondent.

7. Mr.A.Senthilkumar, for the petitioner, reiterated the contention raised in the affidavit and pleaded that as the pond belong to the petitioner, the third 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 properly, the H.R. and C.E. Department had invoked Section 49 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 in himself 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.

18. In the result, this writ petition is allowed. The impugned Tender Auction Notice issued by the third respondent, pertaining to his Tender Auction on 25.07.2023 for leasing out the fishery rights insofar as the Pillaiyaar Koil Kulam, which is mentioned in Serial No.

3, is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

30.04.2025

NCC : Yes/No
Index : Yes/No
Internet:Yes
skn

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

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

V.LAKSHMINARAYANAN, J.

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