



W.P(MD)No.17707 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Writ Petition(MD)No.17707 of 2023

and

W.M.P(MD)Nos.14786 & 14788 of 2023

Syed Kudimiyan

..Petitioner

Vs

- 1.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sarang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 2.The Wakf Inspector,
Thanjavur,
Thanjavur District.
- 3.The Block Development Officer,
Ammapettai Panchayat Union,
Papanasam,
Thanjavur District.
- 4.The President,
Keelakovilpathu Panchayat,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the Impugned Auction notice passed by the 4th respondent in his proceedings Nil dated Nil in respect of Taikal Tank which is



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serial No. 8 in the Impugned Auction notice and situated at R.S.No. 427-A2, Keela Kovilpathu Village, Papanasam Taluk, Thanjavur District and quash the same.

For Petitioner : Mr.K.M.Karunakaran

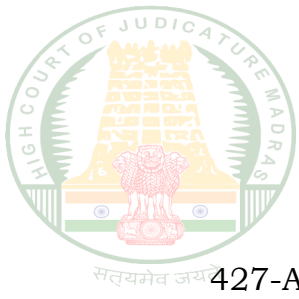
For Respondents : Mr.S.A.Ajmalkhan
(for R1 & R2)

Mr.A.Kannan
Addl. Govt. Pleader
(R3 & R4)

ORDER

The petitioner seeks to quash the impugned auction notice passed by the 4th respondent in his proceedings Nil dated Nil in respect of Taikal tank, which is serial No. 8 in the impugned auction notice and situated at R.S.No. 427-A2, Keela Kovilpathu Village, Papanasam Taluk, Thanjavur District.

2. The petitioner claims to be the hereditary Muthavalli of Hajarth Syed Bawa Sahip Liyulla Dharga. The Dharga is situated in Keelakovilpathu, Vdaiyarkoil Post, Papanasam Taluk, Thanjavur District. The Dharga was endowed with properties, and the same was confirmed in Inan Settlement Proceedings in T.D.No.171. One of such properties, which belongs to the Dharga, is a tank situated at R.S.No.



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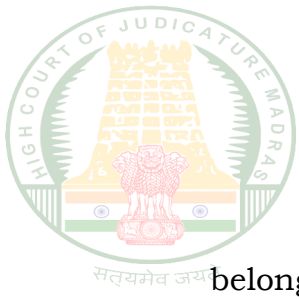
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427-A2 to an extent of 2.48 acres. The fishery rights of the tank had been farmed out by the Dharga, and from and out of the income, the Kanthuri Festival is celebrated. The tank itself is called the Taikal tank. The cause of action for the writ petitioner is that the fourth respondent/President of the Keezhakovilpathu Panchayat attempted to bring the fishery rights in the tank for public auction. Challenging the same, the present writ petition.

3. I heard Mr.K.M.Karunakaran, for the petitioner, Mr.S.A.Ajmalkhan, for the respondents 1 and 2 and Mr.A.Kannan, learned Additional Government Pleader, for the respondents 3 and 4.

4. It is the submission of Mr.K.M.Karunakaran that as the property is vested with the Dharga, the panchayat cannot bring the same for public auction. His submission is supported by Mr.S.A.Ajmalkhan, who appears for the respondents 1 and 2.

5. According to Mr.S.A.Ajmalkhan, during the survey conducted under the Wakf Act, 1954, the Dharga was surveyed and notified, and it has been given a serial number as G.S.No.407/TNJ. In the annexure maintained for the list of the wakfs under column No.10(A), the Kulam at R.S.No.427/A2 has been notified as the property



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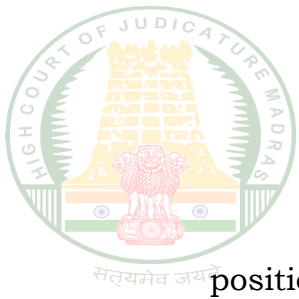
belonging to the wakf. This is in terms of Section 6 of the Wakf Act, 1954. Hence, he pleads that it is the wakf that alone has jurisdiction to bring the fishery rights for auction, and the fourth respondent does not possess jurisdiction.

6. Per contra, Mr.A.Kannan, representing the respondents 3 and 4, pleads that as the tank is the Kulam Poramboke and it vests with the Government, consequently, the fourth respondent can bring the fishery rights for auction.

7. I have carefully considered the submissions of all sides, and I have gone through the records.

8. In terms of the Wakf Act of 1954, which is more or less in substance captured under Section 6 of the Wakf Act of 1995, once the wakf is surveyed and notified, in case there is any dispute with respect to the right, title, and interest of such property, the remedy that has been set forth under the Wakf Act is that the person aggrieved should present a civil suit.

9. A perusal of the pro forma shows that the notification had been issued under the Wakf Act of 1954. Mr.A.Kannan is not in a



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position to point out any proceedings initiated by the fourth respondent Panchayat to the effect that it had obtained a declaration from the civil court that the contents of the pro forma are erroneous and that the property vests with the panchayat. When a pro forma has been prepared pursuant to the Wakf Act, 1954, the panchayat in case it has right over the same, ought to have presented a suit for a declaration that it is the owner of the property. The period of limitation for presentation of the suit by a third party is 12 years.

10. This position has been settled by the Supreme Court in **Board of Muslim Wakfs, Rajasthan vs. Radha Krishna & Ors, AIR 1979 SC 289**, which reversed the judgment of the Rajasthan High Court in **Radhakrishna vs. Board of Muslim Wakfs, Rajasthan, AIR 1967 Raj 1**. Though several decades had gone by from the date of notification, till date, there is nothing on record to show that the panchayat had asserted its rights and obtained a declaration to the aforesaid effect. That being the factual position, the attempt of the fourth respondent to bring the fishery rights, which had vested with the Dargha, for auction cannot be countenanced. Therefore, the impugned Tender Auction Notice is liable to be quashed.



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11. In the result, this writ petition is allowed. The impugned Tender Auction Notice dated Nil issued by the fourth respondent in respect of Taikal Tank which is situated in Serial No.8 in the impugned auction notice, 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 Block Development Officer,
Ammapettai Panchayat Union,
Papanasam,
Thanjavur District.
- 2.The President,
Keelakovilpathu Panchayat,
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V.LAKSHMINARAYANAN, J.

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