

W.P.(MD)No.20324 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 20.12.2021

PRONOUNCED ON : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.20324 of 2021

and

W.M.P.(MD)Nos.16977 and 16978 of 2021

P.Subbiah @ Subbian

President,

Pappaaianpatti Kanmoi Water Users Association,

Theni District.

... Petitioner

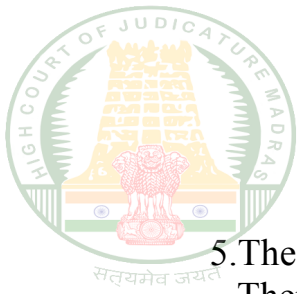
vs.

1.The District Collector,
Theni District, Theni.

2.The Executive Engineer/PWD /WRO,
Manjalar Basin Division,
Periyakulam, Theni District.

3.The Assistant Executive Engineer,
PWD/WRO, Manajalar Basin Division,
Periyakulam, Theni District.

4.The Assistant Engineer, PWD/WRO,
Irrigation Section,
Periyakulam, Theni District.



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5.The Assistant Director of Fisheries,
Theni District at Vaigamdam,
Theni District.

6.The Tahsildar,
Periyakulam Taluk, Theni District.

7.P.Nagamuthu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the second respondent in K.No.Ko.20/Vu.Po (Pa.Pi)/2021, dated 24.09.2021 and quash the same and consequently, to forebear the respondent 1 to 4 herein from in any manner conducting tender-cum-public auction for lease of fishing rights in Pappianpattikulam Kanmoi Periyakulam Taluk, Theni District.

For Petitioner	:Mr.K.Appadurai
For R1 to R6	:Mr.J.John Rajadurai Government Advocate
For R7	:Mr.R.Karunanidhi

ORDER

Writ Petition filed in the nature of Certiorarified Mandamus calling in question the impugned proceedings of the 2nd respondent dated 24.09.2021 and interfere with the same and consequently forbear the respondents from conducting lease-cum-public auction for lease of



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fishing rights in Pappianpattikulam Kanmoi, in Periyakulam Taluk, Theni District.

2.The Writ Petitioner, P. Subbiah @ Subbian, President of Pappaianpatti Kanmoi Water Users Association, in the affidavit filed in support of the Writ Petition, claimed that the Kanmoi is meant for irrigation and about 350 acres of land depend on the water from the Kanmoi, benefitting about 7500 families. It was further claimed that leaseholders of fishing rights cause damage to the tank bund to release water from the tank, to enable them to catch the fish. This affected irrigation. It was stated that the Public Works Department laid a condition that the lessees should not damage the bund of the Kanmoi or release the water, prior to bringing fishing rights to auction.

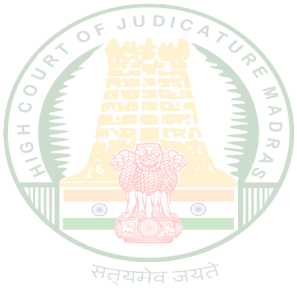
3.It was further stated that the petitioner came to know that the respondents intended to auction the fishing rights and the petitioner had given a representation on 04.10.2021 protesting at such attempt. However, the seventh respondent claimed that he had obtained fishery rights and produced a letter dated 24.09.2021. The petitioner then came



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to know that the respondents had issued a tender notification dated 09.09.2021. It was stated that the entire proceedings stand vitiated owing to lack of transparency and failure to follow due process of law. It was claimed that the Writ Petition should be allowed and the reliefs sought be granted.

4.A Counter Affidavit was filed by the third respondent, Assistant Executive Engineer, PWD/WRO Manjalar Basin Division, Periyakulam, on behalf of the respondents wherein it was stated that the fourth respondent had issued a tender notification on 06.08.2021 inviting tenders for public auction of lease for fishing rights in Pappaiyampattikulam Kanmoi at Thenkarai Village in Periyakulam for the period 31.08.2021 to 30.08.2022. A deposit of Rs.30,000/- by demand draft was made a condition. The date of auction was fixed as 27.08.2021. It was claimed that tender notice was fixed on the Village notice board and the public were also informed. The date was then postponed and re-fixed to 24.09.2021. The lease period was from 01.10.2021 to 30.09.2022.



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5.It was further stated that four persons participated in the auction and finally, the seventh respondent herein, P. Nagamuthu was declared the highest bidder for Rs.48,900/-. It was stated that Clause 14 of the tender stipulated that the lessee should not damage the tank bund or close the inflow of water into the tank. The water, meant for irrigation should not be let out. It had been stipulated that violation would entail cancellation of the lease and forfeiture of deposit. It was specifically stated that the Kanmoi was vested with the Public Works Department.

6.It was specifically further stated that the petitioner, being a resident of the Village was well aware of the tender proceedings. It was urged that the Writ Petition should be dismissed.

7.Heard arguments advanced by Mr. K. Appadurai, learned Counsel for the petitioner and J. John Rajadurai learned Government Advocate for first to sixth respondents and Mr. R. Karunnidhi, learned Counsel for the seventh respondent.



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8.It is the contention of Mr. K. Appadurai that the Kanmoi is a vast area and grant of fishing rights for a meager sum itself shows that the auction had not been conducted with bonafide intentions. Learned Counsel expressed fear that the seventh respondent would damage the tank bund, drain the water of the Kanmoi to catch the fish. He further claimed that the notification has to be interfered with since proper publicity had not been given prior to the auction. Learned Counsel also pointed that the seventh respondent's signatures in the various documents evidently differ and stated that the entire process was a sham. He urged that the Writ Petition should be allowed.

9.Mr.J.John Rajadurai, learned Government Advocate who appeared for the first to sixth respondents however contended that the auction was conducted following due process. Notices were affixed in all prominent and public places. Moreover, the petitioner being a local resident cannot feign ignorance of the same. Learned Government Advocate further stated that the seventh respondent had bid the highest



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amount and had been granted the rights. He further pointed out the clauses stipulated on the lessee and stated that the apprehension that the tank bund would be damaged is only imaginary. The respondents have a right to cancel the rights if there is violation of this clause. He reiterated that the Writ Petition should be dismissed.

10.Mr.R.Karunanidhi, learned Counsel for the seventh respondent contended that the seventh respondent had participated in the auction, satisfied the pre-condition to deposit Rs. 30,000/- by demand draft and then quoted the highest bid. He was declared to be the successful bidder. There was no violation of any procedure. He stated that the Writ Petition has to be dismissed as not maintainable as the seventh respondent has been granted the rights in manner known to law and there has been no violation of any of the conditions of the lease.

11.I have carefully considered the arguments advanced and perused the records.



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12.The petitioner had filed the Writ Petition in his status of President of Pappianpatti Kanmoi Water Users Association at Periyakulam in Theni District. Pappaiyampattikulam Kanmoi is situated in Thenkarai Village, Periyakulam. It is vested with the Public Works Department. The issue surrounds grant of fishing rights. The main grievance of the petitioner is that any lessee who is granted such fishing rights, to exploit the available fish, often damage the Kanmoi tank bunds, let the water flow and then catch the fish which otherwise would be deep in the water. This damage to tank bund and flow of water affects the agricultural fields. It is stated that the Kanmoi is the water source for about 350 acres of land and about 7500 families are also dependent on it.

13.If that be the primary grievance, then the petitioner should have been vigilant and should have prevented the rights be auctioned. However, the Writ had been filed after the auction had been conducted.

14.It is also pertinent to point out the conditions stipulated in the auction notification which made it clear that the successful bidder should



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not damage the tank bund and let out the water from the Kanmoi. The respondents have retained the power to cancel the lease if this is done.

15.The petitioner had then questioned the auction procedure itself. That may be out of scope of Writ Petition. The petitioner had not participated in the auction. It is inconceivable that the petitioner and none of the other members of the Association were not aware of the notifications issued by the respondents. The first date of auction was cancelled and a new date was then fixed. It had been clearly stated that the notification was affixed in all prominent places. However, neither the petitioner nor any of the members of the Association can claim ignorance of the notification. They are all residents of the same area. They did not want the fishing rights to be auctioned. Then they would have taken every care to see that a notification is not issued and if issued take steps to question the same immediately. They had every right to participate in the auction. None of the members of the Association participated in the auction. They cannot question the procedure adopted. The issues of differing signatures and alleged low auction amount are aspects beyond judicial review, and this Court cannot sit as an appellate authority over the respondents.



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16.In ***Nagar Nigam Meerut v. AL Faheem Meat Exports (P) Ltd.,***

reported in ***(2006) 13 SCC 382***, it had been laid down as follows:

“All contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the auction, and there is total transparency...”

17.In ***Uflex Ltd. Vs Government of Tamil Nadu and others,***

reported in ***2021 SCC OnLine SC 738***, the Hon’ble Supreme Court held

as follows :

“42. We must begin by noticing that we are examining the case, as already stated above, on the parameters discussed at the inception. In commercial tender matters there is obviously an aspect of commercial competitiveness. For every succeeding party who gets a tender there may be a couple or more parties who are not awarded the tender as there can be only one L-1. The question is should the judicial process be resorted to for downplaying the freedom which a tendering party has, merely because it is a State or a public authority, making the said process even more cumbersome.... The objective is not to make the Court an appellate authority for scrutinizing as to whom the tender should be awarded. Economics must be permitted to play its role for which the tendering authority knows best as to what is suited in terms of technology and price for them.”



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18.It is thus seen that the right to auction fishing rights was the correct step undertaken by the respondents. The petitioner should have participated in the auction. Conditions protecting the interest of the members of the petitioner Association have been imposed by the respondents. The Court cannot sit as an Appellate Authority and scrutinize as to whom the tender should be given.

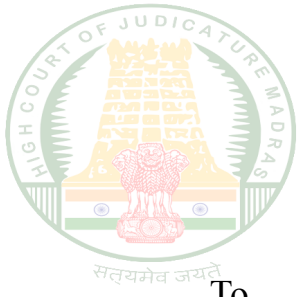
19.The Writ Petitioner having failed to participate in the auction cannot call upon the Court to enter into a roving enquiry on the entire issue. I am confident that the respondents would ensure that the stipulations in the notifications are not violated by the seventh respondent.

20.Writ Petition is dismissed. No order as to costs. Consequently connected Miscellaneous Petition is dismissed

Index :Yes / No
Internet :Yes
cmr

12.01.2022

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C.V.KARTHIKEYAN, J.

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Order made in
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