

(2011) 11 MAD CK 0123

In the Madras High Court

Case No : Writ Petition (MD) No. 221 of 2011

G. Poosathurai

APPELLANT

Vs

The District Collector, Tirunelveli District, Tirunelveli, The
Chief Executive Officer/ Assistant Director of Fishery
Department, Fish Farmers Development Agency (Local) Opp.
to Palayamkottai Bus Stand, Tirunelveli - 627 011 and The
Commissioner, Sankarankovil Panchayat Union,
Sankarankovil, Tirunelveli District

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 133, 133(3), 242

Citation : (2011) 11 MAD CK 0123

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Sathiamoorthy, for the Appellant; M. Govindan For Respondent 1,
Special Government Pleader and Mr. P. Thilakkumar For Respondent 3, for the
Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner is before this Court for the second round. Earlier, he filed a writ petition being W.P. (MD) No. 5089 of 2009 before this Court seeking for a direction to dispose of his representation, dated 30.06.2009. This Court without going into the merits of the case, directed the petitioner's representation to be considered. Pursuant to the same, the second respondent informed the petitioner that the petitioner cannot get fishing rights in the village tank under the control of Sankarankoil Panchayat Union. Since fishing rights was not given to the fishing farmers development agency, the petitioner's request for renewal of the fishing rights cannot be granted. By order dated 25.08.2009, the third respondent panchayat union informed the second respondent that only a sum of Rs. 6118/- has been granted by this agency to the panchayt union for the lease hold right

and therefore, the panchayat union decided to bring the fishing rights by public auction so that the revenue of the panchayat union can be increased and a resolution to that effect was passed by the panchayat union as early as on 16.07.2007 in Resolution No.32. Hence, the third respondent informed the second respondent that after the expiry of earlier lease on 30.06.2009, no further renewal can be granted with effect from 01.07.2009 and the fishing rights will be given only on the basis of public auction. Aggrieved by the response, the petitioner filed the present writ petition.

2. The contention of the petitioner was that G.O. Ms. No. 136 Forests and Fisheries Department, dated 11.02.1982 informed the authorities that the scheme which was introduced for the establishment of Fish Farmers Development Agencies in the State. The lease period of scheme should be extended for 10 years in all cases and therefore, within the said period would be sufficient for a fish farmer to establish his position and his unit economically viable. Accordingly, the lease of Fish Farmers Development Agencies tanks given to the fish farmers identified by the agency could be kept for a period of 10 years with effect from 01.04.1982.

3. It is not clear as to how far the said Government order can be enforced in the light of the subsequent enactment of the Tamil Nadu Panchayats Act, 1994. u/s 133, the Government is empowered to transfer to the village panchayat or to the panchayat union council, the protection and maintenance of any irrigation work, the management of turns of irrigation, or the regulation of distribution of water from any irrigation work. The panchayat or the panchayat union as the case may be are given the powers subject to such restrictions and control to execute kudimaramat in respect of any irrigation source in the villages. More particularly, u/s 133(3), it was stated as follows:

133(3)Where the maintenance of any irrigation work, is transferred under this section, the fishery rights of Government in such work shall be transferred to and be vested in the village panchayat or the panchayat union council, as the case may be, subject to such terms and conditions including terms and conditions regarding the utilisation of the income, as may be specified by the Government.

4. In the light of the statutory provision vested on the panchayat and the panchayat union council as per the law and also general principles of granting any lease hold right besides to go for public auction, the petitioner cannot thwart the same by certain untenable grounds.

5. In the writ petition, notice of motion was ordered on 06.1.2011. On notice from this Court, the third respondent has filed a counter affidavit dated "nil", February 2011. In the counter affidavit, a reference was made to G.O.No.169, Rural Development Department, dated 16.08.1999 and the Government Order is referred to in Paragraph 4 of the counter affidavit which reads as follows:

4...G.O.No.169 RD(P3)Dept., dated 16.8.99 para no 11, it is stated that water bodies in panchayat or panchayat union fish forming right should be given by

open auction, and the contract period for five years. Every year the contract amount should be raised 10% to the previous year. Upset lease amount is to be determined by the panchayat or panchayat union consultation with concerned Inspector of fisheries. The petitioner was given fish farming right for the period from 1.7.1999 to 30.06.2004 and 01.07.2007 to 30.06.2009. The said order cannot be challenged by the petitioner as per law.

6. The Government order referred to dated 16.08.1999 in paragraph 4 which is a statutory rule framed by the State Government u/s 242 of the Tamil Nadu Panchayats Act, 1994 in respect of Lease and Licensing of Fishery Rights in Water Sources vested and Regulated by Village Panchayats and Panchayat Union Councils Rules 1999. Under the said rules, more particularly, Rule 11 reads as follows:

11. Lease of fishery rights:- The lease of fishery rights in the water sources vested in the village panchayats or the panchayat union council shall be given after conducting public auction by the respective village panchayats or panchayat union council, as the case may be. Such lease shall be for a period of five years. Lease amount shall be raised every year at the rate of 10 per cent over the lease amount of the previous year.

Upset lease amount shall be fixed by the village panchayat and the panchayat union council concerned in consultation with the Inspector of Fisheries of the respective area.

7. In the light of the statutory powers vested on the panchayat and also it is being regulated by the said statutory rules, the petitioner by filing writ petition cannot seek for derailing the statutory power of panchayat union. There is no case made out to entertain the writ petition. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.