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**2016 (0) AIJEL-HC 235447**

**GUJARAT HIGH COURT**

**Hon'ble Judges: Akil Kureshi and Mohinder Pal JJ.**

**Laboni Sakhi Mandal Versus Union Of India**

SPECIAL CIVIL APPLICATION No. 14963 of 2015 ;  
SPECIAL CIVIL APPLICATION No. 13726 of 2015 ; \*J.Date :- JANUARY 28, 2016

- GUJARAT FISHERIES ACT, 2003
- ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958

**Gujarat Fisheries Act, 2003 - Ancient Monuments and Archaeological Sites and Remains Act, 1958 - grant of fishing rights - urged that subject of fishery is a State subject therefore Government of India has no right to grant fishing rights - archaeological department of Government of India is having control and management of Malav Talav which is a pond, with a structure in centre of historical and archaeological importance, and duly declared as a protected monument - held, that being position, it would only be Union of India which cannot only maintain but also deal with said site which would include giving rights of fishing in pond - impugned tender notice issued by State Government inviting tenders for fishing rights quashed - petition allowed.**

**Imp.Para:** [ 12 ]

**Equivalent Citation(s):**

2016 JX(Guj) 640 : 2016 AIJEL\_HC 235447

**JUDGMENT :-**

**AKIL KURESHI, J.**

1 These petitions overlap. Brief facts are as under.

2 Special Civil Application No.14963/2015 is filed by a cooperative society. The petitioner has challenged an order dated 28.4.2015 passed by respondent no.1 Union of India under which the period for carrying out fishing activity by respondent no.4 at Malav Talav, Dholka, came to be extended for the period between 1.4.2015 to 31.3.2016. The

petitioners have also challenged an order dated 1.4.2014 also passed by the same authority under which the offer of respondent no.4 during the auction of Rs.41,000/for such fishing rights was accepted and consequently the said respondent no.4 was granted fishing rights at Malav Talav for one year from 1.4.2014 to 31.3.2015. Case of the petitioner is that Union of India did not have any authority to grant such fishing rights. The subject of fishery is a State subject under List II in Schedule 7 to the Constitution. In exercise of such powers, the State legislature has also enacted Gujarat Fisheries Act, 2003 to regulate fishing activity in the State of Gujarat. The Union of India therefore, had no authority to grant any such license to respondent no.4 to carry out fishing activity at Malav Talav. Case of the petitioners also is that, in any case, such rights were assigned to respondent no.4 without following proper procedure, without issuing notice and inviting interested eligible agencies to apply for such rights.

**3** Union of India as well as respondent no.4 have opposed this petition. In particular, respondent no.4 would point out that in the past similar petitions filed have been withdrawn or dismissed. Fresh petition therefore, would not be maintainable. According to the respondent, Malav Talav is an ancient monument under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as "the Act of 1958") and thus it is the Central Government alone which can give such rights to anyone. It is also pointed out that proper procedure was followed by the Superintendent before passing the impugned order. Bids were invited from the members of the public. 10 persons had participated during such auction. Offer of the petitioner at Rs.41,000/per annum was the highest and, therefore, accepted.

**4** Special Civil Application No.13726/2015 has been filed by the same person who has been assigned the fishing rights by Union of India. He has prayed for a declaration that the allotment made by respondent no.3 i.e Union of India, in his favour of the fishing rights is legal and valid. He has also prayed for a permanent restraint against the State authorities from assigning such rights pursuant to public notice dated 7.8.2015 under which the State Government on the premise that power to allot fishing rights at Malav Talav vests in the State Government, has issued the tender notice inviting offers for allotment of such rights.

**5** The stand of the State Government is that the allotment made by the Union of India in favour of the said petitioner of this petition is illegal. Malav Talav is situated in Dholka taluka of Ahmedabad District. The right to allot fishing rights in various lakes and ponds in the State vests in the fisheries department. It is pointed out that Gujarat Fisheries Act, 2003 was brought into force with effect from 25.2.2004 for the purpose of providing protection, conservation and development of fisheries in inland and territorial waters of the State of Gujarat and for regulating fishing in the inland and territorial waters. The State Government in its affidavit in reply dated 15.9.2015 placed heavy reliance on the provisions of Gujarat Fisheries Act 2003 and Rules made thereunder to contend that the State Government is the sole authority which can assign fishing rights.

**6** Issues involved in the two petitions thus substantially overlap. Answer to the entire issue would depend on answer to the question whether power of assigning the fishing rights in the present case vests in the Union of India or the State Government. To answer

such question, we would have to take note of the provisions contained in Gujarat Fisheries Act 2003 as well as the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

**7** It is not in dispute that fishery is included in the State list under Seventh Schedule to the Constitution and thus forms a subject in respect of which the State legislature has exclusive powers to frame the legislation. In exercise of such rights, the State legislature has also enacted Gujarat Fisheries Act 2003 to provide for protection, conservation and development of fisheries in inland and territorial waters of the State of Gujarat and for regulation of fishing in the inland and territorial waters along the coast line of the State and for matters connected therewith. Section 6 of the Gujarat Fisheries Act 2003 pertains to power to make rules to protect fish. Subsection (1) thereof provides that the State Government may by notification in the Official Gazette make rules for any water other than private waters for all or any of the following matters including prohibiting or regulating the erection or use of fishing gear, the construction of weirs, dams and bunds; regulating the dimension and the kind of nets to be used and the mode of using them; prohibiting all fishing in the specified waters for a period not exceeding two years etc. Chapter III of the Gujarat Fisheries Act, 2003, pertains to regulations of fishing in specified area. Section 7 contained in the said chapter pertains to power to regulate, restrict or prohibit certain fishing activities within specified area. Term 'specified area' has been defined in section 2(p) as to mean the area of specified inland water or the territorial water as the State Government may, by notification in the Official Gazette specify. Section 8 of the Gujarat Fisheries Act 2003 prohibits any owner or master of a fishing vessel from using or causing or allowing to be used, a fishing vessel for fishing in contravention of the notification issued under section 7. Section 9 prohibits any fishing vessel which is not licensed under section 10, from the date of commencement of the Act, from being used for fishing in any specified area. Section 10 pertains to licensing of fishing vessels. Chapter V of the Gujarat Fisheries Act, 2003 pertains to offences and penalties. Section 30 is a rule making power of the State Government under which the Government may by notification in the Official Gazette make rules for carrying out the objects of the Act.

**8** In exercise of such rule making powers, the State Government has also notified Gujarat Fisheries Rules, 2003. Chapter II thereof pertains to protection of fish and contains provisions for prohibition against destruction of fish by explosive, against destruction of fish by poisoning of water, against introduction of exotic fish and regulation of fishing.

**9** It can thus be seen that the State legislature has made extensive provisions for controlling and regulating the fishing activity in the inland and territorial waters along the coast line of the State.

**10** The Act of 1958 on the other hand was enacted to provide for preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects. Section 2(a) of the Act of 1958 defines 'ancient monument'. Section 2(j) contains definition of 'protected monument' as to mean any ancient monument which is declared to be of national importance by or under the Act.

Section 3 provides that certain ancient monuments would be deemed to be of national importance. Section 4 pertains to power of Central Government to declare ancient monument to be of national importance. Section 5 pertains to acquisition of rights in a protected monument. Section 6 pertains to preservation of protected monument by agreement. Section 13 pertains to acquisition of protected monuments and provides that if the Central Government apprehends that a protected monument is in danger of being destroyed, injured, misused, or allowed to fall into decay, it may acquire the protected monument under the provisions of Land Acquisition Act as if the maintenance of the protected monument were a public purpose within the meaning of that Act. Under subsection(1) of section 14 of the Act of 1958, the Central Government would maintain every monument which has been acquired under section 13 or in respect of which any of the rights mentioned in section 5 have been acquired. Section 20A prohibits the area beginning at the limit of the protected area or the protected monument and extending to a distance of one hundred meters in all directions to be a prohibited area or protected monument. Section 20B on the other hand provides that every area beginning at the limit of prohibited area in respect of every ancient monument and archaeological site an remains, declared as of national importance and extending to a distance of two hundred meters in all directions shall be regulated area in respect of such ancient monument, archaeological site and remains.. Section 20C and 20D of the Act of 1958 put restrictions on and provides regulation on construction, repair, renovation etc., within the prohibited and regulated area.

**11** It can thus be seen that under the Act of 1958, detailed provisions have been made for maintenance and repair and other related issues of archaeological and historical monuments and archaeological sites and remains of national importance.

**12** It is not in dispute that the archaeological department of Government of India is having the control and management of Malav Talav which is a pond, with a structure in the centre of historical and archaeological importance, and duly declared as a protected monument. That being the position, it would only be the Union of India which can not only maintain but also deal with the said site which would include giving rights of fishing in the pond. As noted, the State legislature is authorized to frame the law regarding fisheries and consequently in exercise of such powers, Gujarat Fisheries Act, 2003 has also been framed. Nevertheless, the Gujarat Fisheries Act 2003 pertains to regulating, controlling and developing fishing in the inland and territorial waters of the State of Gujarat. Provisions contained therein, noted hereinabove, touch the aspect of the development, control and regulation of fishing. For such purpose, detail provisions have been made in order to carry out such activity in an orderly manner and in a manner such as not to damage the fishing activity in the long run. It is for such purpose that certain restrictions and regulations have been imposed envisaging obtaining license for fishing activity by fishing vessels and trawlers and prohibiting certain activities such as destruction of fish by poisoning of waters and against introduction of toxic fish. These provisions however, would not govern the question whether it would be the State Government or some other entity or agency which can give fishing rights with respect to a particular property. Answer to such question must be found by addressing the question who enjoys the ownership, management or control over such property. The Gujarat Fisheries Act, 2003, in other words, would not decide the power or authority of the State

Government to grant fishing rights in a particular water body. If such right vests in the Union of India or for that matter some other authority or agency, merely because the State legislature has exclusive right to frame the law with respect to subject of fisheries, by itself, would not mean that the State Government is authorized to assign such rights irrespective of the fact whether the right, title and interest over such property vests in the State Government or not. As noted, Malav Talav being an ancient monument, so duly declared under the Act of 1958 is within the management and control of the Union of India. It is not the case of the petitioner of Special Civil Application No.14963/2015 nor of the State Government that the Union of India does not enjoy such management and control of the monument. That being the position, it would be the Union of India alone which could not only maintain and develop the property, of course in tune with the Act of 1958, but also can assign fishing rights in the water body. This is not to suggest that the fishing activity which may be carried on at such site under the authority granted by the Union of India, would not have to fulfill the requirements of the Gujarat Fisheries Act, 2003 and rules made thereunder. Undoubtedly, the contractor or any other agency which desires to carry out such fishing activity would have to fulfill all the statutory requirements, obtain all necessary permissions and licenses wherever so specified, would have to submit to the control, regulation and prohibitions contained in the Gujarat Fisheries Act, 2003 and rules made thereunder. However, this is not the same thing as to suggest that the State Government which has no right, title or control over the monument in question, can assign fishing rights and collect revenue proceeds arising therefrom.

**13** Regarding the question of assigning fishing rights by the Union of India, it has come on record through affidavit that the bids were called for from the interested persons. The contractor respondent no.4 of Special Civil Application No.14963/2015 and also the petitioner in Special Civil Application No.13726/2015 made the highest offer. We however, do not accept the contention of respondent no.4 of petition not being maintainable since earlier petition of this petitioner was never rejected on merits. We have therefore, decided the issues on merits.

**14** Under the circumstances, Special Civil Application No.14963/2015 is dismissed.

**15** In Special Civil Application No.13726/2015, we quash the impugned tender notice dated 7.8.2015 issued by the State Government inviting tenders for fishing rights at Malav Talav. Petition is allowed and disposed of accordingly.