



W.P(MD)No.2262 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2262 of 2014

and

M.P(MD)Nos. 2 & 3 of 2014

1.Murugan
2.Ganesan
3.Paramanandham

... Petitioners

Vs

1.The District Collector,
Collectorate Complex,
Sulakarai – Virudhunagar,
Virudhunagar District.

2.The Tahsildar,
Sivakasi Taluk,
Sivakasi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in Proceedings No. O.Mu. A2/262/2013, dated 03.05.2013, and quash the same as illegal and direct the respondents to grant patta to the petitioners house situated in survey No. 1 of Sakkamalpuram Hamlet of Appayanaickenpatti Village, Sivakasi Taluk.



W.P(MD)No.2262 of 2014

For Petitioners : Mr.R.Govindaraj

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioners are residents of Sakkammalpuram Hamlet of Appayanaickenpatti Village in Sivagangai Taluk. They submitted petitions before the District Collector, Virudhunagar for issuance of free house site patta. Sites identified by the petitioners have been classified as “Odai poramboke” in Village accounts. Since patta cannot be issued in respect of water bodies, the request of the petitioners was negated by the second respondent vide memorandum dated 03.05.2013. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner states that during the relevant time, the petitioners 1 and 2 were serving in the Army. The third petitioner is an agricultural labour. The contention of the petitioners is that their neighbours have been granted patta and that they alone have been discriminated against.



W.P(MD)No.2262 of 2014

4. The sense of grievance nurtured by the petitioners is justified. But then no relief can be granted. It is well settled that there cannot be equality in the matter of illegality. The Hon'ble Full Bench of the Madras High Court in the decision reported in **2021 (2) CTC 801 (The State and Ors. Vs S.Rajaram and Ors)** had held as follows :

“19.It is well settled that Article 14 of the Constitution of India cannot be invoked for perpetuating illegality. A wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in any other case. Even if the State implements an erroneous order passed by the Court, it cannot be precluded from challenging a similar order passed in another case, simply because appeal was not preferred in the earlier case (Paragraph No.17 in State of Madhya Pradesh Vs. Ramesh Chandra Bajpai, reported in (2009) 13 SCC 635)”

The another Hon'ble Full Bench of the Madras High Court in the decision reported in **(2015) 8 MLJ 1 (FB) (T.K.Shanmugam Vs. The State of Tamil Nadu & Others)** had held as follows:

"26. Thus, the Division Bench in L. Krishnan, did not limit its direction to water bodies under the control of the Public Works Department. In fact, it has issued directions for all natural water resources in the different parts of the State of Tamil Nadu and wherever illegal encroachments are found to



WEB COPY



W.P(MD)No.2262 of 2014

take steps for removal of the encroachments in accordance with the relevant provisions of law. The State Government thought fit to enact the Tank Act and though the object of the enactment was couched on a border principle, the Act was restricted to the encroachments in tanks which are under the control and management of the Public Works Department. The question would be as to whether this would in any manner alter the position or could have an effect of diluting the directions/observations of the Division Bench in L. Krishnan's case. The answer to this question shall be an emphatic "NO".

27. Section 11 of the Tank Act, specifically states that the operation of other laws not to be affected, as the provisions of the Tank Act shall be in addition to and not in derogation of any other law for time being in force. Thus, the encroachments in respect of water bodies which are not covered under the provisions of the Tank Act have to be necessarily removed by resorting to the procedure under the Land Encroachment Act. We are not inclined to ignore the directions issued by the Division Bench in L. Krishnan's case, as general observations, as observed in Sivakasi Region Tax Payers Association's case. We may hasten to add that in L. Krishnan's, the Division Bench issued positive direction to the State Government and this cannot be brushed aside as general observations and more so in the light of the observations in the case of Jagpal Singh, wherein pointed directions were issued by the Hon'ble Supreme Court to all the Chief Secretaries. In Sivakasi Region Tax Payers Association's case though the Division Bench upheld the



WEB COPY



W.P(MD)No.2262 of 2014

G.O. Ms. No. 854, it held that the said G.O., must read along with the provisions of the Land Encroachment Act, Tank Act and Standing Orders of Board of Revenue. If that be the interpretation, the question would be whether the State Government would be empowered to issue Government Orders for regularising encroachments in water bodies on the ground that the water body has lost its character and it is no longer a water body on account of disuse. We may answer this query by referring to the observations of the Hon'ble Supreme Court in the case of Jagpal Singh:-

"19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years. 20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."



W.P(MD)No.2262 of 2014

The Hon'ble Division Bench of Madras High Court also vide order dated 30.08.2022 made in W.P.Nos.22408 of 2022, etc batch had adopted the very same approach.

5.The impugned memorandum issued by the second respondent is in consonance with the principles laid down by the Madras High Court and Hon'ble Supreme Court. It is now an accepted position that water bodies cannot be reclassified and pattas issued. The first respondent is directed to revisit the issuance of patta in respect of the very same water body for other persons. Of course, the first respondent shall follow due process of law before passing final order.

6.This writ petition is dismissed with the aforesaid direction to the first respondent. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.07.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



W.P(MD)No.2262 of 2014

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W.P(MD)No.2262 of 2014

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.2262 of 2014

and

M.P(MD)No.1 of 2014

03.07.2023