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W.P.(MD)NO.25381 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.25381 of 2022 AND
W.M.P.(MD)No.19464 of 2022

1. A.Wins Anto,
S/o.Antony Muthu,
Chairman, Project Committee,
Kothaiyar Basin Irrigation System,
Water Resources Department,
Nagercoil, Kanyakumari District.
 2. V.Murugesu Pillai,
S/o.Velayuthampillai,
President, P.P.Channel Distributory Committee, WRD,
Eraniel & Post, Kanyakumari District.
 3. R.Chellappan,
S/o.Kumara Udhayamarthandan,
President,
Eraniel Kadaimadai Neyyoor, Colachel,
Cheramangalam, Major and Minor Branch Canals,
Water Users Association, Lakshmipuram,
Water Resources Department,
Neyyoor, Neyyoor Post,
Kanyakumari District.
- ... Petitioners

Vs.

1. The District Collector,
Kanyakumari District,
Nagercoil.



2. The Executive Engineer,
Kothaiyar Irrigation Division,
WRD,
Nagercoil.
3. The Assistant Engineer,
Irrigation Special(Tanks) Section,
WRD, Thuckalay,
Kanyakumari District.
4. The Superintendent of Police,
Kanyakumari District,
Nagercoil.
5. The Sub Collector,
Padmanabhapuram Revenue Division,
Thuckalay,
Kanyakumari District.
6. The Thasildar,
Kalkulam Taluk, Thuckalay Post,
Kanyakumari District.
7. The President,
Chadayamangalam Village Panchayat
Chadayamangalam,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to take immediate steps to remove all the encroachments in the Tank known as Mankulam @ Paambatti Kulam situated in S.No. 429/7, Chadayamangalam Village, Kalkulam Taluk, Kanyakumari District by invoking the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007 and to restore the said tank to its original position.



For Petitioners : Mr.G.Prabhu Rajadurai
For R-1 to R-6 : Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.K.Balasubramani,
Special Government Pleader.

For R-7 : Mr.T.Cibi Chakraborty

* * *

ORDER

Heard the learned counsel appearing for the writ petitioners and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for respondents 1 to 6 and the learned counsel appearing for the seventh respondent.

2. The allegation of the writ petitioner is that in the petition-mentioned waterbody, a number of encroachments have come up and that they are liable to be removed.

3. When the matter was taken up for hearing, it transpired that the Government departments as well as the local body have put up constructions and they have been in



existence for quite some time. We therefore felt that it would not be in consonance with public interest to direct their removal. However, in order to ensure that no further construction takes place in the water-bodies, we called upon the learned Additional Advocate General to convene a meeting of the stakeholders and take a considered decision and file a report before this Court. Pursuant to the direction given by this Court, on 05.08.2023 under the leadership of the District Collector, Kanyakumari District a meeting was convened. The minutes drawn on such occasion have been placed before this Court. Paragraph No.3 of the minutes reads as follows:-

“ மேலும், வழக்கில் அறிவுறுத்தப்பட்ட நீர்நிலை புறம்போக்கு (மிகவும் ஆட்சேபணை புறம்போக்கு நிலங்கள்) மற்றும் இதர புறம்போக்கு (ஆட்சேபணை புறம்போக்கு நிலங்கள்) நிலங்களில் எதிர்வரும் சந்ததியினருக்கு பாதுகாத்து கொடுக்கும் பொருட்டு பொது மக்களின் பயன்பாடு என்ற நோக்கத்திற்காக அரசுக்கட்டிடங்கள் ஏதும் கட்டக்கூடாது எனவும், ஏற்கனவே கட்டப்பட்டு பயன்படுத்தப்பட்டு வருகின்ற இனங்களில் கூடுதல் கட்டிடங்கள் எதுவும் கட்ட அனுமதிக்கக்கூடாது எனவும், மேலும் நீர்நிலை புறம்போக்கில் கட்டப்பட்டு செயல்பட்டு வரும் அனைத்து அரசு கட்டிடங்களின் தரத்தினை உறுதிபடுத்துமாறும் மேலும், தனிநபர்கள் நீர்நிலை



புறம்போக்கு நிலங்களில் ஆக்கிரமிப்பு செய்து எவ்விதமான கட்டிடங்களும் கட்டுவதை தவிர்க்கும் விதமாக அந்நிலங்களை கண்காணித்து மேல்நடவடிக்கை மேற்கொள்ள அனைத்து துறை அலுவலர்களுக்கும் அறிவுறுத்தப்பட்டது. மேலும் அவரவர் வரையறைக்குள் ஏற்படுத்தப்படும் ஆக்கிரமிப்புகளை கண்காணித்து நடவடிக்கை எடுக்க தவறும் நபர்கள் மீது உரிய நடவடிக்கை எடுக்கப்படும் என்று எச்சரிக்கப்பட்டு அறிவுரைக் கூட்டம் முடிவற்றது. ”

The District Collector has also filed status report and the following undertaking has been given. Paragraph No.5 of the status report is as follows:-

“I humbly submit that on 05.08.2023 the matter was taken up for consideration with concerned departments such as Revenue, Urban and Rural Local Bodies (Corporation, Village Panchayats, Town Panchayats and Municipalities), Public Works Department (Water Resources Division and Buildings Construction and Maintenance Division) (Meeting minutes copy enclosed herewith for kind perusal) and I have also instructed all the concerned officials not to



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permit any encroachments in the water bodies (highly objectionable poromboke) and other objectionable poromboke areas in future and not to make any extension in the existing constructions in Kanyakumari District.”

4. We direct the respondents to adhere to the aforesaid undertaking for all times to come. In other words, the existing water-bodies shall be spared and no building or construction shall be allowed to come up thereon. If this order is breached and if the public buildings have been put up, then they shall be directed to be demolished. This order shall be in the nature of continuing mandamus. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)
22nd AUGUST 2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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