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W.P.Nos.32679 of 2024 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2024

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.Nos.32679, 32745, 32762, 32877 and 32906 of 2024

&

W.M.P.Nos.35511, 35590, 35602, 35698, 35723 of 2024

in

W.P.Nos.32679, 32745, 32762, 32877 and 32906 of 2024

W.P.No.32679 of 2024

1. S.Arivalagan

S/o.Shanmugam

2. A.Kalaiarasan

S/o.Arivalagan

3. A.Santhi

W/o.Arivalagan

... Petitioners

VS

1. The District Collector



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Salem District

2. The Revenue Divisional Officer
Attur, Salem District

3. Tahsildar
Attur, Salem District

4. Mr.Periyasamy
S/o.Muthu Gounder

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of impugned order in Na.Ka.206642/2024/K5 dated 17.08.2024 passed by the first respondent/District Collector, Salem and quash the same.

For Petitioners : Mr.A.Abdul Kader
in W.P.No.32679 of 2024

Mr.T.Shanmugarajeshwaran
in W.P.No.32745 of 2024

Mr.P.V.Balasubramaniam
Senior counsel
for Mr.K.R.Samratt
in W.P.No.32762 of 2024

Mr.C.A.Diwakar
for Mr.K.Chandrasekaran
in W.P.No.32877 of 2024



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Mr.V.R.Annagandhi

in W.P.No.32906 of 2024

For Respondents

:

Mr.V.Ravi

Spl. Govt. Pleader for R1 to R3

in all Writ Petitions

COMMON ORDER

(Order of the Court was made by M.SUNDAR, J.)

This common order will now dispose of the captioned five 'Writ Petitions' {'WPs' in plural and 'WP' in singular' for the sake of brevity} and the captioned five 'Writ Miscellaneous Petitions' {'WMPs' in plural and 'WMP' in singular for the sake of brevity} thereat.

2. As regards the captioned main WPs, facts are common.

3. Short facts are that subject matter is a irrigation tank known as 'Nathred Sahib Tank' situate in S.No.149, Thulukkanoor Village, Attur Taluk, Salem District' [hereinafter said Tank' for the sake of brevity and convenience]; that the said Tank is also known as 'Thulukkanoor lake'; that this is the third round of litigation; that the first round of litigation



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was by way of a 'Public Interest Litigation' ['PIL' for the sake of brevity]

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vide W.P.No.28754 of 2005 when one V.Govindarajan filed a PIL with a prayer to direct the official respondents to remove alleged encroachments in said tank. This WP was disposed of on 04.01.2008 by a Division Bench *inter alia* remitting the matter to the District Collector (R1) before us i.e., District Collector, Salem with a directive to look into the matter, making it clear that if any representation is preferred giving the names of the alleged encroachers, the Collector shall get the matter enquired through the Tahsildar [R3] before us; that pursuant to this order, a representation appears to have been received and the Tahsildar appears to have enquired into the matter and made a report dated 25.02.2008 bearing reference ந.க.12806/05/பி3; that thereafter the matter appears to have gone into slumber as there is no record to demonstrate that Collector has passed any further orders; that when matter stood thus, the second round of litigation commenced vide W.P.No.13830 of 2012 (together



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with a miscellaneous petition thereat) wherein one Periyasamy (R4 before us in the captioned matters) made a prayer to mandamus the District Collector [R1] to exercise powers under Section 3 of 'the Tamil Nadu Irrigation Tanks (Improvement) Act, 1949' [hereinafter 'Tank Irrigation Improvement Act' for the sake of brevity] to increase the capacity of said Tank; that this writ petition came to be disposed of on 25.03.2024 by another Hon'ble Division Bench to which one of us (K.Rajasekar.J.,) was a party; that other Hon'ble Division Bench directed R1 (District Collector) to verify the revenue records, documents, the sanctity of the same and thereafter, if said Tank is found to be a water body, there is a further direction to take appropriate action to evict the encroachers; that while making the order, Hon'ble Division Bench has made it clear that if homeless poor people are identified, then alternate tenements should also be considered; that the Hon'ble Division Bench emphatically held that no encroachment can be permitted in water bodies; that pursuant to this



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order dated 25.03.2024, R1 swung into action and after detailed examination of records made an 'order dated 17.08.2024 bearing reference ந.க.206642/2024/கே5' [hereinafter 'impugned order' for the sake of brevity and convenience] wherein and whereby R1 has made it clear that the entire exercise is pursuant to orders of Hon'ble Division Bench and after elaborate examination of documents, has come to the conclusion that there is a breach qua said Tank in S.No.149; that there is a breach of conditions on the basis of which pattas have been issued and the impugned order also makes it clear that it is very much a water body and with the intention of protecting the water body ad-measuring 53.02.5 Hectares (131.03 acres) as per the Villiage Register which describes it as 'துலுக்கனூர் ஏரி' [Thulukkanoor lake] R1 has directed that steps have to be taken for proper maintenance [பராமரிப்பு] of said Tank as a water body as in the revenue records; that assailing this impugned order, captioned five writ petitions have been filed by five individuals who were



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all respondents in W.P No.13830 of 2012 in which Hon'ble Division

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Bench gave direction to R1 (District Collector) before us.

4. Mr.P.V.Balasubramaniam, learned Senior counsel instructed by respective counsel on record in W.P.Nos.32679, 32745, 32762 and 32906 of 2024 and Mr.C.A.Diwakar, learned counsel appearing on behalf of counsel on record for the writ petitioner in W.P.No.32877 of 2024 made submissions on behalf of writ petitioners.

5. Notwithstanding very many averments and notwithstanding myriad grounds in the writ support affidavits, learned Senior counsel Mr.P.V.Balasubramaniam and learned counsel Mr.S.Diwakar predicated their challenge to the impugned order on four crisp points and they are as follows:

a) The writ petitioners have not been given opportunity by

R1 in making the impugned order;

b) In the PIL, the District Collector has filed a counter



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affidavit dated 22.09.2005 *inter alia* saying that S.No.149, Thulukkanur Village, Attur Taluk, Salem District has been classified as Government Poramboke but this has not been taken seriously;

c) the impugned order effectively overrides G.O.Ms.No.2151, Revenue Department dated 05.11.1968 wherein the Government has directed grant of patta to one Thiru.B.Peer Mohammed Rowther and four others of Thulukkanur Village on payment of actual assessment;

(d) 'A' Register extract show S.No.149, 149/2A and 149/2B as Ryotwari lands.

6. Issue notice to official respondents i.e., R1 to R3.

7. Thiru.V.Ravi, learned Special Government Pleader accepted notice for R1 to R3.

8. Learned State counsel submitted that the impugned order has



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been made pursuant to orders of another Hon'ble Division Bench.

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Learned State counsel further submitted that the impugned order has been made in accordance with the revenue records and it has taken into account the subsequent Government Orders i.e., subsequent to 1968 and the subsequent developments.

9. In the light of the trajectory the matter has taken, considering the legal perimeter within which the legal drill on hand perambulates, main writ petitions were taken up with the consent of both sides making it clear that all the rights and contentions of R4 (private respondent- Thiru.Periyasamy, son of Muthu Gounder) will remain preserved and will remain unaffected by this order.

10. We now proceed to consider the submissions one after the other.

a) the first point turns on opportunity to the writ petitioners. The order of Hon'ble Division Bench is in two



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parts. The first part is to identify whether said Tank is a water body and second part is to initiate action against encroachers if it is found to be a water body. Now what has happened is, the first part has been complied with diligently and duly by the Collector (R1). Therefore, this argument of opportunity to the writ petitioners does not really arise. To be noted, the earlier order of Hon'ble Division Bench itself makes it clear that opportunity to all parties should be given. Obviously, opportunity will be given when removal of encroachment exercise (second part of the Division Bench order) begins.

b) As regard the second point turning on counter affidavit dated 22.09.2005 in the first round of litigation i.e., PIL, it was very fairly submitted that in the second round of litigation in paragraph 4, Hon'ble Division Bench has clearly said that the District Collector has earlier stated that some portions of the



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land are patta lands and this is a reference to the counter affidavit in the first round. This means that order of Division Bench dated 25.03.2024 pursuant to which impugned order was made by R1 clearly notices the stand of State in the first round qua PIL. There is also a reference to G.O.Ms.No.2151, Revenue Department dated 05.11.1968 and while dealing with that there will be a little more elaboration on this. Suffice to say that the earlier stand of the District Collector in the first round of litigation has been duly noticed by the Division Bench which gave the direction on 25.03.2024.

c) This takes us to third point which turns on G.O.Ms.No.2151, Revenue Department, dated 05.11.1968. This Government order has been clearly noticed in the impugned order, particularly in paragraph 9 thereat. After noticing this G.O, the impugned order clearly takes note of the



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subsequent Government order being G.O.Ms.No.41 of the Revenue Department dated 20.01.1987 which makes it clear that water bodies have to be protected, maintained and this is imperative and important. This subsequent Government Order also makes it clear that the Government is carefully overseeing if there is any encroachment in water bodies and that effective steps are being taken to ensure complete ban on any encroachment in water bodies. Relevant portion of paragraph 9 of the impugned order is extracted and set out infra:

'9.....பார்வை 5-இல் காணும் 25.03.2024
நாளிட்ட மாண்புமையுடைய சென்னை உயர்நீதிமன்ற
தீர்ப்புரையின்படி வருவாய்த்துறை ஆவணங்கள், ஆரசு
ஆவண காப்பகத்திலிருந்து பெறப்பட்ட ஆவணங்கள்,
பொதுப்பணித்துறையினரின் அறிக்கை, ஆத்தூர்
வருவாய் கோட்டாட்சியரின் அறிக்கை மற்றும் இதர
ஆவணங்களை பரிசீலனை செய்யப்பட்டதில் ஆத்தூர்
வருவாய் கோட்டாட்சியரின் அறிக்கையின்படி சேலம்
மாவட்டம், ஆத்தூர் வட்டம் துலக்கானூர் கிராமம்,
நில உடைமை மேம்பாட்டு திட்டத்திற்கு முந்தைய



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'அ' பதிவேட்டில் புல எண், 149-இல் 131.03 ஏக்கர் (53.02.5 ஹெக்டேர்) நிலம் அரசு புறம்போக்கு 'நப் சாயபு ஸ்பெஷல் ரேட்டு' என வகைபாடு செய்தும், நில உடைமை மேம்பாட்டு திட்ட புலப்படத்தில் "துலக்கனூர் ஏரி" எனவும் குறிப்பிடப்பட்ட நீர்நிலையில் நீர்நிலை புறம்போக்கு நிலங்கள் ஆட்சேபணையான வகைபாட்டு நிலமாக கருதப்படாத நிலையில் அரசாணை எண். 2151, வருவாய்த்துறை, நாள்-05.11.1968-இன்படி தனி நபர்களுக்கு பட்டா வழங்கப்பட்டுள்ளது தெரியவருகிறது.

பார்வை 4-இல் காணும் அரசாணை (நிலை) எண்.41, வருவாய்த்துறை நாள் 20.01.1987-இல் பின்வருமாறு தெரிவிக்கப்பட்டுள்ளது.

'4. நீர்நிலைப் புறம்போக்கு நிலங்களில் உள்ள ஆக்கிரமணங்களை வரண்முறைப்படுத்துவது சம்மந்தமாக மேலே பத்தி 1-இல் சொல்லப்பட்ட அரசாணைகளை அரசு மறு பரிசீலனை செய்தது. நீரோட்டங்கள் மற்றும் குளம் குட்டைகள் விலங்களுக்கு மட்டுமின்றி பொது மக்களுக்கும் பயன்படுகின்றன. சில இடங்களில் அவை குடிநீருக்காகவும் பயன்படுத்தப்படுகின்றன. தொடர்ந்து குடிநீர் வழங்கும் வகையில் ஆறு மற்றும் குளம் இவைகளின் உட்பரப்பில் கிணறுகள் வெட்டும் பழக்கம் பரவலாக



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இருந்து வருகிறது. மேலும், நீரோட்டங்கள், குளங்கள் மற்றும் குட்டைகள் அவற்றின் அருகாமையுள்ள கிணறுகளின் நிலத்தடி நீர் மட்டம் உயர்ந்த நிலையில் இருக்க உதவுகிறது. எனவே, நீரோட்டங்களையும், குளங்களையும் மற்றும் குட்டைகளையும் பாதுகாத்து பராமரிக்க வேண்டியது மிகவும் அவசியம். இந்த மாதிரி உள்ள எல்லா நீர்நிலைகளில் உள்ள ஆக்கிரமிப்புகளையும் அகற்றுமாறும் அவற்றில் ஆக்கிரமணங்கள் ஏற்படாதவாறு கூர்ந்து பாதுகாக்க வேண்டுமெனவும் அரசு கருதுகிறது. மேலே சொல்லப்பட்ட அனைத்து நீர்நிலை புறம்போக்கு நிலங்களில் உள்ள ஆக்கிரமிப்புகளை வரன்முறைப்படுத்தும் செயல் குறிப்புகளுக்கு ஒரு முழுமையான தடையை அரசு விகித்துள்ளது.....'

(underlining made by this Court
for ease of reference and for
emphasis)

Therefore, this point on G.O.Ms.No.2151, Revenue Department dated 05.11.1968 pales into insignificance and becomes a non-starter. In any event in G.O.Ms.No.2151, Revenue Department dated 05.11.1968 itself there is a clear mention about the existence of the tank and clearly



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G.O.Ms.No.41 dated 20.01.1987 will have an overriding effect.

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Therefore, the point is, the existence of said Tank is not in dispute.

(d) This takes us to the last point turning on 'A' Register.

'A' Register clearly refer to some sub-divisions, namely Sub-Division Nos. 149, 149/2A and 149/2B and they are all subsequent developments which get subsumed by the imperative need to protect water bodies.



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11. The discussion thus far makes it clear that all the four points urged on behalf of the writ petitioners fail to cut ice with us. As rightly pointed out by learned Special Government Pleader, the impugned order has been made by the Collector right earnest, pursuant to the directions of Hon'ble Division Bench. Therefore, we find no reason to find fault with the Collector or interfere with the impugned order.

12. Before we conclude, we make it clear that this Court has repeatedly emphasised the need to protect water bodies and the lead case in this regard is ***T.K.Shanmugam Vs. State of Tamil Nadu*** reported in ***2016-1-L.W-168***. This judgment followed a Full Bench ratio in another ***T.K. Shanmugam vs. The State of Tamil Nadu*** reported in ***2015-5-L.W-397*** and relevant paragraphs in ***T.K.Shanmugam*** case reported in ***2016-1-L.W-168*** are paragraphs 26, 27 and 28 which read as follows:

'26.At this juncture, this Court, taking judicial notice of the fact that even during the hearing of this case, the State of Tamil Nadu is seriously affected by unprecedented floods, ie.,



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during November 2015, and because of that, number of people were dead and many people lost their property, is compelled to put its views that the entire loss due to the flood was due to maladministration and the prevailing practices by the authorities as almost all the water bodies and water courses were allowed to be encroached upon resulting in reduction in their flood storing and carrying capacity, forcing the water to deviate from its regular course and enter the residential areas causing devastating effects. The authorities have permitted construction of houses in the water bodies. This resulted in inundation of these areas during flood and all these houses submerged under the flood water. This shows that despite the orders of the Court, the authorities pretend to act swiftly in removing encroachments but only in a selective manner and not in a planned and determined manner.

27.It has become inevitable for this Court to put on record that the authorities in power cannot destroy the water bodies or water courses formed naturally for the benefit of mankind for ever and it is beyond the power of the State to alienate or re-classify the water bodies for some other purposes without compensating the effect of such water bodies.



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28. That apart, while answering the reference in a Writ Petition filed at the instance of the petitioner herein, viz., [T.K. Shanmugam vs. The State of Tamil Nadu](#) [2015 (5) LW 397], the Full Bench of this Court, after considering the various Government Orders and the judgments of this Court and also following the observations and directions issued by the Hon'ble Apex Court, vide order dated 30.10.2015, has held that even the tanks which do not fall within the purview of the [Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007](#), also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Act.'

13. The impugned order also clearly deals with purported pattas and refers to the same as 'உள்தாள் திருத்தம்'. These matters turn on facts. It will suffice to say that impugned order clearly refers to Tahsildar's proceedings dated 13.07.1999 bearing reference TK/8A/1/1409.



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14. Therefore, there can be no two opinion that water bodies need to be protected. Likewise, we are not inclined to find fault with R1 (District Collector) for having diligently acted pursuant to the orders of this Court.

15. One other point which we deem appropriate to record before writing the operative portion is on Tank Irrigation Improvement Act i.e., the Tamil Nadu Irrigation Tanks (Improvement) Act, 1949. This Tanks Irrigation Improvement Act vide Section 2(d) defines 'Tank' as follows:

'2. In this Act, unless there is anything repugnant in the subject or context:-

(a)

(b)

(c)

(d) "tank" means an irrigation tank in the State of Tamil Nadu.'



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16. The purpose of Tank Irrigation Improvement Act is to empower the State Government to increase the capacity and efficiency of irrigation tanks in the State of Tamil Nadu. A careful perusal of the scheme of the statute and more particularly Section 3 thereof makes it clear that this function of the State to increase the capacity and efficiency of irrigation tank includes all tanks irrespective of whether they are situate in ryotwari, zamindari, inamdari or other area.

17. Ergo, the sequitur is captioned writ petitions fail and the same are dismissed. Consequently, captioned WMPs threat also perish with the main WPs. This means that captioned WMPs are also dismissed. There shall be no order as to costs.

[M.S.,J] [K.R.S.,J]

11.11.2024

gpa

P.S. I: *Upload forthwith*

P.S.II : *All concerned including the Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded*



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M.SUNDAR,J.,
and
K.RAJASEKAR, J.,

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To

1. The District Collector
Salem District
2. The Revenue Divisional Officer
Attur, Salem District
3. Tahsildar
Attur, Salem District

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