IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.11.2015

Judgment delivered on : 27.11.2015

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE

and

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No. 1295 of 2009

1. T.K. Shanmugam
Secretary
C.P.I. (M) North Chennai District Committee
52 Cooks Road
Perambur, Chennai - 1 ... Appellant

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Revenue
Fort St. George
Chennai

2. The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Public Works
Fort St. George, Chennai

3. The Collector
Chennai District

4. The Collector
Thiruvallur District

5. Chennai Metropolitan Development Authority
Rep. by its Chairman
Egmore, Chennai - 8

6. The Managing Director
Chennai Metropolitan Water Supply
and Sewerage Board
Chennai - 2

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7. M. Murthy
R7 impleaded as per order dated
05.8.2015 in M.P. No. 1 of 2015 ... Respondents

Prayer in WP.1295/09:- Petition under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents 3 and 4 to grant Patta and regularise the encroachments in Survey No. 11 (Part) and 53/2 (Part) in No. 65, Kolathur Village, Chennai District in terms of G.O. ms. No. 854 dated 30.12.2006 read with G.O. ms. No. 579 dated 03.10.2008 issued by the first respondent herein read with letter No. 42857/K/2002 dated 07.3.2005 of the second respondent herein to the sixth respondent herein and in terms of the judgment dated 29.4.2008 in W.P. Nos. 16636 of 1995 and 22274 of 2007 reported in 2008 (5) MLJ 1425.

For Petitioner : Mr. N.G.R. Prasad
for Mr. S. Sivakumar & J. Prataban

For RR 1 to 4 : Mr. P.H. Aravind Pandian, AAG
Assisted by
Mr. V.R. Kamalanathan, AGP

For R 5 : Mr. K. Rajasrinivas

For R 6 : Mr. N. Ramesh

For R 7 : Mr. S. Shinu

JUDGMENT

The need to protect the environment has emerged as a burning issue, which ultimately lead to the new concept of 'sustainable development.' Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Lakes and water bodies are gifts of nature. There is no possibility of getting further gifts of such nature. We should be content with the resources already given by the nature. Therefore, we should protect these valuable resources so as to enable the future generation to maintain it for the years to come for common good of all. There should be a harmonious approach in the matter of development vis-a-vis ecology. Environment plays a pivotal role in the life of human beings and, therefore, it is necessary to have a study with regard to impact on ecology because of the massive projects of development involving utilisation of natural wealth like wet lands, water bodies, lakes, etc.

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2. Article 51-A(g) of our Constitution contains a Constitutional mandate to protect and improve the natural environment including forests, lakes, rivers and wild life. The Hon'ble Supreme Court by way of series of judgments, interpreting Article 21 of the Constitution evolved the concept of 'sustainable development', in the interest of our economy as well as environment.

3. When it is a recognised principle that tanks, rivers and water-bodies are all communal properties belonging to the public at large, environmental management is not the concern of the Government alone and it is the responsibility of the people as well. Unfortunately, in the eagerness to acquire more and more property, even rivers, water bodies and lakes are not left free. Cases of encroachment on water bodies are really alarming. Water bodies are potential source for drinking water for human and cattle. Only with a view to protect the same and to help the environment and develop ecology, the Government has enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). The very object of the Act is to find the exact boundary of each Tank in Tamil Nadu and also to detect encroachments for eviction as per the procedure laid down in the said Act. However, there are instances where the public raised fingers against the Government also when it has forgotten the laws meant for preserving water bodies and attempted to fill up those natural streams under the guise of development. Occupation of the water bodies by way of encroachment will deprive water to the public in larger interest ignoring the Public Trust Doctrine.

4. The instant writ petition is one such case where apprehending reversal of land reforms and undermining the land ceiling laws, the petitioner, Secretary of a Political Party, viz., C.P.I. (M) North Chennai District Committee, has invoked Article 226 of the Constitution of India seeking for issuance of Mandamus directing the revenue authorities to grant patta by regularising the encroachments.

5. A perusal of the papers would show that G.O. Ms. No. 854 dated 30.12.2006 had prescribed a one time scheme for regularising encroachments for persons applying before 30.6.2007. Subsequently, the deadline was extended upto 30.9.2009 by virtue of G.O. Ms. No. 579 dated 03.10.2008. In the meanwhile, this Court by order dated 04.10.2007 in W.P. Nos. 25776 of 2006 and 17915 of 1993, sought to remove encroachments

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in the water bodies and water courses numbering about 29 in and around the city of Chennai. Based on the said order, eviction notices were issued by the officials of the second respondent, to the encroachers in January 2009.

6. At this juncture, it is pertinent to note that in the aforesaid Writ Petitions, the Secretary to Government had filed an affidavit to the effect that the State Government has taken a policy decision to restore the water bodies in the city of Chennai to their original shape, size, capacity, etc.. Besides, the Government had categorised 19 tanks as tanks that do not have any problem in taking the rehabilitation and restoration work and tanks that are relatively large and essentially required to be restored for improving and sustaining the sub-soil water levels and ensuring pollution free environments.

7. From the materials available on record, it is seen that the subject matter of the instant Writ Petition relates to Kolathur Tank located in Kolathur, which is one among the 19 water bodies in which the encroachments are sought to be evicted. The petitioner also confined the relief with regard to the encroachers in Kolathur Eri in Survey Nos.11 (Part) and 53/2 (Part) wherein several hundred families are claimed to be residing for more than 25 years in regularized and unregularized housing colonies.

8. The main contention of the learned counsel appearing for the petitioner is that even people who were granted Patta on reclassification of the land as 'Natham' and people who were allotted lands by the Tamil Nadu Slum Clearance Board also have been issued with eviction notices. Further, relying on G.O. Ms. No. 417 dated 03.9.2003 issued by the Public Works Department, learned counsel submitted that orders have been issued for transferring 29 lakes around Chennai City to the Chennai Metropolitan Water Supply and Sewerage Board / sixth respondent herein for augmentation of Chennai city water supply. According to the learned counsel, Kolathur lake is one among the 8 lakes which could not be handed over due to its non-existence as it is totally infested with encroachments and cannot be restored for the present comes under category. Placing reliance on G.O. Ms. No. 854 dated 30.12.2006 issued by the Government of Tamil Nadu, learned counsel also submitted that the said G.O. has been upheld by a Division Bench of this Court in Sivakasi Region Tax Payers Association vs. State of Tamil Nadu [(2008) 5 MLJ 1425] and only based on the same, representations were given to the authorities for grant of patta stating that the encroachments were made in lakes which were in disuse as water bodies. As such, according to him, the

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encroachers residing in S. Nos. 11 (Part) and 53/2 (Part) in 65, Kolathur Village, are entitled to regularization of their encroachment in terms of the above G.O.

9. Opposing the contentions of the petitioner, the second respondent Special Secretary to Government, Public Works Department, filed counter affidavit stating that the encroachers have unauthorizedly entered upon the water bodies of the Government, which is highly objectionable.

10. The fourth respondent District Collector, Thiruvallur District filed counter affidavit stating that pursuant to the issuance of G.O. Ms. No. 854, Revenue Department dated 30.12.2006, 16363 encroachments in water course poramboke were regularized upto 30.6.2007 and subsequently, in view of the stay granted by this Court, instructions were issued to the Collectors vide Office Letter No. F1/27403/2006 dated 09.7.2007 to restrain further issue of house sites pattas in water bodies and water course porambokes. It is also stated that by virtue of G.O. Ms.No. 372 Revenue Department, dated 26.8.2014, the Scheme was extended up to 31.3.2015 to regularize the encroachments in un-objectionable poramboke alone. According to the fourth respondent, as of now, there is no Scheme or Government Orders to regularize the encroachments in water course porambokes and the Korattur Eri and Menambedu, subject matter of the instant petition, are Sarkar poramboke and highly objectionable water course poramboke lands vested with Government for which no patta could be granted.

11. Heard the learned counsel appearing for the parties and perused the records.

12. Before adverting to the merits of the case, it would be relevant to refer to the various Government Orders issued by the Government of Tamil Nadu which speak about the importance of water bodies and the impact of the encroachments on its banks, various provisions of law and the decisions in this regard.

13. With a view to avoid floods and improving facility in the city, the Government issued G.O. (Ms) No. 417, Public Works (K) Department, dated 03.9.2003 and the relevant portion is usefully re-produced hereunder:-

> "In view of the advice of the Hon'ble Chief Minister cited in paragraph 2 after deep consideration the following order is issued.
>
> 1) Action is to be taken to initiate proceedings to retrieve the lakes within the

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jurisdiction of Chennai Water Supply and Sewerage Board and those in their surroundings which are under the maintenance of the public works department on condition that the respective local bodies would take steps to transfer them to the Chennai Water Supply and Sewerage Board.

2) The Chennai Metropolitan Water Supply and Sewerage Board should ensure that caution would be taken to avoid floods and protection from pollution in all the lakes around Chennai city which would come under its maintenance. It should also ensure all the possibilities of putting up bund to protect the lakes and water sources from being encroached upon."

14. In G.O. Ms. No. 1428 dated 04.8.1988, the Government has requested the Tamil Nadu Housing Board to draw up suitable plans in consultation with MMDA and Metrowater to provide sufficient storage capacity in a portion of the Kolathur Tank to store adequate water which will act as an acquifier for recharging ground water in the area. Besides, by the said G.O., the Government directed the Collector to evict the encroachments in the Kolathur tank and demarcate and hand over the land to the Tamil Nadu Housing Board except the portion of the tank to be retained as Tank for storage of water for recharging ground water in that area.

15. On the other hand, the learned counsel for the petitioner relied on G.O. Ms. No. 1428 dated 04.8.1988 to show that the ayacut lands have been converted into house sites and that the Kolathur tank will no longer be useful as an irrigation tank. The other G.O., which the learned counsel seeks in aid is G.O. Ms. No. 975, Public Works (XI) Department dated 29.6.1993 to show that the Kolathur tank with its water spread area was directed to be handed over to the Revenue Department for providing house sites to the Government servants and for regularization of encroachments.

16. In the above context, the provisions contained in the Tamil Nadu Land Encroachments Act, 1905 are also relevant. As per Section 2 of the said Act, all lands, except the lands classified as temple sites and house sites, vests with the Government. Sections 3, 3-A, 4, 5, 5-A, 5-B provide for levy of assessment for unauthorised occupation in Government lands.

17. The Hon'ble Supreme Court as well as this Court, in a catena of decisions, have time and again held that no encroachment should be tolerated over the water bodies which

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constitute part of the precious natural resources.

18. The relief sought for in this Writ Petition is unacceptable as (i) the prayer sought for in a Mandamus cannot be granted straightaway for issuance of patta and regularization of the encroachment; and (ii) the decision rendered in Sivakasi Region Tax Payers Association vs. State of Tamil Nadu [(2008) 5 MLJ 1425] based on which the petitioner has filed the Writ Petition, itself is to the effect of protecting water bodies by removal of encroachments.

19. There can be no dispute that the present Probono Publico is filed for issuance of patta for the encroachers and also to regularise the encroachments in Kolathur Eri in Survey Nos. 11 (Part) and 53/2 (Part), which form part of the water body. The fact remains that the encroachers have been issued with eviction notice in accordance with the provisions of the Act. Therefore, the petitioner in the guise of representing the encroachers, has got no vested right to prevent the encroachments being removed, that too, to restore the water body. On the other hand, the encroachers are bound to vacate and hand over vacant possession of the property.

20. Insofar as the contention that several hundred families are claimed to be residing in the encroached area for more than 25 years, the same is only to be rejected. First of all, there is no proof for the said contention. Further, assuming that the said families have been in possession of the property for a considerable period, that would not confer any right on them over the land for the simple reason that admittedly, they are encroachers, that too, in a water body, which needs to be protected in the interest of public.

21. It is pertinent to point out that earlier, the Government by way of G.O. Ms. No. 186 Revenue Department, dated 29.4.2003 have issued orders to the District Collectors to remove the encroachments. However, there seemed to be no follow up action. Similarly, this Court, in L. Krishnan vs. State of Tamil Nadu [2005 (4) CTC 1] in W.P. 20186 of 2000, disposed of on 27th June, 2005, directed the Government to remove the encroachments and restore the water bodies. However the said order was also not complied with. The failure of the authorities had resulted in huge loss of lives and public funds during floods in the months of October and November, 2005.

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22. Significantly, while considering the difficulties faced by the Government in carrying out the process of removal of encroachments in water bodies, a Division Bench of this Court consisting of the Hon'ble then Chief Justice Ajit Prakash Shah (as he then was) and P.Jothimani,J. in Anti Corruption Movement, rep. by its General Secretary vs. Government of Tamil Nadu, rep. by Secretary, Public Works Department, Chennai and others [2008 1 MLJ 417], has issued certain directions, which have been discussed by the Full Bench of this Court in Writ Appeal No. 1294 of 2015 filed by the very same petitioner herein.

23. Above all, the petitioner has based his claim on the basis of the decision of this Court in Sivakasi Region Tax Payers Association vs. State of Tamil Nadu [(2008) 5 MLJ 1425], wherein, according to him, the validity of G.O. Ms. No. 854, Revenue Department, dated 30.12.2006 has been upheld.

24. We have gone through the said judgment, wherein, a Division Bench of this Court heard a batch of Writ Petitions, which included, inter alia, one for quashing G.O. Ms. No. 854, Revenue Department, dated 30.12.2006. Even in the said Writ Petition, the ground raised was that it is the duty of the Government to protect all public water works, public reservoirs etc., and the Government cannot divest the same by any administrative instruction regularizing the encroachment even in water body, water tank and irrigation sources. The Division Bench further held that the contents of the G.O. should not be read in isolation. In this regard, the observation made by the Division Bench in paragraph No.22 of the judgment is usefully extracted hereunder:-

> "In our considered opinion, the contents of the G.O. should not be read in isolation. They must be read along with the provisions of the Tamil Nadu Land Encroachment Act, 1905, the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and more particularly along with the Standing Orders of the Board of Revenue as well as the impugned G.O. should be read as complementary to each other and the G.O. should not be read as supplanting the Revenue Standing Order."

In the very same order, the Division in paragraph 24 has held as follows:-

> "Since such G.O. has to be read along with other Rules as well as the existing Revenue Standing

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Orders, it is obvious that any land which is still continuing as water source either for the purpose of drinking or for the purpose of irrigation cannot be assigned....”

(Emphasis applied)

25. The Division Bench also observed that the G.O. would apply only where the environment is not affected in the sense that the area is not actually in use as Eri (lake) or water source either natural or artificial and not required for any public use and for the use of the State. In view of such specific directions, it is understandable as to how the petitioner still tries to convince this Court relying on the said judgment. To put it in a nutshell, we are surprised to note that the petitioner has relied on the decision, viz., 2008 (5) MLJ 1425, which itself is totally against his case.

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., 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.

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],

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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.

29. It is significant to point out that the Hon'ble Apex Court in a series of judgments, has held that statutory rules cannot be amended by Executive instructions but "if the rules are silent" on any particular point, Government can fill up the gaps by issuing executive instructions, in conformity with the existing rules. Having regard to the acute water scarcity recurring in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already ear marked water storage tanks, ponds and lakes, to its original status as part of its rain water harvesting scheme, which has already been initiated.

30. This Bench also wants to put it on record that as against the directions issued by this Court from time to time for eviction of the encroachers in the water bodies, which is in the larger interest of the society, no individual has raised his little finger, except the present writ petitioner, Secretary of a Political Party, that too, under the garb of a Public Interest Litigation.

In view of the foregoing discussion and in the light of the answer to the reference rendered by the Full Bench on this issue, we are of the view that the arguments of the petitioner claiming that the encroachments in river poramboke have to be regularized, is legally not sustainable and the relief claimed in this Writ Petition cannot be granted. As such, the Writ Petition fails and the same stands dismissed but without costs.

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ASSISTANT REGISTRAR(CS-V)

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SUB-ASSISTANT REGISTRAR

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To

1. The Secretary to Government
   State of Tamil Nadu
   Department of Revenue
   Fort St. George,Chennai

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Pre-Delivery Judgment in
W.P. No. 1295 of 2009

CO-VS
JD 09/12/2015

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