

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2016

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice M.M.SUNDRESH

W.P.No.21734 of 2015

S.Malathy

... Petitioner

Versus

1.The District Collector,
Tiruvallore.

2.The District Revenue Officer,
Tiruvallore.

3.The Revenue Divisional Officer,
Ambattur, Tiruvallore District.

4.The Tahsildar,
Ambattur Taluk,
Ambattur, Tiruvallore District.

5.The Managing Director,
Tamil Nadu Housing Board,
Old No.331, New No.491,
Anna Salai, Nandanam,
Chennai 600035.

6.The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar Western Extension,
J.J.Nagar Division,
Thirumangalam,
Chennai 600 101.

7.The Junior Engineer,
Tamil Nadu Housing Board,
Anna Nagar Western Extension,
J.J.Nagar Division,
Thirumangalam, Chennai 600 101.

8.The Inspector General of Registration,
Registration,
No.100, Santhome High Road,
Chennai.

9.The District Registrar,
North Chennai, Chennai.

10.The Sub Registrar,
Konnur, Chennai 600 049.

11.The Assistant Commissioner
Corporation of Chennai,
Zone VII, Ambattur, Chennai 600 053.

12.The Executive Engineer,
Corporation of Chennai,
Zone - VII, Ambattur, Chennai 600 053.

13.The Chairman, TANGEDCO,
(Previously Tamil Nadu Electricity
Board),
Anna Salai, Chennai.

14.The Assistant Engineer,
TANGEDCO,
JJ Nagar Centre,
Mogappair East,
Mogappair,
Chennai 600 037.

15.A.Devanidhi

16.D.Beninal Johnsi Rani

(R.15 and R.16 are residing at
No.16, Asirwatham Nagar,
Mogappair, Chennai 600 037)

17.The Chennai Metropolitan Development
Authority, through its Member Secretary,
Egmore, Chennai.
(R.17 impleaded as per order dated
08.02.2016 by CJ and MMSJ
in W.P.No.21734 of 2015)

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Mandamus, directing the respondents 1 to 14 to remove the encroachments made by the 15th and 16th respondents in Kulam (Water Body) in S.No.499 bearing

D.No.145, Vellalar Street, Mogappair, Chennai 600 037 and retrieve the public property with a view to protect the water body.

For Petitioner ::: Mr.R.Murali

For Respondents::: Mr.S.T.S.Murthi
Government Pleader for R.1 to
R.4,8,9 and 10
Mr.V.Anandhamoorthy for R.5 to R.7.
Mr.K.Soundararajan for R.11 and R.12
Mr.P.R.Dhilipkumar for R.13 and R.14
Mr.N.G.R.Prasad for Mr.D.Ashok Kumar
for R.15
Mr.S.Punniyakotti for R.16
Mr.N.Sampath for R.17.

O R D E R

(The Order of the Court was made by The Hon'ble
The Chief Justice)

The writ petition filed as a Public Interest Litigation seeks to allege that there are encroachments in Kulam (Water Body) in S.No.499 bearing D.No.145, Vellalar Street, Mogappair, Chennai 600 037. The petitioner is not in the vicinity of the area, but claims that she is interested in water bodies, though nothing has been placed on record to show her special interest in the field.

2. The affected parties have been impleaded as private respondents. The surprising part has been the inconsistent stand submitted by the respondent/authorities qua the area through different affidavits. In fact, it is still not clear to us as to which part is Government land and which part is private land. It is stated that a part of the land was handed over to the predecessor of CMDA to develop a Housing Project. On the nature of the land also, there appears to be lack of clarity. Suffice to say, in the affidavit filed by the 4th respondent, it was stated that an extent of 0.33.0 hec was classified as Kulam poramboke under the revenue records and that statutory notices under Section 7 of the Tamil Nadu Land Encroachments Act, 1905, was served on 9 encroachers, but none of them has offered any explanation to the preliminary notices served on 05.08.2015. Thereafter, notices under Section 6 of the said Act were also served and after giving adequate opportunity to the encroachers, eviction process was to commenced.

3. We may note that in the latter part of the affidavit affirmed on 04.02.2016, it has been stated that the land under reference was not a part of the Government Order in which the Tamil Nadu Housing Board was granted permission to enter upon the lands as per G.O.Ms.No.1517, Revenue Department dated 04.09.1984 for utilization by converting the same into house sites. The Tamil Nadu Housing Board had proposed to utilize the land with a view to frame a comprehensive scheme as per their revised lay out and accordingly got the approval of CMDA for the revised lay out, including the case land. The land under reference was free from encroachment by the time of approval by the CMDA vide LP S&S/CMDA 18/84 as Sector II, TNHB Block III). Since the land under issue was neither purely vested with the Government nor managed by the requisitioning Department i.e., TNHB, the eviction proceedings could not be initiated in the transitional process between the Government and the Housing Board.

4. We may note that this is the revised affidavit while the earlier affidavit stated somewhat to the contrary. It is in view of the aforesaid affidavit that we had impleaded CMDA as party and called upon to place its stand before us.

5. The affidavit of the CMDA states that from their planning permission admission/approval data entries in Area Plan Units, it has been found that no entry has been made in S.No.499, Mogappair in the name of the 15th and 16th respondents and hence, no approval was granted by the CMDA.

6. The Deputy Planner of Enforcement Cell (North II) is stated to have inspected the site and necessary communications have been issued to the Corporation to take action and submit a report in pursuance thereto.

7. In the conspectus of the aforesaid, the learned counsels for the respondents state that they are in the process of taking necessary action.

8. The result of the aforesaid stand of the TNHB is that the land is proposed for a public purpose, while the Corporation states that it is now in the process of taking appropriate action in pursuance to the notices already issued for lock and seal.

9. We take the aforesaid statement on record.

10. We may however notice that as per the counter affidavit filed by the 15th respondent, he is the beneficiary of a court decree passed in his favour qua the land and thus, he is entitled to utilize the land.

11. We are of the view that no further directions are required in this writ petition which is accordingly closed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector, Tiruvallore.
2. The District Revenue Officer, Tiruvallore.
3. The Revenue Divisional Officer, Ambattur, Tiruvallore District.
4. The Tahsildar, Ambattur Taluk, Ambattur, Tiruvallore District.
5. The Managing Director, Tamil Nadu Housing Board, Old No.331, New No.491, Anna Salai, Nandanam, Chennai 600035.
6. The Executive Engineer, Tamil Nadu Housing Board, Anna Nagar Western Extension, J.J.Nagar Division, Thirumangalam, Chennai 600 101.
7. The Junior Engineer, Tamil Nadu Housing Board, Anna Nagar Western Extension, J.J.Nagar Division, Thirumangalam, Chennai 600 101.
8. The Inspector General of Registration, Registration, No.100, Santhome High Road, Chennai.

9.The District Registrar, North Chennai, Chennai.

10.The Sub Registrar, Konnur, Chennai 600 049.

11.The Assistant Commissioner, Corporation of Chennai,
Zone VII, Ambattur, Chennai 600 053.

12.The Executive Engineer, Corporation of Chennai,
Zone - VII, Ambattur, Chennai 600 053.

13.The Chairman, TANGEDCO, (Previously Tamil Nadu Electricity
Board), Anna Salai, Chennai.

14.The Assistant Engineer, TANGEDCO, J.J. Nagar Centre,
Mogappair East, Mogappair, Chennai 600 037.

15.The Member Secretary,
Chennai Metropolitan Development
Authority,
Egmore, Chennai.

+3cc to M/S.D.Ashok kumar, Advocate sr.19835,19169

+1cc to M/S.R.Murali, Advocate Sr.19846

+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.19133

+cc to the Government Pleader sr.19189

+1cc to K.Soundararajan, Advocate Sr.19224

+1cc to M/S.v.Anandha Moorthy, Advocate sr.19242

+1cc to M/S.S.Punniyakotti, Advocate sr.19290

+1cc to M/S.N.Sampath, Advocate sr.19316

W.P.No.21734 of 2015

ad(CO)
srg(12/04/2016)

WEB COPY