

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.17869 of 2016

R.Krishnasamy

... Petitioner

Vs

1. The District Collector
Kancheepuram
Kancheepuram.
2. The Revenue Divisional Officer
Chengalpattu Division
Kancheepuram District.
3. The Tahsildar
Thirukkazhukundram Taluk
Kancheepuram District.
4. The Director of Town and
Country Planning
807, Anna Salai
Chennai- 600 002.
5. The Deputy Director
Town and Country Planning
Chengalpattu Region
18, Varadharasanar Street
Vedhajalam Nagar
Chengalpattu-1.
6. The Estate Officer
General Services of Organization
Department of Atomic Energy
Anupuram Township
Kalpakkam
Kancheepuram District-603 102.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India
for issuance of a writ Mandamus directing respondents 1 to 3 to

take appropriate action to protect the public water body called "Kuttai", "Porkovil Kuttai" and "Kannukovil Kuttai" in Survey No.29/1 in Neikkuppi Village in Thirukkazhukundram Taluk of Kancheepuram District from being encroached upon in any way by the 6th respondent or anybody else.

For Petitioner : Mr.S.Sathia chandran

For Respondents : Mr.R.Vijayakumar
Additional Govt. Pleader
for respondents 1 to 5

Mr.V.P.Sengottuvel
for 6th respondent

ORDER

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

The petitioner, claiming to be a resident of Neikkuppi Village, seeks to file the present writ petition under Article 226 of the Constitution of India seeking a writ of mandamus against respondents 1 to 3, being the State Government, to take appropriate action to protect the public water body called "Kuttai", "Porkovil Kuttai" and "Kannukovil Kuttai" in Survey No.29/1 in Neikkuppi Village in Thirukkazhukundram Taluk of Kancheepuram District, alleged to have been encroached upon by the sixth respondent.

2.1. The prayer has been couched in the aforesaid terms, but the story which emerges even from the averments in the petition seems to say something more. A case is sought to be made out as if the Department of Atomic Energy is seeking to grab some land and construct a multi-storied building in a water body. The lands are stated to have been acquired in the second half of 1980s which is stated to have been opposed by the land owners, but did not succeed. The allegation is of paltry sums being given as compensation for the land, sixth respondent illegally taking possession of lands, existence of temple on the land, existence of the water body referred to aforesaid, right to worship the deity called Periyandavar. The case of the petitioner is that while despite the aforesaid the sixth respondent may have legally acquired certain lands surrounding Survey No.29/1, that survey number continues to be a water body to the extent of 3.20 Acres.

2.2. In the year 2012, a sixteen-storied building, stated to be adjoining the water body, was sought to be constructed having obtained a no objection from the Village Panchayat. The

building is undisputedly already completed, but the grievance is that the access is proposed through the water body and no objection certificate has not been issued by the Panchayat at present.

2.3. The grievance is that now another similar multi-storied building adjoining the water body is proposed to be constructed by encroaching upon a portion of the water body and it is alleged that there is a 20 feet such encroachment. Interestingly, in paragraph (16), it is stated that if this building is permitted "I would be put to irreparable loss, injury and hardship", even though the petitioner is no way directly concerned with the land in question.

3.1. A perusal of the counter affidavit of the sixth respondent sets forth the factual position. The Department of Atomic Energy/sixth respondent is mandated to provide basic amenities such as housing, transport and medical facilities to the staff and the family members of various constituent units and, thus, land was acquired in Neikkuppi Village/Amiapakkam, where several houses have already been constructed for the employees, numbering 1250 dwelling units.

3.2. Two Tower Blocks were proposed to be constructed of "C" Type in Survey No.29/1 of Neikkuppi Village, without disturbing the deity inside the water body. One Tower Block is completed, while primary construction activity for the second block commenced when the petitioner approached the Court.

3.3. The acquisition proceedings are stated to be of the year 1988, commencing with the issuance of the notification under Section 4(1) of the Land Acquisition Act, 1894, vide G.O.Ms.No.733, Public Works Department, dated 29.4.1988. The said notification is stated to include the land comprised in S.No.29/1 measuring 3.20 Acres classified as "Porkoil Pond". In the course of the proceedings under Section 5A of the said Act, the villagers requested for permission to perform pooja once in a year for the deity on the banks of Porkoil Pond, which is stated to be situated in a small part of Survey No.29/1. This was agreed to and pooja once in a year is going on. The total land acquired for the township for the Department of Atomic Energy, of which possession was taken, is stated to be 226.70 Acres.

3.4. Insofar as the specific Survey No.29/1 is concerned, the same is stated to have been handed over to the sixth respondent by the Special Tahsildar on 7.12.1990 and it has been averred that, though the pond does exist, the entire 3.20 Acres is not Kuttai.

3.5. Naturally, the other averments about compensation being inadequate, etc., have been denied.

3.6. What is material is the categorical stand in the affidavit that no construction activity takes place or would take place in the area identified as Kuttai. However, the claim of the petitioner of existence of rain water channels, etc., has been denied. It would be useful to reproduce paragraph (13) of the counter affidavit as under:

"13. As regards averments contained in Para - 8, it is submitted that the entire area of 3.20 acres of land falling in Survey No.29/1 is not demarcated as water body. It is submitted that the Department has provided separate enclosure to the area demarcated as water body and no construction activities takes place in the said area."

3.7. It has also been averred that the No Objection Certificate vide letter dated 22.8.2012 had been obtained from the Panchayat qua Two Tower Blocks, of which one is completed and the other tower block is under construction and that all precautions have been taken to ensure water body is not disturbed.

3.8. The Government of Tamil Nadu has issued a notification duly published on 11.3.2015 for declaration of the area as meant for multi-storied building, including the land comprised in S.No.29/1 Part, etc., to the total extent of 19215.00 Sq. Mtrs.

3.9. The sixth respondent claims that it is carrying out the larger social objective also of undertaking rain water harvesting system for the entire township and in the meeting with the local residents on 3.5.2016, the department agreed to consider further demands like not to cut trees near the water body, plantation of trees, proper illumination around water body, water taps for villagers, not to undertake construction on the western side of the temple, etc. A space of 20 feet is stated to have been left between the Second Town Block and the water body for the benefit of the villagers and they would continue to have the right to perform religious duties.

3.10. The reference by the petitioner about absence of No Objection Certificate from the Panchayat has been dealt with by stating that the letter seeking resolution in the form of No Objection Certificate for construction of Tower-2 has been dealt with at the AD, Panchayat Office, which has written a communication to the Block Development Officer to grant necessary permission to the department in this regard.

3.11. On the complaint of the Panchayat President, the site was inspected and in the meeting, the following decisions were taken:

- i. As the land is awarded to Department of Atomic Energy, the villagers have no right on the said land in survey No.29/1. As GSO management is constructing a tower block in one side, beside it, the villagers were allowed to perform their pooja in the pond area where the deity is situated, in view of maintaining harmony and cordial relationship with the neighbourhood, department is ready to allow the villagers to perform pooja as usual, as stated in the Special Tasildhar's resolution at the time of land acquisition.
- ii. It was decided that the remaining portion after the requirement of the department in that survey number, will be fenced and no further construction will be done at that place. No construction labours were allowed to use the pond area and they have to be provided separate toilet facility by the management.
- iii. The separate iron gate to reach the Periandaver Temple to be opened on request by the villagers to perform pooja.
- iv. A separate road to be made from the gate to the Periandaver Temple by the GSO Management.

4. We have dealt with the aforesaid aspects in detail though strictly speaking the controversy is narrower only to show that there is something more than meets the eye in the manner the petition has been filed. The Atomic Energy Department performs an important function, but, of course, it would not imply that it would not follow the law of the land. The lands have been acquired and vested with the Atomic Energy Department, which is utilizing the areas concerned for the residential housing. Various constructions have been made and out of the two towers, one tower is already completed. The concern of the villagers has been addressed, as stated aforesaid, and further meetings have been held to assure their rights of worship and other benefits. There are categorical averments in the counter affidavit set forth and extracted aforesaid to say that the kuttai area has not been constructed upon.

5. In view of the aforesaid position, we are not inclined to pass any further directions as sought for by the petitioner in the petition.

The petition is, accordingly, dismissed. No costs. Consequently, W.M.P.Nos.15561 and 25458 of 2016 are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector
Kancheepuram
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2. The Revenue Divisional Officer
Chengalpattu Division
Kancheepuram District.
3. The Tahsildar
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6. The Estate Officer
General Services of Organization
Department of Atomic Energy
Anupuram Township
Kalpakkam
Kancheepuram District-603 102.

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.59245
+1cc to Mr.S.Sathia chandran, Advocate, S.R.No.59147
+1cc to the Government Pleader, S.R.No.59166

W.P.No.17869 of 2016

KJI (CO)
CA(26/10/2016)