

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.3.2017

CORAM

THE HONOURABLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.6421 to 6428 of 2017
and
W.M.P.Nos.6919 to 6934 of 2017

W.P.No.6421 of 2017

K.Alexander

Petitioner in WP 6421/17

Versus

WP. 6422 of 2017

Kirubakaran

Petitioner in WP. 6422/2017

WP. 6423 of 2017

K. Jerome

Petitioner in WP. 6423/17

WP.6424 of 2017

V.S. Suresh Babu

Petitioner in WP. 6424/17

WP. 6425 of 2017

S. Rajesh

Petitioner in WP. 6425/17

WP.6426 of 2017

M. Senthil Kumar

Petitioner in WP. 6426/17

WP. 6427 of 2017

R.S. Sakthivel

Petitioner in WP. 6427/17

WP. 6428 of 2017

S. Baskar

Petitioner in WP. 6428/17

1 The State Rep.by
The Secretary to Government
Revenue Department, Secretariat
Chennai-600009

2 The Commissioner of Land Administration
Ezhilagam Buildings, Chepauk
Chennai-600005

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- 3 The District Collector
Salem District, Salem
- 4 The Revenue Divisional Officer
Salem, Salem District
- 5 The Tahsildar
Salem Taluk, Salem District Respondents in all Wps

Prayer: Writ petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the impugned order in Na.Ka.No.616/2013/A2 dated 30.01.2017 passed by the 4th respondent and quash the same and consequently direct the respondents to adhere the G.O.(Ms).No.638 issued by Revenue (Ni.Mu.3.1) Department 2.11.2007 and G.O.(Ms).No.253 issued by Revenue (Ni.Mu.3.1) Department dated 20.05.2008.

For petitioners : Mr.N.G.R.Prasad for
Mr.M.Rajendran

For Respondents in
W.P.Nos.6421 to
6425 of 2017 : Mr.M.K.Subramanian,
Government Pleader

For Respondents in
W.P.Nos.6426 to
6428 of 2017 : Mrs.Vasutha Thiagarajan, AGP

COMMON ORDER

(Order of the court was made by HULUVADI G.RAMESH, ACJ.)

Heard the learned counsel appearing for the parties for some time.

2. The writ petitions have been filed seeking issuance of a writ of certiorarified mandamus to call for the records of the impugned order in Na.Ka.No.616/2013/A2 dated 30.01.2017 passed by the 4th respondent and quash the same and consequently direct the respondents to adhere the G.O.(Ms).No.638 issued by Revenue (Ni.Mu.3.1) Department 2.11.2007 and G.O.(Ms).No.253 issued by Revenue (Ni.Mu.3.1) Department dated 20.05.2008.

3. It appears that in furtherance of the order passed for removal of the encroachment of water bodies, the Government sought to take initiate action and most of the buildings are removed and pattas already granted were cancelled. In this regard, it appears that notice came to be issued under section 7

of the Land Encroachment Act and after considering the objection raised by the assignees, the eviction order under section 6 has been passed.

4. The case of the petitioners is that despite pattas have been granted in their favor by the Government, the authorities have unauthorisedly proceeded to cancel the patta and take possession. The fact remains that the very land in question itself is a water body as such, the pattas issued were subsequently cancelled and action has been initiated against the petitioners to remove the encroachment . The petitioners would contend that even 40 years ago, though the lands in question were identified as water body, they could be used as water body, and therefore, pattas have been issued in the name of the individual allottees and in such a situation, the action sought to be taken is without taking into consideration the view already taken that it could not be used as water body.

5. It appears that present order is passed based on the decision of this court in W.P.No.1294 of 2009 (T.K.Shanmugam V. The State of Tamil Nadu and others, wherein certain directions were issued and pursuant to the same the action was initiated and the said judgment was rendered on the basis of the ratio laid down by the Honourable Supreme Court in HINCH LAL TIWARI v. KAMAL DEVI ((2001) 6 SCC 496) wherein it is held that the endeavour of the State should be to protect the material resources like Forests, Tanks, Ponds, etc., in order to maintain ecological balance which would pave the way to provide a healthy environment and enable the people to enjoy a quality life, which is essence of the right guaranteed under Article 21 of the Constitution. It is further held therein that it is imperative that such noted water storage resources, such as tanks, odai, oornis, canals, etc., are not obliterated by encroachers. Referring to Article 48A of the Constitution of India and also referring to the judgment in KESAVANANDA BHARATHI v. STATE OF KERALA ((1973) 4 SCC 225), ANIMAL AND ENVIRONMENT LEGAL DEFENCE FUND v. UNION OF INDIA ((1997) 3 SCC 549) and M.C.METHA v. UNION OF INDIA ((1997) 3 SCC 715), the court issued a direction with two fold, firstly, with a positive direction to remove the encroachments over odai poramboke which was complained of in the said Public Interest Litigation and secondly, a direction to the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

6. It appears that with regard to certain patta holders occupying the lands in question, this court had already observed

in W.P.No.36431 of 2016 that pattas were issued in violation of the Board Standing Order No.21 and the classification of the land still persists as Water Body and therefore, there is no question of allowing any construction on such lands in view of the Full Bench decision of this court in T.K.SHANMUGAM v. THE STATE OF TAMIL NADU cited supra.

7. It appears that the lands in question were classified as water body about 40 years ago, but, some time later, ignoring the factual situation, pattas might have been granted, but, it does not necessarily mean that the illegality has to be continued in perpetuity. Nonetheless, the demand of the petitioners for alternative places to accommodate themselves can be claimed and there shall not be any impediment for the Government to allot alternative places in view of the positive direction already given by this court while directing to initiate action to evict the encroachers from the water bodies to protect the environment. Moreover, the eviction order is passed only after serving notice to the assignees and after considering their objections. Further, it was found that there were violations of the conditions imposed for the assignment and in some cases, the allotments made for residential purpose were utilised for non-residential purposes. All these appear to be very gross violation of the conditions of allotment. But, still, the learned counsel for the petitioners harp on the issue by contending that when once pattas were granted by confirming that the lands were not water body, now they cannot be cancelled. Apart from the fact that there are gross violations of the conditions of assignment, the eviction is ordered on the basis of the direction issued by this court to protect the water bodies and that too after following the procedure and most of the encroachments appear to have already been removed.

8. Therefore, in the factual situation, the petitioners are directed to vacate the encroachments left out within a period of one month from the date of receipt of a copy of this order and the Government to consider allot alternative places for the assignees. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

ssk.

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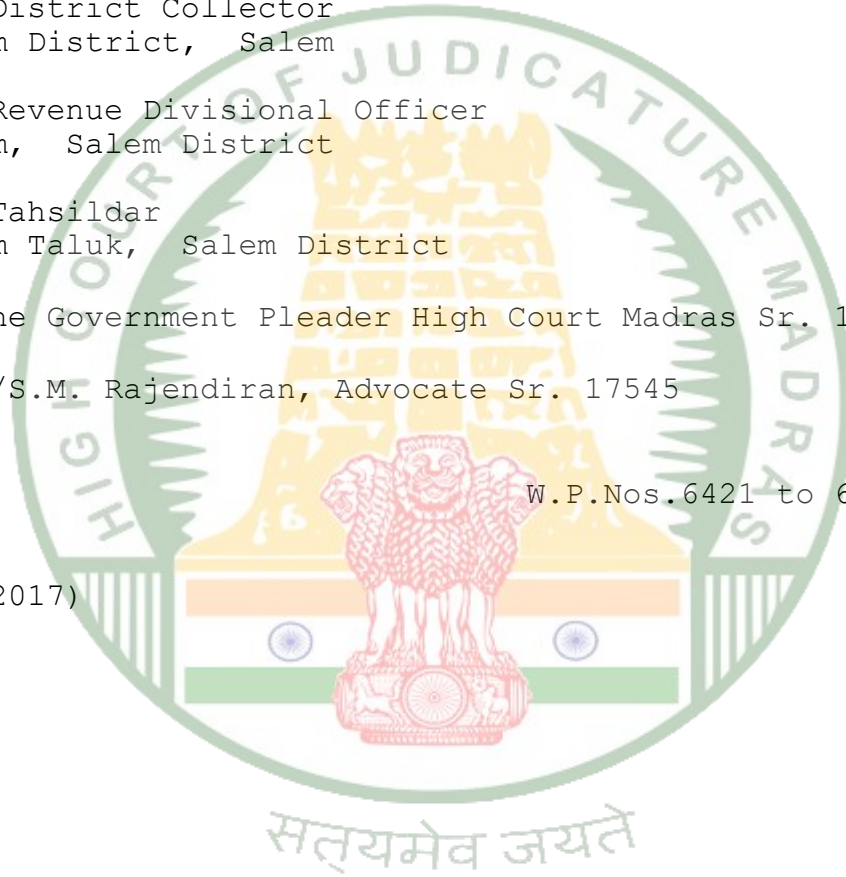
- 1 The Secretary to Government Revenue Department,
The State of TamilNadu
Secretariat Chennai-600009
- 2 The Commissioner of Land
Administration Ezhilagam Buildings, Chepauk
Chennai-600005
- 3 The District Collector
Salem District, Salem
- 4 The Revenue Divisional Officer
Salem, Salem District
- 5 The Tahsildar
Salem Taluk, Salem District

+1cc to the Government Pleader High Court Madras Sr. 17372

+1cc to M/S.M. Rajendiran, Advocate Sr. 17545

W.P.Nos.6421 to 6428 of 2017

SS(CO)
VR(13/04/2017)



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