

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.31978 and 32476 of 2017
and WMP.Nos.35138, 35139, 35794 to 35796 of 2017

W.P.No.31978 of 2017

G.Murugan

.. Petitioner

vs.

1.The Tahsildar,
Ponneri Taluk,
Tiruvallur District.

2.The Assistant Executive Engineer,
Public Works Department (Kosathalai
River Subdivision),
Sholavaram Division,
Redhills, Chennai.

3.The Revenue Divisional Officer,
Ponneri, Tiruvallur District.

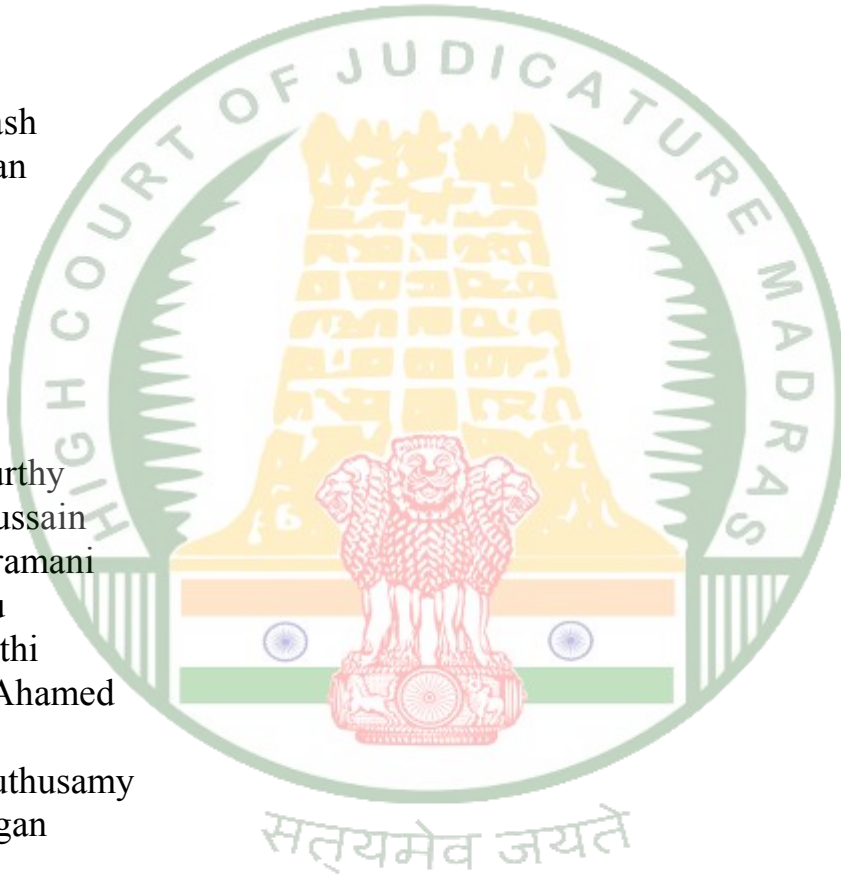
4.The District Collector,
The Collectorate,
Thiruvallur District.

5.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.

.. Respondents

W.P.No.32476 of 2017

- 1.L.Ravi
- 2.V.P.Sheeba
- 3.K.Umarani
- 4.R.Jeyaprakash
- 5.G.Mahendran
- 6.R.Durai
- 7.Akila
- 8.Karima
- 9.Banumathi
- 10.A.Karthik
- 11.Shanthi
- 12.E.Ramamurthy
- 13.A.Zahir Hussain
- 14.V.Balasubramani
- 15.N.Jeyavelu
- 16.G.Banumathi
- 17.A.Rafeeq Ahamed
- 18.R.Kumari
- 19.S.Alagumuthusamy
- 20.P.Velmurugan
- 21.G.Pradeep
- 22.A.Sathish Kumar
- 23.N.Palani
- 24.A.Nagarajan
- 25.R.Mayazhagu
- 26.R.G.Ramaraj
- 27.E.Ebinesar
- 28.Priya
- 29.M.A.Suresh Kumar
- 30.R.V.Swaminathan
- 31.Dhasilma
- 32.A.Vanitha



WEB COPY

33.R.Radhi
 34.G.Vijayasekar
 35.P.Banumathi
 36.Adhika Begum
 37.Chandra
 38.R.Rajeswari

.. Petitioners

vs.

- 1.The Tahsildar,
Ponneri Taluk,
Tiruvallur District.
- 2.The Assistant Executive Engineer,
Public Works Department (Kosathalai
River Subdivision),
Sholavaram Division,
Redhills, Chennai.
- 3.The Revenue Divisional Officer,
Ponneri, Tiruvallur District.
- 4.The District Collector,
The Collectorate,
Thiruvallur District.
- 5.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.

.. Respondents

Prayer in W.P.No.31978 of 2017 : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the report dated 02.12.2017 in proceedings number Na.Ka.33/2016/A1 on the file of the first respondent herein and to quash the same and to direct the respondents to update the revenue records and the village records pertaining to the impugned order within the time frame.

Prayer in W.P.No.32476 of 2017 : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the report dated 02.12.2017 in proceedings number Na.Ka.33/2016/A1 on the file of the first respondent herein and to quash the same and to direct the respondents to update the revenue records and the village records pertaining to the impugned order within the time frame.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
in both W.Ps. for M/s.P.Raja

For Respondents : Mr.A.N.Thambidurai,
in both W.Ps. Special Government Pleader

ORDER

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

By consent, both the writ petitions are taken up for final disposal and are disposed of by this common order, as the issue to be adjudicated is one and the same.

W.P.No.31978 of 2017

2. According to the petitioner, lands on which superstructure of the petitioner has been put up were agricultural lands and originally, there was a big lake in Padiyanallur Village and it was demarcated even prior to the year 1957 as Lake area in S.No.82 with an extent of 125 acres. During the year 1957, Assistant Settlement Officer of Tiruvallur had initiated *suo motu* enquiry and converted large extent of lands covering S.Nos.77 to 109 as Tank Bed, vide proceedings dated

31.10.1957 and the said proceedings were set aside by the Board of Revenue, vide proceedings dated 13.05.1971 in B.P.Perm.212/71. It is further stated by the petitioner that the property in S.No.95/5 was taken up by the Assistant Settlement Officer, Chengalpet vide proceedings dated 07.10.1974 in SR 117/Sec11(a)/74 and after conducting enquiry, has notified the said lands as Ex-Zameen estate and it was taken over by the Government on 03.01.1951 under the provisions of Tamil Nadu Act XXIV of 1948 and the property in S.No.95/4 admeasuring to an extent of 32 cents was declared as Ryoti and belong to one Arumuga Reddy and Munusamy Reddy, vide proceedings of the Assistant Officer, Chengalpet dated 30.11.1974. Accordingly, settlement pattas have also been issued in favour of the then holders of land in Patta No.442 for S.Nos.95/5 and 95/4 of Padiyanallur Village, Ponneri Taluk and it changed several hands through sale deeds and the petitioner had purchased lands admeasuring to an extent of 1193 sq.ft in S.No.94/4 and 5 in Padiyanallur Village, Ponneri Taluk, Tiruvallur District in Plot No.56, vide Registered Sale Deed dated 04.04.2007 in Doc.No.5059 of 2007 on the file of the Sub-Registrar Office, Redhills. The petitioner was also issued with patta by the first respondent on 26.09.2011 in Patta No.3287 and subdivision was also effected as S.No.95/2A1A4. The petitioner, after obtaining necessary permission from the Sholavaram Town Panchayat, has put up superstructure and it was also subjected to statutory levies.

3. The petitioner would further state that during the year 2017, revenue officials visited the Padiyanallur Village and also made measurements and however, to his shock and surprise, the first respondent has furnished a report alleging encroachment on the Lake belonging to Public Works Department in the Padiyanallur Village under the provisions of The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 read with rules framed thereunder and also G.O.(Ms) No.320, Public Works (H) Department dated 28.09.2007 and the name of the petitioner finds place in Sl.No.41. The petitioner, apprehending dispossession in pursuant to the proceedings of the first respondent, came forward with this writ petition.

W.P.No.32476 of 2017

4. The petitioners, who are 37 in numbers, apart from raising similar averments as that of the petitioner in W.P.No.31978 of 2017, would submit that they purchased certain extent of lands and also put up superstructures and the details of the same have been set out in para 11 and the petitioners in this writ petition expressed similar apprehension as that of the petitioner in W.P.No.31978 of 2017.

5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and the impugned proceedings and would submit that based on the settlement proceedings, lands in S.No.95/4 and 95/5 changed very many hands and the extent details of which have been given in the affidavit and they have also been issued with pattas and the superstructures was also subjected to statutory levies and without putting the petitioners on notice and without ascertaining the factual position of the classification of lands, decision is taken that the petitioners are encrochers of lands classified as water body and if proper and sufficient opportunity is given to them, they would be in a position to substantiate their contention and therefore, prays for interference.

5. *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents, on instructions, would submit that pattas have been granted erroneously and steps are being taken to cancel the same in accordance with law and since the petitioners are in possession of lands classified as “Water Body” as per revenue records maintained by the Public Works Department, action is being taken strictly in accordance with law.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. It is relevant to extract Sections 3 to 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007:

“3. Power to direct survey of tanks:- The Government may direct that a survey be made, with reference to the records available with the Revenue Department, of tanks in every district for the purpose of determining their limits in respect of area and that proper charts and registers be prepared setting forth the channel and all boundaries and marks and all other matters necessary for the purpose of identifying such limits.

4. Appointment of Survey Officer:-(1)The Government or any other officer authorized by it may, by order, appoint any officer not below the rank of Taluk Surveyour as Survey Officer for surveying the tanks within such local limits as may be specified in such order.

(2)The survey Officer shall carry out the survey of tanks in such manner as may be prescribed.

(3)The Survey Officer shall be assisted by such officers of the Public Works Department having control over such tanks.

5. Power to enter upon:-The Survey Officer and officers assisting the Survey Officer shall have power to enter upon any land and to do all acts necessary for the survey of tanks.

6. Report of survey Officer:- (1)The Survey Officer shall after the completion of the survey of tanks, prepare a chart and a register pointing out the boundaries of the tanks and such other informations necessary for the purpose of identifying the limits of tank.

(2)The chart and the register prepared under sub-section(1) shall be handed over to an officer of the Public Works Department, having control over such tanks, as may be specified by the Government.

(3)The officer referred to in sub-section (2), shall within one month from the date of handing over of the chart and register, publish a notice in such manner as may be prescribed pointing out the boundaries of the tank.

7. Eviction of encroachment:-If the officer specified in sub-section (2) of Section 6 is of opinion that any person has encroached upon any land within the boundaries of the tank and that the encroacher should be evicted, the officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice.

(2)Where, within the period specified in the notice under sub-section(1), the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the tank, the officer referred to in sub-section (2) of Section 6 shall remove the encroachment and take possession of the land within the boundaries of the tank encroached upon, by taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to that officer.

(3)Any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after a notice under sub-section(1), be liable to forfeiture.

8. A perusal of the impugned report of the third respondent would *prima facie* indicate that the petitioners have not been afforded with any opportunity to put forth their stand as to the right, title and possession in respect of the lands on which they have put up superstructures.

9. This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners, grants liberty to the

petitioners to submit individual representations to the second respondent with a copy marked to the Assistant Engineer, PWD, Kosathalai River Subdivision, Sholavaram, Redhills, Chennai and to the Tahsildar, Ponneri Taluk, Thiruvallur District by enclosing relevant authenticated documents within a period of four weeks from the date of receipt of a copy of this order and the second respondent, upon receipt of the same, is directed to consider the said representation on merits and pass orders in accordance with law within a period of twelve weeks thereafter and communicate the decision taken, to each of the writ petitioners. It is made clear that the above officials, till the passing of final orders on the representations to be submitted by the petitioners, shall defer further decision to evict/dispossess them from the sites/superstructures in question. It is also made clear that till the disposal of the representations by the respondents 1 and 2, the petitioners shall not create any third party rights in respect of the land/superstructures in question and shall not alter its' physical features also.

10. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[M.S.N., J.] [S.P.I., J.]
13.12.2017

Index : Yes / No
Internet : Yes / No
jvm

To

- 1.The Tahsildar,
Ponneri Taluk,
Tiruvallur District.
- 2.The Assistant Executive Engineer,
Public Works Department (Kosathalai River Subdivision),
Sholavaram Division,
Redhills, Chennai.
- 3.The Revenue Divisional Officer,
Ponneri, Tiruvallur District.
- 4.The District Collector,
The Collectorate,
Thiruvallur District.
- 5.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.



WEB COPY

M.SATHYANARAYANAN, J.,
and
SATRUGHANA PUJAHARI, J.

jvm



W.P.Nos.31978 and 32476 of 2017

WEB COPY

13.12.2017