

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.25241 of 2017

Rajasekaran

.. Petitioner

vs.

1.The Engineer in Chief
Water Resources Organization and
Chief Engineer,
Public Works Department,
Chepauk, Chennai - 600 005.

2.The District Collector,
Villupuram District,
Villupuram.

3.The Tahsildar,
Vikravandi Taluk,
Vikravandi,
Villupuram District.

4.P.Murugaiyan

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of mandamus to
direct the respondents to remove the encroachment in the
lake situate at Survey No.102 and 131/1 of Tirumangalam
Village, Vikravandi Taluk, Villupuram District.

For Petitioner

: Ms.S.R.Vissalni
for Mr.V.Raghavachari

For Respondents

: Mr.M.K.Subramanian
Government Pleader
for respondent Nos.1 to 3

ORDER

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

This writ petition is directed against the alleged encroachment of a lake in Survey Nos.102 and 131/1 of Tirumangalam Village, Vikravandi Taluk, Villupuram District.

2. According to the petitioner, the encroachers have changed the nature and character of the water body and are carrying on agricultural activities. It is contended that the encroachments are interfering with the flow of water. A reference has been made to the judgment of the Supreme Court in Association for Environment Protection v. State of Kerala, reported in (2013) 7 SCC 226, where the Supreme Court adopted the principles laid down in the judgment in M.C.Mehta v. Kamal Nath, reported in (1997) 1 SCC 388, deprecating the obstruct of the natural flow of a river.

3. In T.K.Shanmugam v. State of Tamil Nadu and others, reported in 2015 (2) CWC 849 (Mad.), a Full Bench of this Court held as follows:

"25. After referring to the above observations, it was pointed out that having regard to the precarious water situation prevailing in major part of the year in the State of Tamil Nadu, it is imperative that water storage resources such as tanks, ponds, odai, canals, etc., are not obliterated by the encroachers. The observations made by the Hon'ble Supreme Court in the case of M.C. Metha, (supra), observing that the "precautionary principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation. Ultimately, the Division Bench directed the State Government to identify all such 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 resource which has been classified, as such in the revenue records to its original position.

26. Thus, the Division Bench in L.Krishnan, did not limit its direction to water bodies under the control of the Public Works Department. In fact, it has issued directions for all natural water resources in the different parts of the State of Tamil Nadu and wherever illegal encroachments are found to take steps

for removal of the encroachments in accordance with the relevant provisions of law. The State Government thought fit to enact the Tank Act and though the object of the enactment was couched on a border principle, the Act was restricted to the encroachments in tanks which are under the control and management of the Public Works Department. The question would be as to whether this would in any manner alter the position or could have an effect of diluting the directions/observations of the Division Bench in L.Krishnan's case. The answer to this question shall be an emphatic "NO".

27. Section 11 of the Tank Act, specifically states that the operation of other laws not to be affected, as the provisions of the Tank Act shall be in addition to and not in derogation of any other law for time being in force. Thus, the encroachments in respect of water bodies which are not covered under the provisions of the Tank Act have to be necessarily removed by resorting to the procedure under the Land Encroachment Act. We are not inclined to ignore the directions issued by the Division Bench in L.Krishnan's case, as general observations, as observed in Sivakasi Region Tax Payers Association's case. We may hasten to add that in L.Krishnan's, the Division Bench issued positive direction to the State Government and this cannot be brushed aside as general observations and more so in the light of the observations in the case of Jagpal Singh, wherein pointed directions were issued by the Hon'ble Supreme Court to all the Chief Secretaries. In Sivakasi Region Tax Payers Association's case though the Division Bench upheld the G.O.Ms.No.854, it held that the said G.O., must read along with the provisions of the Land Encroachment Act, Tank Act and Standing Orders of Board of Revenue. If that be the interpretation, the question would be whether the State Government would be empowered to issue Government Orders for regularising encroachments in water bodies on the ground that the water body has lost its character and it is no longer a water body on account of disuse. We may answer this query by referring to the observations of the Hon'ble Supreme Court in the case of Jagpal Singh

30. since the object of the enactments which have held the field from 1905 does not speak of any such exemption, rather the underlying principle was to preserve and protect water bodies. It is to be noted at this juncture, during summer, water bodies would appear dry, but during rainy days/monsoon, stream would be in place to drain/take the water to the water bodies and percolation takes place which in all probability results in surcharge of ground water. Thus, on account of the default of the Revenue officials or on account of collusion of official machinery with encroachers can hardly be a premium to justify encroachments. The theory of adverse possession, would not stand attracted in such cases. The encroachers are in fact trespassers into Government property. In terms of the Standing Orders of the Board of Revenue, the Village Administrative Officer has a duty to report any encroachment in any Government land in his village. The present scenario of rampant encroachment is on account of the failure of the Revenue Administration to protect Government lands. As observed T.N. Senthilkumar, (supra), the State holds all the water bodies in public trust for the welfare of this generation and all succeeding generation. Thus it would be preposterous to suggest that a trespasser with or without the connivance of the officials enters into occupation of Government land, gradually defaces its identity then puts forth a plea that it is no longer a water body or a water channel and seeks for regularisation of his trespass be rewarded with a patta. If such acts of trespassers/encroachers are to be treated as pardonable and be rewarded for their illegal act in the form of regularisation/accommodation to say the least, it would be an absolute degradation and collapse of the public trust vested with the State to protect the lands and water bodies. If the Government is interested in allocating the poor and downtrodden, it should bring out a scheme for rehabilitating them and not to condone their act of trespass, reclassify the law and then grant Patta to those encroachers."

4. Respondent No.3 is directed to consider the representation of the petitioner forthwith in the light of the judgment of the Full Bench of this Court in T.K.Shanmugam (supra) and if any encroachment is found, to remove the

encroachments at the earliest and in any case, within three months from the date of communication of this order.

5. The writ petition, accordingly, stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Engineer in Chief
Water Resources Organization and
Chief Engineer,
Public Works Department,
Chepauk, Chennai - 600 005.
- 2.The District Collector,
Villupuram District,
Villupuram.
- 3.The Tahsildar,
Vikravandi Taluk,
Vikravandi,
Villupuram District.

+1cc to M/S.V.Raghavachari, Advocate Sr. 71153
+1cc to the Government Pleader Sr. 71087

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AD(CO)
VR(27/10/2017)