

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.35335 of 2003

1. S.Jaithun Beevi
2. A.Haseena

.. Petitioners

Vs.

1. Govt. of Tamil Nadu,
Rep. by its Special Commissioner and
Commissioner for Land Administration,
Chepauk, Chennai-600 005.

2. The Management of Maggyath Sha Sirguro
Wakf Board College,
Rep. by its Principal,
K.K.Nagar, Madurai-625 020.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in Rc.F2/49914/01, dated 06.11.2003 and quash the same and direct the first respondent to assign the land in issue to the petitioners.

For Petitioner : Mr.K.Ramkumar
For Respondents : Mr.Akhil Akbar Ali,
Govt. Advocate for R-1
Ms.P.T.Ramadevi for R-2

ORDER

The petitioners have come forward with the above Writ Petition seeking to quash the impugned order dated 06.11.2003 passed by the first respondent and to direct the first respondent to assign the land in question to the petitioners.

2. The petitioners are living in Karumbalai area in Madurai, for the past many years. The petitioners seek for regularisation of the encroachment in the property in question. According to the petitioners, no notice was served on them and they cannot be evicted except in accordance with law.

3. Heard both sides and perused the materials available on record.

4. It is worthwhile to notice a Full Bench decision of this Court in W.P.No.1294 of 2009, dated 30.10.2015 (T.K.Shanmugam Vs. The State of Tamil nadu and others), wherein the Full Bench has exhaustively dealt with the encroachment on water bodies, the relevant portion of which are extracted hereunder:

"12. A Public Interest Litigation was filed by one Mr.L.Krishnan seeking for a direction against the Government and the Revenue Officials to remove encroachments made by certain private parties in a Odai Poraomboke in Villupuram District. While disposing of the Writ Petition, the Division Bench pointed out that ponds, tanks and lakes have been an essential part of the people's natural resources, however in recent years, these have been illegally encroached by unscrupulous persons and this has had adverse effect on the lives of the people. Further, it was pointed out that day in and day out, many petitions are filed by way of Public Interest Litigation alleging encroachments into ponds/tanks/lakes/odai Poramboke etc., in different parts of the State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu, it was pointed out that a time has come where the State has to take some definite measures to restore the already earmarked water storage tanks, ponds and lakes as disclosed in the revenue records to its original states as part of its rain water harvesting scheme. The Court took judicial notice of the action initiated by the State Government by implementing the water harvesting scheme as a time bound programme. It was further pointed out that it is imperative that such natural resources provided for water shortage facilities are maintained by the State Government by taking all possible steps both by taking preventive measures as well as by removal of unlawful encroachments. After referring to the decision of the Hon'ble Supreme Court in the case of Hinch Lal Tiwari Vs. Kamal Devi reported in 2001 (6) SCC 496, it was 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 was further held that in the State of Tamil Nadu having regard to the precarious water situation prevailing in the major part

of the year, it is imperative that such noted water storage resources, such as tanks, odai, oornis, canals etc are not obliterated by encroachers. Reference was also made to Article 48-A of the Constitution. The Division Bench after referring to the other decisions of the Hon'ble Supreme Court in Kesavananda Bharathi Vs. State of Kerala reported in 1973 (4) SCC 225; Animal and Environment Legal Defence Fund Vs. UOI, reported in 1997 (3) SCC 549; M.C.Metha Vs. UOI reported in 1997 (3) SCC 715, issued certain directions. The directions issued were two fold, firstly, a positive direction to remove the encroachments over odai poramboke which was complained of in the said Public Interest Litigation, 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.

... ..

18. In the case of Jagpal Singh (Jagpal Singh Vs. State of Punjab - 2011 (11) SCC 396), certain trespassers unauthorisedly occupied an extent of land in a village which was a pond and the trespassers filled the village pond and made construction thereon. Action for eviction of the unauthorised occupants was initiated, but the Collector, Patiala, held that it would not be in public interest to dispossess the encroachers and directed the Grama Panchayat to recover the cost of the land, thus regularising the illegality. On appeal by some third parties to the Commissioner, the order of the Collector was set aside, holding that the Grama Panchayat was colluding with the encroachers. The Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be encroached upon by any private parties. Against the order of the Comm, a Writ Petition was filed before the High Court which was dismissed by the learned single Judge and affirmed by the Division Bench. This order was put to challenge before the Hon'ble Supreme Court wherein it was pointed out that the appellants therein were trespassers who illegally encroached on the Grama Panchayat lands by using muscle power and money power in collusion with officials of the Grama Panchayat and such kind of patent illegality must not be condoned

and even if houses have been built on the land in question they must be ordered to be removed and the possession of the land must be handed back to the Grama Panchayat. It was further pointed out that many State Governments have been issuing orders permitting allotment of Grama Sabha land to private persons on payment of some money and all such Government Orders are illegal and should be ignored.

20. In the case of R.Lakshmanan (Division Bench of Madurai Bench of Madras High Court in W.P.(MD). No.1496 of 2014, dated 06.08.2014, R.Lakshmanan Vs. Government of Tamil Nadu and others), a Public Interest Litigation was filed before the Madurai Bench of this Court to restore the capacity of the water bodies as on date of the 1923 survey. The Writ Petition was disposed of by directing the Government to issue appropriate direction which should be mandatory in nature to all local bodies, including Corporation, Municipalities and Panchayats not to grant any planning permission for any construction that is put up in a water body and not to grant approval for any lay out or building plan, if the land is located either in part or in whole, in a water body and directing the Government to contemplate issuing of an order under the Tamil Nadu Town and Country Planning Act making it mandatory to enclose a certificate of the Revenue Authority along with building plan application, certifying that no part of the land is located in a water body and wrong information if provided, the person who issued the certificate to be held responsible.

21. General Instructions given for Land Administration states that encroachments in poramboke lands like water sources/courses, gracing grounds, temple lands, kalam, etc., are considered as highly objectionable and these encroachments have to be evicted. The Revenue, Public Works and Highways Department authorities and local bodies like Municipalities and Corporation have been empowered to evict unauthorised encroachments after giving due notice under the Tamil Nadu Land Encroachment Act, 1905, for which a District Level Committee under the Chairman of the District Collector has been constituted.

... ..

30. 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. ... 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.

32. Thus it is the duty of the State to protect, conserve and augment traditional water retaining structures.

44. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularising their possession which has to be deprecated.

45. and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any

encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905. .. ."

5. Further, a Division Bench of this Court, in W.P.No.1295 of 2009, by order dated 27.11.2015, has followed the above said Full Bench decision of this Court, and the relevant portion of the said order passed by the Division Bench reads as follows:

"3. Cases of encroachment on water bodies are really alarming. Water bodies are potential source for drinking water for human and cattle. Only with a view to protect the same and to help the environment and develop ecology, the Government has enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). The very object of the Act is to find the exact boundary of each Tank in Tamil Nadu and also to detect encroachments for eviction as per the procedure laid down in the said Act. ... Occupation of the water bodies by way of encroachment will deprive water to the public in larger interest ignoring the Public Trust Doctrine.

... ..

17. The Hon'ble Supreme Court as well as this Court, in a catena of decisions, have time and again held that no encroachment should be tolerated over the water bodies which constitute part of the precious natural resources.

....

19. The fact remains that the encroachers have been issued with eviction notice in accordance with the provisions of the Act. Therefore, the petitioner in the guise of representing the encroachers, has got no vested right to prevent the encroachment being removed, that too, to restore the water body. On the other hand, the encroachers are bound to vacate and hand over vacant possession of the property.

20. ... Further, assuming that the said families have been in possession of the property for a considerable period, that would not confer any right on them over the land for the simple reason that admittedly, they are encroachers, that too, in a water body, which needs to be protected in the interest of public.

... ..

26. At this juncture, this Court, taking judicial notice of the fact that even during the hearing of this case, the State of Tamil Nadu is seriously affected by unprecedented floods, i.e. during November 2015, and

because of that, number of people were dead and many people lost their property, is compelled to put its views that the entire loss due to the flood was due to maladministration and the prevailing practices by the authorities as almost all the water bodies and water courses were allowed to be encroached upon resulting in reduction in their flood storing and carrying capacity, forcing the water to deviate from its regular course and enter the residential areas causing devastating effects. The authorities have permitted construction of houses in the water bodies. This resulted in inundation of these areas during flood and all these houses submerged under the flood water. This shows that despite the orders of the Court, the authorities pretend to act swiftly in removing encroachments but only in a selective manner and not in a planned and determined manner.

27. It has become inevitable for this Court to put on record that the authorities in power cannot destroy the water bodies or water courses formed naturally for the benefit of mankind for ever and it is beyond the power of the State to alienate or re-classify the water bodies for some other purposes without compensating the effect of such water bodies.

28. That apart, while answering the reference in a Writ Petition filed at the instance of the petitioner herein, viz., T.K.Shanmugam Vs. State of Tamil Nadu (2015 (5) LW 397), the Full bench of this Court, after considering the various Government Orders and the judgments of this Court and also following the observations and directions issued by the Hon'ble Apex Court, vide order dated 30.10.2015, has held that even the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Act.

29. Having regard to the acute water scarcity recurring in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already earmarked water storage tanks, ponds and lakes, to its original status as part of its rain water harvesting scheme, which has already been initiated.

.... "

6. In the light of the observations made by the Full Bench and Division Bench of this Court and finding that the impugned order issued is justified in terms of the above decisions and also taking into consideration the fact that the impugned order has been issued by the first respondent only to protect the water course Poramboke, on which the land in question stands, this Court finds no merit in the contentions of the petitioners. Hence, the Writ Petition is dismissed. No costs.

7. The encroachment of the petitioners in the land in question shall be removed by the first respondent within a period of one week from the date of receipt of a copy of this order and the compliance report shall be submitted to the Registrar General of this Court forthwith, who shall place the same before me within one week from the date of receipt of the said compliance report. The District Collector, Madurai and the Commissioner of Police, Madurai shall extend their support to remove the above said encroachment.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Special Commissioner and
Commissioner for Land Administration,
Chepauk, Chennai-600 005.
2. The District Collector, Madurai
3. The Commissioner of Police, Madurai.
4. The Registrar General, High Court, Madras.

Copy to: The Section Officer,
Writ Section, High Court, Madras.104

+ 1 cc to Mr. K. Sudalikannu, Advocate SR.52124
+ 1 cc to Government Pleader Sr.53296

W.P.No.35335 of 2003

VGII

EU 22.08.17