



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD).17105/2014, 3470/2016 and 3667/2016

and

WMP(MD).3067/2016 and WMP(MD).3285/2016

W.P. (MD) No.17105 of 2014

K.Thavamani

.... Petitioner

Vs.

1. The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai.

2. The Chief Engineer,
The Public Works Department,
Water Resources Organization,
Periyar Main Canal Division,
Sub Division - 1,
Madurai - 625 002.

3. The Executive Engineer,
The Public Works Department,
Water Resources Organisation,
Periyar - Vaigai Canal Division,
Sub Division - 1,
Madurai - 625 002.

4. The Junior Engineer,
The Public Works Department,
Periyar - Vaigai Canal Division,
Sub Division - 1,
Madurai - 625 002.

5.K.Muthalagu

6.Murugeswari

7.A.Pitchaiammal

8.Ramachandran

9.N.Jeyakodi

10.M.Sonai

11.M.Murugesan

12.Aadhi

<https://hcservices.ecourts.gov.in/hcservices/>

13.Puluchi

14.M.Duraipandi



15.M.Chithiran
16.N.Pandiyammal
17.S.Panju
18.Murugan
19.Manikandan
20.Periyakaruppan
21.R.Panjavarnam

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 2 to 4 to remove the encroachments made by the respondents 5 to 21 and others in Nelliyyenthal Tank in S.No.15/1A1 and 15B in Nelliyyenthalpatti village in Kodikulam 2nd Bit in Madurai North Taluk in Madurai District in the light of direction given by this Court in W.P.No.14179/2013 & 15590/2013 dated 27.08.2013 and 07.10.2013.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.Govindan, Spl.G.P. for RR1 - 4
Mr.S.Rajasekar for RR5 to 21
For T.Lajapathi Roy

W.P. (MD) No.3470 and 3667 of 2016

M.Chitran ... Petitioner in W.P. 3470/2016

1.M.Manikandan
2.R.Panchavarnam
3.N.Jayagodi
4.N.Pandiammal
5.K.Murugeswari
6.A.Adhi

... Petitioners in W.P.3667/2016

VS.

1. The Government of Tamil Nadu
The Principal Secretary to the Government,
Department of Revenue,
Fort St. George,
Chennai - 9.
2. The District Collector,
Madurai District,
Madurai.
3. The Public Works Department,
Water Resources Organization,
rep. by its Chief Engineer,
Periyar Main Canal Section,
Sub Division 1,
Madurai - 625 002.



4. The Junior Engineer,
Periyar Main Canal Section
Sub Division 1,
Madurai - 625 002.

WEB COPY

5. K.Thavamani

... Respondents in both petitions

Common Prayer in W.P.(MD) Nos.3470 and 3667 of 2016 : Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice for removal of encroachment passed by the third respondent through his proceedings in Letter No.Va.Pa.Mu.VaA2/Ko.WP.17105/2014 dated 19.01.2016 in respect of the Survey No.15/1A1 & 15/1B, situated in Nelliyyental Kanmai, Kodikulam II Bit, Madurai North Taluk, Madurai District and quash the same as illegal.

For Petitioners : Mr.S.Rajasekar

For T.Lajapathi Roy

For Respondents : Mr.M.Govindan, Spl.G.P. for RR1 to 4
Mr.R.Suriyanarayanan for R5

C O M M O N O R D E R

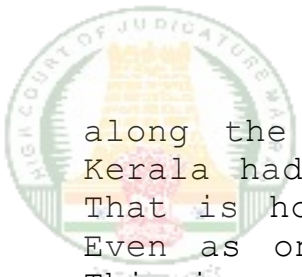
(Order of the Court was made by G.R.SWAMINATHAN, J)

Nelliyyental Tank is situated in Survey No.15/1A1 and 15B in Nelliyyentalpatti Village in Kodikulam Second Bit in Madurai North Taluk in Madurai District. The said tank area came under encroachment. The Public Works Department issued notices for clearing the encroachments. Since no follow-up action was taken, one of the ayacutdars filed W.P.(MD) No.17105/2014 for directing the authorities to remove the encroachments in the said tank.

2.The Chief Engineer, Water Resources Organization, Public Works Department, Madurai Region had issued an order directing the encroachers to vacate the Nelliyyental Kanmai on or before 17.2.2016. Aggrieved by the same, one of the encroachers filed W.P.(MD) No.3470/2016.

3.In fact, the authorities did not initiate action all of a sudden. There is a litigative history preceding the present round of proceedings. This Court by order dated 20.9.2013 in WP (MD) No.15590/2013 set aside the notices issued by the authorities. There is a reference to quite a few other earlier writ petitions in the said order passed by this Court.

4.The case of the encroachers is that the village of Malayalathanpatti spontaneously developed almost a century ago



along the bund of Nelliendal Tank. A group of persons from Kerala had come down to Madurai and they settled in this place. That is how this hamlet came to be known as Malayalathanpatti. Even as on date about 40 Keralite families are still residing. This is a documented historical fact.

WEB COPY

5.The encroachers would submit that the actual storage capacity or area of the tank has not at all been affected by the encroachment. A look at the revenue records would show that the hamlet has not expanded beyond the bund boundary. The Government recognizing the settled possession has put up cement roads and street lights. It has given water and electricity connections. An elementary school, a noon-meal centre, a balawadi and a ration shop have been constructed. Even toilets have been allowed to be constructed under government subsidy schemes. More than anything else pattas have been issued to a number of residents.

6.The government has issued pattas to a select and a favoured group. Though as per the revenue records, the Kanmai is located in Survey No.15 spread over 54.80 acres, a portion of the area has been carved out and delineated as Survey No.15/1A and pattas have been issued in favour of the occupants. It cannot be disputed that the hamlet has seen at least three generations.

7.The learned Counsel appearing for the writ petitioners in WP (MD)No.3470/2016 would therefore contend that it would be grossly unfair and inequitable to vacate the occupants of Malayalathanpatti at this point of time.

8.The official respondents have filed their counter opposing the prayer made by the encroachers. Maintenance of water bodies and keeping them free of encroachment is a matter of supreme public importance. The Government of Tamil Nadu has therefore enacted Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The Malayalathanpatti Residents' Welfare Association filed WP(MD) No.6602/2005 praying for grant of patta. By order dated 20.8.2009 the said writ petition was dismissed. The Ayacutdars filed WP (MD) No.1814/2011 for removal of the encroachments. The authorities conducted survey of the tank and initiated action for clearing the encroachment. This was resisted by some of the encroachers who filed WP(MD)No.15590/2015. Certain directions were given in the said writ petition and only in terms thereof, the order impugned in the present writ petition came to be issued. When it is seen that the persons are in unauthorized occupation of the tank, they will have to be necessarily removed. The official respondents therefore pray for dismissal of WP(MD) No.3470/2016.

<https://hcservices.courts.gov.in/hcservices/> It called upon the official respondents to furnish the list of encroachers. The official respondents conducted a



verification exercise and submitted that as on date there are 144 encroachers. Their details have also been furnished. The Special Government Pleader filed a typed set containing annexures setting out the list of eligible persons who can be given alternative house sites.

10. All the orders issued by the Chief Engineer, PWD WRO, Madurai Region calling upon the encroachers to remove the encroachment are identically worded. It is asserted in the impugned orders that the occupants of Malayalathanpatti are residing in the catchment area of Nellyyendal Kanmai. The authority has come to the conclusion that this would in turn affect the storage capacity of the kanmai. The authority has tersely made this assertion without reasoning it out.

11. The grievance of the Ayacutdars is totally hollow. A field inspection has revealed that one Manikandan Nagar has come up in the Ayacut region. The Ayacutdars have plotted out some of the erstwhile agricultural lands. Constructions have come up. The PWD authorities had even permitted the usage of the bund portion as an access road to reach the Ayacut area. Therefore we do not find any bona fides in the prayer made in WP(MD)No.17105/2014. The intention of the writ petitioner does not appear to be protection of the water tank. Between the Ayacut and the national highway lies Malayalathanpatti. The existence of the hamlet of Malayalathanpatti is a hindrance to the conversion of Ayacut region as a piece of residential lay-out. If the hutments are cleared, there can be a direct road laid between the highway and the Ayacut region. We therefore do not wish to pass any direction in WP(MD)No.17105/2014. The same stands dismissed.

12. As regards the encroachers, we can only call upon the authorities to re-examine the issue afresh. It is beyond dispute that a number of pattas has been issued in favour of a section of the encroachers. Of course there is no question of invoking the parity principle in these matters. At the same time the authorities cannot act in a discriminatory fashion. It is not the case of the authorities that the tank ever reached its full capacity. Since we have earlier found that the conclusion of the authorities that the storage capacity of Nellyyendal Kanmai stands affected is not a reasoned one, we are inclined to quash the orders impugned in WP(MD)Nos.3470 and 3667/2016. The authorities are directed to re-examine the issue by considering the feasibility of permitting the encroachers to continue to reside without affecting the water flow till framing of a rehabilitation scheme by giving alternative sites to the eligible persons and also by preserving the tank in its present position. The authorities are directed to ensure that there is no further encroachment. The authorities cannot also issue patta to the applicants. Since the details of occupants are fully available,



it should not be difficult to prevent further encroachment. The authorities are directed to remove those who are occupying some of the hutments in the capacity of tenants.

13. With these directions, WP(MD) No.3470 and 3667/2016 are disposed of. WP(MD) No.17105/2014 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Principal Secretary to the Government,
Government of Tamil Nadu
Department of Revenue,
Fort St. George,
Chennai - 9.
2. The District Collector,
Madurai District,
Madurai.
3. The Chief Engineer,
Public Works Department,
Water Resources Organization,
Periyar Main Canal Section,
Sub Division 1, Madurai - 625 002.
4. The Junior Engineer,
Periyar Main Canal Section
Sub Division 1, Madurai - 625 002.
5. The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai.
6. The Executive Engineer,
Public Works Department,
Water Resources Organisation,
Periyar - Vaigai Canal Division,
Sub Division - 1, Madurai - 625 002.

SKM

VB/SKN/SAR4/02.11.2018/6P/7C

WP(MD) .17105/2014, 3470/2016 and 3667/2016

and

WMP(MD) .3067/2016 and WMP(MD) .3285/2016

18.09.2017