



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2017

CORAM:

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THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P(MD)No.3831 of 2017

M.Syed Ibrahim

.. Petitioner

Vs.

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
Department of Revenue,
Fort St.George,
Chennai - 600 009.
 2. The State of Tamil Nadu,
rep.by its Secretary to Government,
Department of Municipal Administration
& Water Supply,
Fort St.George, Chennai - 600 009.
 3. The District Collector,
Pudukottai District.
 4. The Municipal Commissioner,
Pudukottai Municipality,
Pudukottai District.
 5. Thanthai Periyar Kudisai Valvor Nala Sangam,
rep. by its Secretary,
No.19, R.M.V.Nagar,
Kattapudukulam, Pudukottai,
Pudukottai District.
- .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents 1 to 4 to maintain survey No.232 of Pudukottai South Village locally known as Samy Iyerkulam @ Pappankulam with an extent of 4.81.5 hectares as a water body and to forbear them from granting patta to the 5th respondent or



For Petitioner : Mr.N.Balakrishnan
For RR - 1 to 3 : Mr.K.Guru
Additional Government Pleader.
For R - 4 : Mr.P.Mahendran
For R - 5 : Mr.V.Singan

Orders reserved on 12.06.2016
Orders pronounced on 16.06.2016

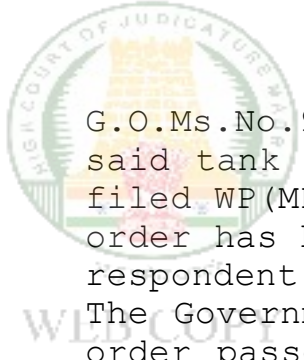
ORDER

[Order of the Court was made by **A.SELVAM, J.**]

This Writ Petition has been filed under Article 226 of the Constitution of India praying to direct the respondents 1 to 4 to maintain Survey No.232, Pudukottai South Village as "Samy Iyerkulam @ Pappankulam" and to forbear them from granting patta to the fifth respondent or to anybody by way of issuing a Writ of Mandamus.

2.It is averred in the petition that Survey No.232, an extent of 4.81.5 hectares situates in Pudukottai Town. The same is popularly known as Samy Iyerkulam @ Pappankulam. On ground, Pudukottai town slopes from North to South and therefore, during rainy season, rain water would be drained towards South and the same has come to Pappankulam. The said Pappankulam is a source of ground water supply to residential localities like Sathyamoorthy Nagar, S.S.Nagar, Chinnappa Nagar, Diamond Nagar, New Diamond Nagar, N.G.O.Colony, Nizam Colony, Annai Nagar etc., Further it is averred in the petition that the said Pappankulam has irrigated 150 acres of wet lands. In due course, most of the lands have been converted into house sites. However, till date it remains as a tank on ground. Now the respondents 1 to 4 are making arrangements to convert the said tank as house sites so as to give the same to the members of the fifth respondent. The petitioner has given a representation on 06.07.2016 to the respondents 1 to 4 and the same has not been considered. Under the said circumstances, the present Writ Petition has been filed for getting the relief sought therein.

3.In the counter filed on the side of the fifth respondent it is averred that it is true that Survey No.232, an extent of 4.81.5 hectares has been classified as Samy Iyerkulam @ Pappankulam in revenue records. Due to extension of habitations in Pudukottai Town, the entire wet lands have been converted into house sites prior to 25 years. The tank mentioned in the petition is not having inflow channels. Under the said circumstances, the same has been classified as Natham for giving assignment to houseless poor persons. The Government of Tamil Nadu has issued



G.O.Ms.No.94, Revenue dated 04.02.1998. By virtue of the same, the said tank has been classified as Natham. The fifth respondent has filed WP(MD)No.12184 of 2000 on the file of this Court, wherein an order has been passed on 13.04.2009 and thereby directed the third respondent to implement G.O.Ms.No.94, Revenue dated 04.02.1998. The Government of Tamil Nadu has not filed any appeal against the order passed by this Court. Further, the then Additional Advocate General, Tamil Nadu has also given his opinion. The then District Collector of Pudukottai has also issued proceedings in Rc.No.23607/2009/E5 dated 14.09.2015 for the purpose of converting the tank as grama Natham. There is no merit in the petition and the same deserves to be dismissed.

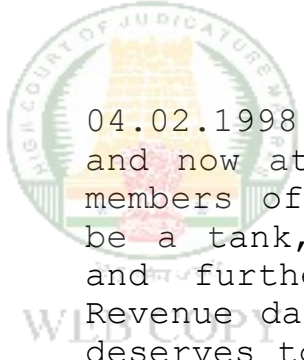
4.Before contemplating the rival submissions made on either side, it would be more useful to look into the original classification of the tank mentioned in the petition.

5.It is an admitted fact that in Pudukottai Town, Survey No.232 admeasuring 4.81.5 hectares is originally classified as a tank and the same is popularly known as Samy Iyerkulam @ Pappankulam. It is also equally an admitted fact that by virtue of G.O.Ms.No.94, Revenue dated 04.02.1998, the said tank has been classified as Natham for the purpose of converting the same into house plots so as to assign in favour of the members of the 5th respondent. In pursuance of the said Government Order, subsequent proceedings have been passed. The fifth respondent has filed WP (MD)No.12184 of 2000 on the file of this Court, wherein a specific direction has been given to the third respondent therein to implement G.O.Ms.No.94, Revenue dated 04.02.1998.

6.The sum and substance of the case of the petitioner is that the tank mentioned in the petition should be maintained as a tank and the same should not be converted into house plots and further the same is the only source of ground water supply to various places which situate around the same.

7.The learned counsel appearing for the petitioner has repeatedly contended to the effect that Survey No.232 in Pudukottai Town has been classified as tank and the same is popularly known as Samy Iyerkulam @ Pappankulam. Now, by virtue of G.O.Ms.No.94, Revenue dated 04.02.1998, attempts have been made so as to convert the same into house plots. Under the said circumstances, a representation dated 06.07.2016 has been given to the respondents 1 to 4, but the same has not been considered.

8.The learned counsel appearing for the fifth respondent has argued to the effect that even though Survey No.232 has been classified as a tank in those days, subsequently all wet lands have been converted into house plots and now the said tank is not having any supply channel. Under the said circumstances, the Government of Tamil Nadu has passed G.O.Ms.No.94, Revenue dated



04.02.1998 and thereby converted the tank in question as Natham and now attempts are being made to assign the same in favour of members of the fifth respondent. Since Survey No.232 has used to be a tank, the petitioner cannot file the present Writ Petition and further the petitioner has not challenged G.O.Ms.No.94, Revenue dated 04.02.1998 and therefore, the present Writ Petition deserves to be dismissed.

9.As stated earlier, Survey No.232 is nothing but a tank and its total extent is 4.81.5 hectares. It is also an admitted fact that the said tank is popularly known as Samy Iyerkulam @ Pappankulam.

10.The only point that has to be considered in the present Writ Petition is as to whether Survey No.232 should be maintained forever as a tank or the Government of Tamil Nadu can change its classification for the purpose of converting the same into various house plots?

11.In fact, the legal questions involved in the present petition have already been decided in the decision rendered by the Hon'ble Full Bench of this Court reported in **2015 (6) CTC 369 [T.K.Shanmugam, Secretary, C.P.I (M) North Chennai District Committee Vs. State of Tamil Nadu rep. by its Secretary to Govt., Department of Revenue, Fort St. George, Chennai]**. In paragraphs - 41, 44 and 45, the Hon'ble Full Bench of this Court has observed as follows:

"41.The next aspect would be as to how and in what manner the appropriate authority would come to a conclusion that such land is not required for any public purpose or for the State. It may be a policy decision in this regard, but such policy decision has to satisfy the touch-stone of fairness and reasonableness and satisfy Article 14 of the Constitution of India. Reading of the Government Orders show that the decision taken with regard to a particular land is not required for the Government for any public purpose is largely based on report submitted by the officials of the Revenue Department and invariably the justification is that people have been residing for a long period of time and there has not been any flow of water into tank/lake for several years or the water is unfit for human consumption. In our view, this can hardly be a justification, since the Revenue Authorities have turned a blind eye to encroachments on lands which have, canals/channels through which the water flows into such water bodies. Once again the Government having failed to protect those feeder channels and canals cannot sight that as



an excuse to say that there is no flow of water into the tank/lake and therefore, they would be justified in recommending regularisation of the encroachments.

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.....

44. The Government Orders starting from 30.12.2006 in G.O.(Ms)No.854, Revenue Department and subsequent Government Orders in G.O.Ms.No.498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. 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 regularizing their possession which has to be deprecated.

45. In the light of the above, we answer the reference on the following terms:-

The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations/directions issued in L.Krishnan vs. State of TamilNadu reported 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh vs. State of Punjab, reported in (2011) 11 SCC 396, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in T.S.Senthil Kumar, vs. Government of Tamil Nadu, reported in 2010-3-MLJ-771 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 the provisions of the Tamil Nadu Land Encroachment Act, 1905."



12. Even from a cursory look of the observations made by the Hon'ble Full Bench of this Court, it is made clear that the State Government has no power to change water bodies for some other purpose.

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13. In the instant case, as noted down earlier, Survey No.232, Pudukottai Town is classified as a tank. But, by virtue of G.O.Ms.No.94, Revenue dated 04.02.1998, the Government of Tamil Nadu has made arrangements to convert the same into Natham. But the Hon'ble Full Bench of this Court has categorically held that the State Government is not having any such power and it is the duty of the Government to maintain the same as it is.

14. The learned counsel appearing for the fifth respondent has relied upon the decision reported in **(2008) 5 MLJ 1425 [Sivakasi Region Tax Payers Association (Reg.S.No.81/94), rep.by its Secretary Vs. State of Tamil Nadu rep. by its Secretary to Government, Department of Revenue, Madras and others]**.

15. It is not an exaggeration to say that the said decision has also been referred to in the decision rendered by the Hon'ble Full Bench of this Court.

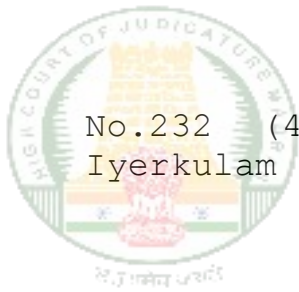
16. As stated earlier, the learned counsel appearing for the fifth respondent has made an abortive attempt to the effect that the petitioner has not challenged G.O.Ms.No.94, Revenue dated 04.02.1998.

17. In the decision rendered by the Hon'ble Full Bench of this Court, various Government Orders have been referred to. The corollary of the Hon'ble Full Bench of this Court is that the Government is not having power to change classification of water bodies, water source etc., Therefore, viewing from any angle, the contentions put forth on the side of the fifth respondent are not having merits.

18. The main contention put forth on the side of the petitioner is that the respondents 1 to 4 are making arrangements to convert Survey No.232, Pudukottai Town into house plots by way of changing its classification.

19. Even at the risk of repetition, the Court would like to point out that by virtue of the decision rendered by the Hon'ble Full Bench of this Court, the respondents 1 to 4 are not having any power and therefore, they can be directed to maintain Survey No.232, Pudukottai Town (Samy Iyerkulam @ Pappankulam) as it is.

20. In the, this Writ Petition is allowed without costs. The respondents 1 to 4 are strictly directed to maintain Survey



No.232 (4.81.5 hectares) Pudukottai South Village as "Samy Iyerkulam @ Pappankulam" forever.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Revenue,
Fort St.George,
Chennai - 600 009.

2.The Secretary to Government,
State of Tamil Nadu,
Department of Municipal Administration & Water Supply,
Fort St.George,
Chennai - 600 009.

3.The District Collector,
Pudukottai District.

4.The Municipal Commissioner,
Pudukottai Municipality,
Pudukottai District.

+1cc to Mr.V.Singan, Advocate in SR.No.60747
+1cc to Mr.P.Mahendran, Advocate in SR.No.60523
+1cc to Mr.N.Balakrishnan, Advocate in SR.No.60698
+1cc to Special Government Pleader in SR.No.60606

mj

AE/SV MMS/SAR2/27.06.2017/7P/9C

Pre delivery order made in
W.P(MD)No.3831 of 2017
16.06.2017