

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.37747 of 2003

And

W.P.M.P.No.211 of 2012

Smt.Rajathi

... Petitioner

Vs

1.The District Collector,
Salem District at Salem.

2.The Assistant Commissioner,
Zone II, Salem Corporation,
Asthampati,
Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents in any manner dispossessing the petitioner from the land in Patta 275 Survey No.18/8 measuring 1.84 acres Asthampatti Village in Salem District.

For Petitioner : Mr.P.Jagadeesan

For Respondent-1 : Mrs.R.Janaki,
Additional Government Pleader.

For Respondent-2 : Mr.G.Sankaran

ORD E R

The writ petition on hand is filed for a direction to forbear the respondents in any manner dispossessing the writ petitioner from the land in Patta 275 Survey No.18/8 measuring 1.84 acres Hasthampatti Village in Salem District.

2. The learned counsel, appearing on behalf of the writ petitioner, states that a piece of land measuring 1.8 acres in Survey No.18/3 Hasthampatti Village was held by one Venga Gounder, the great Grandfather of the writ petitioner's husband. The said land has been in continuous use and enjoyment and possession of the family of the writ petitioner's husband for over 67 years. The Settlement Officer of Dharapuram granted

patta after sub division of land Survey Number as 18/8 and Patta Number as 275. The land is assessed and tax is being paid.

3. The writ petitioner states that the land was under cultivation at the time of filing of the writ petition and the paddy was 25 days old. On 19.11.2003, the second respondent came to the land and informed that the said land should not be used by the writ petitioner for cultivation. The respondents had not listening to the words of the writ petitioner. Thus, the writ petitioner made a representation on 21.11.2003 to the first respondent and to the District Collector on 24.11.2003. Once again on 4.12.2003, the officials came to the premises and forced the writ petitioner not to cultivate the land. The writ petitioner states that she is in possession and enjoyment of the land as an absolute owner and therefore, she will not be in a position to evict the premises. The writ petitioner made several representations against the forcible dispossession made by the officials. Thus, the writ petitioner is constrained to move the present writ petition for a direction to forbear the respondents from dispossessing the writ petitioner from the land described in the present writ petition.

4. The learned counsel for the writ petitioner, relying on the order passed by the Settlement Officer on 27.3.2001, states that the Settlement Officer has passed an order in favour of the writ petitioner and a Ryotwari patta was granted in favour of the writ petitioner. Thus, the writ petitioner is entitled to continue in possession and enjoyment of the said property.

5. The learned Additional Government Pleader, appearing on behalf of the first respondent, disputed the contentions of the learned counsel for the writ petitioner, in entirety. The District Collector, Salem filed a counter-affidavit, stating that the land in Survey No.18/3 measuring an extent of 2.33.5 Hectares of Hasthampatti Village, Salem Taluk stands registered as 'Kollankuttai Eri Poramboke' in village accounts. The Assistant Settlement Officer, Dharapuram in his proceedings dated 27.3.2001 has granted patta for a portion of the 1.84 acres from the land under reference in favour of the writ petitioner viz., Smt.Rajathi, W/o. (Late) Arumugam under Section 11-A of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. Necessary changes have been carried out by sub dividing the land as Survey No.18/8 in an extent of 1.84 acres in Village and Taluk Accounts in favour of the writ petitioner.

6. A perusal of the Village Accounts reveals that the suit land in question originally stands classified as 'Kollankuttai Eri Poramboke' vested with the Government. This village was taken over by the Government on 12.1.1951 under the

Estates Abolition and Conversion into Ryotwari Act, 1948 and Ryotwari Settlement was introduced in the Village in Fasli 1362. On completion of entire survey and settlement work of this village, fair accounts of the village were prepared and handed over to the Revenue Department in the year 1970. It is not clear that how the Assistant Settlement Officer, Dharapuram passed an order now granting patta to the suit land in question in favour of the writ petitioner viz., Tmt.Rajathi under Section 11-A of the Act 26/1948 after the lapse of 39 years. Inasmuch as all the fair accounts of this village were already handed over to the Revenue Department, the Settlement Authorities have no jurisdiction to pass such an order in granting patta to the writ petitioner. It is contrary to the rules framed thereunder Act 26/ 1948. In this case, the rough schedules prepared during the time of introduction of Ryotwari patta to the eligible persons the predecessors in title would have claimed patta to the suit land. During the preparation of rough Schedules, the suit land which classified as 'Eri Poramboke' were merely confirmed during the final settlement enquiry of the village as 'Eri Poramboke'.

7. If aggrieved by the proceedings, such persons ought to have filed a petition before the Settlement Authorities for grant of patta in respect of the suit land in question by providing documentary evidences in support of their claims. However, the writ petitioner owns no proof to prove that the suit land in question is with her actual possession and enjoyment.

8. The property in question is required for common purposes as it is classified as 'Kollankuttai Eri Poramboke'. In this regard, necessary proposals were sent to the Government separately for the cancellation of the orders passed by the Assistant Settlement Officer, Dharapuram, granting patta for the extent of 1.84 acres in Survey No.18/8 of Hasthampatti Village of Salem Taluk under Act 26/1948 through the District Collector, Salem. The counter-affidavit states further that on account of the interim injunction granted in the present writ petition in favour of the writ petitioner, the further action in this regard is kept in abeyance.

9. The land in respect of Survey No.18/8 measuring an extent of 1.84 acres at Hasthampatti village is classified as 'Eri Poramboke' and the same is known as 'Kollankuttai Eri Poramboke', which is highly objectionable land. Further, it is contended that the said 'Kollankuttai Eri Poramboke' is situate in the heart of Salem City Corporation. The land situate nearby the Combined Court Buildings, Salem and adjacent to Hasthampatti Police Station, which is a prime locality at Salem City.

10. The writ petitioner Smt.Rajathi under the guise at the alleged patta, which is wrongly issued by the Assistant Settlement Officer, Dharapuram, now attempting to convert the said land into house plots through Real Estate Brokers at the instigation of some other persons in the neighbouring locality. The other persons are also attempting to encroach the said property. The said property is a very valuable one and the writ petitioner is misusing the interim injunction granted by this Court and making efforts to sell the property in favour of some third parties. The erroneous order passed by the Assistant Settlement Officer cannot be relied upon and the District Collector has sent a proposal to the Government for the cancellation of the order passed by the Assistant Settlement Officer. For these reasons, the writ petition is liable to be rejected.

11. Hearing the arguments of the respective learned counsels appearing on behalf of the writ petitioner as well as the respondents, this Court is of an opinion that the District Collector found that the order passed by the Assistant Settlement Officer is in violation of the provisions of the Act. It is categorically enumerated that on completion of the entire Survey and Settlement work of the Hasthampatti Village, fair accounts of the village were prepared and handed over to the Revenue Department in the year 1970.

12. The District Collector raises a doubt in respect of the order passed by the Assistant Settlement Officer, Dharapuram on 27.3.2001, granting patta in favour of the writ petitioner under Section 11-A of the Act 26/1948, after the lapse of 39 years as per the fair accounts of the village and the said accounts were handed over to the Revenue Department and thereafter, the Settlement Authorities have no jurisdiction to pass such an order of granting patta in favour of the writ petitioner. The said action of the Assistant Settlement Officer, Dharapuram is contrary to the Rules under the Act 26/1948. The procedures contemplated were not followed by the Assistant Settlement Officer and the District Collector raises a doubt in respect of the order passed by the Assistant Settlement Officer in favour of the writ petitioner.

13. This Court cannot brush aside the activities of few persons for getting patta or assignment in their favour in collusion with some public officials. Even sometimes, the orders are passed in technical manner, in compliance with law and to favour certain persons. Though such orders are not illegal or not in violation of the Act, such orders are passed to favour some individuals on extraneous considerations. Thus, all these aspects are to be gone into by the Higher Officials, while identifying such valuable lands are taken away by few greedy men for their unlawful enrichments.

14. The land in question in the present writ petition is classified as 'Kollankuttai Eri Poramboke' which is a water body. Water body and water resources are to be preserved for the welfare of the public at large. The Hon'ble Supreme Court of India time and again emphasised that there cannot be any encroachment or allotment or assignment of land in the water bodies and water resources. Even the encroachment, if any, is to be evicted by following the procedures contemplated under the Encroachment Act. Thus, the orders passed by certain officials, if found not in consonance with the provisions of the Act or to favour some individuals, it is the duty of the Higher Officials to ensure that such orders passed contrary to the public interest and in violation of the Rules are cancelled without any further delay. In this regard, the District Collector already sent a proposal to the Government for the cancellation of the order passed by the Assistant Settlement Officer, Dharapuram and on account of the interim order granted in the present writ petition, the proposals are now pending before the Government for consideration.

15. There is a growing trend across the State that the valuable public lands and Government properties are grabbed or encroached by the few greedy men for their personal gains. It is duty mandatory on the part of the State to ensure that all such water bodies, water resources and Government poramboke lands are protected and the encroachers are evicted by following the procedures contemplated under law. The water bodies and the water resources and the Government poramboke lands are to be utilised for the welfare of the public at large. In the event of allowing such encroachments, assignments or allotments, the constitutional rights of other citizen in general are infringed.

16. Every citizen has got a right in respect of such public properties. When few greedy men are allowed to take away such valuable properties of the Government or water bodies or water resources, then the rights of all other public at large is violated. Thus, there cannot be any leniency or misplaced sympathy in respect of eviction of encroachers of poramboke lands, water bodies and water resources. Even if any person is attempting to possess the land based on certain erroneous orders or the orders, which are all not in accordance with the provisions of the Statute, then the Authorities Competent must immediate take action for cancellation of all such orders and evict such persons from the public lands, water bodies and water resources and the Government poramboke lands for implementing the public schemes in the larger interest of the public.

17. Large extent of lands belong to the State are now under encroachments. Water bodies and water resources are also under encroachments. People are suffering on account of frequent disastrous. These disastrous are man made as per the Expert's

opinion. Such man made disastrous are to be averted by efficient actions on the part of the State Executives. The Executives day-in and day-out are witnessing all such encroachments within their jurisdiction and in spite of their clear knowledge, these officials are not initiating any action and colluding with such greedy men for their personal gains and on extraneous considerations. The State is bound to initiate appropriate prosecution and disciplinary proceedings against all such erring officials. If the Revenue Officials and the other connected officials are committing an act of negligence, lapse or dereliction of duty, the Authorities Competent are bound to initiate action under the provisions of the Discipline and Appeal Rules and the prosecution under the Penal Laws, there cannot be any lenience in this aspect.

18. Courts are repeatedly passing orders to protect such public properties, including water bodies and water resources. However, there is slackness on the part of the officials in executing such Court orders and the District Collectors, in this regard, are bound to issue suitable instructions/orders to all the authorities concerned to identify such encroachments and initiate action for eviction or to identify all such irregular or erroneous orders passed by the authorities and initiate action to cancel all those orders and resume the lands for the welfare of the public to implement the public schemes by the State.

19. In respect of the present writ petition, this Court is of an opinion that the District Collector has categorically stated that the order passed by the Assistant Settlement Officer, Dharapuram is not in accordance with law. The District Collector in his counter-affidavit has ascertained that the land is situated nearer to the Combined Court Buildings, Salem and adjacent to Hasthampatti Police Station, which is a prime locality at Salem City. Further, it is stated that the writ petitioner, in collusion with few Real Estate Brokers, is attempting to sell the property in favour of some third parties for their unlawful enrichment. When such statements are made by the District Collector in his own affidavit, such statements can never be brushed aside. This Court is of an opinion that all appropriate actions are to be initiated by the District Collector to protect the public lands, water bodies and water resources. This Court has elaborately considered the ill effect of the encroachments in WP No.4779 of 2015 dated 13.8.2018 and the relevant paragraphs 11, 12, 13, 14, 15, 16 and 17 of the abovesaid order, are extracted hereunder:-

"11. ENCROACHMENT - AS AN ISSUE:-

(1) The Black's Law Dictionary defines encroachment as "an infringement of another's rights; an interference with or intrusion onto another's property". The

word 'Encroach' is defined as "to enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude; to gain or intrude unlawfully onto another's lands, property or authority". Thus, it is unambiguous that encroachment is an offence. Encroachment amounts to a criminal trespass into the property belongs to another.

(2) The definition of encroachment is also defined in Section 2(1)(c) of the Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905). Encroachment means, unauthorised occupation of land and public land by way of putting temporary, or permanent structure for residential or commercial use or any other use.

(3) The encroachment process gradually gains momentum from the following factors:-

- (i) Lack of periodical monitoring;
 - (ii) Weakening of Social bondage;
 - (iii) People's justification of their position by citing wrong examples;
 - (iv) Delayed realisation of the ill-effects caused by encroachments;
 - (v) Negligence of Government functionaries and lack of timely action.
- However, it is pertinent to note the fact that the basis of the alarming rise of encroachments is the greed, selfishness, and jealousy of people.

(4) Section 441 of the Indian Penal Code states; "whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'." The term 'criminal trespass' has been defined in Black's Law Dictionary as "a person who enters on the property of another without any right, lawful authority or an express or implied invitation or licence". But when trespass is committed with a criminal intention, it is treated as an offence and is made punishable under the Indian Penal Code. A

punishment is that "whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) The land encroachment is a social evil. Encroachment is a passive form of land grab movement, which mirrors man's innate greed for land and his natural tendency towards aggrandizement of wealth in any form. Encroachment of Government property is a loss not only for the Government but also the public, as huge amount of money would be spent again to acquire new property.

(6) The Government lands are for the welfare of the public in general and to create common infrastructure for the usage and benefit of, we the people of India. Thus, the matter of encroachment of Government land cannot be treated ordinarily and it should be treated as a grave offence against, the State.

(7) Article 300-A of the Constitution of India deals with persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law. Thus, the State being a "person", cannot be deprived of its right of property and any intruder is liable to be prosecuted under the provisions of the Land Encroachment Act as well as under the Penal Law. Thus, this Court is of the opinion that the rights conferred to a person under Article 300-A of the Constitution of India, is certainly available to the State and the State has got every right to initiate appropriate legal action against the encroachers.

(8) The preamble of the Constitution 'WE THE PEOPLE OF INDIA', is the heart and soul of the Constitution. Article 12 of the Constitution provides definition for the State. Accordingly, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of

India. Thus, State is a person and therefore, all public lands belong to the State and we the people of India are the owners of the land. Thus, the right of property provided under Article 300-A is to be extended to the State as a person. In other words, the property belongs to the State is also protected under Article 300-A of the Constitution of India. Thus, any encroacher of a public/Government land is certainly depriving the right of property of the State to possess the same under Article 300-A of the Constitution of India. Therefore, the question of de-linking such encroachers otherwise will not arise at all. Question of extending the equality clause or the discrimination clause will not arise at all to the encroacher as an offender and an offender citing the offence committed by one offender, another one cannot claim that he should also be exonerated from the offence. Such a dangerous proposition, cannot be adopted at any circumstances and in the event of connivance with the officials in this regard also to be viewed very seriously.

(9) This Court wishes to ask a question whether any citizen of this country will allow another citizen to encroach the property owned by him. Litigations in lakhs and lakhs are pending before various Courts in our Great Nation only to establish the rights of such citizen in respect of their property. Such being the law of this country, how a State land can be allowed to be encroached by another citizen and such offences are dealt in a casual manner by the officials. Due to the constant increase of market value of the immovable property in this Great Nation, the public officials are also contributing for the dilution of the implementation of various laws in this regard, more specifically, while dealing with the Government lands. Such actions deserve to be condemned and such officials are to be dealt with iron-heart and no leniency can be shown to such public officials.

12. The Tamil Nadu Land Encroachment Act, 1905, is an Act, which provide

measures for taking unauthorised occupation of land which are the property of the Government. The preamble of the Act provide measures for checking unauthorised occupation of lands which are the property of the Government, whereas, it has been the practice to check the unauthorised occupation of lands which are the property of the Government and by imposition of penal or prohibitory assessment or charge and whereas, the doubts have arisen as to how far such practice is authorized by law and it is expedient to make statutory provision for checking such occupation. The Act provides for removal of encroachment and the implementation of the Act by the Government officials are to be done in a manner prescribed under the Act. Any violation of the officials also to be viewed seriously.

13. With this background, it is necessary to go into the legal principles laid down by the Courts on encroachments:

(i) In *PANDIA NADAR AND ORS v. THE STATE OF TAMIL NADU AND ORS* [1974 AIR 2044], the Constitution Bench of the Hon'ble Supreme Court rendered a Judgment on 30th April 1974 wherein, the very constitutional validity of the Tamil Nadu Land Encroachment Act, 1905 was tested. While dismissing the Appeals filed by land encroachers, the Hon'ble Supreme Court held as follows:

This Court then went on to apply those principles to the statutes under consideration in the following words :

"The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the

ordinary Civil Court. Ever, normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may, be possible but is very improbable. And if there is discrimination in actual (1) [1952] SCR 435 (2) [1962] 2 SCR 125 (3) [1960] 2 SCR 646 (4) [1954] SCR 30.

practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property, and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers' case."

(ii) In KRISHNAN, L. v. STATE OF TAMIL NADU [2005 (4) CTC 1], His Lordship Justice F.M. Ibrahim Kalifulla, speaking for the Bench, held as follows:

"9. In this connection reference may

be made to Article 48A of the Constitution which states: -

"Protection and improvement of environment and safeguarding of forests and wild life: - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

10. No doubt the above provision is in the Directive Principles of State Policy, but it is now well settled that the fundamental rights and directive principles have to be read together, since it has been mentioned in Article 37 that the principles laid down in the Directive Principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The Directive Principles embody the aim and object of the State under a Republican Constitution, i.e., that it is a welfare State and not a mere police State, vide *Kesavananda Bharati Vs. State of Kerala*, (1973) 4 SCC 225 (vide paragraphs - 134, 139 and 1714) and embodies the ideal of socio-economic justice, vide *Union of India Vs. Hindustan Development Corporation*, AIR 1994 SC 988 (990).

11. Though the early decisions of the Supreme Court paid comparatively scant attention to the Directive Principles in Part - IV of the Constitution as they were said to be non-justiciable and nonenforceable in the Courts (vide Article 37), the subsequent decisions of the Supreme Court changed this trend and this new trend reached its culmination in the 13 member bench Judgment of the Supreme Court in *Kesavananda Bharati's Case* (Supra), which laid down that there is no disharmony between the directive principles and fundamental rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble to the Constitution. The Constitution aims at a synthesis of the two, and the Directive Principles constitute "the conscience of the Constitution". Together they form the

core of the Constitution, vide Markandeya, V. Vs. State of A.P., AIR 1989 SC 1308 (paragraph - 9). They are not exclusionary, but are complementary to each other, vide Unnikrishnan, J.P. Vs. State of A.P., AIR 199 3 SC 2178. It follows therefore that the courts should uphold, as far as possible, legislation enacted by the State which seeks to remove inequalities and attain 'distributive justice', vide, Lingappa Pochanna Appealwar Vs. State of Maharashtra, AIR 1985 SC 389 (paragraphs 16 and 20), Manchegowda Vs. State of Karnataka, AIR 1984 SC 1151, Fateh Chand Himmatlal Vs. State of Maharashtra, AIR 1977 SC 1825, etc., In recent decisions the Supreme Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by nonimplementation of the Directive Principles, vide Comptroller and Auditor General of India Vs. Jagannathan, AIR 1987 SC 537 (paragraphs 20-21), Mukesh Advani Vs. State of M.P., AIR 1985 SC 1363, Bandhua Mukti Morcha Vs. Union of India, AIR 1984 SC 802, Animal and Environment Legal Defence Fund Vs. Union of India, (1997) 3 SCC 549, etc.

12. Apart from the above we may also refer to Article 51A(g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court, vide Animal and Environment Legal Defence Fund Vs . Union of India (supra, vide para-15).

13.....

14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondents 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest

litigation, we take this opportunity to direct 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."

(iii) In an important Judgment, the Hon'ble Supreme Court in JAGPAL SING v. STATE OF PUNJAB [AIR 2011 SCC 1123], has held as follows:

"13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years. "

21. For the reasons given above there is no merit in this appeal and it is dismissed."

14. It is categorically stated in the counter affidavit filed by the respondents that the portion of the land encroached by

the writ petitioner is a Government Poramboke land, which is preserved as water body. The Hon'ble Division Bench of our High Court in the case of T.S.Senthil Kumar, Vs. The Government of Tamil Nadu, rep.by its Secretary, Public Works Department, in W.P.No.20021 of 2008 dated 10.02.2010 and the relevant paragraphs are extracted hereunder:

"From the above, it is seen that the Act in question has come not a day sooner, because we have seen that the Ramsar Convention includes as wetlands, not only natural wet lands, but even human-made wetlands such as waste water treatment ponds and reservoirs. Therefore, tanks and tank poramboke lands would definitely require protection from encroachment."

"18. Considering the fact that we have adopted wet land conservation policy which takes note of the environmental value and functions of wet lands and the fact that they deserve to be protected, the State may take steps to protect all water bodies and not only tanks. In L.Krishnan's case - AIR 2005 Madras 311, this Court has referred to the judgment of the Supreme Court in AIR 2001 SC 3215, where the maintenance of ecological balance has been highlighted and this Court has also specifically indicated that it is imperative to see that water storage resources such as tanks, odais, oranis, canals are not obliterated by encroachers. Right to water is a part of life and, therefore, as observed by the Supreme Court in Hinch Lal Tiwari v. Kamal Devi and others - AIR 2001 SC 3215, demands of economic development must be made without compromising the natural resources of the earth which this generation holds in trust for future generation. The order of inter-generational equity has to be remembered and in fact in the Rio Declaration, to which India is a party, it has been affirmed that environmental protection constitutes an integral part of sustainable development and cannot be isolated from it."

"19. Persistent developmental activities, ignoring the need to protect natural resources, have caused irreparable

damage. It is also necessary that the State shall not invoke Section 12 of the Act which results in alienation of tank poramboke lands citing "public interest". Protection of water resources is as much as a public interest issue as any other requirement. The Government may also bear in mind that water resources have to be protected while issuing patta to persons who claim to have resided in the same place for a number of years."

15. The Hon'ble High Court, in the above said case issued directions to the State, which reads as under:

"(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind

the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007."

16. The Hon'ble Division Bench of our High Court in W.P.No.26364 to 26376 of 2017 dated 10.10.2017, held as follows:

"8. A perusal of the typed set of documents filed in support of these writ petitions would reveal a shocking and sorry state of affairs. Admittedly, the petitioners are ranked encroachers and however, the concerned revenue officials have failed to take action at the relevant point of time and therefore, allowed them to perpetuate the illegality and the petitioners/their predecessors have, not only stopped with the illegal act of encroachment ; but also got emboldened on account of the inaction on the part of the revenue officials as well as the Local Body officials and proceeded to construct palatial superstructures, without any authorisation or planning permission and also leased out the same for commercial purposes. It appears that it was / is a deliberate and wilful act on the part of the revenue officials as well as the Local Body officials as to the non-taking of any action to abate such illegalities."

"The respondents shall cause inspection of the entire area in question and identify the encroachers as well as the unauthorised / deviated constructions and take necessary and appropriate action within a period of ten weeks from the date of receipt of a copy of this order and file a COMPLIANCE REPORT to this Court."

"The Administrative Department of the Government is directed to identify the officials concerned as to the continued laxity and exhibition of callousness and apathy in performing / discharging their official duties and neglect in protecting

the assets of the Government and initiate appropriate Departmental and Criminal action and also file a Status Report."

17. From the said judgments delivered based on the legal principles settled by the Hon'ble Apex Court of India, it is clear that all "Kuttai Poramboke", "Pond Poramboke" and other Poramboke lands belongs to the Government are to be preserved for protecting the Environment and for the usage of the public at large. In this case, it is categorically admitted even by the writ petitioners' that they have encroached the Government Poramboke land and it was classified as "Vari Poramboke lands" and "Pond Poramboke lands", which all are water bodies. Thus, there cannot be any leniency or misplaced sympathy in respect of such encroachments of the Government land and the authorities competent are duty bound to protect the same in all respects. However, this Court is able to find out that the officials have miserably failed to protect such valuable lands of the Government and submitted frequent proposals in favour of the writ petitioners' on extraneous considerations, enabling them to pursue the matter for getting permission in an illegal manner. Thus, the public officials have colluded with the writ petitioner company for the purpose of the continuance of encroachment of such Government Poramboke lands. All such Government officials are liable for prosecution and suitable disciplinary proceedings are also to be initiated against such persons. The Government officials are the abettors and have equally committed an offence by assisting the writ petitioners' to encroach the land and continue in the encroached land for the past about many years. Thus, the officials concerned are equally responsible."

20. This apart, the Apex Court of India also reiterated that the State is duty bound to protect the water bodies, water resources and Government poramboke lands. In spite of various orders of the Constitutional Courts, the authorities are not initiating appropriate steps in a swift manner to evict such encroachments and to cancel all such orders which all are not in accord with the provisions of law.

21. The learned counsel for the writ petitioner states that suo motu notice issued by the Government in respect of the possession and enjoyment of the land by the writ petitioner was challenged and the Hon'ble Division Bench passed an order on 22.2.2013 in WP No.1464 of 2013. In the said order the Hon'ble Division Bench held that the order of the Assistant Settlement Officer cannot be reviewed by the Government at this length of time. As against the said order, the SLP (Civil) No.1248 of 2015 filed by the State, which is also pending before the Supreme Court of India. The learned counsel for the writ petitioner further states that on account of the fact that the Hon'ble Division Bench of this Court has concluded the issue, the present writ petition deserves to be allowed.

22. This Court is of an opinion that the Hon'ble Division Bench of the Court in WP No.1464 of 2013 had not adjudicated the sanctity/illegality of the order passed by the Assistant Settlement Officer. The suo motu notice, which was challenged by the writ petitioner in that writ petition was adjudicated and the relief sought for in WP No.1464 of 2013 was to prohibit and forbear the Government from conducting suo motu revision proceedings enquiry initiated by the Government under proceedings dated 22.11.2012, this Court is of the considered opinion that it was only the notice and there was no adjudication of the issues by the Competent Authorities. The said notice was challenged on the grounds of delay and jurisdiction. So such technical grounds raised cannot be a bar for ordering complete adjudication of the issues in the interest of the public at large. When the Courts have allowed the writ petition on technical grounds, that cannot be construed as a total bar for the complete adjudication of the issues in the proper manner by verification of records and the documents and by adducing evidences.

23. No person can be allowed to take away the Government lands, merely on certain technical grounds. The Courts are allowing certain writ petitions on account of certain procedural lapses, if any committed by the Competent Authorities. However, such procedural lapses or some technical grounds, cannot be a point for complete adjudication of the issues and the substantial justice to the parties as well as to the citizen at large in the present case can be given only in the event of conducting a proper enquiry and a complete adjudication with reference to the revenue records and all other records. Thus, the mere passing of an order by the Division Bench cannot be a point for the writ petitioner to get away or dilute the adjudication of the issues at large.

24. When the District Collector has raised a doubt regarding the order passed by the Assistant Settlement Officer and the patta granted pursuant to the order, then this Court has to go deep into the matter and find out whether an enquiry was conducted properly by the Higher Authorities or not. Unfortunately, in the present case, no such roving enquiry was conducted by any of the authorities and the writ petitioner is continuing in possession and enjoyment of the land, which is classified as 'Kollankuttai Eri Porakboke'. Only on the basis of the order passed by the Assistant Settlement Officer and the same has not been adjudicated at any point of time. Thus, an illegality can never be allowed to be continued on account of certain procedural aspects or on technical grounds.

25. The Courts can easily visualise such procedural lapses and technical grounds are left open intentionally by some public officials in favour of such greedy men. The Courts cannot close its eyes in respect of functioning of the officials in certain circumstances and actions of such Executives in order to favour some individuals. Favouritism and nepotism in certain aspects and the circumstances are also be considered by the Courts while deciding such matters.

26. The Courts must keep in mind the paramount importance of the public interest and the same alone must prevail over and not the private interest. The constitution requires the State to act in a fair and reasonable manner. This Court is of an opinion that there cannot be any illegality or irregularity by few Executives in the name of the State. In the present case on hand, when the District Collector has categorically enumerated that the order of the Assistant Settlement Officer, Dharapuram is doubtful, then an enquiry in depth is certainly warranted and the Court cannot shut its eyes in respect of the enquiry to be conducted. In this view of the matter, the reliance placed by the learned counsel for the writ petitioner cannot be accepted.

27. This apart, mere pendency of SLP will not be a bar for this Court to decide the matter on merits in the present writ petition. As the relief sought for by the writ petitioner before the Division Bench is totally unconnected with the relief sought for in the present writ petition. In the earlier writ petition, the State challenged the suo motu revision notice issued by the Government and in the present writ petition, the writ petition has been filed for a direction to forbear the respondents from interfering with the peaceful possession and enjoyment of the property.

28. The very filing of the writ petition shows that the doubtful circumstances are available and they are to be enquired into as per the statement made by the District Collector, Salem

in his counter-affidavit. For all these reasons, this Court is convinced in respect of the counter-affidavit and the facts set out by the District Collector in his counter-affidavit. Thus, the following orders are passed:-

(a) The relief, as such, sought for in the present writ petition stands rejected;

(b) The District Collector, Salem is directed to conduct a detailed enquiry with reference to the revenue records and all other connected records, by affording opportunity to the writ petitioner and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order;

(c) The writ petitioner is at liberty to submit her objections/explanations and documents, if any, to the District Collector, Salem, within a period of two weeks from the date of receipt of a copy of this order;

(d) In the event of identifying the land as water body, water resources or Government poramboke, then the District Collector, Salem is bound to evict all such encroachers by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905;

(e) In the event of identifying the land, being a patta land, belongs to the writ petitioner, then all further actions shall be dropped;

(f) In the interest of public, the District Collector, Salem is directed to identify all the encroachments in the water bodies, water resources and Government poramboke lands in Salem District, within his jurisdiction and initiate appropriate actions;

(g) The District Collector, Salem is directed to issue Circulars/Instructions to all subordinate officials to initiate actions in respect of encroachments without any further lapse of time;

(h) In the event of any negligence, lapses or dereliction of duty, the District Collector, Salem is directed to initiate prosecution and disciplinary proceedings against all such officials concerned.

29. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The District Collector,
Salem District at Salem.

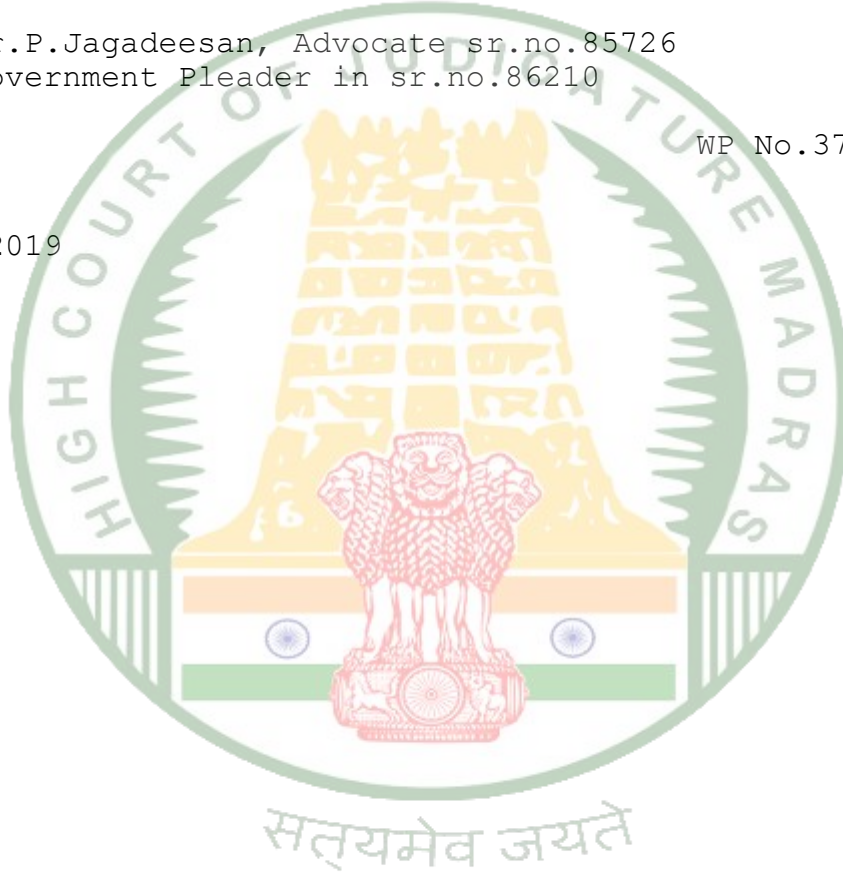
2.The Assistant Commissioner,
Zone II, Salem Corporation,
Asthampati,
Salem.

+lcc to Mr.P.Jagadeesan, Advocate sr.no.85726

+lcc to Government Pleader in sr.no.86210

WP No.37747 of 2003

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