

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :29-08-2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.Nos.3035 to 3038 of 2014

V.K.Jayarathinam .. Petitioner in W.P.No.3035 of 2014
A.Karunanithi .. Petitioner in W.P.No.3036 of 2014
S.Muthulakshmi .. Petitioner in W.P.No.3037 of 2014
V.Valarmathi .. Petitioner in W.P.No.3038 of 2014

.Vs.

1.The Secretary,
Government of Tamil Nadu,
Revenue Department,
St.George Fort, Chennai-9.

2.The District Collector,
Chennai District,
Rajaji Salai, Chennai-1.

3.The Tahsildar,
Purasavakkam,
Perambur Taluk, Perambur,
Chennai-11.

... Respondents in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writs of Mandamus, directing the first respondent and second respondent to issue Patta to the petitioners as per the Government orders in G.O.(MS) No.34 Revenue (LD1) Department dated 23.01.2008 and the recommendations of the third respondent in ref.letter No.Na.Ka.No.A/33159/09 dated 22.01.2010.

For Petitioner all WPs : Mr.R.Malaichamy

For Respondents in all WPs: Mr.Ansar
Government Advocate

COMMON ORDER

Mahatma Gandhi said, "there is no human institution but has its dangers. The greater the institution the greater the chances of abuse. Democracy is a great institution and, therefore, it is liable to be greatly abused. The remedy, therefore, is not avoidance of democracy, but reduction of possibility of abuse to a minimum".

2. "The spirit of democracy is not a mechanical thing to be adjusted by abolition of forms. It requires change of heart. The spirit of democracy cannot be superimposed from the outside. It must come from within".

3. Dr.Ambedkar said, "I do not want that our loyalty as Indians should be in the slightest way affected by any competitive loyalty whether that loyalty arises out of our religion, out of our culture or out of our language. I want all people to be Indians first, Indians last and nothing else but Indians".

4. The lis on hand is one such case where few greedy people are infringing the rights of the citizen at large. This Court has made an attempt to minimise the infringement and damage caused on account of the greediness of few men. Equal protection of the fundamental rights of all other citizen, in general, is also a constitutional duty of the Constitutional Courts. If any infringement causes in violation of the fundamental rights of other citizen at large, then the Court must ensure that the social justice, equality of rights of all citizens are protected.

5. This being the constitutional mandate, this Court is not shy in bringing about the fact that the violations and more specifically, the encroachments in water bodies are slowly increasing in our great Nation. Encroachment is an offence and infringement of other's rights. But encroachment in water bodies and natural water resources are greater and serious offences, wherein stringent actions and protection of such water bodies are also imminent and highly warranted.

6. Thus, this Court is duty bound to take an attempt to ensure that the Executives/Administrators of the State are upholding the constitutional perspectives by maintaining the ecological balances and maintain the water bodies and water resources in the State, so as to protect the human lives in a peaceful manner and in accordance with the constitutional perspectives and the rights ensured to the citizens of this great Nation.

7. The facts in respect of these writ petitions are as follows:

W.P.No.3035 of 2014

It is contended that the writ petitioner is a retired employee from TCMPLID/AAUIN in 2011, and now he is a pensioner. The petitioner is in occupation of a small piece of land to an extent of 680 sq.ft. comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai

District. The petitioner is residing in the same premises bearing Door No.2B/13B Kulakarai Lane, P.E.Koil Street, Ayanavaram, Chennai-600 023 comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The learned counsel for the petitioner states that the writ petitioner is in possession of the property for the past 40 years continuously. As per the revenue records, the land comprised in T.S.No.113, Block No.16 of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District is a Government Poramboke land. However, it is contended that the Government of Tamil Nadu has recognised their residential status and issued Ration Card, Voter ID and providing Electricity connection etc., in favour of the writ petitioner. The writ petitioner is paying the property tax also. This being the factum of the case, the writ petitioner claims which he is entitled for grant of patta in respect of the land and the portion of the building under his occupation.

W.P.No.3036 of 2014

8. It is contended that the writ petitioner is a retired Railway and now he is a pensioner. The petitioner is in occupation of a small piece of land to an extent of 640 sq.ft. comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The petitioner is residing in the same premises bearing Door No.13c/24, Kulakarai Lane, P.E.Koil Street, Ayanavaram, Chennai-600 023 comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The learned counsel for the petitioner states that the writ petitioner is in possession of the property for the past 25 years continuously. As per the revenue records, the land comprised in T.S.No.113, Block No.16 of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District is a Government Poramboke land. However, it is contended that the Government of Tamil Nadu has recognised their residential status and issued Ration Card, Voter ID and providing Electricity connection etc., in favour of the writ petitioner. The writ petitioner is paying the property tax also. This being the factum of the case, the writ petitioner claims which he is entitled for grant of patta in respect of the land and the portion of the building under his occupation.

W.P.No.3037 of 2014

9. It is contended that the writ petitioner is a house wife deriving income from the pension of her husband retired Constable. The petitioner is in occupation of a small piece of land to an extent of 900 sq.ft. comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The petitioner is residing in the same premises bearing Door No.19/2, Kulakarai Lane, P.E.Koil Street,

Ayanavaram, Chennai-600 023 comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The learned counsel for the petitioner states that the writ petitioner is in possession of the property for the past 50 years continuously. As per the revenue records, the land comprised in T.S.No.113, Block No.16 of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District is a Government Poramboke land. However, it is contended that the Government of Tamil Nadu has recognised their residential status and issued Ration Card, Voter ID and providing Electricity connection etc., in favour of the writ petitioner. The writ petitioner is paying the property tax also. This being the factum of the case, the writ petitioner claims which he is entitled for grant of patta in respect of the land and the portion of the building under her occupation.

W.P.No.3038 of 2014

10. It is contended that the writ petitioner is a servant deriving income of Rs.500/- per month. The petitioner is in occupation of a small piece of land to an extent of 580 sq.ft. comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The petitioner is residing in the same premises bearing Door No.15/16, Kulakarai Lane, P.E.Koil Street, Ayanavaram, Chennai-600 023 comprised in T.S.No.113, Block No.16, of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District. The learned counsel for the petitioner states that the writ petitioner is in possession of the property for the past 40 years continuously. As per the revenue records, the land comprised in T.S.No.113, Block No.16 of Ayanavaram Village of Purasawalkam-Perambur Taluk, Chennai District is a Government Poramboke land. However, it is contended that the Government of Tamil Nadu has recognised their residential status and issued Ration Card, Voter ID and providing Electricity connection etc., in favour of the writ petitioner. The writ petitioner is paying the property tax also. This being the factum of the case, the writ petitioner claims which he is entitled for grant of patta in respect of the land and the portion of the building under his occupation.

11. The writ petitioners have stated that they made representations to the authorities competent for the grant of patta under the provisions of the Patta Pass Book Act, 1983, in respect of the portion of the lands under their respective occupations. It is pertinent to note that Patta Pass Book can be granted if the applicant establishes that he is the owner of the property. Section 3 of the Patta Pass Book Act, 1983, enumerates that a owner of the land can apply for patta and the patta can be granted by the Revenue Officials to the owner of the property. Thus, it is a precondition that the ownership in

respect of the property must be established before the Revenue Officials for grant of patta.

12. The representations by the petitioners for the grant of patta have yielded no result. Thus, they are constrained to move the present writ petitions for a Mandamus, to direct the first and the second respondents to issue patta as per the Government Orders issued in G.O.(Ms.) No.34, Revenue Department, dated 23.1.2008.

13. First of all, the Scheme granted for the issuance of free patta to the landless poor people in the year 2008, cannot be applied now after a lapse of 10 years. Even the Government is duty bound to protect the Government lands, water bodies and water resources for the welfare of the State as a whole. Thus, free patta can never be granted in respect of the water bodies and water resources, which is meant for the common usage of all the citizen and water, being a life for humans, the same is to be protected in all respects and there cannot be any compromise in this regard.

14. The learned Government Advocate, appearing on behalf of the respondents, strenuously opposed the contentions raised on behalf of the writ petitioners by stating that even the official proceedings, enclosed by the writ petitioners at page No.9 of the typed set of papers filed along with the writ petitions, clearly states that the property in question is classified as "Kulam" (Pond). The property under the occupation of the writ petitioners are water bodies and therefore, the competent officials are right in not granting patta in favour of the writ petitioners. The proceedings dated 22.1.2010 states that the said land is classified as "water body" and used as a "Kulam" (Pond) and therefore, patta cannot be granted in view of the judgment of the Hon'ble Supreme Court of India.

15. It is relevant to state that the Apex Court of India, time and again emphasised and reiterated that no patta can be granted in respect of the water bodies and the water resources, which are all available in the State, which all are to be utilised for the welfare of the public at large. Further, it is emphasised that State can never allow the encroachments in water bodies and in water resources, which will affect the very rights of the citizens at large.

16. This Court is of a strong opinion that it became a routine affairs in the State, more specifically, in and around the Chennai City, that the Government poramboke lands/water bodies and water resources are encroached by the few greedy men to the larger extent and such encroachments are happening certainly with the collusion and connivance of few greediest

officials and with the support of some local politicians. Any right thinking person can never tolerate the illegal activities of such encroachers and the land mafias. It is duty mandatory on the part of the Executives to ensure that the Government lands, water bodies and water resources are protected and all the people get the natural resources for their utilisation and for their healthy and peaceful life.

17. It is painful to pen down that, Greater Chennai is frequently facing flood related issues, more specifically, during the rainy seasons. Such disasters are occurring frequently now-a-days. Even the smallest range of rains are causing such disasters. The Experts, time and again, warned that these are all the man made disasters. In spite of the warnings and despite the fact that the people of the Greater Chennai are facing agonies frequently, the Executives remained as silent spectators and no efficient and effective actions are taken in this regard.

18. This Court is not doubting the actions of the Executives. However, such actions, now initiated, are absolutely insufficient and the Executives are acting just to solve the issues then and there temporarily and, they are not initiating any steps to resolve the issues on permanent basis, so as to ensure that water bodies, Government lands and water resources are protected.

19. For instance, if a writ petition is filed before the High Court and in one such writ petition, if a direction is issued to remove the encroachment, then the officials are evicting that particular small portion of the land and leaving the matter as it is. Even that land is not protected thereafter, and once again the same lands are again encroached by the very same persons or by some other persons. It is frequently happening in the City that, whenever certain encroachments are removed, once again the officials are allowing such encroachments. Such inactions of the Executives are to be construed that they are more or less circumventing the orders of the High Courts and the Constitution. These Executives are not sensitive enough to realise the evil consequences of such encroachments. These Executives are more selfish than acting for the welfare of the people in their capacity as public servants. Thus, this Court is of an opinion that stringent actions are required in this regard and the State should ensure that the water bodies and water resources are protected for the welfare of the whole State and for the welfare of the people at large.

20. The Hon'ble Supreme Court of India delivered number of judgments in respect of the protection of environment, ecology and to protect the water bodies and water resources, which is

the Constitutional mandates. Thus, it is unnecessary to quote all those judgments which are all many in numbers. The Constitutional Courts across the country also delivered umpteen number of judgments and issued directions to the State to protect the forest, environment, ecology, water resources and water bodies as per law and made it for the benefit of the public at large. However, the actions, in this regard, are certainly insufficient and it is witnessed that the encroachments of water bodies, Government lands and water resources are in increasing mode. It is the constitutional duty on the part of this Court to ensure that such illegalities and inactions of the Executives are to be dealt with in accordance with law.

21. Number of articles are prohibited and conferences and seminars are conducted in respect of maintaining the ecology and water resources. Many number of suggestions, ideas and, ways and means are provided by the Experts in this regard. But all such opinions, articles and laws are only remaining in papers and not implemented effectively and efficiently by the Executives, who all are duty bound to implement the same.

22. This Court is of a doubt that whether these Executives, including the District Collectors in the rank of I.A.S., Officials are unable to deal with these problems or unable to handle such land mafias, who are all encroaching the Government lands and water bodies in the State. This Court is unable to understand the hesitation on the part of these Executives in implementing the laws in its letter and spirit. This Court is unable to understand whether these officials, who are supposed to act, are failing in their duty to act in accordance with the Constitution of India and as per the Statutes.

23. The Laws in this country are enough. What we require is an effective and efficient implementation of such laws, which is the constitutional mandate. Independency of the Executives are also to be preserved. While implementing the Statutes, Executives must feel that they are duty bound under the Constitution to maintain the independency in respect of execution of the Laws in its letter and spirit, so as to uphold the constitutional principles.

24. In respect of the present writ petitions on hand, undoubtedly, the petitioners are the encroachers of water bodies. The lands in encroachment are classified as "Kulam" (Pond), which is a water body. Thus, certainly the inaction of the Executives are to be deprecated.

25. Let us now look into the fundamental rights of the citizen. Article 14 speaks about equality before law. Article 16

provides about equality of opportunity. Article 21 deals with protection of life and personal liberty, which is of more relevance as far as the present writ petitions are concerned.

26. Article 21 ensures that no person shall be deprived of his life or personal liberty except according to procedure established by law.

27. If the water bodies, Government lands and water resources are encroached by few greedy men, then this Court is of an opinion that it infringes the right of the citizen at large in respect of protection of their life. Undoubtedly, preservation of water and providing clean water to the citizen are within the meaning of "Right to Life". Humans cannot survive without water. Water, certainly, is life. Thus, preservation of water and equal distribution of clean water to all is the integral part of Article 21. Article 21 ensures the right to life. Without water, there cannot be any life. Water is life, both for humans and for all living creatures in this world.

28. Thus, in all respects, providing of water and protection of water bodies and water resources are to be construed as fundamental right of citizen and infringement by few men to be construed as grave offence. The encroachers in water bodies are committing the grave offence of infringing the right of all other citizen at large. Thus, those encroachers are not only be evicted, but also to be prosecuted. Neither the State nor the Courts can encourage such encroachers of water bodies and water resources in the State. Water, being the life, protection of life is a fundamental right of a citizen. Decent medical facilities are now became integral part of right to life. Peaceful and calm life are also included as integral part of Article 21. Even the usage of loudspeakers are now prohibited. Every man's house is a castle for him. He has got every right to live in his house peacefully and calmly. The loudspeakers and other noise pollutions created by other people should not infringe the privacy of the citizen in his house, who is residing in his house. Thus, noise pollutions and usage of loudspeakers are also certainly prohibited. Any such usage should not cause any harm or injury to other citizens, who are all residing in their houses.

29. When such all are the interpretations provided by the Constitutional Courts across the country, in order to preserve the valuable fundamental right of "Right to Life", this Court is of an opinion that the water bodies and protection of water is also to be construed as an integral part of Article 21 of the Constitution of India.

30. In this view of the matter, any encroachment made in the water body, is to be treated as grave offence and all such encroachers are to be evicted without any leniency and no misplaced sympathy can be shown in such kind of violations and encroachments.

31. Unlike previous years, now water disputes are increasing in our great Nation. Everybody wants to preserve the water as the demand is more. Under these circumstances, if these water bodies and water resources are not protected, this Court is able to visualise the future consequences, which would be undoubtedly disastrous. If these water bodies are not protected at least now, we are committing the grave offence to the next generation citizen of this great Nation. The forefathers of our Constitution also visualised the importance of maintaining the right to life. Without clean water, there is no life.

32. It is the duty of the State to ensure that free air, water and medical facilities are provided to the citizen without any hindrance. Even the poorest citizen of this great country must be provided with water and medical facility. This is the reason why the Courts are repeatedly emphasising the State to ensure decent medical facilities in Government Hospitals, enabling the poor people to avail the decent medical facilities at free of cost, which is their fundamental right ensured under the right to life. Thus, encroachments of water bodies must be viewed not only seriously, but also with some sensitiveness. The Executives in this regard must show their activeness and act swiftly to evict all such encroachments in water bodies and water resources and thereby utilise the water bodies for preservation of water during the rainy seasons and during flood times.

33. As stated earlier, Chennai City had faced enough floods during previous years. Every year during rainy season, people are afraid and their minds are under stress. The people are expecting floods even for small range of rains. It is the duty of the State to remove such apprehensions from the minds of the citizen of the Greater Chennai and all over the State. Citizen must feel free that even if there is large scale rains, then the State is capable of dealing with such flood related situations. However, the present situation is not providing any such guarantee or scope on account of large scale encroachments in water bodies and water resources and other areas wherein the rain waters are preserved.

34. The third respondent informed this Court that the property described in the present writ petitions are classified as "Government Poramboke land" and usage as "Kulam" (Pond). Even in the revenue records, it is classified as "Kulam" (Pond),

which is a water body. Though the Revenue Officials are very much aware of these classifications, they have not initiated any action for preserving the water body for the past many years and allow these greedy men to encroach the water bodies and water resources. Undoubtedly, there is large scale collusion in this regard, between the Executives, land mafias and some local politicians. It is not only the inaction of the Executives, but also the greediness of the encroachers. Thus, the respondents, in this regard, are bound to initiate appropriate actions to evict all such encroachers from the government land, water bodies and water resources.

35. This Court is of an opinion that the encroachers in respect of water bodies and water resources are causing greater infringement of the fundamental rights of all other citizen. Thus, they are to be construed as grave offenders. Therefore, all these encroachers of water bodies and water resources are not entitled for any Flood Relief Funds from the taxpayers' money (Government Funds). The Government cannot extend any Flood Relief Fund to these encroachers, who are all in occupation of the water bodies and water resources, as they are committing an act of offence and infringing the fundamental rights of all other citizen of this great Nation.

36. Article 51-A of the Constitution of India enumerates the fundamental duties of every citizen of India. Article 51-A, sub-clause (g) enumerates that "the protect and improve the natural environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures". Sub-Clause (i) to Article 51(A) of the Constitution states that "to safeguard public property and to abjure violence". When the fundamental duties of every citizen of India enumerates that such water bodies are to be protected and it is the duty of every citizen, then any citizen violating his fundamental duties cannot have any scheme for enforcement of his right. Rights and duties are corresponding in nature. A person, who claims right must perform his duties also and in the absence of performing such duties, a citizen may not have any morale to claim rights. Thus, the authorities competent even as a citizen are bound to protect the water resources and water bodies.

37. In view of the facts and circumstances, the following directions are issued:-

(i) The first respondent/The Secretary to Government, Revenue Department, Fort Saint George, Chennai-9, is directed to issue appropriate orders to the competent authorities concerned stating that the encroachers of water bodies and water resources are not entitled to receive any Flood Relief Fund from the taxpayers' money (Government Funds);

(ii) The second respondent/District Collector, Chennai District, is directed to conduct a Review Meeting, within a period of two weeks from the date of receipt of a copy of this order and issue suitable orders to all the officials concerned from various Government Departments and initiate immediate actions to evict all encroachments made in water bodies and water resources within Chennai District and keep the water bodies open for preservation of water and in the interest of the public at large;

(iii) The District Collector, Chennai, is directed to ensure that all such encroachments in water bodies and water resources are evicted by invoking the provisions of the Tamil Nadu Land Encroachments Act, 1905 or the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, whichever is applicable, within a period of eight weeks from the date of receipt of a copy of this order;

(iv) The District Collector, Chennai District, is directed to conduct an enquiry on various illegalities and irregularities regarding all such encroachment issues and in the event of negligence, collusion, misconduct or dereliction of duty on the part of the Government Officials/Public Servants, then initiate appropriate prosecutions and departmental disciplinary proceedings under the Discipline and Appeal Rules;

(v) The Commissioner of Police, Greater Chennai, is directed to provide adequate police protection for the purpose of eviction of all the encroachers in water bodies and water resources to be carried out by the District Collector, Chennai City;

(vi) The District Collector, Chennai is directed to submit a compliance report in this regard, within a period of twelve weeks from the date of receipt of a copy of this order.

38. With these directions, the writ petitions stand disposed of. However, there shall be no order as to costs.

39. Post these matters "For Reporting Compliance".

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KP/Svn

To

1.The Secretary,
Government of Tamil Nadu,
Revenue Department,
St.George Fort, Chennai-9.

2.The District Collector,
Chennai District,
Rajaji Salai,
Chennai-1.

3.The Tahsildar,
Purasawakkam-Perambur Taluk,
Perambur,
Chennai-600 011.

4.The Commissioner of Police,
Greater Chennai Corporation,
Vepery,
Chennai-7.

5.The Section Officer
Writ Section
High Court, Madras.

+1cc to Mr.R.Malaisamy, Advocate SR.NO.59068

+1cc to Government Pleader SR.NO.60994

EV(CO)
sm:25.9.2018

W.P.Nos.3035 to 3038/2014



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