

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2018

PRONOUNCED ON : 04.12.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

W.P.Nos.32303 to 32308 of 2017 and
W.M.P.Nos.35567 to 35572 of 2017 and
W.M.P.Nos.3033, 3035, 3037 & 3039 of 2018

P.Sundaramurthy ... Petitioner in WP.No.32303/2017
Visalachi ... Petitioner in WP.No.32304/2017
P.Arulmurugan ... Petitioner in WP.No.32305/2017
V.Kannan ... Petitioner in WP.No.32306/2017
Muniammal ... Petitioner in WP.No.32307/2017
M.Duraisamy ... Petitioner in WP.No.32308/2017

Vs.

- 1.The District Collector,
Thiruvallur District,
Thiruvallur.
- 2.The Tahsildar,
Ambattur Taluk, Ambattur. ... Respondents in all WPs
- 3.The Assistant Engineer (AE)
Supply (Perumal Agaram Zone),
Electricity Board TANGEDCO,
Thiruverkadu, Chennai - 77.
- 4.The Commissioner,
Thiruverkadu Municipality,
Thiruverkadu.
... Respondents 3 & 4 in W.P.Nos.32303, 32305,
32307 & 32308/2017

[R3 and R4 are impleaded as per
order dated 05.02.2018 in WMP.
Nos.3032, 3034, 3036 & 3038/2018]

Prayer in WP.No.32303/2017: Petition filed under Article 226 of
the Constitution of India, praying to issue a Writ of Mandamus
forbearing the Respondents 1 and 2 in any way interfering in the

peaceful possession and enjoyment of the petitioner property bearing Door No.4/5, Survey No.38/Part 1 New Survey No.1 to a total extent of 27 Hectares alternatively 23.5 Ares approximately 0.03 cent of land and building situated at Aatrangarai Street, Numbul Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District without following due process of law.

Prayer in WP.No.32304/2017: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the Respondents 1 and 2 in any way interfering in the peaceful possession and enjoyment of the petitioner property bearing Door No.8/9, Survey No.38/Part-I, Plot No.F (New Survey No.1 to a total extent of 27 Hectares alternatively 23.5 Ares) approximately 0.06 cent of land and building situated at Aatrangarai Street, Numbul Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District without following due process of law.

Prayer in WP.No.32305/2017: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the Respondents 1 and 2 in any way interfering in the peaceful possession and enjoyment of the petitioner property bearing Door No.4/1, Survey No.38/Part 1, Plot No.K (New Survey No.1) to a total extent of 660 sq.ft. (Part) out of total extent of 1320 sq.ft. of land and building situated at Aatrangarai Street, Numbul Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District without following due process of law.

Prayer in WP.No.32306/2017: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the Respondents 1 and 2 in any way interfering in the peaceful possession and enjoyment of the petitioner property bearing Door No.5/6, Survey No.38/Part, Plot No.1(I) (New Survey No.1) to a total extent of 27 Hectares, Acre 23.5 Ares) 0.03 cents of land and building situated at Aatrangarai Street, Numbul Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District without following due process of law.

Prayer in WP.No.32307/2017: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the Respondents 1 and 2 in any way interfering in the peaceful possession and enjoyment of the petitioner property bearing Door No.12/3, Survey No.38/Part Plot No.D (New Survey No.1 to a total extent of 27 Hectares alternatively 23.5 Ares) approximately 0.04 cent of land and building situated at Aatrangarai Street, Numbul Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District without following due process of law.

Prayer in WP.No.32308/2017: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the Respondents 1 and 2 in any way interfering in the peaceful possession and enjoyment of the petitioner property bearing Door No.14/4, Survey No.38/Part 1, Plot-B, (New Survey No.1 to a total extent of 27 Hectares alternatively 23.5 Ares) approximately 0.03 cent of land and building situated at Aatrangarai Street, Numbul Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District without following due process of law.

For Petitioner : M/s.S.Venkatesh
S.Jaganathan

For 1st & 2nd Respondent: Mr.S.N.Parthasarathy
Government Advocate in all
W.Ps

For 3rd Respondent : Mr.P.R.Dhilip Kumar
in W.P.Nos.32303, 32305,
32307 & 32308/2017.

For 4th Respondent : Mr.R.Mohandoss
[W.P.Nos.32303, 32305,
32307 & 32308/2017]

COMMON ORDER

M.VENUGOPAL, J.

Heard both sides.

2.According to the Petitioners, they are living with their families at Door Nos.4/5, 8/9, 4/1, 5/6, 12/3 and 14/4 respectively at Aatrangarai Street, Noombal Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District uninterruptedly for more than 31, 29, 21, 31, 17 and 32 years respectively.

3.The Petitioners are the absolute owners of the property by virtue of Registered 'Sale Deeds' on the file of Sub Registrar Office, Poonamallee. They are poor agriculturists and soon after their purchase, they had put up small houses to an extent of 500 sq.ft. built up area and that they are paying regularly the property tax to the Thiruverkadu Municipality. Their houses do have Electricity Service connections and they are paying the Electricity charges.

4.According to the Petitioners, there is a Bridge situated more than 100 meters away from their houses. Also, there is a 'River Canal' which is situated away from the Bridge. The

Respondents 1 and 2 are cleaning the canal and removing the Debris. As a matter of fact, the 2nd Respondent and their men had inspected the Petitioners houses on 07.12.2017 and marked some portions stating that their lands are Government Land and they were to remove them from their houses.

5.The plea taken on behalf of the Petitioners is that the Respondents have no Authority in Law to evict them or to dispossess them without following the 'Due Process of Law' for the simple reason that they had put up their Houses in a 'patta Land' by virtue of the Registered Sale Deeds in their favour and also they were granted patta as early as 1997.

6.The Learned Counsel for the Petitioners points out that the Petitioners filed W.P.Nos.25283 to 25288 of 2006 seeking to restrain the Respondents therein from interfering with the possession of their properties and this Court on 11.08.2006 had passed an order inter alia to the effect that '... If at all the respondent intends to take action against the petitioners in respect of the property that can be only done by following due process of law. With the observation that if the properties, which are stated to be in possession of the Petitioners, are not the properties owned by the Government, any action the respondents intend to take, has to be taken only in accordance with law, this writ petition is disposed off. No costs. The connected miscellaneous petitions are closed.'

7.The Learned Counsel for the Petitioners projects an argument that till 06.12.2017, there was no threat or coercion by the Respondents. However, on 07.12.2017 the 2nd Respondent/ Tahsildar, Ambattur along with his subordinates and Government servants came to the Petitioners Lands and threatened to vacate from the lands and they informed that they would demolish the buildings etc.

8.The prime contention taken on behalf of the Petitioners is that even assuming that they are considered to be 'Encroachers', the Respondents will have to take recourse to the ingredients of the Tamil Nadu Land Encroachment Act, 1905 or under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. In fact, the Petitioners were given time till 11.12.2017 to vacate from their Lands and Houses. Hence, the Petitioners have filed the present Writ of Mandamus before this Court seeking to restrain the Respondents 1 and 2 from anyway interfering with their peaceful possession and enjoyment of the subject properties.

9.In Response, the Learned Government Advocate for the Respondents 1 and 2 submits that the Petitioners purchased the Lands by registered documents and that they are squatting on the river. Furthermore, the Patta No.494 was cancelled as per

proceedings of the then Sub Collector, Ponneri in Noombal dated 05.01.2006 and the Original Survey Numbers was restored as S.No.1. Indeed, the said Survey Number No.1 is Cooum River only and it is not a 'Patta Land' as claimed by the Petitioners.

10.The Learned Government Advocate for the Respondents 1 and 2 takes a plea that the Petitioners are aware that they are squatting on the 'River' and they confirmed the eviction move made by the 2nd Respondent as early as 2006 which pointed out that the Lands in question are over the 'Cooum River'.

11.The Learned Government Advocate for the Respondents 1 and 2 brings it to the notice of this Court that the Government of Tamil Nadu is implementing the Integrated Cooum River Eco Restoration Project (under Aegis of the Chennai River Restoration Trust (CRRT), as per the order of the National Green Tribunal (NGT), Southern Zone, Chennai. The administrative sanction for the implementation of the Scheme was sanctioned by the Government vide G.O.Ms.No.9, M.A. & W.S. (MCL) Department, dated 13.01.2015. In this project, desilting, widening of River, Removal of solid waste, review channel improvement review front development works, Resettlement and Rehabilitation of Project affected families on account of eviction of encroachments are carried out.

12.Continuing further, it is represented on the side of the Respondents that during September, 2017 Bio-metric Enumeration was done for providing allotment of tenements through the Tamil Nadu Slum Clearance Board who were living in Survey No.1, Cooum River, Aatrangarai Street, Noombal Village, Madura Vellappanchavadi of Maduravoyal Taluk by officials of the Public Works Department and Revenue Department. After getting allotment of tenements in the Tamil Nadu Slum Clearance Board, Perumbakkam Village of Kanchipuram District on 09.12.2017. The persons had moved out from Cooum River on their own. The shelters were removed by the PWD authorities only after the concerned individuals were vacated from their houses. Apart from that, no eviction has been carried out in the Aatrangarai Street, Noombal Village as averred by the Petitioners.

13.The Learned Government Advocate for the Respondents 1 and 2 contends that the Petitioners are squatting over the structures which is a hindrance to the developmental activity and they refused to record their Bio-metric details and they are not cooperating with the Respondents in securing an alternate site at Perumbakkam.

14.The Learned Government Advocate for the Respondents 1 and 2 submits that in respect of Resettlement and Rehabilitation of affected families to protect their interests in the following manner:

(i) Announcements on enumeration of families entitled to derive the benefits of resettlement and rehabilitation by the Government are to be made;

(ii) Bio-Metric Enumeration Work would be carried out jointly by the officials of various Departments.

(iii) Survey of School and College Students affected on account of Eviction.

(iv) Information on resettlement and rehabilitation (R&R) package of benefits will be given to the affected families.

(v) Information will be given about the date and time of relocation.

(vi) The affected families will be provided free transportation to the Tamil Nadu Slum Clearance Board Tenements and also they would be provided with food and water for three days.

(vii) The Special Camps are to be conducted by the Education Department to issue Transfer Certificates for admission in the Schools of resettled sites and necessary assistance would be provided to them.

(viii) Arrangements would be made to transfer Voter ID and Family Cards to the resettled place; and

(ix) These families are resettled in storeyed tenements in various locations and the tenements are in 400 sq.ft. plinth area with concrete roof in integrated townships. Further, each tenements are provided with individual water supply, toilet, electricity, lift with power backup and individual toilet facilities. Moreover, Special Camps at the Resettlement and Rehabilitation Schemes admitting the children of under 5 years in Anganwadi (ICDS) centres, immediate admission in schools - primary, Middle, High and Higher Secondary, provision for College Education, change of address of Voter ID card, Ration card, Adhar Card, Issue of Identity Cards for unorganised workers, issue of old age pension and widow pension etc., are being ensured. Apart from that, Special care is being taken to provide ground floor tenements to the aged, families with medical issues with mentally and physically challenged.

15. The Learned Government Advocate for the Respondents 1 and 2 proceeds to point out that the Government of Tami Nadu had

sanctioned a unique scheme at the cost of Rs.181.85 Crores to provide the following packages at the time of resettlement to the families living on the river banks:

(a) Shifting allowance of Rs.5000/- per family.

(b) Subsistence allowance of Rs.30,000/- (Rs.2500/- per month for 1 year, per family)

(c) Beneficiary contribution at the rate of 10% of the housing cost which works out to Rs.65,000/- per family

(d) Electricity Service Connection charges of Rs.2500 per family

(e) Community Development Programmes.

It is further represented on behalf of the Respondents that the Tamil Nadu Slum Clearance Board had resettled so far 8710 families from the banks of Adyar River (4134 families) and Cooum River (4576 families) and the benefits were extended to them. In December, 2015 the families living on the banks of City Rivers, lost their belongings and precious human lives too.

16. The Learned Government Advocate for the Respondents 1 and 2 brings it to the notice of this Court that the Skill Development training for slum youth through Tamil Nadu Skill Development Corporation is also in progress and that the Special Programme for resettled families in the trades of car driving, cutting and tailoring, readymade garments making, house keeping, four wheeler mechanism, nursing aid and beautician training are also imparted to resettled families under CRRT Project. Besides these, the Soft skills are also imparted to ensure vertical mobility of already employed.

17. The Learned Government Advocate for the Respondents 1 and 2 takes a plea that the location of the Resettlement and Rehabilitation (R&R) Schemes on OMR and Orakadam which are IT and Auto Manufacturing Hub and Middle and Upper residential habitations enable these families to get themselves engaged in the service sector for employment etc. The Tamil Nadu Slum Clearance Board is also addressing the issues of unemployment through Job melas conducted in co-ordination with Government bodies, Non Governmental Institutions and Corporate Bodies and Directorate of Employment and Training, District Administration of Kanchipuram and Tiruvallur for restoration of livelihood of Rehabilitated families. Apart from that, to enhance the livelihood opportunity for the resettled families, the Slum Clearance Board had extended support for smaller economic activities tool kit for Tiles Work, Beautician, Painting, Electrical Work, Machinery, Carpentry, Plumbing, Centering, Cutting & Machinery and Housekeeping Tools were provided. Continuing further, the Slum Clearance Board had initiated 'Madras Institute of Development Studies (MIDS)' to conduct impact assessment study of Resettlement & Rehabilitation. Psychological support will be done by opening counseling centres

and resident welfare associations are ensured through regular community meetings for the upkeep of the schemes.

18. The Learned Government Advocate for the Respondents 1 and 2 submits that in respect of the Community Development Programmes, the following are in progress/proposed:

- (i) Income Generation & Economic Development Activities - Formation of new Self Help Groups (SHGs) / CLG and strengthening the capacity of existing, skill development training including provision of tool kit, Entrepreneurial Development Programme and Self Employment Programme, Establishment of viable-enterprises. Support for smaller Economic Activities.
- (ii) Implementation of major livelihood activities for individual/Community Level Social Mobilization and Awareness Creation - social security Measures Campaigns.
- (iii) Conducting of social security measures campaigns, social mobilization and awareness creation-Health, Education, Sanitation, Youth Welfare Programme, counseling, Centres, Youth Resource Development Programmes, Job fairs, Inter-Slum Olympics, other need based programmes,
- (iv) Formation of Resident Welfare Associations & Community Development Society - Capacity Building for Resident Welfare Association Office Bearers and members, establishment of corpus fund for maintenance impact Assessment Study.
- (v) Beyond housing, Tamil Nadu Slum Clearance Board (TNSCB) has extended Resettlement & Rehabilitation (R&R) Package and Special intervention through Community Development Programmes for the resettled families.

19. The Learned Government Advocate for the Respondents 1 and 2 contends that in the Status Report filed before this Court on 08.11.2018 by the 2nd Respondent/Tahsildar, Ambattur Taluk, it is mentioned that Visalachi (Petitioner in W.P.No.32304/2017), V.Kannan (Petitioner in W.P.No.32306/2017), M.Duraisamy (Petitioner in W.P.No.32308/2017) had moved out from the Coom River, on their own after obtaining the allotment of Tenements in Tamil Nadu Slum Clearance Board, Perumbakkam Village of Kanchipuram District on 09.12.2017. Further, the Petitioners (Sundaramurthy in W.P.No.32303/2017, Arulmurugan in W.P.No.32305/2017 and Muniammal in W.P.No.32307/2017) had refused to take the Bio-Metric Enumeration for securing the allotment at Perumbakkam like other people. Moreover, the Petitioners' family members and some of the tenants from the Petitioners houses received the allotment and vacated the houses. But the Petitioners had not vacated and they had also not removed their structures and in fact, they are squatting on

the structures.

20.The 4th Respondent/Municipality in his Status Report dated 02.08.2018 had stated that based on the direction issued by this Court, he conducted a site inspection in respect of Survey No.38/ Part-1 (New Survey No.1), Aatrangarai Street, Noombal Madura, Vellappan Chavadi Village, Thiruverkadu. At the time of inspection, the Petitioner in W.P.No.32305/2017 (Arulmurugan) produced a copy of the planning permit obtained from the Thiruverkadu Town Panchayat in the year 2002. On scrutiny of the said permit and when it was reviewed with the Municipal office records, it came to light that the planning permit bearing Survey No.138 furnished by Arulmurugan was dated 10.02.2002, but there is no such planning permit with Serial No.138 in the Municipality records and for the period from April 2001 to March 2002, there are totally 1 to 67 serial numbers and further, Serial No.138 is not registered.

21.The Learned Government Advocate for the Respondents 1 and 2 points out that a copy of the Planning Permission produced by the Petitioner [Arulmurugan in W.P.No.32305/2017] as P.P.No.23/2002. But, in the Municipal Records, the Serial No.23 is registered in the name of one N.Petha Perumal. In short, the copy of the Planning Permission produced by the said Arulmurugan does not match with the Municipality Records and therefore, it is the stand of the Municipality that construction put up by the said Arulmurugan (Petitioner in W.P.No.32305/2017) is an unauthorised one and constructed without obtaining any permission.

22.The Learned Government Advocate for the Respondents 1 and 2 submits that the Writ Petitioners in W.P.No.32303, 32304, 32306, 32307 and 32308/2017 [viz., P.Sundaramurthy, Visalachi, V.Kannan, Muniammal and M.Duraisamy] had put up the constructions without securing any planning permission from the Municipality and they are unauthorised ones.

23.By way of reply, the Learned Counsel for the Petitioners submits that the Petitioners are the absolute owners of the land, which forms part of Old Survey No.38 Part-1, New Survey No.1, 92, Noombal Village, Ambattur Taluk, measuring an extent of 1320 sq.ft. approximately 0.03 cent of land which was purchased by means of registered sale deeds at Sub Registrar Office, Poonamallee from vendors after paying sale considerations.

24.In fact, the Petitioners are the owners of the Lands having a history of more than 100 years of title passing from one vendor to another and the Government of Tamil Nadu in the year 1958 made an endeavour to declare these lands as 'Inam Lands' vesting with them. Apart from that, the lands were purchased originally by T.S.Lakshmi Narayana Iyer in the year

1920 by a Registered Document No.4080 of 1920. Also, it is represented on behalf of the Petitioners that the said Lakshmi Narayana Iyer was the owner of Vast Extent of land prevailing in Noombal Village and Puliampet Village Old Chengalpet District.

25.The Learned Counsel for the Petitioners proceeds to point out that after the purchase of T.N.Krishnaswamy Iyer and Lakshmi Narayana Iyer, the Collector of Chengalpet initiated proceedings under the Tamil Nadu Estate Abolition Act and they succeeded under the original proceedings. Earlier, the Petitioners vendors filed S.T.Appeal No.21 of 1958 at S.T.P.No.34 of 1960 before this Court and this Court passed the Judgment on 22.12.1960.

26.The Learned Counsel for the Petitioners submits that if the Respondents are desirous of acquiring the Petitioners Lands, they should follow the Due Process of Law by initiating proceedings under the Land Acquisition Act.

27.The Learned Counsel for the Petitioners contends that the Petitioners lands cost approximately around Rs.25,00,000/-, but the Respondents are illegally and without following 'Due Process of Law' are compelling them to surrender their Lands or in the alternative, they are compelling them to take tenements which are worth about Rs.2,00,000/- in respect of 300 sq.ft. situated at Kancheepuram.

28.The Learned Counsel for the Petitioners submits that the Petitioners were not issued with any notice before the cancellation of Patta No.494 in terms of the proceedings of the then Sub-collector, Ponneri dated 05.01.2006.

29.The Learned Counsel for the Petitioners submits that the Petitioner in W.P.No.32305/2017 (Arulmurugan) has not made any deviation in his construction and that the Chennai Metropolitan Development Authority or the Municipal Authority had not issued any notice regarding the unauthorised construction and in the absence of the same, his constructions and his occupancy of the property in question is a valid and legally tenable one.

30.The Learned Counsel for the Petitioners refers to the Order dated 22.12.1960 in S.T. Appeal No.21 of 1958 and S.T.P.No.34 of 1960 [between T.N.Krishnaswamy, T.S.Lakshminarayana Iyer V. State of Madras represented by the Collector of Chingleput, whereby and whereunder, it is, among other things, observed as under:

"The Nawab did not deal with the two villages as inam villages when he mortgaged them to Khaja Chamier in 1782. The Nawab was entitled to mortgage them as ruler de jure of the territory with power of disposal of the two villages which formed legally and factually part of his State. As we said, that mortgage did not not and could not constitute an inam

grant within the scope of Section 3(2)(d) of the Estates Land Act. Regulation 31 of 1802, to which Venkatasubba Rao J referred, did save Badsahi grants but that could not constitute a statutory recognition of the transaction of 1782 if that was not itself an inam grant. The inam tenure created in 1763 came to an end when the villages reverted to the lawful possession of the grantor, the Nawab, and the subsequent transaction of 1782 could not be linked up with the 1763 grant to determine the tenure under which Khaja Chamier held the villages. He held them only as Circar villages mortgaged to him by the then Sovereign Ruler of the State of which they had constituted a part.

The learned Government Pleader conceded with reference to the records be obtained from the office of the Board of Revenue that the appellants and their predecessors-in-interest held Noombal and that also apparently applied to Puliampet, rent free though the village was never settled as an inam village at the inam Settlement. It was never recognised by the British as an inam village though no quit rent or peishous was collected at any time, and only road cess was collected. But the question of recognition by the British Government could only arise had there been a grant in inam, and we have held that there was no grant in inam to be recognised by the British. The inam grant of 1763 had terminated, and there was no further inam grant in or after 1782.

We reverse the finding of the Tribunal that Noombal was an inam estate. The appeal is allowed and the appellants will be granted a declaration that Noombal is not an inam estate as defined by section 2(7) of Act 26 of 1948. The appellants will be entitled to their costs throughout. Counsels fee Rs.250/-."

31. In this connection, it is not out of place for this Court to make a relevant mention that some of the Writ Petitioners herein along with others had filed W.P.Nos.25283 to 25288 of 2006 before this Court seeking the relief of restraining the Respondents therein from interfering with their possession in respect of the property situated at Survey No.1, Noombal Madura, Vellappansavadi Village, Thiruverkadu, Ambattur Taluk, Thiruvallur District and this Court on 11.08.2006 had, among

other things, observed that '.... If at all the respondent intends to take action against the petitioners in respect of the property that can be only done by following due process of law. With the observation that if the properties, which are stated to be in possession of the Petitioners, are not the properties owned by the Government, any action the respondents intend to take, has to be taken only in accordance with law and disposed of the Writ Petitions'.

32.The Learned Government Advocate for the Respondents 1 and 2 projects a plea that the Survey No.1 in Noombal Village, Maduravoil Circle, Thiruvallur District, measuring an extent of 27.13.5 is a 'Cooum River' as per 'A' Register Entry and that the Petitioners having reportedly purchasing the lands by means of registered document and obtaining patta in the year 1997 is not a germane, in view of the fact that they were/are squatting on the Cooum River. Further, when the Patta No.494 were cancelled by the proceedings of Sub-collector of Ponneri dated 05.01.2006 and the original Survey Number was restored as Survey No.1, the Petitioners cannot take advantage of their purchase of lands through registered sale deeds.

33.The Respondents, in their counter, had categorically averred that no eviction was carried out in the Aatrangarai Street, Noombal Village as alleged by the Petitioners and that the Respondents are following the 'Due Process of Law' by offering alternative site(s) to the Petitioners.

34.It is represented on behalf of the Respondents that the Petitioners in W.P.Nos.32304 and 32308/2017 [viz., Visalachi and Duraisamy] and the Petitioner's (in W.P.No.32306) wife - Renugadevi [wife of Kannan] were provided with alternative tenements at Perumbakkam Village and that they would be relocated/shifted only after following the 'Due Process of Law' like other Tenements who had moved out acquiring the River from its natural course.

35.Ordinarily, those persons who had encroached upon the water Bodies, water Resources, Tanks, water spread area, Rivers are not entitled to claim the benefits from the concerned Authorities.

36.It must be borne in mind that the Full Bench of this Court in the decision T.K.Shanmugam V. State of Tamil Nadu reported in 2015 (6) CTC 369, at special pages 388, 391, 392 & 393 wherein at paragraphs 22, 24, 31 to 33, 35 & 36, it is observed as under:

"22.The common thread which runs through the manual of Revenue Administration is to preserve water courses as such. Though certain Government Orders were issued during 1970s, permitting assignment of Tank-beds

with due permission, if those Government Orders seek to regularise illegal encroachment in tank-beds, water channels or area abutting and on margins of water channels to that extent the Manual of Revenue administration and the Government Orders are deemed to have been superseded, more particularly in the light of the directions issued by the Hon'ble Supreme Court in the case of Jagpal Singh V. State of Punjab, 2011 (11) SCC 396. However, the manual of Revenue Administration does not specifically state about assigning tank beds for a different user or concession to house site etc after reclassification.

24. The Division Bench in L.Krishnan's case referred to the decision of the Hon'ble Supreme Court in the case of Hinch Lal Tiwari, wherein the importance of tanks/ponds etc was highlighted in the following terms:-

13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13 having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites." (emphasis supplied)

31. We may at this stage examine the origin, scope and object of the Public Trust Doctrine. Most scholars identify the Justinian code of sixth century Rome as the genesis of the Public Trust Doctrine - the doctrine of res communes which claims that some things are common to mankind - the air, running water, the sea, and consequently the shores of the sea [and] the right of fishing in a port, or in rivers, is common to all

men¹. It has been further observed that the title to these essential resources was vested in the State, as the sovereign, in trust for the people. Res communes were excluded from private control and the trustee was charged with the duty of preserving the resources in a manner that made them available for certain public purposes. It has been further explained that the legal or moral concept of common ownership later emerged as more of a reservation of a series of particular rights to the public to engage in certain activities, thus limiting the prerogatives of private ownership. There is therefore now a nearly universal notion that resources such as watercourses should be protected from complete private acquisition in order to preserve the lifelines of communal existence. The common property resources are those resources not controlled by a single entity and access to which is limited to an identifiable community of individuals or states. No one user has the right to abuse or dispose of the property. Any dealing with the property has to take into account the entitlements of others. Besides, users of common property share rights to the resource and are subject to rules and restrictions governing the use of those resources^{2 & 3}. In England, this concept appears in the common law, particularly through the writings of Bracton and Fleta, Englands Magna Carta, and commentary by Blackstone. Paragraph 5 of the Magna Carta made explicit reference to the guardianship of land extending the guardianship to houses, parks, fish ponds, tanks, mills and other things pertaining to land. As early as 1865, the English House of Lords defined the concept of public trust in the case of *Gann v Free Fishers of Whitstable*, House of Lords, 3 March 1865, 11 E.R. 1305 (1865) 11 H.L. Cas. 192, holding that the bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is by law vested in the crown. But this ownership of the crown is for the benefit of the subject, and cannot be used in any manner so as to derogate from, or interfere with the right of navigation, which belongs by law to the subject of realm. This imposed a high fiduciary duty of care and

responsibility upon the sovereign⁴. Further elaborating the concept of public trust, the English Common Law distinguished between property that was transferable to private individuals and property that was held in trust for the public traditionally waterways. The property held in trust for the public is the dominant estate and encapsulates the public's trust rights, ranging from fishing, fowling and navigation to other broader rights like recreation.

32. Whatever approach is taken, the fundamental emphasis is on communal rather than private rights. In cases where communal rights protector negates the rights of some, it implies a denial of the application of the Public Trust Doctrine. Natural resources have traditionally been found either under the sovereignty of a particular state or in the so-called global commons. Where the resources are held by a state, the essence of the Public Trust Doctrine is that the state or governmental authority, as trustee, has a fiduciary duty of stewardship of the public's environmental capital. Thus it is the duty of the State to protect, conserve and augment traditional water retaining structures.

33. The Supreme Court of the United States of America in *Illinois Central Railroad Co. v. People of the State of Illinois* [146 US 387 = 36 LEd 1018 (1892)], pointed out that the State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in execution of this trust, is permissible.

35. The Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 5 SCC 281], held that there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

36. Thus, the public trust doctrine requires that natural resources such as lakes, ponds etc., are held by the State as a trustee of the public and can be disposed of

only in a manner that is consistent with the nature of such a trust.

Further, in the aforesaid decision at page No.397 at paragraph Nos.44 &45, it is observed as follows:

"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 following the provisions of the Tamil Nadu Land Encroachment Act, 1905."

37. Moreover, in the decision T.K. Shanmugam, Secretary, C.P.I. (M), North Chennai V. State of Tamil Nadu, Rep. By its Secretary to Government Department of Revenue, For St. George, Chennai & others, 2016-1-L.W. 168, at special pages 173 & 174, wherein at paragraph Nos. 18, 19, 27 & 29, it is observed and held as follows:

"18. The relief sought for in this Writ Petition is unacceptable as (i) the prayer sought for in a Mandamus cannot be granted straightaway for issuance of patta and regularization of the encroachment; and (ii) the decision rendered in Sivakasi Region Tax Payers Association vs. State of Tamil Nadu [(2008) 5 MLJ 1425] based on which the petitioner has filed the Writ Petition, itself is to the effect of protecting water bodies by removal of encroachments.

19. There can be no dispute that the present Probono Publico is filed for issuance of patta for the encroachers and also to regularise the encroachments in Kolathur Eri in Survey Nos. 11 (Part) and 53/2 (Part), which form part of the water body. The fact remains that the encroachers have been issued with eviction notice in accordance with the provisions of the Act. Therefore, the petitioner in the guise of representing the encroachers, has got no vested right to prevent the encroachments being removed, that too, to restore the water body. On the other hand, the encroachers are bound to vacate and hand over vacant possession of the property.

27. It has become inevitable for this Court to put on record that the authorities in power cannot destroy the water bodies or water courses formed naturally for the benefit of mankind for ever and it is beyond

the power of the State to alienate or re-classify the water bodies for some other purposes without compensating the effect of such water bodies.

29. It is significant to point out that the Hon'ble Apex Court in a series of judgments, has held that statutory rules cannot be amended by Executive instructions but "if the rules are silent" on any particular point, Government can fill up the gaps by issuing executive instructions, in conformity with the existing rules. Having regard to the acute water scarcity recurring in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already ear marked water storage tanks, ponds and lakes, to its original status as part of its rain water harvesting scheme, which has already been initiated."

38. It is to be noted that this Court in the decision Anti Corruption Movement, represented by its General Secretary, Saligramam, Chennai V. Government of Tamil Nadu, represented by Secretary, Public Works Department, Chennai and others, (2008) 1 MLJ 417 at special page 420 & 421, wherein at paragraphs 4 & 5, it is observed as follows:

"4. The State Government has now enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 ('Tamil Nadu Act' in short), which has been brought into effect from 1.10.2007. Section 7 of the Tamil Nadu Act casts a duty on the Officer of the Public Works Department to remove the encroachments in the tank areas after issuing a notice to the encroachers and take possession of the land within the boundaries of the tank encroached by taking such police assistance as may be necessary and any police officer whose help is required for this purpose shall render necessary help to that Officer. Section 7 further provides that any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after due notice, be liable, to forfeiture.

5.The Secretary to Government, Public Works Dapartment has filed on affidavit dated 28.9.2007, wherein he has stated that the State Government has taken a policy decision to restore the water bodies in the city of Chennai to their original shape, size, capacity etc. and the process of removal of the encroachments has been reviewed and accordingly, 29 tanks located in and around the city of Chennai have been broadly categorized into three types as mentioned below:

The action plan devised for restoration of the 29 tanks situated in and around the city of Chennai is as follows:

(i)Steps will be taken, to restore the 19 tanks falling under Categories 'A' and 'B' situated in and around Channel City to ensure augmentation of water holding capacity which will improve the ground water re-charge water holding capacity which will improve the ground water re-charge and its sustainability and create favourable environment to the neighbouring areas. Wherever the tanks cannot be restored to their original extent for certain practical reasons, efforts will be taken to deepen the retrieved parts of the tanks so as to ensure the maximum possible water storing facility. Financial sanction in respect of 4 tanks out of the 19 tanks has already been obtained. For the balance 15 tanks, estimates are prepared for seeking financial assistance.

(ii) 10 tanks under Category 'C' cannot be restored at this stage as these are fully developed with regularized and unregularised houses/housing colonies. However, further examination will be made to see the possibility of constructing multi-storied tenements, in the existing locations and retrieving some portions of the land for creating water bodies for the benefit of those families themselves. This may require long time and considerable planning and efforts and no time frame can be fixed.

(iii)Encroachments to the extent practically possible as shown in the action plan, will be removed. The estimated encroachments are approximately 18670. The exact number will be known after cent percent enumeration is carried out. The Government

may consider providing alternate accommodation to the eligible evictees depending upon the facts and circumstances. For eligibility purpose, the long time settlers as found as in December, 2006 and holding the family cards issued by the Civil Supplies and Consumer Protection Department may be the criterion. The claims of those families who are said to be the owners of the houses but not living at those places will not be entertained.

(iv) The Collectors will decide the programme of evicting the encroachments preferably from October/November, 2007 to May, 2008 depending upon the area specific issues involved."

Also, in the aforesaid decision at pat 421 & 422, wherein at paragraphs 7 & 8, it is observed and held as under:

"7. Having considered the difficulties expressed by the Government Pleader in carrying out the process of removal of encroachments, we pass the following the order:

(i) The Secretaries, Public Works Department, in consultation with the respective District Collectors, are directed to decide the programme of evicting the encroachments in the water bodies falling in Categories 'A' and 'B' referred to above, by the end of November, 2007 and complete the process of removal of such encroachments by the end of May, 2008.

(ii) The State Government is at liberty to consider, in appropriate cases, grant of alternative sites for re-location of the encroachments, as per their policy decision. All the authorities concerned like the local authorities as well as the police officials, will extend their full cooperation to the Public Works Department/District Collectors for effectively implementing the policy decision of the Government of removal of encroachments from water bodies.

(iii) No Civil Court shall entertain any suit or proceeding in connection with the removal of the encroachments in the water bodies and every person, who has put up any construction in such water bodies and who is aggrieved by the action taken by the authorities of removal of such encroachment

from the water bodies, is at liberty to move this Court under Article 226 of the Constitution of India and all such applications shall be placed before the First Bench of this Court.

(iv) The State Government is directed to identify and take stern action against the land grabbers who have sold the lands in the water bodies to innocent purchasers, which would act as a deterrent. The survey numbers of the lands in various water bodies in question are directed to be notified and the Registration Department concerned is directed not to register any transaction in respect of such lands falling under the water bodies.

(v) In respect of the Porur tank, the respondents have already removed all the encroachments and the said water body is free of any encroachment. In case any encroachment is made on the water body in future, it will be open for the authorities to remove such encroachment even without, issuing any notice to such encroachers.

(vi) It is also made clear that even after the encroachments from the water bodies are removed as per 'the policy decision of the State Government, the respective District Collectors shall keep a close watch over such water bodies and in case of any fresh encroachment thereon, the District Collectors are at liberty to remove the same with the help of police, wherever necessary, without any notice, to such encroachers.'

8. The learned counsel for the petitioners state that certain tanks and eris in Kakkalur, Chitlapakkam and Thirunindravur are not covered by the list furnished by the State Government. Mr. Raja Kalifulla, learned Government Pleader, however, submits that the State Government will follow the procedure enumerated above in respect of these water bodies also and whenever possible, remove the encroachments within the time frame fixed by this Court."

39. It is to be pointed out that no person can live without the 'Means of Livelihood'. In our Constitution, there is no absolute bar as regards the deprivation of life or personal liberty. But the same is subject to the procedure established by Law. If an individual utilises a public property in an unauthorised manner, then, he is a 'Trespasser'. As a matter of

fact, the word 'Trespass' is a Civil Tort. A Trespasser may be evicted forcefully and the force is to be employed in a reasonable manner quite appropriate to the situation. What is essential is that a Trespasser is to be provided with a reasonable opportunity to move/vacate from the place of encroachment before taking any other coercive action against him/her.

40. On a careful consideration of the respective contentions and when the Petitioners have come out with a definite stand that they are living their own properties in their own right and they are to be removed in case of encroachment only after following the 'Due Process of Law' by the Respondents and also this Court, taking note of a prime fact that three of the Petitioners were provided with an alternative tenements at Perumbakkam Village and they had also vacated from the petition properties, this Court, in the interest of Justice, Fair Play, Equity, Good Conscience and even as a matter of prudence, directs the Respondents to conduct a detail Enquiry in the subject matter in issue, within a period of two weeks from the date of receipt of copy of this order, by issuing notices to the concerned Writ Petitioners, who continued to occupy/reside in the petition mentioned properties, by specifying the time and date on which Enquiry to be conducted. The Petitioners, on receipt of notices from the Concerned Authorities, are required to appear in person at the specified time, date and place without fail and to participate in the Enquiry proceedings. It is open to the Petitioners to substantiate their versions by producing relevant materials/documents at their command by tracing their title and to prove their ownership of the Land and in this regard, the Concerned Authority shall provide an 'Opportunity of Hearing' to the concerned Petitioners, by adhering to the Principles of 'Natural Justice'. It is open to the concerned Petitioners to raise all factual and legal pleas before the Concerned Authorities/Appropriate Respondents, who shall take into account of the same and to pass a complete and comprehensive final speaking orders in a qualitative and quantitative terms by meeting out the points canvassed by the concerned Petitioners. It cannot be gainsaid that after conclusion of Enquiry, the final orders shall be passed by the Concerned Authority in a fair, free, unbiased and in a dispassionate manner, of course, untrammelled and uninfluenced with any of the observations made by this Court in the present Writ Petitions, of course, within a period of four weeks thereafter. If the Appropriate Authorities come to the conclusion that the Petitioners are 'Encroachers' in Survey No.1 of Cooum River and not in patta Land as claimed by them, then, they are at liberty to take such action as they deem fit and proper, of course, in the manner known to Law and in accordance with Law. If the Authorities opine that the Petitioners need to be provided with an alternative Tenements/Accommodation, then,

they can be provided with an alternative Tenements/Accommodation, like that of the other Writ Petitioners without any loss of time. Till the final orders are passed by the Appropriate Authority, the possession and enjoyment of the Petitioners in the subject property shall not be displaced/disturbed.

41. With the aforesaid observations and directions, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

Sgl

To

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Tahsildar,
Ambattur Taluk, Ambattur.

3. The Assistant Engineer (AE)
Supply (Perumal Agaram Zone),
Electricity Board TANGEDCO,
Thiruverkadu, Chennai - 77.

4. The Commissioner,
Thiruverkadu Municipality,
Thiruverkadu.

5. The Government Advocate,
High Court, Madras.

+6 CCS to Mr. S. Venkatesh, Advocate sr 83187

+1 CC to Mr. R. Mohandoss, Advocate sr 83013.

+1 CC to Govt. Pleader sr 83735.

W.P.Nos. 32303 to 32308 of 2017

RR (CO)

SP (27/12/2018)