



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

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THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P (MD) No.6419 of 2018

M.Muthiah : Petitioner

Vs.

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

2.The Secretary to State of Tamil Nadu,
Department of P.W.D.,
Fort St. George,
Chennai.

3.The District Collector,
Virudhunagar District,
Virudhunagar.

4.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

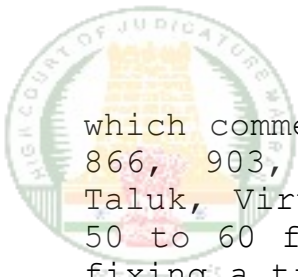
5.The Tahsildar,
Taluk Office,
Srivilliputtur,
Virudhunagar District.

6.The Executive Engineer,
PWD, WRD,
Upper Vaippar Basin Division,
Rajapalayam,
Virudhunagar District.

7.The Block Development Officer,
Watrap, Srivilliputtur Taluk,
Virudhunagar District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 7 to remove the encroachments in "Nariodai", a prominent water body



which commences from Sathuragiri Hills, runs through S.Nos.839, 865, 866, 903, 931 and 950 of Maharajapuram Village, Srivilliputtur Taluk, Virudhunagar District, to a stretch of 3.5 Kms., and having 50 to 60 feet width and restore the same to its original status by fixing a time frame.

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For Petitioner : Mr.Santharam Natarajan

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader for R1 to R6

Mr.M.Karuppasamy
Government Advocate for R.7

O R D E R

[Order of the Court was made by The Hon'ble Chief Justice]

This writ petition, by way of Public Interest Litigation, is directed against encroachments in "Nariodai", a prominent water body, which commences from Sathuragiri Hills and runs through S.Nos.839, 865, 866, 903, 931 and 950 of Maharajapuram Village, Srivilliputtur Taluk, Virudhunagar District, over a stretch of 3.5 Kms., with a width varying from 50 to 60 feet and to restore the same to its original position.

2. Under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, all encroachments on water bodies are liable to be removed.

3. From the averments in the affidavit in support of the writ petition, it appears that survey had commenced on 11th June 2014 and completed on 23rd September 2014. However, thereafter, no steps have been taken. The existence of encroachments on the water body in question, as contended in the Writ Petition, has apparently been admitted on behalf of the respondents.

4. It appears that by G.O.Ms.No.579, Revenue NM1(2) Department, dated 03.10.2008, the Government extended the time for regularisation of encroachments till 30th September 2009. 30th September 2009 has long expired and encroachments, it appears, are still in existence. There are still encroachers on water bodies.

5. In the judgment dated 30th October 2015, in W.P.No.1294 of 2009 [T.K.Shanmugam v. The State of Tamil Nadu and others], a Full Bench of this Court held as follows:

"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 (supra). 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.

23. The legal position being thus, we are required to decide as to whether the provisions of the Tank Act does in any manner dilute the observations made in L.Krishnan's case, which view was quoted with approval in Jagpal Singh's case. After having perused the decisions referred supra, the only answer to this question should be in the negative. We support our conclusion with the discussion in the following paragraphs.

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)

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 TamilNadureported 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."

6. In view of the aforesaid judgment, there can be no question of regularisation of encroachments on water bodies.

7. The writ petition is disposed of, by directing the respondents to remove all encroachments from the water body in question and to submit a report before this Court. All encroachments shall positively be removed within three months in accordance with law. The encroachers shall be given reasonable notice in compliance of the provisions of Section 7 of the Tamil Nadu Land Encroachment Act, 1905. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to State of Tamil Nadu, Department of Revenue, Fort St. George, Chennai.
- 2.The Secretary to State of Tamil Nadu, Department of P.W.D., Fort St. George, Chennai.
- 3.The District Collector, Virudhunagar District, Virudhunagar.
- 4.The Revenue Divisional Officer, Sivakasi, Virudhunagar District.
- 5.The Tahsildar, Taluk Office, Srivilliputtur, Virudhunagar District.
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- 7.The Block Development Officer, Watrap, Srivilliputtur Taluk, Virudhunagar District.

+1CC to Mr.K.Gokul, Advocate, SR.No. 58790

ORDER MADE IN
W.P (MD) No.6419 of 2018
26.03.2018

NB/RSB

<https://hcservices.ecourts.gov.in/hcservices/> AM/CVC/SAR 3/09.04.2018/4P/9C