



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.A(MD)No.553 of 2011

M.Muthu Palani Asari

... Appellant/Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Revenue Divisional Officer,
Devakottai Division,
Devakottai,
Sivagangai District.
3. The Tahsildar,
Tiruppathur Taluk,
Sivagangai District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 19.11.2010 made in W.P(MD)No.691 of 2010, on the file of this Court.

Prayer in WP(MD). 691/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the third respondent issued in her R.C.A-5/6464/08 dated 24-11-2009 and quash the same and consequently direct the respondents to accord permission periodically for cutting and removal of prosopis trees standing inside the Chinna Kollan Kanmai which is situated in S.No.144 of Kirunga Kottai Village as per the settlement officer proceedings No.A-941/56 dated 31-03-1956 and in consonance with the practice hitherto followed, and as per the directions dated 02-07-2008 of the District Collector, Sivagangai.

For Appellant
For Respondents

: Mr.M.P.Senthil
: Mr.A.Muthukaruppan,
Additional Government Pleader.

**JUDGMENT**

(Judgment of the Court was delivered by
M. SATHYANARAYANAN, J.)

WEB COPY The writ petitioner is the appellant and he made a challenge to the memo of the third respondent, dated 24.11.2009 made in Na.Ka.No.Aa5/6464/08, in and by which, to cut Prosopis Juliflora (Seemai Karuvelam) in "Group Chinnakollan Kanmoi", came to be rejected. The Writ Petition, after contest, came to be dismissed on 19.11.2010 and challenging the legality of the same, the present Writ Appeal is filed.

2.It is the claim of the appellant/writ petitioner that by virtue of G.O.Ms.No.1144, Revenue, dated 07.05.1954, that the rainfed Tanks with Ayacuts of 10 acres or less will be handed over to the Ayacatdhars on condition that the Tanks will be continued to be a poramboke and Government property and the repairs shall be done by Ayacatdhars and the Ayacatdhars will be allowed to seek the permission of the Tahsildar to cut down free of charges by use of the unreserved trees which may grow on the bed or the land of the Tank.

3.According to the learned counsel appearing for the appellant/writ petitioner, vide proceedings in K.Dis.941/56, dated 31.03.1956, the said Tank continues to be in the custody of the appellant/writ petitioner for the purpose of maintenance and after obtaining permission from the Tahsildar, he used to cut and remove the unreserved trees and it has been extended periodically. When he made such a request, it was rejected by the third respondent vide impugned memo, dated 24.11.2009.

4.The learned Single Judge, after taking note of the rival submissions, found that in the light of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, (Tamil Nadu Act 26 of 1963), the right of the appellant/writ petitioner, if any, ceased to have any effect in view of the subsequent development of the Act and even as per Section 133 of the Tamil Nadu Panchayat Act, 1994, already maintenance of irrigation Tank and execution of Kudimaramathu has vest with the Panchayat and it cannot be given to any such individual and the maintenance of the poramboke lands in Ryotwari is also vests with the Village Panchayat. The learned Single Judge further found that under Section 135 of the Tamil Nadu Panchayat Act, 1994, the communal lands found in the Estate covered by the Tamil Nadu Estates Land Act, 1908, also vests with the Panchayat and used by the Panchayat for communal purpose and therefore, the relief sought for by the appellant/writ petitioner cannot be granted and therefore, ~~dismissed~~ the Writ Petition vide impugned order, dated 19.11.2010 and aggrieved by the same, the present Writ Appeal is filed.



5. The learned counsel appearing for the appellant/writ petitioner has invited the attention of this Court to the typed-set of documents and would submit that admittedly, the appellant/writ petitioner has been granted right to maintain the Tank with the permission of the jurisdiction of Tahsildar to cut and remove the unreserved trees and all along such a request was entertained and however, all of a sudden, the third respondent vide impugned order, dated 24.11.2009 has rejected the request of the appellant/writ petitioner and the learned Single Judge, without considering the legal factual aspect and legal position, erroneously dismissed the Writ Petition and prays for interference.

6. Per contra, Mr. A. Muthukaruppan, learned Additional Government Pleader appearing for the respondents, would submit that in the light of the passing of the said Act, whatever pre-existing order under the Government Order got ceased, the appellant/writ petitioner, as a matter of right, cannot claim any right to maintain the Tank and to cut and remove the unreserved trees and prays for dismissal of the Writ Appeal.

7. This Court has carefully considered the rival submissions and perused the materials placed on record.

8. The Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, is to provide for the acquisition of land holders in Inam Estates in the State of Tamil Nadu and the introduction of the Ryotwari Settlement in such estates.

9. Section 2(17) of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, defines 'ryoti land' and it does not include beds and bunds of tanks and as per sub-Clause (a) it consists of beds and bunds of tanks and of supply, drainage, surplus or irrigation channels.

10. It is also to be pointed out at this juncture that as per Section 14-A of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, Ryotwari patta not to be granted in respect of a private Tank.

11. In the considered opinion of this Court, the learned Single Judge has rightly taken note of the said provision and also Sections 133, 134 and 135 of the Tamil Nadu Panchayat Act, 1994 and rightly reached the conclusion. The appellant/writ petitioner, as a matter of right, cannot make any claim in respect of the said Tank and cannot cut the tress and the tank bed, whatever be the rights acquired by the appellant/writ petitioner in terms of the above said G.O would seized to have effect in the light of the ~~State to be governed~~ such, the petitioner has no legal right to make a claim to maintain the Tank and cut the unreserved trees.



12. This Court, on an independent application of the mind to the entire materials placed on record, is of the considered view that there is no infirmity or error apparent in the reasons assigned for dismissing the writ petition.

13. In the result, this Writ Appeal is dismissed, confirming the order, dated 19.11.2010 passed in W.P(MD)No.691 of 2010. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Revenue Divisional Officer,
Devakottai Division,
Devakottai,
Sivagangai District.
3. The Tahsildar,
Tiruppathur Taluk,
Sivagangai District.

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 55916
+ 1 cc TO The Special Government Pleader in SR No. 55547

ps

AE/SKN RSK/SAR4/03.04.2018/4P/6C

W.A(MD)No.553 of 2011
14.03.2018