

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.15018 of 2004
and
W.P.M.P.No.17816 of 2004

C.Thankappan

.. Petitioner

vs

1.The State of Tamil Nadu,
rep. By Secretary,
Department of Revenue,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kanyakumari District,
Collectorate,
Nagarcoil.

3.The District Revenue Officer,
Midalam,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

4.The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent pertaining to his order bearing proceedings No. A.2 13466/03 dated 15.04.2004 and quash the same and consequently directing the respondents to consider the assignment of 1.5 ares of lands in R.S.No.300/9 in Midalam Village, Vilavancode Taluk, Kanyakumari District in favour of the petitioner.

For Petitioner : Mrs.A.V.Bharathi for
Mr.S.C.Herold Singh

For Respondents : Mrs.Janaki
Addl. Govt. Pleader for R1 to R4

O R D E R

The notice issued by the Tahsildar, Vilavancode, in proceeding dated 27.05.2004 is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the writ petitioner is the owner of an extent of 1.50 ares of land bearing R.S.Field No.300/8A and 448/8 of Midalam village, Vilavancode Taluk, kanyakumari District. The land is a patta land. The writ petitioner constructed a house over the land situated on the eastern portion in the year 1984 and the same is bearing the door No.7-56/A.1 of Karungal Town Panchayat.

3. A narrow strip of poramboke land comprised in R.S.No.300/9 lies sandwiched in between the writ petitioner's patta lands in R.S.Nos. 300/8-A & 448/8. There is no dispute with regard to the writ petitioner's ownership of the patta lands. The Karungal-Midalam road is on the Eastern side of R.S.448/8 road runs. The said poramboke land measuring about 1.5 acres, which is equivalent to 3.5 cents approximately is sandwiched in between the writ petitioner's two patta lands and the writ petitioner is in occupation and enjoyment of the same for several years. For the purpose of safety, the writ petitioner had put up a compound wall through northern and southern side of the lands in 1974 itself.

4. The learned counsel for the writ petitioner states that the Authorities recognized the possession of the writ petitioner in respect of the strip of the land which is classified as Government poramboke. The writ petitioner is paying the B memo charges in respect of his occupation of the said poramboke land. At the outset, it is contended that the writ petitioner is owning a patta land and in between his patta lands a strip of land is classified as poramboke land and therefore, for safety reasons, the writ petitioner constructed compound wall and in occupation of said poramboke land for the past many years. Under these circumstances, the present writ petition is filed seeking assignment of the said portion of the land on the ground that the writ petitioner is in possession of the land for a considerable length of time.

5. Mr.K.Kannan, Tahsildar, Vilavancode, Kanyakumari District is present before this Court along with the files. The learned

Additional Government Pleader representing the Tahsildar, submitted the status report submitted by the Tahsildar/4th respondent. The status report reveals that the writ petitioner filed the present writ petition to retain his blockade made on the "Odai Poramboke" by raising the compound wall along with his patta land being aware of the miseries and hardships experienced by the local public.

6. Survey No.300/9 having an extent of 0.05.50 hectare land in Midalam Village of Vilavancode Taluk of Kanniyakumari District is classified as Odai Poramboke which is a water course. The petitioner owns his patta land in Resurvey No.300/8A having an extent of 0.42.00 hectare (1.05 acre) on the Western side of aforesaid Odai poramboke. The petitioner's wife Tmt. Joice owns an extent of 0.01.50 hectare land in survey No.448/8 lies on the eastern side of the said Odai poramboke. The petitioner encroached south middle of Odai in survey No.300/9 and constructed compound wall in the Odai along with the aforesaid patta lands lying on both side of Odai and thus blocked the Odai to an extent of 0.01.50 hectare. No B.Memo has been registered against the petitioner or his wife for the encroachment. 'U' Lease only has been granted to him for enjoyment of one cashew nut tree vide U.Lease No.15. The petitioner has constructed a house bearing Door No. 7/56A1 of Karungal Town Pachayat in Survey No.300/8A which lies on the water side of Odai poramboke. Lying on the northern side of petitioner's land in survey No.300/8A is survey No.300/7 which is owned by one Thiru.Murugayya with an extent of 0.53.50 hectare. He has constructed compound wall on all other side except the side of Odai. The land encroached by Thiru.Murugayya was already evicted and another pattadar Thiru.Durai Raj who has constructed a Toilet in the Odai poramboke also was evicted. Since the Odai poramboke is required for public purpose all other land owners who made encroachments were agreed for eviction and cleared their encroachments on their volition for public convenience. But this petitioner is the only encroacher putting the compound wall and blocking the Odai poramboke causing inconvenience and hardships to the public and refusing to heed the request of the authorities and public.

7. Regarding the civil suits, the original suit in O.S.No.220/1997 filed in the District Munsif Court for title and declaration of the encroached portion as 'B' schedule property was dismissed. As the land was required for public purpose and being a water course poramboke encroachment was found highly objectionable and action was taken to evict the encroachment and Sec.7 Notice was issued to him under Land Encroachment Act, 1905. But he has filed a writ petition before the Hon'ble high Court at Madras in W.P.No.6936/2004 seeking directions to the respondents to stop the eviction proceedings and also for a

direction to dispose off the petitioner's request for assignment.

8. The Hon'ble High Court while disposing the case has directed to pass appropriate orders on the request of the petitioner for assignment in accordance with law as the petitioner has mainly contended before the Hon'ble Court that the encroachment is not an objectionable one. In accordance with the direction of the Hon'ble High Court, the request of the petitioner was examined and as the encroachment is on a water course poramboke and banned for assignment, his request was rejected and as assignment of patta cannot be granted in a water course poramboke, appropriate order was passed by Tahsildar, Vilavancode in Proceedings No.A2/13466/03, dated 15.04.2004 in accordance with law and observing all usual formalities.

9. Against this order, he has filed this writ petition and got an interim stay to continue his blockade by raising compound wall on the Odai poramboke causing miseries and hardships to public as the interim stay ordered by the Hon'ble High Court is still in force. All other encroachment made on the aforesaid water course poramboke have already been evicted but the petitioner is the only person continuing the encroachment based on interim stay ordered by Hon'ble High Court.

10. The learned Additional Government Pleader brought to the notice of this Court that encroachments made on the water course and water resources in that particular area were already evicted. On account of the interim stay granted in the present writ petition, the writ petitioner alone is yet to be evicted and by evicting all other encroachments in water bodies and water resources in that locality, the public residing in that locality are benefited. It is further contended that the encroachments in Odai Poramboke, water resources are prohibited and the Apex Court also passed judgments for eviction of the encroachers from the water bodies and water resources. Thus, the claim of the writ petitioner for assignment of the said land cannot be considered at all.

11. The learned counsel for the writ petitioner states that the writ petitioner is in possession of the said poramboke land for about 50 years and therefore, the assignment of land is provided in favour of he writ petitioner. Such an argument advanced by the writ petitioner deserves no merit consideration as the judgment of the Apex Court reiterates that there cannot be any encroachments in water body, water resources and also in poramboke lands.

12. Encroachments are infringing the rights of all other citizen. The constitutional rights of all other citizen in

respect of the public properties cannot be taken away by few individuals on account of their greediness. Encroachment of land occurs on account of the greediness. Courts can never encourage the actions of such greedy men in respect of their encroachment of the public land, water bodies and water resources. It is a growing trend across the State that few greedy men, land grabbers and land mafias are encroaching the public property, water bodies and water resources and obstructing the development of our great Nation. On account of large scale encroachment, the developmental activities of the State is being paralyzed. "State" is bound to act vigilantly and no leniency can be shown in respect of the encroachers and the authorities competent are bound to invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905 or the Tamil Nadu Protection of Tanks and removal of Encroachment Act, 2007 whichever is applicable. There cannot be any leniency or misplaced sympathy in respect of the encroachers. Any lapses in this regard on the part of the authorities are also must be viewed seriously. The authorities committing lapses, negligence or dereliction of duty by way of any omission or commission, must be taken note of and suitable prosecution and appropriate disciplinary actions are also to be initiated against all such officials, who all are responsible for committing an act of negligence or dereliction of duty.

13. This Court had passed an order in respect of the evil facts of encroachments and the infringement of rights of all other citizens in general in W.P.No.33883/2012 dated 11.09.2018 and the relevant paragraphs are extracted hereunder:-

"7. If the Officials are inactive and insensitive towards the encroachments in public lands and water bodies it would amount to infringing the constitutional rights of other citizens, who are residing in the nearby places from water bodies, as the same would affect the other citizens to get sufficient water. Thus, the infringement amounts to violation of constitutional rights ensured to all other citizens. It is the duty of the State to preserve the water bodies and prevent ecological imbalances. Such being the constitutional perspectives and duty of the State, the State authorities are bound to act in respect of all such encroachments. In W.P.No.4779 of 2015 dt.13.08.2018, this Court passed an order as below:-

11. ENCROACHMENT - AS AN ISSUE:-

(1) The Black's Law Dictionary defines encroachment as "an infringement of another's rights; an interference with or intrusion onto another's property". The word 'Encroach' is defined as "to enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude; to gain or intrude unlawfully onto another's lands, property or

authority". Thus, it is unambiguous that encroachment is an offence. Encroachment amounts to a criminal trespass into the property belongs to another.

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

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

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

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

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

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

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

(8) The preamble of the Constitution 'WE THE PEOPLE OF INDIA', is the heart and soul of the Constitution. Article 12 of the Constitution provides definition for the State. Accordingly, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Thus, State is a person and therefore, all public lands belong to the State and we the people of India are the owners of the land. Thus, the right of property provided under Article 300-A is to be extended to the State as a person. In other words, the property belongs to the State is also protected under Article 300-A of the Constitution of India. Thus, any encroacher of a public/Government land is certainly depriving the right of property of the State to possess the same under Article 300-A of the Constitution of India. Therefore, the question of de-linking such encroachers otherwise will not arise at all. Question of extending the equality clause or the discrimination clause will not arise at all to the encroacher as an offender and an offender citing the offence committed by one offender, another one cannot claim that he should also be exonerated from the offence. Such a dangerous proposition, cannot be adopted at any circumstances and in the event of connivance with the officials in this regard also to be viewed very seriously.

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

12. The Tamil Nadu Land Encroachment Act, 1905, is an Act, which provides measures for taking unauthorised occupation of land which is the property of the Government. The preamble of the Act provides measures for checking unauthorised occupation of lands which are the property of the Government, whereas, it has been the practice to check the unauthorised occupation of lands which are the property of the Government and by imposition of penal or prohibitory assessment or charge and whereas, the doubts have arisen as to how far such practice is authorized by law and it is expedient to make statutory provision for checking such occupation. The Act provides for removal of encroachment and the implementation of the Act by the Government officials are to be done in a manner prescribed under the Act. Any violation of the Act also to be viewed seriously.

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

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

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

"The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary Civil Court. Ever, normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may, be possible but is very improbable. And if there is discrimination in actual (1) [1952] SCR 435 (2) [1962] 2 SCR 125 (3) [1960] 2 SCR 646 (4) [1954] SCR 30.

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

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

"9. In this connection reference may be made to Article 48A of the Constitution which states: -
"Protection and improvement of environment and safeguarding of forests and wild life: - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

10. No doubt the above provision is in the Directive Principles of State Policy, but it is now well settled that the fundamental rights and directive principles have to be read together, since it has been mentioned in Article 37 that the principles d down in the Directive Principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The Directive Principles embody the aim and object of the State under a Republican Constitution, i.e., that it is a welfare State and not a mere police State, vide *Kesavananda Bharati Vs. State of Kerala*, (197 3) 4 SCC 225 (vide paragraphs - 134, 139 and 1714) and embodies the ideal of socio-economic justice, vide *Union of India Vs. Hindustan Development Corporation*, AIR 1994 SC 988 (990).

11. Though the early decisions of the Supreme Court paid comparatively scant attention to the Directive Principles in Part - IV of the Constitution as they were said to be non-justiciable and nonenforceable in the Courts (vide Article 37), the subsequent decisions of the Supreme Court changed this trend and this new trend reached its culmination in the 13 member bench Judgment of the Supreme Court in *Kesavananda Bharati's Case* (Supra), which laid down that there is no disharmony between the directive principles and fundamental rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble to the Constitution. The Constitution aims at a synthesis of the two, and the Directive Principles constitute "the conscience of the Constitution". Together they form the core of the Constitution, vide *Markandeya, V. Vs. State of A.P.*, AIR 1989 SC 1308 (paragraph - 9). They are not exclusionary, but are complementary to each other, vide *Unnikrishnan, J.P. Vs. State of A.P.*, AIR 199 3 SC 2178. It follows therefore that the courts should uphold, as far as possible, legislation enacted by the State which seeks to remove inequalities and attain 'distributive justice', vide, *Lingappa Pochanna Appealwar Vs. State*

of Maharashtra, AIR 1985 SC 389 (paragraphs 16 and 20), Manchegowda Vs. State of Karnataka, AIR 1984 SC 1151, Fateh Chand Himmatlal Vs. State of Maharashtra, AIR 1977 SC 1825, etc., In recent decisions the Supreme Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by nonimplementation of the Directive Principles, vide Comptroller and Auditor General of India Vs. Jagannathan, AIR 1987 SC 537 (paragraphs 20-21), Mukesh Advani Vs. State of M.P., AIR 1985 SC 1363, Bandhua Mukti Morcha Vs. Union of India, AIR 1984 SC 802, Animal and Environment Legal Defence Fund Vs. Union of India, (1997) 3 SCC 549, etc.

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

13.....

14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondents 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated."

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

"13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to

the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years. "

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

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

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

"18. Considering the fact that we have adopted wet land conservation policy which takes note of the environmental value and functions of wet lands and the fact that they deserve to be protected, the State may take steps to protect all water bodies and not only tanks. In L.Krishnan's case - AIR 2005 Madras 311, this Court has referred to the judgment of the Supreme Court in AIR 2001 SC 3215, where the maintenance of ecological balance has been highlighted and this Court has also specifically indicated that it is imperative to see that water storage resources such as tanks, odais, oranis, canals are not obliterated by

encroachers. Right to water is a part of life and, therefore, as observed by the Supreme Court in Hinch Lal Tiwari v. Kamal Devi and others - AIR 2001 SC 3215, demands of economic development must be made without compromising the natural resources of the earth which this generation holds in trust for future generation. The order of inter-generational equity has to be remembered and in fact in the Rio Declaration, to which India is a party, it has been affirmed that environmental protection constitutes an integral part of sustainable development and cannot be isolated from it."

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

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

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

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

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

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not

more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

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

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

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

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

"The Administrative Department of the Government is directed to identify the officials concerned as to the continued laxity and exhibition of callousness and apathy in performing / discharging their official duties and neglect in protecting the assets of the Government and initiate appropriate Departmental and Criminal action and also file a Status Report."

17.From the said judgments delivered based on the legal principles settled by the Hon'ble Apex Court of

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

18. This Court is able to find that the Sub-Collector, Ariyalur, who passed the impugned order alone has realized the fact and rejected the claim of the writ petitioner. Thus, the actions are to be initiated against all the officials, except the Sub-Collector, Ariyalur, who passed the impugned order in this writ petition.

19. Considering the arguments as advanced by the learned counsel for the writ petitioner as well as the learned Special Government Pleader, this Court has to consider, whether it is right on the part of the writ petitioner to encroach the Government Poramboke land and thereafter, write a letter, seeking permission to lay Railway Tracks. Whether the writ petitioner is right in continuing the industrial establishment by encroaching the Government land without even obtaining permission from the Government. This apart, the subsequent proposal to provide an alternate land for

exchange is also not made clear by the writ petitioner. Contrarily, the respondents stated that the proposed alternate land suggested by the writ petitioner also belongs to the Government and it is not the land belongs to the writ petitioner. Under these circumstances, this Court has to examine whether the writ petitioner has shown their highhandedness in respect of encroaching the Government land with the hope that the Government will not raise any objection. This Court has to further examine that whether the public servants/respondents have acted prudently and diligently in maintaining the public lands meant for the welfare of the public at large. The Possibility of collusion and corrupt activities of the Government officials are also to be examined in such nature of cases, where the petitioner like corporate sector has encroached the public lands and laid Railway Tracks by digging the water body for about 30 ft. and utilizing the same for commercial purposes, thereby depriving the people of that locality to utilize the water bodies and the public pathway. All these questions are to be addressed in such nature of cases.

20. Admittedly, the writ petitioner has encroached the land belongs to the Government. In paragraph 7 of the affidavit filed in support of the writ petition categorically states that "9.55 K.M railway path identified by the petitioner company included lands under the Government Poramboke measuring a total extent of nearly 9.12 acres". The petitioner made an application dated 05.05.2009, bearing No.549 with the 1st respondent to utilize the specified Government Poramboke land, thereby agreeing to pay the prescribed fee, if any, to the Government, of which, a copy was also sent to the 3rd and 4th respondents. Thus, it is unambiguous that the writ petitioner has encroached the land belongs to the Government without any authority. It is an admitted fact and therefore, factual presumption is to be drawn that the petitioner has usurped the powers of the State with an understanding that nobody can raise any objection in respect of such encroachments. Otherwise also, they are under the impression that no person in the Village can raise any objection in view of their strength and they are confident that they can get such permission even after encroachment. Such an attitude of the writ petitioner can never be tolerated. If the Corporate Sectors started encroaching the public lands with the fond hope that they can violate the rule of law and get permission from the Government in their own way, then

the Courts cannot witness the same as mute spectator. Such an attitude of the writ petitioner is certainly unwarranted and is to be deprecated.

21. The frequent internal correspondences between the respondents are clear that they wanted to assist the writ petitioner on extraneous considerations. On a perusal of the internal communication between the respondents 3, 4, 5, 6 & 7, this Court is of a strong opinion that there is a possibility of collusion in order to help the writ petitioner one way or other. This Court cannot have any objection to help for the development of an Industry. In fact, this Court has to positively look into the industrial advancements and developments in our great Nation. However, considering the process of developing the industries and corporates, the persons, who all are desiring to commence such industrial activities, must know that they are bound by the rule of law and the norms fixed and the law in force, must be followed for the commencement of industrial activities. Such industries cannot encroach upon the Government land, which is not only a water body, but also used as a pathway by the Villagers and the people of that locality. Thus, the collusion in this regard by the authorities are also to be investigated by the State Government. There is a possibility of corrupt activities also and the investigating authority must examine all these aspects based on the internal correspondences shared between the respondents for several years and thereby allowing the writ petitioner to enjoy the Government land for about many years. The language used in the internal correspondences are self-explanatory that the authorities have taken steps to ratify the illegality committed by the writ petitioner. It is not an irregularity, but certainly an illegality. The illegality committed by the persons cannot be condoned in a routine manner. The illegalities are to be dealt with in accordance with law. When the authorities came to understand that the writ petitioner has committed an illegality, then they are bound to initiate appropriate action under the provisions of law. Thus, all those officials, who have shared the internal communication in order to help the writ petitioner in an illegal way, must be prosecuted and suitable disciplinary actions are to be initiated by the competent authorities. Once the illegality is found, it is duty mandatory on the part of the public servants to ensure that proper actions are initiated against all such illegalities. Contrarily, they are going on writing letters and

sharing informations, knowing the fact that the Government has not granted any permission or assignment in favour of the writ petitioner. When the Sub Ordinate officials have indulged in such correspondences intentionally and knowing that the Government has not granted permission, there is no reason to approve the conduct and the manner in which they dealt with the matter relating to encroachment of public lands. Thus, the conduct of the Government officials concerned in this regard are certainly reprehensible and suitable actions are certainly warranted.

22. On a perusal of the impugned order, the Sub-Collector has categorically made a finding that the writ petitioners' have encroached the Government land and laid Railway Tracks by digging in the encroached land 30 ft. depth and 60 ft. breadth. The alternate land suggested for exchange is also classified as "Cart Track Poramboke lands". Therefore, the writ petitioner has made an attempt to cheat the Government by providing another Government land as an alternate land for exchange. The attitude of the writ petitioner in this regard deserves all further actions in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905. The Sub-Collector has clearly stated that the land owners Easementary right has been encroached by the writ petitioner company, while forming the Railway Track in the Government Poramboke Lands. It is categorically established by the respondents 8 to 14 that the pattadars could not reach their land for cultivation, and could not carry the agricultural produce as well as the implements thereby affecting their livelihood and found rights on account of the encroachment of the Government land committed by the writ petitioner company. The land encroached was classified as "Vari Poramboke lands", which all are prohibited water bodies by the Hon'ble Supreme Court. Some of the lands are "Pond Poramboke lands" and in the course of forming of Railway Track by digging to the depth of 30 ft, the natural water ways in these lands have been damaged, thereby hindering natural water flow leading to the curtailment of irrigation for agriculture. The lands to which exchange proposal is put forth by the company are "Cart Track Poramboke lands". Thus, on account of the large scale of encroachment of Government lands by the writ petitioner company, the nearby land owners have lost their usual pathway rights. The findings of the District Collector is certainly an alarming factor for this Court. The writ petitioners' have encroached the water bodies and

the Apex Court and this Court has passed number of orders, stating that the water bodies are to be protected in all respects. When there is an encroachment in the water body namely "Vari Poramboke lands", "Pond Poramboke lands", this Court is unable to understand, why the official respondents have not taken any action to remove all such encroachments by following the procedures as contemplated under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The present Sub-Collector, who passed the impugned order has categorically stated that the writ petitioners' have encroached the public lands, which includes water bodies and "Pond Poramboke lands". Such being the factum, why the earlier officials, who had indulged in sharing internal correspondences, have not initiated proper legal action to evict the encroachers in respect of the Government lands, which all are classified as water bodies. In this regard, a detailed investigation and an enquiry is certainly warranted and all the officials, who have acted unbecoming of a public servant are to be prosecuted under the penal provisions as well as under the disciplinary laws.

23. This being the view taken by this Court, there is no infirmity as such in respect of the impugned order passed by the 2nd respondent/The Sub-Collector, Ariyalur, in proceedings dated 10.02.2015 and accordingly, the writ petition is devoid of merits. However, taking note of the internal correspondences between the Government officials and the manner in which the Government lands including the water bodies are systematically allowed to be encroached by the corporates like the petitioner, this Court is inclined to pass the following orders.

(i) The writ petitioner, admittedly, an encroacher of the Government land, has not established even a semblance of right to grant the relief as such sought for in the present writ petition. Accordingly, the claim of the writ petitioner is rejected.

(ii) The respondents 2 and 3 are directed to evict all the encroachments of the "Government Poramboke lands", "Vari Poramboke lands", "Pond Poramboke lands" and all other public lands in that locality within a period of Two Weeks from the date of receipt of a copy of this order.

(iii) The Superintendent of Police, Ariyalur, is directed to provide necessary Police protection to the respondents 2 and 3 to evict the encroachers from the public lands in all respects.

(iv) The first respondent is directed to order for

an enquiry or investigation to be conducted by an I.A.S. level officer in respect of the conduct of the officials of the District Administration and the officials of the Public Works Department in respect of their conduct, negligence, dereliction of duty, corrupt activities, illegalities and to submit a enquiry report within a period of two Months from the date of receipt of a copy of this order.

(v) On receipt of an Investigation/Enquiry report, the first respondent is directed to initiate all appropriate actions against all the public servants and all other persons concerned under the penal provisions of law and under the Discipline and Appeal Rules.

24. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed".

8. The counter-affidavit filed by the respondents states that the writ petitioner has encroached upon 0.40.5 ares of land in Survey No.1395C/3A, classified as 'Wet Assessed Waste (Nanjai Tharisu) Government Poramboke Land (Total extent 11.73.5 Ares) and the writ petitioner has constructed a Compound Wall in respect of the encroached Government land.

9. This being the factum of the case, the District Collector is bound to act swiftly and remove all such encroachments by evicting the encroachers both in the Government lands and in water bodies. In view of the facts and circumstances, the following orders are passed:-

(i) The relief as such sought for in this writ petition stands rejected.

(ii) The District Collector, Kancheepuram District/first respondent is directed to conduct review meetings with the Officials concerned to identify the encroachments in Government lands as well as in the water bodies and water resources, within the jurisdiction of Kancheepuram District, and within a period of two weeks from the date of receipt of a copy of this order.

(iii) The District Collector, Kancheepuram District/first respondent is directed to issue suitable orders/instructions to all the concerned Officials to initiate action to evict all such encroachments in Government lands, water bodies and water resources, within his jurisdiction, by following the procedures contemplated under the Tamil Nadu Land Encroachments Act, 1905 or under the Tamil Nadu Protection of Tank

and Eviction of Encroachment Act, 2007, which ever is applicable.

(iv) In the event of any failure, negligence or dereliction of duty on the part of the Officials concerned, then the District Collector is directed to initiate appropriate prosecution and departmental disciplinary proceedings against all such Officials under the Rules in force.

(v) Suitable circulars or instructions are to be issued to all the Officials concerned to protect the Government lands, Government properties, water bodies and water resources in accordance with law.

(vi) The Superintendent of Police, Kancheepuram District, is directed to provide adequate protection to the Officials for the purpose of initiating actions to evict the encroachers from the Government lands, water bodies and water resources in Kancheepuram District.

10. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed."

14. Thus, this Court is of an opinion that the impugned notice issued under Section 6 of the Tamil Nadu Land Encroachment Act is in accordance with law and there is no infirmity as such. In view of the fact that the learned counsel for the writ petitioner informed that there are many encroachments in that locality, it is necessary to pass the following orders in the present writ petition, in the interest of public at large,-

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The District Collector, Kanyakumari District / 2nd respondent is directed to conduct a Review Meeting with the concerned officials of all the Departments to identify all the encroachments in water bodies, water resources and Government Poramboke lands in Kanyakumari District within his jurisdiction within a period of two weeks from the date of receipt of a copy of this order.

(iii) The District Collector, Kanyakumari District / 2nd respondent is directed to issue suitable orders / instructions / circulars to all the concerned officials to initiate immediate action to evict all such encroachers in Government Poramboke lands, water bodies, water resources within his jurisdiction by following the procedures as contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905 or Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, which ever is applicable.

(iv) In the event of any failure, negligence or dereliction of duty on the part of the officials concerned, then the District Collector, Kanyakumari District is directed to initiate appropriate prosecution and departmental disciplinary proceedings against all such Government officials under the Discipline and Appeal Rules in force. Such a Clause must be incorporated in the circular / instructions to be issued by the District Collector, while directing the officials concerned to identify the encroachments in Public lands, water bodies and water resources for the purpose of eviction. It is made clear that there cannot be any leniency or misplaced sympathy in respect of the actions to be taken against all such inefficient officials and the officials, who are committing an act of dereliction of duty.

(v) Suitable Circulars / instructions to be issued by the District Collector, Kanyakumari District to all the officials concerned to protect the Government Poramboke lands, Government properties, water resources and water bodies in the manner prescribed under law.

(vi) The Superintendent of Police, Kanyakumari District is directed to provide adequate protections to all the officials concerned for the purpose of initiating actions to evict the encroachers from the Government Poramboke lands, water bodies and water resources in Kanyakumari District.

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

Post this matter "for reporting compliance" on 11.03.2019.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pkn

To

1.The Secretary,
State of Tamil Nadu,
Department of Revenue,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kanyakumari District,
Collectorate,
Nagarcoil.

3.The District Revenue Officer,
Midalam,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

4.The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.

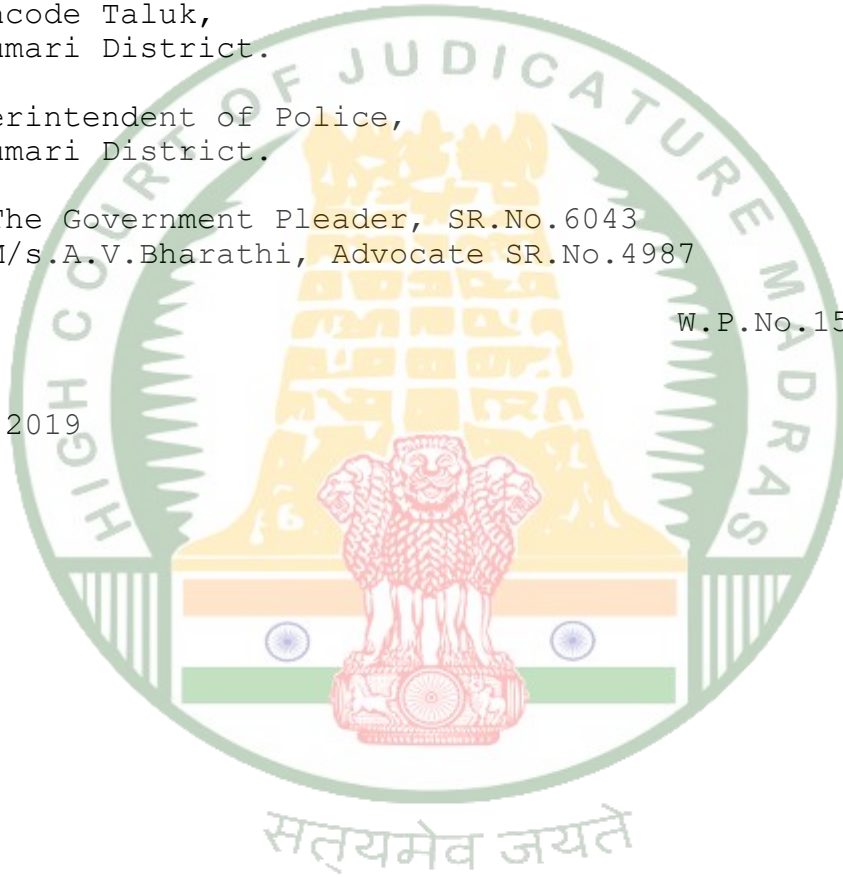
5.The Superintendent of Police,
Kanyakumari District.

+1 cc to The Government Pleader, SR.No.6043

+1 cc to M/s.A.V.Bharathi, Advocate SR.No.4987

W.P.No.15018 of 2004

PPA (CO)
CSL/20.02.2019



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