

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.01.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.20994 & 15243 of 2005

Shree Agarwal Sabha
Rep.by Mr.Mohanlal Sharaf
The Vice President of the Sabha
No.27, Audiappan Naicken Street
Chennai - 600 079.

..Petitioner in both W.ps

vs

1. District Collector
Chennai District.
2. The Tahsildar,
Egmore - Nungambakkam Taluk
Chennai - 600 031

..Respondents in both W.Ps

Prayer in W.P.No.20994 of 2005:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Second respondent in Ref.No.A2 44251/93 dated 31.5.2005 issued by the Second Respondent and quash the same and direct the respondents to confirm the patta issued to the Petitioner on 20.07.2004 in respect of T.S.No.3, block No.2, Naduvakkarai Village to the extent of 0.13.44.0 hectares or 5 grounds and 1010 sq.ft.

Prayer in W.P.No.15243 of 2005:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Second respondent in Ref.No.A2 44251/93 dated 25.02.2005 issued by the Second Respondent and quash the same and direct the respondents to confirm the patta issued to the Petitioner on 20.07.2004 in respect of T.S.No.3, block No.2, Naduvakkarai Village, to the extent of 0.13.44.0 hectares or 5 grounds and 1010 sq.ft.,

For Petitioner : Mr.V.Bhiman
for M/s.Sampath Kumar Associates
(in both W.Ps)

For Respondents : M/s.R.Janaki,
Additional Government Pleader
for R1 & R2 (in both W.Ps)

C O M M O N O R D E R

The Notices issued under Section 6 & 7 of the Tamil Nadu Land Encroachment Act, 1905 by the Tahsildar in proceedings dated 31.05.2005 & 25.02.2005 are under challenge in these writ petitions.

Pleadings of the writ petitioner:-

2.The learned counsel for the petitioner states that the petitioner is a Shree Agarwal Sabha, represented by Mr.Mohanlal Sharaf, which is a registered Sabha under the provisions of the Tamil Nadu Societies Registration Act.

3.It is contended that the donors had purchased the property for a valuable consideration with specified boundaries as ear marked in the documents bonafidely purchased from T.A.S.Rathinam and 12 others. The land in question was originally belongs to one Mr.Jayaram Nadar and his brother Mr.Srinivasa Nadar as a joint family property, who had resided at No.7, Kollalar Street, Tondiarpet, Chennai. Mr.Jayaram Nadar died intestate leaving behind his wife Mrs.Rajammal. The total land owned by Mr.Jayaram Nadar and others approximately to an extent of 13 Acres and 40 Cents, out of which 1/12th undivided share of i.e.3 Acres and 77 cents situated in different Survey Nos.at Naduvankarai Village, Saidapet Taluk, Madras, was partitioned and allotted to Mrs.Rajammal wife of the late Mr.Jayaram Nadar by way of a "FAMILY SETTLEMENT DEED" dated 11.05.1944 and registered as document no.1088 of 1944 at madras - Chenglepet Office. The said property was allotted to the share of T.A.S.Arumugham by way of partition Deed in registered document No.295/1950 and eversince from the date of allotment, the original Vendor alienated the properties and encumbered the properties and enjoying it as their absolute owners of the properties.

4.The property in question comes under Survey No.39 North 34.5 cents and South 24.5 is covered as per the settlement Deed. The said Mrs.J.Rajammal got transferred her properties as per their family settlement and entered into another family settlement with one Mr.Ganasundaram alias Ambiraj, her younger brother in the year of 1950 and transferred 3/4th of her properties by a "DEED OF SETTLEMENT" and registered as Document

No.295 of 1950 on 4th February 1950 in favour Mr.Gnasundaram alias Mr.Ambiraj, and leased her remaining properties to Mr.Gnasundaram.

5.The Affidavit narrates the entire sequence of occurrences and the documents registered, the writ petitioners have made an attempt to establish their title by stating that the property described in the writ petition is a private property. The affidavit further narrates that as per the T.S.Register, T.S.No.2, Block No.3, of Naduvakarai village is classified as "Government Poramboke". However, the petitioner's land is situated at T.S.No.3, Block No.2, which is a patta land. Without considering this aspect, the respondent erroneously assumed that the petitioner's land is a Poramboke and has issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. Against the said notice issued under Section 7, the petitioner filed W.P.No.15243/2005. Without considering the pendency of the writ petition before the Court, the 2nd respondent has issued another notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 on 31.05.2005, which was served to the writ petitioner on 13.06.2005 for eviction.

6.At the outset, the 1st writ petition was filed challenging the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act and the 2nd writ petition in W.P.No.20994 of 2005 is filed, challenging the order of eviction passed under Section 6 of the Tamil Nadu Land Encroachment Act.

7.The grounds raised in the writ petitions are that the petitioners are the absolute owners of the property and holding a valid title. The petitioners claim that the notices were issued erroneously as the land in question is classified as "Circar Poramboke". Thus, the impugned notices are liable to be scrapped.

8.At the outset, the petitioner is of the opinion that the land under the possession and enjoyment is a patta land and the notices under the provisions of the Encroachment Act has been issued erroneously, as if the land in question is a "Circar Poramboke".

Counter Pleadings by the Respondents:-

9.Considering the factual discrepancies raised by the writ petitioner in their affidavit, this Court directed the Tahsildar to file Additional counter affidavit and the actions initiated in respect of the encroachers in that particular location.

10.The Additional counter affidavit filed by the 2nd respondent states that the said Naduvakkarai village involved in

the present case was forming part of Erstwhile Egmore-Nungambakkam Taluk till 11.02.2014. Consequent on the bifurcation / trifurcation of taluk offices in Chennai District, the said village was attached with this Aminjikarai Taluk with effect from 12.02.2014. Accordingly, the Additional Affidavit is filed by the Tahsildar, Aminjikarai Taluk.

11.The Status Report reveals that the land in T.S.3 of Block No.2 of Naduvakkarai village stands classified as "Government Poromboke" "Natham" in the Town Survey Land Records maintained by this office as of now. On perusal of G.O.Ms.No.1007 dated 03.12.1993 shows that the land originally held by Thiru.T.A.S.Chelliah was arrived at as follows:

Total Extent held by Thiru T.A.S.Chelliah	: 13299.144 Sq.metres
Land stood classified as Natham Poromboke	: 1827.394 Sq.metres
Land actually belonged to T.A.S.Chelliah	: 11471.750
Land found eligible for exemption	: 2400.000
Excess Vacant land	: 9371.750 Sq.metres.

12.The said land owned by the said T.A.S.Chelliah was ordered to have been exempted from Urban Land Ceiling in the said G.O.Ms.No.1007 dated 03.12.1993. In the said ,it was found that besides the patta land, the said T.A.S.Chelliah had also encroached upon Government land to a total extent of 1827.394 Sq.metres and ordered to evict the encroachment made by Tvl. T.A.S.Chelliah to a total extent of 1827 Sq.metres comprised in T.S.Nos.3,21 of Block No.2, T.S.Nos.2 and 26 in Block No.3 and T.S.No.1 in Block No.8 of Nduvakkarai village. The land involved in this writ petition is one among the aforesaid lands ordered to be evicted.

13.Out of the said lands, the land in T.S.No.3 of Block No.2 of Naduvakkarai village correlates to Old S.No.39 part is measuring to an extent of 1344 Sq.metres and stands classified as "Circar Poramboke". Gramanatham. Hence, action was initiated to evict the encroachment. In the mean time, Thiru. T.A.S.Chelliah, who was the original encroacher of the said land had sold an extent of 5 grounds and 1010 sq.feet in T.S.No.3 of Block No.2 of Naduvakkarai village in about 12 registered documents to the Writ Petitioner herein on 5th June, 1995. Hence, a notice in Form No.7 of Land Encroachment Act, 1905 was served

on one Thiru.Sathish Chand who was the Manager of the Writ Petitioner herein(who purchased the said land from the original encroacher) on 11.07.1997 on proper acknowledgment. Aggrieved on the said notice, the individual had submitted a representation dated 17.07.1997. Besides this, the individual had filed a writ petition in W.P.No.16682 of 1997 dated 18.06.1997. The said Writ Petition was admitted and stay ordered on 05.11.1997. The said writ petitions was dismissed as withdrawn only on 23.03.2004. Though the Writ Petitioner herein had already withdrawn his W.P.No.16882 of 1997, they got their name entered as occupier of the said land under Remarks column in respect of the land in T.S.No.3 of Block No.2 of Naduvakkarai village in TR/730/04-05. As there was no Government orders to regularize the encroachments on the land classified as "Gramanatham", and to grant patta, the entries were found made fraudulently in remarks column(Not in Adangal column), the Personal Assistant to the District Collector had ordered to remove the entries in his D.O.letter No.A2/44251/93 dated 10.06.2005. In compliance of the order of the then Personal Assistant to the District Collector, the then Tahsildar, Erstwhile Egmore-Nungambakkam Taluk had cancelled the fraudulent entries and also issued notice in form 6 in continuation of the notice in form 7 already issued under Land Encroachment Act, 1905. Aggrieved on the said notice, the Writ Petitioner had filed W.P.No.15243 of 2005 with the aforesaid prayer. Besides this, the Writ Petitioner has also filed W.P.No.20994 of 2005 with a prayer to quash the order of the 2nd Respondent in A2/44251/93 dated 31.05.2005. Necessary Counter in W.P.No.20994 of 2005 had already been filed in the year 2007 itself. Besides this, necessary Draft Counter Affidavit prepared and sent to the Government Pleader for vetting in January 2019. In this connection, it is pertinent to point out that the Hon'ble Judge Justice M.Jayachandren has already held in his order dated 16th November 2009 in Second Appeal No.1484 of 1995 as follows:

"Further, from the decisions cited supra, it is clear that 'Gramanatham' cannot be considered, ipso facto, as Government property. Once it is found that item No.1 of the suit schedule mentioned property is classified as 'Gramanatham', it should be held that it does not belong to the Government. Therefore, there can be no doubt that the defendant cannot invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905. As such, the notice issued by the defendant, under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, is invalid in the eye of law. Hence, there is no necessity to implead the Government as a party to the suit, especially, since the appellants had not filed the suit for declaration of their title, in respect of the

suit property. Consequently, Section 79 of the Act would not be applicable to the present case. In respect of item No.2 of the suit schedule mentioned property, there is no serious contest from the side of the appellants to show that they have prescribed title, by way of adverse possession, as claimed by them."

14. In addition to the counter already submitted, this Additional Counter affidavit after perusing all the connected records.

15. The Town Survey Land Record in respect of T.S.No.3 of Block No.2 of Naduvakkarai village is as follows as of now:

Village	:Naduvakkarai
Block No.	:2
T.S.No.	:3
Classification	:Circar Poramboke
Extent	:Hec.Ares.Sq.metres
Adangal	:Gramanatham
How the holding Is utilized?	: Vacant

16. The said land was originally registered in the names of Tvl.Arumugam, Baburaj, Velu, Chelliah, Gnanasundaram Nadar alias Ambi sons of Ayyvoo Nadar in the occupier column (and not in the owner's column). It was subsequently transferred in the name of Sree Agarwal Sabha in Remarks column of the Town Survey and Land Records (i.e. occupier column). The said illegal and irregular entries were ordered to be removed in Collectors proceedings J3/89075/93 dated 10.06.2005 and Taluk A2/42251/93 dated 16.06.2005. Accordingly, the entries made in favour of Sree Agarwal Sabha were cancelled and original entries restored. Aggrieved on the orders of the District Collector, Chennai, the Writ Petitioner has filed this Writ Petition with the aforesaid prayer.

17. The predecessors in title to the Writ Petitioner were already aware of the stand taken by the Government in G.O.Ms.No.1007 Revenue Department dated 03.12.1993. The Government while considering the request of the predecessors in

title to exempt their lands from urban Land Ceiling had found that the Thiru.T.A.S.Chelliah, besides possessing patta lands, was also possessing Government Poramboke "Gramanatham" land to a total extent of 1827.394 sq.metres. In the said order itself, Government had ordered to evict the encroachment made by the said T.A.S.Chelliah in the Government Lands. Whereas, the predecessors in title to the Writ Petitioner have deliberately sold the Government land to the Writ Petitioners herein with an ulterior motive and vested interest. As the predecessors in title were not at all the owners of the land in T.S.No.3 of Block No.2 of Naduvakkarai village, the sale executed by them becomes null and void.

18.Mere possession of the land will not confer any right or title over the Government land held by them. Moreover, a decision had already been taken by the Government to evict the predecessors in title in G.O.Ms.No.1007 dated 03.12.1993. The land involved in this case stands classified as "Circar Poramboke". There were no orders for regularizing the encroachments on Government lands classified as Gramanatham in the year 1996. The Government had issued one time orders to regularize the encroachments on the lands classified as "Natham" only in the year 2013. The Government had issued the one time order to G.O.Ms.No.192 dated 08.06.2012 and G.O.Ms.No.174 dated 13.06.2013 to regularize the encroachments on the lands stand classified as "Gramanatham" in Chennai District. The said Government order lapsed on 30.09.2013.

19.The names of the petitioners were not entered as owners of the said land in T.S.No.3 of Block No.2 of Naduvakkarai village. The name of the Writ Petitioner was entered only under Remarks column(i.e., occupier column). Moreover, the said patta reported to have been granted in favour of the petitioner was ordered to be cancelled by the District Collector in proceedings issued in J3/89075/93 dated 10.06.2005. In pursuance of the same, the entries made in the writ Petitioner's name in the Occupier's column were cancelled and original entries restored.

20.The Writ Petitioner has proposed to use the said land for commercial purpose. Whereas, as per the Town Survey Land Records, the said land stands classified as "Circar Poramboke" "Natham". It is pertinent to point out that in the Judgement in W.A.No.1248 of 2007 in a case of Zonal officer-V, Corporation of Chennai Vs.K.Narasa Reddy of Kances Construction Private Limited, Chennai, the Honourable Mr.Justice Elipe Dharma Rao and the Honourable Mr.Justice M.Venugopal, it has been held that the Madras High Court had directed the Tamil Nadu Government and the

Revenue officials to strictly protect "Gramanatham" lands from being misused, particularly for commercial purposes. Further, 'Grama Natham' is defined in the Law Lexicon as "ground set apart on which the house of village may be built". Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that is a residential portion of a village; or portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.,

21.The writ petitioner was granted with patta by including his name only in the Occupier column(not under the Owner's column). Moreover, the said patta had already been cancelled by the District Collector in J3/89075/93 dated 10.06.2005, 25.02.2005. In pursuance of the same, the entries made in the Writ petitioner's name in the Occupier's column were cancelled and original entries restored. The land measuring an extent of 1344 Sq.metres and comprised in T.s.No.3 of Block No.2 of Naduvakkarai village stands classified as "Circar Poramboke" Natham. The said land cannot be misused for commercial purpose. Grama Natham is defined in law lexicon as a land upon which houses can be built in a village. The terminology "Grama Natham" was brought into existence in order to stress that the land could be used as house sites where the owner of the land could build houses. This was used to differentiate house sites from Government held land such as Inam land(Gift land), ryotwari land (currently abolished system of assessment where land revenue was imposed directly on the individual cultivators called ryots), Pannai lands and waste lands. Whereas, the Writ petitioner has constructed a "Marriage Hall" on the said land. Besides this, in a portion of the land, a clinic is functioning under the name and style of "Maharaja Agrasen Charitable Clinic". The illegal and irregular transfer of Registry effected in the name of the Writ Petitioner was cancelled by the District Collector as stated supra.

22.The learned Additional Government Pleader appearing on behalf of the respondents states that on account of the interim stay granted by this Court in the present writ petition, the eviction order passed by the Tahsildar under Section 6 of the Tamil Nadu Land Encroachment Act was not executed. However, actions were initiated to vacate the Stay and the counter was filed. When the matters were not listed for long time and therefore, the writ petitioner is continuing in the premises only on account of the interim stay granted by this Court. Eviction order is to be executed and accordingly, the petitioner is liable to be evicted from the "Circar Poramboke" land.

23. On account of the increase of land value in City, few greedy men are tempted to encroach the public properties, water resources and water bodies. 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 virtue of few individuals. On account of their greediness. Encroachment of land occurs on account of the greediness. Courts can never encourage the actions of such greedimen in respect of their encroachment of the public land, water bodies and water resources. It is a growing trend across the State that few greedimen, 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.

24. The actions initiated by the respondents for eviction of encroachment in T.S.No.3 Block No.2 of Naduvakkrai village in Amjikai Taluk has been narrated as follows:

Datewise action taken in the case of eviction of encroachment in T.S.No.3 of Block No.2 of Naduvakkrai village in Aminjikai Taluk		
Sl.No	Date	Event
1	21.12.1988	Petition from T.A.S.Chelliah with a request to exempt the lands held by him from Urban Land Ceiling and Regulation Act.
2	03.12.1993	Government exempted the land held by T.A.S.Chelliah from Urban Land Ceiling and also directed to evict the encroachment from the encroacher and report in G.O.Ms.No.1007, Revenue Department dated 03.12.1993

Datewise action taken in the case of eviction of encroachment in T.S.No.3 of Block No.2 of Naduvakkarai village in Aminjikarai Taluk																							
3	03.12.1993	In his letter No.76100/R2/92-6 dated 03.12.1993 the Secretary to Government had requested the District Collector to state as to whether any action was taken to remove the encroachments made by T.A.S. And his family in the following S.Nos. <table> <thead> <tr> <th>Bl.No</th><th>T.S.No.</th><th>Extent encroached in Sq.metres</th></tr> </thead> <tbody> <tr> <td>2</td><td>3</td><td>280.000</td></tr> <tr> <td>2</td><td>21</td><td>87.812</td></tr> <tr> <td>3</td><td>2</td><td>153.333</td></tr> <tr> <td>8</td><td>1</td><td>1395.879</td></tr> <tr> <td>3</td><td>26</td><td>87.295</td></tr> <tr> <td colspan="2">Total</td><td>----- 2004.319 -----</td></tr> </tbody> </table>	Bl.No	T.S.No.	Extent encroached in Sq.metres	2	3	280.000	2	21	87.812	3	2	153.333	8	1	1395.879	3	26	87.295	Total		----- 2004.319 -----
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Total		----- 2004.319 -----																					
4	05.06.1995	Tvl.T.A.S.Chelliah Vagaiara sold a total extent of 5 grounds and 1010 Sq.feet of land to Tvl.Agarwal Sabha in 12 Registered documents on 05.06.1995																					
5	10.10.1996	Agarwal sabha submitted petition to District Collector with a request to make entries in the TSLR and issue patta in their favour																					
6	21.11.1996	The Tahsildar, Erstwhile Egmore-Nungambakkam letter in A2/44251/93 dated 21.11.1996 had stated that the land involved in this case is measuring 1344 Sq.metres and comprised in Old S.No.39/1 correlates to T.S.No.3 of Block No.2 of Naduvakkarai village and that the Government had ordered in G.O.ms.No.1007 dated 03.12.1993 to evict the encroachments. Hence, the request of Agarwal Sabha was recommended for rejection.																					

Datewise action taken in the case of eviction of encroachment in T.S.No.3 of Block No.2 of Naduvakkarai village in Aminjikarai Taluk		
7	21.11.1996	Out of the total extent of 288 Sq.metres of land had already been acquired under Urban Land Ceiling and Regulation Act and the balance extent of 1056 Sq.metres of land was classified as "Circar Poromboke"
8		Action initiated by the District Collector to alienate the lands in T.S.Nos.3, 21 of Block No.2, T.S.No.2 and 26 of Block No.3 and T.S.No.1 of Block No.8 in favour of TNHB
9	18.06.1997	Notice in Form No.7 was served on the encroacher by the Tahsildar Erstwhile Egmore-Nungambakkam Taluk in A2/44251/93 dated 18.06.1997
10	19.06.1997	Appeal preferred by the Encroacher to the District Collector under Land Encroachment Act, 1905. Taken on file of District Collector in A2/44251/93
11	17.07.1997	Reply received from Agarwal Sabha
12	07.11.1997	Copy of Affidavit in W.P.No.16682/1997 filed by Agarwal Sabha received along with Government Pleader's letter dated 07.11.1997
13	07.06.1999	Brief History and Parawar Remarks in W.P.No.16682/1997 submitted to the District Collector by the Tahsildar in A2/44251/93 dated 07.06.1999
14	29.06.1999	Parawar remarks received at Government Pleader's Office sent in J3/83075/93 dated 26.06.1999
15	23.03.2004	W.P.No.16882 of 1997 dismissed as withdrawn
16	03.08.2004	Transfer Registry purported to have been effected in favour of Agarwal Sabha in TR/730/04-05 dated 03.08.2004
17	10.06.2005	D.O.letter received from the District Collector's office ordering to remove the illegal entries in respect of T.S.No.3 of Block No.2 of Naduvakkarai village made in favour of Agarwal Sabha

Datewise action taken in the case of eviction of encroachment in T.S.No.3 of Block No.2 of Naduvakkarai village in Aminjikarai Taluk		
18	10.06.2005	Order complied and notice in form 6 under Land Encroachment Act, 1905 served on the encroacher
19		Encroacher filed W.P.No.15243 of 2005 and 20994 of 2005
20	05.07.2005	In the order dated 05.07.2005 in W.M.P.Nos.16590 of 2005 and 22903 of 2005, in W.P.Nos.15243 of 2005 and 20994 of 2005, the Hon'ble High Court had granted interim stay.
21		Counter Affidavit filed by the District Collector, Chennai in W.P.No.20994 of 2005
22		Both W.P.Nos.15243 of 2005 and 20994 of 2005 are pending.
23	12.02.2014	Consequent on the bifurcation/trifurcation of Taluk offices in Chennai District, the said Naduvakkarai village was attached with the office of the Tahsildar, Aminjikarai Taluk with effect from 12.02.2014
24	Jan., 2019	The pendency of the cases in W.P.Nos.15243 of 2005 and W.P.No.20994 of 2005 were brought to the notice of this office
25	Jan., 2019	Draft Counter Affidavit prepared and sent to the Government Pleader for vetting

Conclusion:-

25.This Court is of an opinion that encroachment is a social evil and this Court had passed an order in respect of the evil facts of encroachments and infringing the rights of all other citizens in general in W.P.No.33883/2013 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 provide measures for taking unauthorised occupation of land which are the property of the Government. The preamble of the Act provide 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 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 officials 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 set 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*, (1973) 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 (1990).

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 1993 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."

26. Even in several other cases, the District Collector was issued with a direction to remove the encroachments in Government Poramboke lands, water bodies and water resources. The District Collector, Chennai also filed a Status Report in other writ petitions, stating that the actions are initiated in respect of the removal of encroachers from the Government land, water bodies and water resources. When the process of evicting the encroachers are in progress, this Court is of an opinion that the present writ petitions deserve no consideration in respect of the claim. The District Collector, Chennai has initiated swift actions in respect of encroachments within his jurisdiction and the Government orders are also awaited in this regard. Under these circumstances, the writ petitioners are not entitled for any relief as such sought for in the present writ petitions.

27. The writ petitioner by encroaching the Government Land, utilizing the same for commercial purposes for their unlawful enrichment. Therefore, there cannot be any further leniency in this regard for the further continuance of the writ petitioner in respect of the "Circar Poramboke" land. In view of the fact that the writ petitioner is the encroacher and the actions were initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and notices under Section 7 was promptly issued by the competent authority, which was challenged in W.P.No.15243 of 2005 and the subsequent order of eviction issued under Section 6 of the Act was also challenged in W.P.No.20994/2005, this Court has no hesitation in holding that the writ petitioner is liable to be evicted pursuant to the eviction order passed by the competent authority under Section 6

of the Tamil Nadu Land Encroachment Act, 1905.

28. Section 6(2) of the Tamil Nadu Land Encroachment Act, 1905 reads as under:-

"(2) Where any property is sold under sub-section(1), the sale proceeds thereof shall after deducting the expenses of the sale and the amount, if any, due to the Government or the corporate authority on account of arrears of rent or damages or costs be paid to such person or persons as may appear to the estate officer to be entitled to the same:

Provided that where the estate officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the Civil Court of competent jurisdiction and the decision of the Court thereon shall be final."

29. In the present case on hand, Section 7 notice had already been issued and subsequently Section 6 order also has been passed, which is under challenge in the present writ petitions. In view of the fact that the provisions of the Tamil Nadu Land Encroachment Act had already been complied with by the competent authorities longback. This Court is of an opinion that providing further time would not be preferable in the interest of justice and in the interest of the public at large. The writ petitioner being an encroacher, enjoying the public land for the past many years and utilizing the same as commercial premises for the benefit of the petitioner and for unlawful enrichment. Thus, no leniency is to be shown as far as the facts and circumstances of the present writ petition on hand are concerned. Section 6(2) of the Tamil Nadu Land Encroachment Act provides an eviction shall be made in the particular manner. Thus, the respondents are bound to evict the writ petitioners without any loss of time and take possession of the properties and utilize the same for the welfare of the public.

30. This being the factum of the case, the respondents are directed to evict the petitioner within a period of 15 days from the date of receipt of a copy of this order and take possession of the Government property and utilize the same for the welfare of the public by implementing such suitable public schemes in the premises. The Commissioner of Police, Greater Chennai Corporation is directed to provide adequate Police Protection to the respondents for eviction of the writ petitioners from the premises.

31. Accordingly, both the writ petitions are devoid of merits and stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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Note: Registry is directed to communicate the copy of this order to the Commissioner of Police, No.132, Commissioner office Building, EVK Sampath Road, Veperiy, Periyamet, Chennai-600 007.

To

1. The District Collector
Chennai District.
2. The Tahsildar,
Egmore - Nungambakkam Taluk
Chennai - 600 031.
3. The Commissioner of Police,
No.132, Commissioner office Building,
EVK Sampath Road, Veperiy, Periyamet,
Chennai - 600 007.
4. The Commissioner of Police,
Greater Chennai Corporation,
Chennai.

+2cc to M/s.Sampath Kumar & Associates, Advocate in sr.no.7444
+2cc to M/s.Sampath Kumar & Associates, Advocate in sr.no.7443
+1cc to Government Pleader in sr.no.7581

W.P.Nos.20994 & 15243 of 2005

PM(CO)
CS/05/02/2019