

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.21204 of 2019

M/s.Ayanambakkam People Welfare Association
Represented by its President
Mrs.T.Jayanthi (36 years)
W/o G.Tikkaraman
No.48, Etteswaran Koil Street
Vaishnavi Nagar
West Ayanambakkam
Chennai - 600 095

...Petitioner

v.

1.The Commissioner
Land Administration
Chepauk, Chennai - 600 005

2.The District Collector
Tiruvallur District

3.M/s.Nova Life Space P. Ltd.
2nd Floor, City Center
Poonamallee High Road
Kilpauk, Chennai - 600 031

...Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing respondents 1 and 2 to retrieve the lands comprised in Survey Nos.658/2, 658/3, 660/1, 661/7, 662/4, 662/5, 663/2, 664/2, 668, 677, 679/3, 681/2 situate at Ayanambakkam Village, Poonamallee Taluk, Thiruvallur District is classified as Canal Poramboke, measuring more than 1 hectare and preserve the natural canal flowing through the said lands.

For Petitioner	: Mr.S.Udhayakumar
For Respondents	: Mr.Akhil Akbar Ali, Govt. Advocate for R1 and R2

ORDER

[Order was delivered by S.MANIKUMAR,J]

M/s.Ayanambakkam People Welfare Association, represented by its President, has sought for a Writ of Mandamus, directing the Commissioner, Land Administration, Chepauk, Chennai-600 005 and the District Collector, Tiruvallur District, namely the respondents 1 and 2, to retrieve the lands comprised in Survey Nos.658/2, 658/3, 660/1, 661/7, 662/4, 662/5, 663/2, 664/2, 668, 677, 679/3, 681/2, situate at Ayanambakkam Village, Poonamalle Taluk, Thiruvallur District classified as Canal Poramboke, measuring more than 1 hectare and preserve the natural canal flowing through the said lands.

2. Short facts leading to the filing of the writ petition are that the petitioner Association is a registered association to protect the welfare of the people in and around Ayanambakkam. It is the contention of the petitioner that vast extent of lands measuring more than 1 hectare in S. Nos. 658/2, 658/3, 660/1, 661/7, 662/4, 662/5, 663/2, 664/2, 668, 677, 679/3, 681/2, situate at Ayanambakkam Village, Poonamalle Taluk, Thiruvallur District is classified as Canal Poramboke. During rainy season, the ponds situated in Ayanambakkam village is fed from water discharged from Ayanambakkam Tank.

3. Rain water flows through the above mentioned survey numbers is a canal to the ponds. The canal is in existence for several centuries and it is a natural course for water to flow. On account of the ponds getting water from Ayanambakkam Tank, the ground water level in the village is maintained and ground water is easily available to the people of the village. The water in the ponds is a good source of water for the people in the village. Further, the cattle in the village drink water from the pond and if the pond is dry, life of cattle will be affected, since the cattle is deprived of drinking water.

4. M/s.Nova Life Space P. Ltd., Chennai, who is doing real estate business and also a flat promoter, has appropriated the lands earmarked as canal poramboke and the said land has been converted into plots. The third respondent is having lands adjoining the canal poramboke lands and the canal poramboke lands which is meant for water conduit is completely closed. As a result, the ponds do not receive water supply from Ayanambakkam Tank. This has affected the water source of the village and ground water table and it has also damaged ecology of the area.

5. More than 2000 people are residing in the village and all are enjoying the pond water for the daily use for several decades. Now the natural course of water has been completely

extinguished on account of formation of a layout by the 3rd respondent. The closure of the canal would also cause flood in the area during heavy rains. The Hon'ble Supreme Court on several occasions has rendered judgments directing the government to preserve water source and its natural course. In spite of representation to the Government Officials, no action has been taken to preserve the water canal and adjoining lands which is classified as poramboke.

6. It is the duty of the government to preserve and safeguard water canal and water tanks as it is a precious and essential requirement for the survival of the people and cattle. It is the further contention of the petitioner that the Association has given a representation dated 7.5.2009 to the Commissioner, Land Administration, Chennai and another representation to the District Collector, Tiruvallur on 6.5.2019, requesting them to take action to preserve the water canal and tank. Till date the respondents have not bothered to instruct the subordinate officials to inspect the place to ascertain the true facts. The flippant attitude of the respondents to such a serious matter affecting the life of the village people and also the village is highly deplorable. In matters of this nature, the officials should act on a war-footing basis, but unfortunately the officials have not shown any interest to take action to restore the ecology and natural feature of the village. The inaction of the officials has emboldened the 3rd respondent to appropriate the valuable government property and thereby cause damage to the natural features. If timely action is not taken to preserve the nature to its pristine form all the people in the village will be badly affected and suffer from severe water problem. The people in the village are depending on water from well and bore-well. There is no water supply from the Panchayat. It is the further contention of the petitioner that on behalf of the village the petitioner has filed the instant writ petition as last bastion of hope to preserve the natural water course.

7. When the matter came up for admission on 23.7.2019, Mr.Akhil Akbar Ali, learned Government Advocate, took notice on behalf of the Commissioner, Land Administration, Chennai and the District Collector, Tiruvallur, namely the respondents 1 and 2.

8. In response to the same, the Commissioner, Land Administration, Chennai, namely the second respondent, has filed a status report, which reads thus:

It is submitted that the lands shown in the averments are government poramboke lands as narrated hereunder:

S.No.	Extent	Classification
658/2	0.02.5	Vayakal - Canal
658/3	0.01.5	Vayakal - Canal
660/1	0.28.5	Vayakal - Canal
661/7	0.08.5	Vayakal - Canal
662/4	0.08.0	Vayakal - Canal
662/5	0.00.5	Vayakal - Canal
663/2	0.06.5	Vayakal - Canal
664/2	0.14.0	Government Poramboke
668	0.14.5	Vayakal - Canal
677	0.18.5	Vayakal - Canal
679/3	0.01.0	Vayakal - Canal
681/2	0.01.0	Vayakal - Canal

From the above details, it could be seen that except the land in S. No.664/2, the remaining lands are classified as Channel Poramboke as per revenue accounts. These lands are vested with the Public Works Department and they are maintaining the channel . Public works Department is having the control over the above Poramboke lands and they are the competent authorities to evict the encroachments if any in these lands as per the provisions contained in sub. section (2) of section 7 of Tamilnadu protection of Tanks and Eviction of Encroachment Act 2007 (Act 8 of 2007). Hence the Public Works Department has to be impleaded as respondent.

The channel is completely silted and there are no symptoms of water flowing through the channel and feeding the ponds as contended.

It is submitted that the adjacent lands on both sides of channel in S.No.661/8, 662/4 are patta lands owned by 3rd Respondent. He has developed the layout and converted the Agricultural lands into house plots. He has raised a compound wall for the entire lands owned by him and closed the channel on both ends. The Tahsildar Poonamallee has been directed to inspect the lands and take immediate appropriate action to remove the compound wall which is an obstruction to free flow of water. Accordingly the Tahsildar Poonamallee inspected the spot on 30.07.2019 along with survey and Revenue officials and took measurements. The boundary of channel has been

correctly measured and found that a portion of compound wall is constructed across the channel on both sides. Then the Tahsildar has immediately demolished the wall and made the channel fit for free flow of water.

It is submitted that the channel is completely silted and no water is flown through the channel to the ponds as contended. Hence the averments are not true. The channel is vested with Public Works Department and they have been directed to take follow up action to remove the silt.

It is submitted that, though the Public Works Department authorities are bound to carry out eviction, the Tahsildar has immediately taken action and demolished the compound wall on both sides and ensured free flow of water in view of urgency. The Public Works Department authorities have been directed to restore the channel on entire stretch by removing the silt and also to evict the encroachments. In this connection it is further submitted that the Public Works Department authorities are taking appropriate action to carry out eviction of Encroachments on River bed lands and Tank Poramboke lands in obedience to the Hon'ble Supreme Court and Hon'ble High Court orders so as to preserve water bodies.

It is submitted that the government is taking effective steps to preserve and safeguard the water body Poramboke lands in view of public interest. The alleged encroachment by 3rd respondent has been removed.

It is submitted that the petitioner has reported that he has filed a representation on 06.05.2019 to the 2nd respondent. Since parliamentary elections were being held at that juncture, the revenue and other departments staffs were engaged in this regard. Nevertheless the Tahsildar, Poonamallee has been informed to take immediate action. The land has been measured and it is found only the lands in S.No.661/8 and 662/4 are located within the premises of the lands owned by the 3rd respondent and not the other lands as contended. The other lands are located outside the Premises of lands owned by 3rd respondent. It is found that the 3rd respondent has constructed a compound wall for the entire lands owned by him and the compound wall constructed obstruct the flow of water in the channel poramboke in S.No.662/4 and 661/8. Therefore the Tahsildar has demolished the compound wall on both sides and

obstruction cleared.

It is submitted that the lands shown in the affidavit have been demarcated. The following is the status on ground.

Sl.No	S.No.	Extent	Existing Condition	Action Taken
1	658/2	0.02.5	Thorny Bushes	-
2	658/3	0.01.5	Thorny Bushes	-
3	660/1	0.28.5	Building	PWD has been directed to take action to remove the building
4	661/7	0.08.5	No Encroachment	-
5	662/4	0.08.0	Compound wall by 3rd respondent	Demolished
6	661/8	0.00.5	Compound wall by 3rd respondent	Demolished
7	663/2	0.06.5	Thorny Bushes	-
8	662/5	0.00.5	Thorny Bushes	-
9	668	0.14.5	Compound Wall	PWD has been directed to take action to remove the encroachment
10	677	0.18.5	Encroached by VGN Road, Park	PWD has been directed to take action to remove the encroachment
11	679/3	0.01.0	No Encroachment	-
12	681/2	0.01.0	No Encroachment	-

The Encroachments by 3rd Respondents have been removed. In respect of other encroachments the PWD has been directed to evict the encroachments. I shall watch and see that encroachments are evicted after following due process of law.

9. the District Collector, Tiruvallur, namely the second respondent, vide R.C. No.15788/2019/N1 dated 5.8.2019, has sent a letter to the Junior Executive Engineer (PWD), WRO, Adyar Basin, Chennai - 6 with a copy to Tahsildar, Poonamallee, directing him to remove all the encroachments comprised in S.

Nos.658/2, 658/3, 660/1, 661/7, 662/4, 662/5, 663/2, 664/2, 668, 677, 679/3 and 681/2 of Vanagaram Village, Poonamallee Taluk, based on Forms 1 and 2 issued by Tahsildar, Poonamallee as per the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and send Action Taken Report immediately to the District Collector, Tiruvallur. For brevity, the said letter reads thus:

From	To
The District Collector, Engineer Tiruvallur. Basin,	The Junior Executive (PWD), WRO, Adayar

Chennai - 16.

RC.No. 15788 /2019/N1. Date: 05.08.2019

Sir,

Sub: Court Case - WP.No.21204 of 2019 - filed by
M/s.Ayanambakkam People Welfare
Association - High Court-Reg.

Ref: 1. WP.No.21204 / 2019 , filed by
M/s.Ayanambakkam People Welfare
Association Rep.by its President
Mrs.T.Jayanthi.
2. Tahsildar, Poonamallee, Rc.No. 1578 /
2019/B2, Dated:02.08.2019.

The Writ petition in the reference cited has been filed by M/s. Ayanambakkam People Welfare Association with a prayer to remove the encroachments and to retrieve the lands comprised in S.No.658/2, 658/3, 660/1, 661/7, 662/4, 662/5,663/2,664/2,668,677,679/3 and 681/2 which is classified as water channel poramboke.

In the reference 2nd cited the Tahsildar, Poonamallee had issued Form 1 and 2 to PWD Adayar Basin, Chennai - 16 to remove encroachments in the above said lands.

Hence, in order to comply the order of High Court, it is directed to remove all the encroachments comprised in S.No. 658/2, 658/3, 660/1, 661/7, 662/4, 662/5,663/2,664/2,668,677,679/3 and 681/2 of Vanagaram Village, Poonamallee Taluk, based on form 1 and 2 issued by Tahsildar, Poonamallee as per the Provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007 (Act 8 of 2007), and send the action taken Report immediately to this office . This is should

be treated as most urgent for comply the order of High Court of Madras.

For District Collector,
Tirvallur.

Copy to:
Tahsildar, Poonamallee - for follow of action.

10. From the status report of the Commissioner, Land Administration, Chennai and the communication of the District Collector, Tiruvallur, addressed to the Junior Executive Engineer, (PWD) WRO, Adyar Basin, Chennai - 16, we could find that the respondents have acted on the representation of the petitioner association and the Public Works Department has been directed to take action to remove encroachment, wherever encroachments are there. Insofar as S. Nos.660/1, 668 and 677, PWD has been directed to take action to remove the encroachment. Insofar as S. Nos.658/2, 658/3, 663/2 and 662/5, the lands are surrounded with thorny bushes. Insofar as S. Nos.662/4 and 661/8, compound wall constructed by the third respondent has been demolished. Insofar as S. Nos.661/7, 679/3 and 681/2, there is no encroachment.

Recording the above, writ petition is disposed of. However, there shall be no order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner
Land Administration
Chepauk, Chennai - 600 005

2.The District Collector
Tiruvallur District.

+1 cc to M/s.R.Udhayakumar,Advocate Sr.No. 67951
+1 cc to The Government Pleader Sr.No.68057

AKM/24.09.19/8P-5C /

Writ Petition No.21204 of 2019