

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

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

W.P.No.30914 of 2018

P.Arulnathan

.. Petitioner

Vs.

1. The Collector,
Salem, Salem District.
2. The Special Officer/Executive Officer,
Nangavalli Town Panchayat,
No.54, West Ratha Street,
Nangavalli, Mettur Taluk,
Salem District, Pin: 636 454.
3. The Special Officer/Executive Officer,
Vanavasi Town Panchayat,
D.No.60/12-1, D.Vanavasi Devankar Street,
Vanavasi Post, Mettur Taluk,
Salem District, Pin: 636 457.
4. The Executive Engineer,
Public Works Department (PWD),
Water Resources Organisation (WRO)
Ground Water Division,
Salem - 636007.

.. Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents to restore the actual extent of water bodies which were in existence in Old S.Nos.123/7 and 139 of Nagavalli Village and in Old S.No.168 of Vanavasi Village, Mettur Taluk, Salem District.

For Petitioner : Mr.J.Lakshmi Narayanan

For Respondents : Mr.Akhil Akbarali
Government Advocate

O R D E R

(Order of this Court was made by SUBRAMONIUM PRASAD, J.)

The writ petitioner who claims to be a resident of Nangavalli Post, Mettur Taluk, Salem District, has filed the instant writ petition for a Mandamus, directing the respondents, to restore the actual extent of water bodies which were in existence in Old S.Nos.123/7 and 139 of Nagavalli Village and in Old S.No.168 of Vanavasi Village, Mettur Taluk, Salem District.

2. According to the petitioner, portion of S.No.272/25 (0.2580.0 sq meters) in Nangavalli Village, is a Kuttai, S.No.300/2 (0.0085.0 sq. meters), is a Eri and S.No.305/2 (0.0706.0 sq. meters) is similarly, a water body which was in existence in Old S.No.139, Nangavalli Post, Mettur Taluk, Salem District.

3. The petitioner submitted that in respect of Vanavasi Village, water bodies in Old S.No.168 was divided into several sub divisions bearing New S.No.391 with 30 sub divisions and only one sub division bearing S.No.391/14, measuring to an extent of 0.1701.0 sq meters, which was earmarked as Eri and according to the petitioner all the water bodies, have been converted into Natham lands.

4. Petitioner would submit that the water bodies in Nangavalli and Vanavasi Villages, have been completely destroyed and have been exploited. He would submit that the water bodies have been encroached upon by the people.

5. This Court issued notice to the respondents.

6. The respondents have categorically denied, that the above survey numbers are water bodies or i.e. Kuttai or Eries.

7. According to the respondents, the villages are dry land villages. Paragraph Nos.2 to 8 of the counter affidavit, are as under:-

2. It is submitted that, the village Nangavalli in Mettur Taluk is a Ryotwari Village and not an Estate Village. The initial survey of this village under the Ryotwari Settlement enactments was introduced in the year 1962 and updating registry survey and Natham Settlement surveys were held in the year 1984 and 1992 respectively. According to the resurvey 1962, the entries relating to the alleged lands in 123-7, 168 and 139 are recorded as follows in the

original Fair Adangal, Parent register of A Register.

S.No.123/7 (Old No.350/1A)		Govt. Poramboke	48.37 acre	Village site
S.No.168/1 (Old No.350/1A)		Govt. Poramboke	27.51 acre	Village site
S.No.168/2 (Old No.350/1A)		Govt. Poramboke	0.47 acre	Road
S.No.168/3 (Old No.350/1A)		Govt. Poramboke	1.27 acre	Village site
S.No.168/4 (Old No.351/1A)		Govt. Poramboke	0.50 acre	Elementary school
S.No.168/5 (Old No.350/1A)		Govt. Poramboke	0.12 acre	Village site
S.No.139/1 (Old No.101)		Govt. Poramboke	2.27 acre	Village site
S.No.139/2 (Old No.350/1A)		Ryotwari dry	2.00 acre	Pattaland of Panchayat Board
S.No.138/2 (Old No.350/1A0)		Ryotwari dry	2.00 acre	Pattaland of Panchayat Board

3. It is humbly submitted none of the lands alleged herein were registered as Tank or water bodies. A copy of the village map prepared in the year of 1931 also report the said averment. According to the 1931 year map, the same numbers of survey are available and this was adopted in 1934-1962 settlement. There was water storage details of Kuttai or Pond in two areas within the village sites at S.No.123/7 as "Nangavalli eri" and another storage of water details with in S.No.168 as Vanavasi eri. There was no such detail marking available in S.No.139/1. In all these 3 fields besides water storage details marking, there are habitations land markings in several area's in the fields in S.No.123/7, 168 and 139/1 and there was no details of feeder channel marked in the 1931 year map about the inflow and outflow of water of the water storage area. Therefore it is submitted that there is no channel for augment of water to feed in and outflows in the year 1931 itself and it is only low lying rainfed water stagnating area used then for cattle feeds in the past.

4. In the Natham settlement 1992, the authority concerned has regularized the habitations of the occupant of each one in accordance with the rules framed under the Natham settlement envisaged in the Revenue Standing Order 21 and no water bodies were converted as alleged by the writ petitioner into village site, so as to give House site patta's in the past.

It is most humbly submitted with reference to the averments contained in para 1 to 3 are the personal information of this writ petitioner and he has to prove his own averments.

5. It is submitted that with reference to the averments contains in para 4 of this affidavit, that the lands in S.No.123/7, 139 and 168 of Nangavalli are water bodies are denied. The classification of the alleged lands prior to 1962 year settlement are only village sites. This is a dry land village and no wet lands registered sources. The water stagnating area in the village site was either used by human habitations and cattle feeding and there was no irrigation from this water storage in this Kuttai and no ayacut of lands registered under it. It is submitted that in this village there was no tank as alleged by the writ petitioner and therefore these averments does not support his case that the lands are water bodies.

6. It is humbly submitted with reference to the averments contained in para 5 of this affidavit that the introduction of Natham settlement as per others of the government in Go.Ms.No.197 Rev. Dept. Date 14.10.1988 is for the uplift of the occupier in the village site by regularizing their occupation as per law is a reasonable cause and policy decision of the government. All other averments with regard to the notations and splitting of lands with reference to their possession in the natham settlement are lawful activities and maintained for the purpose of the scheme. Therefore once the alleged lands are not water bodies, such vague averments do not support the case of this petitioner.

7. It is humbly submitted with reference to the averments contained in para 6 of the affidavit are denied. The averment that both the two panchayats are mismanaging the water body areas are false, since there was no ayacut area in the Nangavalli village, and the pipe line now averred

by this writ petition are laid by the panchayat to supply drinking water from the river Cauvery and water storage in the over head tank located in S.No.139/1 on nangavalli village and this has nothing to do with the village sites in the Survey numbers mentioned by the petitioner as Water Bodies. The Vanavasi is the hamlet of Nangavalli village. It is submitted that the water in this land is being maintained by the concerned local bodies. With regard to the averment that the petitioner is being put to great hardship and difficulty since agriculture is the only source of his livelihood, it is submitted that according to the petitioner he owns an extent of 1.38.0 hec. of agriculture lands in S.No.15/2, which is 500 meter away from the village site S.No.123/7 on the south. The petitioner land is not classified as wet land as there will not be any water supply to this land from his land and no water charges are levied upon the land.

8. It is submitted that the writ petitioner has not produced any evidence of revenue records or Panchayat records to establish these alleged lands are water bodies. The writ petition has not proved that the lands are water bodies and conversion of the existing village in to ryotwari manai in the Natham settlement violates the constitutional rights of the petitioner. All the citations and incidents referred there in are not related to this case and it does not support the prayer of the petitioner. In the light of the fact that the land holds water, the 1st respondent/collector is considering all options, especially to maintain the said area as a water holding area for the future."

8. Heard the learned counsel for the parties.

9. Other than bald averments, that these survey numbers are Kuttai and Eries, (water bodies), no documents have been produced by the petitioner, to substantiate his contention. The only document filed by the petitioner, is a patta in respect of his lands, showing his possession over his land and adangal in respect of his lands, showing of crops in his lands.

10. The petitioner has not chosen to produce any document that S.Nos.123/7, 139 and 168 of Nangavalli and Vanavasi Villages respectively, which he claims to be water body, is actually a water body.

11. It is trite law that the initial onus is always on the petitioner to establish this averments made by him and he has to produce document to substantiate his case. The Court cannot accept ipse dixit of the public interest litigant, and start a roving enquiry.

12. If the petitioner could produce the patta or adangal of his land, nothing prevented the petitioner to file document of the lands which he claims, were water bodies that are now converted as house site.

13. The Hon'ble Supreme Court in *Sadananda Halo and Others vs. Momtaz Ali Sheikh and Others*, reported in 2008 (4) SCC 619, has observed as under:-

"It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a non-permitted fact-finding exercise but also went on to rely on the findings of the amicus curiae, or as the case may be, the scrutiny team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a fact-finding commission, that too, more particularly at the instance of those petitioners who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an appellate tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification."

14. It is also worthwhile to note that the Madras High Court, has framed rules under Article 225 of the Constitution of India, to regulate public interest litigations.

15. Writ petition is dismissed as it is bereft of any particulars. No Costs.

16. After dismissal of the writ petition, though Mr.J.Lakshmi Narayanan, learned counsel for the petitioner, sought two days time to produce documents which have been obtained, after filing of the writ petition, we do not accept the said request.

17. Thereafter, the writ petitioner seeks liberty to file fresh writ petition with all supporting materials to substantiate his contention of conversion of water bodies into natham lands.

18. After dismissal of the writ petition, the right of the petitioner, is to file a fresh writ petition with all supporting materials to the pleading as discussed in the foregoing paragraphs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Collector,
Salem, Salem District.
2. The Special Officer/Executive Officer,
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4. The Executive Engineer,
Public Works Department (PWD),
Water Resources Organisation (WRO)
Ground Water Division, Salem - 636007.

+1cc to Mr.J.Lakshmi Narayanan, Advocate, S.R.No.15444
+1cc to the Government Pleader, S.R.No.14916

W.P.No.30914 of 2018

CA (CO)
CS/04/04/2019