



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.12.2018

PRONOUNCED ON : 18.03.2019

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CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P. (MD) Nos.8676 to 8678 & 21179 of 2018

and

W.M.P. (MD) Nos.8138 to 8140 & 19023 to 19025 of 2018

W.P. (MD) Nos.8676 to 8678 of 2018:

Ramu	...	Petitioner in WP(MD) 8676/18
Sarashwathi	...	Petitioner in WP(MD) 8677/18
Krishnan	...	Petitioner in WP(MD) 8678/18

Vs.

1.The District Collector,
Sivagangai District.

2.The Assistant Executive Engineer,
Public Works Department,
Water Recourses Wing, Irrigation No.1,
Thiruppuvanam,
Sivagangai District.

... Respondents in all three petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India seeking a Writ of Mandamus forbearing the respondents from removing the trees in S.No.193/1 situate at Vaviyarenthal Village, Thiruppuvanam Taluk, Sivagangai District, without issuing any notice and without following due process of law.

For Petitioner	:	Mr.J.Anandkumar
For Respondents	:	Mr.V.R.Shanmugathan, Special Government Pleader

W.P. (MD) No.21179 of 2018:

P.M.Vanniya Perumal	...	Petitioner
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Vs.

1.The District Collector,
District Collectorate,
Sivagangai,
Sivagangai District.



2.The Tahsildhar,
Thirupuvanam Taluk,
Sivagangai District.

3.The Public Works Department,
Rep. by the Superintending Engineer,
Irrigation Division,
Sivagangai District.

4.The Junior Engineer,
Public Works Department,
Irrigation Division,
Thirupuvanam Taluk,
Sivagangai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned auction notice in letter No.Ko.(Elam)38/E/.Pol/Thirupuvanam dated 26.09.2018 on the file of the third respondent and quash the same as illegal and consequently direct the respondents 1 & 2 to grant 'Patta' under Revenue Standing Orders - 19B to harvest 374 coconut trees and 2 mango trees standing in S.No.193/1, Vaviyarenthal Village, Thirupuvanam Taluk, Sivagangai District, within a stipulated time limit.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

C O M M O N O R D E R

B. PUGALENDHI, J.,

The Writ Petition in W.P.(MD)No.8676 of 2018 is filed by one Ramu seeking a Writ of Mandamus, forbearing the respondents from removing the trees in S.No.193/1, situate at Vaviyarenthal Village, Thirupuvanam Taluk, Sivagangai District, without following due process of law. According to the writ petitioner, he is owning lands in S.No.194/1, adjacent to S.No.193/1 and his ancestors have cultivated Sugarcane and Coconut trees in the said land for more than 50 years. On 21.12.2017, the Assistant Executive Engineer, Public Works Department / second respondent herein has issued a notice directing the petitioner to remove the encroachment in S.No.193/1. Since the petitioner is in continuous possession, he made an application to the concerned authorities on 22.01.2018, for issuing 2-C patta for his possession and when the same is pending consideration before the Tahsildar, Sivagangai, the second respondent is taking cohesive steps to remove the well grown trees



in his land and therefore, he has come forward with this application.

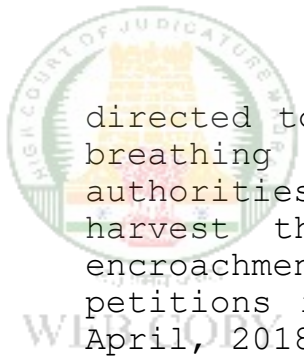
2. For the same set of facts and claiming the same relief, two other persons, namely, Sarashwathi and Krishnan, as petitioners, have filed W.P.(MD)Nos.8677 & 8678 of 2018, respectively.

3. W.P.(MD)No.21179 of 2018 has been filed by one P.M.Vanniya Perumal seeking a Writ of Certiorarified Mandamus to quash the impugned auction notice passed by the third respondent in Letter No.Ko.(Elam)38/E/.Pol/Thiruppuvanam, dated 26.09.2018. According to the petitioner, without issuing any notice, the authorities had come with a JCB for removal of coconut trees in S.No.193/1, situate at Vaviyarenthal Village, Thiruppuvanam Taluk, Sivagangai District and on protest, they returned. Thereafter, the authorities had issued the impugned auction notice for removing the trees, without issuing Forms I to III as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, [hereinafter referred to as "the Act"]. Therefore, the petitioner had approached this Court for quashing the auction notice and for a direction to the authorities to grant Patta under Revenue Standing Orders - 19B to harvest 374 coconut trees and 2 mango trees standing in S.No.193/1, Vaviyarenthal Village, Thiruppuvanam Taluk, Sivagangai District.

4. Since the issue involved in all the writ petitions pertains to encroachment in S.No.193/1, Vaviyarenthal Kanmoi, Thiruppuvanam Taluk, Sivagangai District, all the writ petitions are heard together and are disposed of by way of this common order.

5. A counter affidavit has been filed by the Junior Engineer, Public Works Department, Irrigation Division, Thiruppuvanam Taluk, Sivagangai District / fourth respondent in W.P.(MD)No.21179 of 2018 and a common argument has been advanced on behalf of the respondents.

6. According to the Public Works Department, the land in S.No.193/1 is a water body, classified as "Vaviyarenthal Kanmoi", measuring 50.24.0 Hectares. There were nearly 79 encroachers identified by the Department and action has been taken as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, by issuing Forms I, II & III of the Act on 18.08.2016, 21.09.2016, and 26.10.2016, respectively. As against Form I & Form III of the Act, some of the encroachers of Vaviyarenthal Kanmoi have approached this Court by filing W.P.(MD)Nos.5958 to 5961 of 2017 and this Court, by common order dated 27.07.2017, while directing the authorities to defer the removal of encroachment till 31.12.2017, has dismissed the writ petitions observing that there is no reason to interfere with the orders passed by the Department. Breathing time was granted to the encroachers to remove the encroachments, at least by harvesting the same. The authorities were specifically



directed to completely remove the encroachments, by the end of the breathing time granted by this Court. Subsequent thereto, the authorities have also waited for some time for the encroachers to harvest their crops and issued further notice to remove the encroachments as on 21.12.2017. Only after the same, the writ petitions in W.P.(MD)Nos.8676 to 8678 of 2018 came to be filed in April, 2018.

7. The specific case of the Department with regard to W.P.(MD) No.21179 of 2018 is that one Ramu / petitioner in W.P.(MD)No.8676 of 2018 is the original encroacher in the water body, for which, an eviction notice was issued to him on 26.10.2016 in Form III of the Act and oral instructions as well as tom-tom were taken against the encroachers. The said Ramu is also before this Court, by filing W.P.(MD)No.8676 of 2018, wherein, no interim orders have been granted. But, the nephew of the said Ramu, suppressing these facts, has filed this petition, as if he is the encroacher and no notice was issued to him. Based on the same, an order of status-quo was granted in W.P.(MD)No.21179 of 2018, which was filed in October, 2018, as such, the matters are pending thus.

8. Heard the learned Counsel appearing on either side and perused the documents placed on record.

9. The issue involved is encroachment on a water body. The Hon'ble Supreme Court as well as this Court has passed several orders and directions to the Government in respect of encroachments on water bodies and this Court deems it necessary to refer to the march of decisions rendered in this regard.

10. In ***L.Krishnan v. State of Tamil Nadu and others***, reported in ***2005-3-LW-313***, a Division Bench of this Court has held as follows:

"4. ...We feel it appropriate to pass this order and give certain other directions to the first respondent State Government to make an overall study of all such encroachments in respect of the lands which have been classified as lands meant for the purpose of storage of water (ie., ponds, tanks, lakes etc.). We are of the view that in the present day context, such a step is required to be taken by the State in order to improve the water storage facility prevailing in this State since in many parts of Tamil Nadu people are suffering from an acute shortage of water.

5. Since time immemorial ponds, tanks and lakes have been used by the people of our Country, particularly in rural areas, for collecting rain water for use for various purposes. Such ponds, tanks and lakes have thus been an essential part of the people's natural resources. However in recent years these have been illegally encroached upon in



many places by unscrupulous persons who have made their constructions thereon, or diverted them to other use. This has had an adverse effect on the lives of the people.

6. It is also relevant to state that day in and day out, many such petitions are being filed by way of 'public interest litigation' alleging encroachments into ponds/tanks/lake/odai porambokes etc., in different parts of this State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already ear marked water storage tanks, ponds and lakes, as disclosed in the revenue records to its original status as part of its rain water harvesting scheme."

11. A direction was also issued to 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."

12. This decision rendered in **L.Krishnan v. State of Tamil Nadu** was subsequently approved by the Hon'ble Supreme Court in **Jagpal Singl & others v. State of Punjab & others**, reported in **2011-3-LW-17**, wherein, the Hon'ble Supreme Court has held as follows:

"5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

...

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached



to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years."

13. The Hon'ble Supreme Court, in the aforesaid decision, has also issued the following direction:

"22. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of Gram Sabha / Gram Panchayat / Poramboke / Shamlat land and these must be restored to the Gram Sabha / Gram Panchayat for the common use of villagers of the village. For this purpose, the Chief Secretaries of all State Governments / Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases, e.g., where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes / Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

14. After the decision in **L.Krishnan's** case (cited supra), the State Government has enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, with a view to provide measures for checking encroachments, eviction of encroachments and for the protection of the tanks.

15. The constitutional validity of this Act was challenged in **T.S.Senthil Kumar v. State of Tamil Nadu & others**, reported in **(2010) 3 MLJ 771**, that no opportunity was provided in the Statute to the aggrieved parties. A Division Bench of this Court has discussed the issue in detail and has also relied upon the decision of the Supreme Court in **(2006) 3 MLJ 201 (SC)**, in the case of **Intellectuals Forum v. State of Andhra Pradesh**, wherein it has been held as follows:

"29.The responsibility of the State to protect the environment is now a well accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "state responsibility" for pollution emanating within one's own territories (Chorfu Channel Case, ICJ Reports (1949) 4). This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which



India was a party. The relevant Clause of this Declaration in the present context is paragraph 2, which states:

'The natural resources of the earth, including the air, water, land. Flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.'

16. The Division Bench in **T.S.Senthil Kumar's** case (cited supra), while upholding the Act, had also issued the following directions:

"(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.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under:

(i) When the officer of the Public Works Department publishes the notice in Form-II in the boards of the offices of Village



Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."

17. Even thereafter, a Public Interest Litigation has been filed seeking Patta in water bodies based on G.O.Ms.No.854 dated 30.12.2006, read with G.O.Ms.No.372 dated 26.08.2014. In this regard, a reference was made to a larger Bench and the larger Bench of this Court, in ***T.K.Shanmugam, Secretary, C.P.I. (M) v. State of Tamil Nadu & others***, reported in ***2015-5-LW-397***, has answered the reference as follows:

"45. In the light of the above, we answer the reference on the following terms:- The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations / directions issued in L.Krishnan v. State of Tamil Nadu reported in 2005-3-LW-313 = 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh v. State of Punjab, reported in 2011-3-LW-17 = (2011) 11 SCC 396, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in T.S.Senthil Kumar v. Government of Tamil Nadu, reported in 2010-3-MLJ-771 and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905."

18. Even after repeated orders of the Supreme Court as well as this Court, the encroachments in water bodies were neither curtailed nor removed. In this context, a Division Bench of this Court in W.P. (MD)Nos.21346 of 2015, etc, batch, has taken cognizance of the issue and has held that if no action is taken for restoring the water bodies, all water bodies would disappear, thereby, causing irreparable damage to the public at large and also has called upon the District Collectors of Madurai, Ramanathapuram, Sivagangai, Theni and Dindigul to file their status reports on the action taken



qua removal of the encroachments in the water course. Mr.Veera Kathiravan, learned Senior Counsel was appointed as *Amicus Curiae* to assist the Court in those cases and the matter is sub judice before this Court.

19. Since the present case pertains to Vaviyarenthal Kanmoi, situate at S.No.193/1, Thiruppuvanam Taluk, Sivagangai District and the action for removing the encroachments has been taken pursuant to the orders of this Court in W.P.(MD)Nos.21346/15, 11101 & 24149/17, 11467, 17307, 20884, 20886 & 20927 of 2018, we have also requested the learned *Amicus*, Mr.Veera Kathiravan, to assist this Court in the present writ petitions also and the learned *Amicus* has filed the reports of the District Collector, Sivagangai, which were filed in W.P.(MD)Nos.21346/15, 11101 & 24149/17, 11467, 17307, 20884, 20886 & 20927 of 2018 and this Court has also perused the same.

20. From the report, it could be seen that almost in all the Kanmois, the storage capacity of water is now 20% or less than 20% due to such encroachments. It is further stated therein that unlike any other District, trees have been planted and the encroachers have been allowed to enjoy the same for years together in Sivagangai District. As per the report of the Revenue Divisional Officer, Sivagangai, dated 21.03.2018, in the process of removing the encroachments in Vaviyarenthal Kanmoi, the Tahsildar has submitted a report to the Revenue Divisional Officer that S.No.193/1 to an extent of 50.24.0 Hectare is classified as "Vaviyarenthal Kanmoi" in the village records and the Kanmoi is under the control of the Public Works Department and there are 485 trees (358 big Coconut trees, 6 small Coconut trees & 121 saplings) available in the Kanmoi.

21. When the authorities have issued the notices in Form I & III of the Act, on 18.08.2016 & 26.10.2016, regarding the removal of encroachments in Vaviyarenthal Kanmoi, the same were put under challenge in W.P.(MD)Nos.5958 to 5961 to 2017 by some encroachers and this Court has also issued an ultimatum to the authorities to completely clear the encroachments situate at S.No.193/1, immediately after 31.12.2017. Thereafter, when the authorities took action, the present writ petitions came to be filed, stating that without issuing any notice, they are taking action.

22. With regard to W.P.(MD)Nos.8676 to 8678 of 2018, the petitioners, in their respective affidavits, have admitted that the authority concerned has issued a proceedings dated 21.12.2017, directing them to remove the encroachments by 31.12.2017. In the said proceedings, it has been categorically mentioned that as early as on 16.10.2016, an order for removal of encroachment has been served upon the encroachers, but, in view of the order passed by this Court in W.P.(MD)Nos.5958 to 5961 to 2017, time for removing the encroachment is extended till 31.12.2017.



Therefore, the ground raised by these petitioners that they have been kept under dark lacks merit.

23. Insofar as W.P.(MD)No.21179 of 2018 is concerned, the writ petitioner has not even filed any document in support of his case that he is in occupation of the property. However, he claims that he has cultivated 372 trees in the said land and he is in occupation of the land. But, it is the specific case of the Department that the petitioner in W.P.(MD)No.8676 of 2018 / one Ramu is the encroacher and this petitioner, being the nephew of the said Ramu, who is a third party, has filed this writ petition and successfully obtained an interim order and thereby, stalled the proceedings.

24. On seeing the modus, it appears that though the notices in Form I, II & III of the Act have been issued in the year 2016, the present writ petitions have been filed in a piecemeal manner to thwart the action of the Department by referring to the pendency of the writ petitions. From the records, it could be seen that the notices in Form I to III of the Act have been issued as early as in the year 2016 and as against the same, four encroachers have also filed W.P.(MD)Nos.5958 to 5961 of 2017. These writ petitions have been dismissed with a specific direction, as early as on 27.07.2017. In such circumstances, we cannot presume that there was no notice to these petitioners alone.

25. Though, time and again, specific directions have been given by the Supreme Court as well as this Court, as stated supra, the encroachments in water bodies have not been eradicated in *toto*. The report filed by the District Collector, Sivagangai, in W.P.(MD) Nos.21346 of 2015, 11101 & 24149 of 2017, 11467, 17307, 20884, 20886 & 20927 of 2018, shows that out of the identified 582 encroachments, they have removed 451 encroachments and 131 are yet to be removed. But, a cursory look over the filing of cases would show that for removal of encroachments, on an average, 1300 cases have been filed every year before the Madurai Bench of Madras High Court alone. Therefore, it is crystal clear that on the one hand, when the authorities are attempting to take action against encroachments, new encroachments are mushrooming on the other hand. In fact, in the report of the Revenue Divisional Officer, dated 21.03.2018, itself, it is stated that 121 Coconut saplings are found in the Vaviyarenthal Kanmoi, which means they are newly planted. The action taken by the Government should not only eliminate the existing encroachments, but should also prevent the future ones.

26. In the present cases, the writ petitioners claim that they are cultivating the lands by planting Coconut trees and other crops over a period of 50 years. The classification of the land would be very much known to the Village Administrative Officer (VAO). In terms of the standing orders of the Board of Revenue, the Village Administrative Officer is duty bound to report any encroachment in



any Government land in the village under his jurisdiction. In fact, as per the standing orders of the Board of Revenue, frequent inspection has to be carried out by the revenue authorities. Without their connivance and collusion, the encroachments are not possible.

27. Insofar as W.P.(MD)No.21179 of 2018 is concerned, it is glaring seen that the petitioner, who is not an encroacher, is claiming that he is in occupation of the property and cultivating the same, but has not filed any document to substantiate the same. As a matter of right and pride, he came before this Court as if he is an encroacher and that the Department, without issuing any notice, has taken action and has also obtained an interim order. Such an act on the part of this petitioner has to be deprecated and this writ petition deserves to be dismissed.

28. In fact, for the purpose of cultivation, the encroachers would never allow water to stagnate, as prolonged stagnation of water would damage their crops. They have, therefore, obliterated the water body and thereby, the real nature of the water body is either diminished or altered. Therefore, even after the removal of the encroachments, the storage capacity of these tanks would be reduced considerably. The Government also will be burdened with huge expenses to restore these water bodies, which are public properties.

29. Section 8 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 provides for imposing penalties on the encroachers and the concerned officer has to make a complaint in writing. But, in reality, it appears that the officers are not troubling themselves, by preferring complaints against the encroachers. As per Section 11, *ibid*, the provisions under this Act shall be in addition to and not in derogation of any other law for the time being in force.

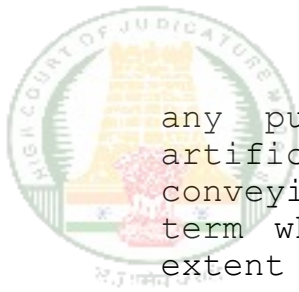
30. If anybody damages any property, including a public property, he is liable to be prosecuted under the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 (for short "TNPPDL Act"). Section 3 of the TNPPDL Act reads thus:

"3.Punishment for committing mischief in respect of public property:

(i) whoever commits mischief by doing any act in respect of any property and thereby causes damage or loss to such property to the amount of one hundred rupees or upwards; or

(ii) commits mischief by doing any act which causes or which he knows to be likely to cause a diminution of the supply of water to the public or to any person for any purpose or an inundation or; or obstruction to, any public drainage, or

(iii) commits mischief by doing any act which renders



any public road, bridge, navigable channel, natural or artificial impassable or less safe for travelling or conveying property; shall be punished with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine;

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Provided that the Court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year."

31. The word "Mischief" has been defined in Section 2(2) of the TNPPDL Act, which is profitably extracted hereunder:

"... The express mention of 'damage' in the Section is indicative of the fact that the purview of the offence of "mischief" is not intended to be confined only to cases of "wrongful loss", but also to engulf within it all such cases of damages by unlawful means. Destruction of any property within the meaning of the Section carries with it the implication that something should be done to the property contrary to its natural use and serviceableness.

...

Explanation 3. Mischief causing "diminution of the supply of water" Ingredients:- The physical requisites of such an act are the doing or any act which causes, or to the doer's knowledge is likely to cause a diminution of supply of water.

It is sufficient that the supply of water available for a particular person or class of persons should be diminished by the act of the accused."

32. Penal provision is also available under Section 430 IPC, which deals with the mischief to diminution of water supply and the same is extracted thus:

"430 - Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."

The expression "diminution of the supply of water for agricultural purposes" in Section 430 IPC cannot be limited to those cases only where the water has been allowed either to go waste or has been diverted for non-agricultural purposes. Any act with the knowledge of the likely consequence of diminution of the supply of water for agricultural purposes or for food or for drinking by human being or by animals can also be made liable under this Section.



33. In the present case, for years together, the encroachers, not only enjoyed the Vaviyarenthal Kanmoi, which is coming under the control of Public Works Department, ie., Government land, but also obliterated the water body. Therefore, the encroachment as well as obliteration as regards water bodies would attract the offence under Sections 425 & 430 of the Indian Penal Code and Section 3 of the TNPPDL Act, besides Section 8 of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act. The Government is incurring huge expenses for restoring the water body to its original state and therefore, in addition to prosecution, damages has to be recovered from the encroachers for the restoration activities.

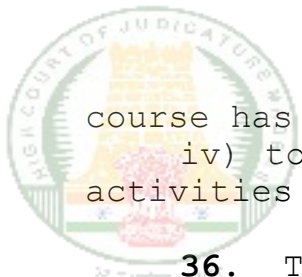
34. The Rulers of those days thought it fit to develop plenty of water bodies for the population prevailed then. But, we are slowly allowing these water bodies to vanish into thin air with the alarming population. Ultimately, people are made to starve and struggle for water. Water is essential not only for the survival of people, but also for the survival of other living beings. The Supreme Court, in **M.K.Balakrishnan v. Union of India**, reported in **(2009) 7 MLJ 184 : (2009) 4 Scale 185**, has held that 'Our ancestors were wise people, who realized that because of droughts or some other reasons, there may be shortage of water in future and hence, they made the provision of a pond near every village, tanks in or near temples, etc., which were the traditional rainwater harvesting methods. The whole idea behind this was that whenever there is a shortage of water due to drought, etc., people may not suffer and they may use the water available in ponds, tanks, etc. Unfortunately, people have forgotten the wisdom of our ancestors and that is why some greedy people for their personal interest and to make money, have filled up most of these ponds, tanks, etc. and have constructed buildings thereon with the result that in most parts of India, there is a terrible water shortage and people are suffering terribly, particularly, in the summer season, both in rural and urban areas. When water is not available, people come to the streets and there are road blocks, riots, etc., to awaken the government authorities to take some measures to make available the necessity of life to the general public called water.'

35. As decided in **T.N.Senthikumar's** case, the State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations. Therefore, the Government must draw a scheme,

i) not only to remove the existing encroachments, but also to prevent the encroachments in future;

ii) to cast certain responsibilities and duties upon the authorities concerned so as to prevent and eliminate the encroachments in water bodies;

iii) to register cases under the Tamil Nadu Property (Prevention of Damage & Loss) Act in cases of encroachments, where the water bodies have been damaged / disturbed and the natural



course has been affected; and

iv) to recover damages from the encroachers for the restoration activities in the water bodies.

36. To sum up, this Court, while recording the valuable assistance rendered by the learned *Amicus Curiae*, dismisses all the writ petitions, by holding that Forms I to III have already been issued to the encroachers in the year 2016 itself and these notices have been challenged before this Court in W.P.(MD)Nos.5958 to 5961 of 2017 and a final order has also been passed on 27.07.2017 with a direction to completely remove the encroachments. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

Gk

To

- 1.The District Collector,
District Collectorate,
Sivagangai,
Sivagangai District.
- 2.The Tahsildhar,
Thirupuvanam Taluk,
Sivagangai District.
- 3.The Public Works Department,
Rep. by the Superintending Engineer,
Irrigation Division,
Sivagangai District.
- 4.The Junior Engineer,
Public Works Department,
Irrigation Division,
Thiruppuvanam Taluk,
Sivagangai District.
- 5.The Assistant Executive Engineer,
Public Works Department,
Water Recourses Wing, Irrigation No.1,
Thiruppuvanam,
Sivagangai District.



7. The Secretary to Government,
Public Works Department,
Government of Tamil Nadu,
Fort St.George, Chennai.

+1.CC. To Mr.T.Lajapathi Roy, Advocate in SR No.55246

Order made in
W.P. (MD) Nos.8676 to 8678 & 21179 of 2018
and
W.M.P. (MD) Nos.8138 to 8140 & 19023 to 19025 of 2018
18.03.2019

MK (20.11.2019) 15P 9C