



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P (MD) No. 20642 of 2019

WEB COPY

- 1.S.Ganesan
- 2.Selvaraj
- 3.Marudhaiya
- 4.Velmurugan
- 5.Pitchaiya
- 6.Senthilkumaran
- 7.Kasamuthu
- 8.Subbulakshmi
- 9.Sudalai
- 10.Navaneethakrishnan
- 11.Murugan
- 12.Mariyappan
- 13.Ayyakutti
- 14.Chellappa

... Petitioners

Vs.

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.

- 2.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.

- 3.The Tahsildar,
Kovilpatti Taluk,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the third respondent to provide Patta in Survey No.187, situated at Nalattin Pudhur, Kovilpatti Taluk, Thoothukudi District based on the petitioners' representation dated 22.07.2019.

For Petitioner : Mr.J.Sivaram

For Respondents : Mr.M.Pandiarajan
Additional Government Pleader



ORDER

Mr.J.Sivaram, learned counsel on record for writ petitioner and Mr.M.Pandiarajan, learned Additional Government Pleader (AGP), who has accepted notice on behalf of all three respondents are before this Court.

2. 14 writ petitioners have joined together and filed the instant writ petition. Subject matter of instant writ petition is writ petitioners seeking patta for Survey No.187 in Nilattin Pudhur Village, Kovilpatti Taluk, Tuticorin District (hereinafter 'said land' for brevity).

3. It is the case of all the writ petitioners that they have put up superstructures and are residing in the said land. It is also submitted that writ petitioners have obtained family ration cards, electricity connection and paid house tax to Kovilpatti Panchayat Union for the superstructures which have erected in said land.

4. The petitioners have sent a representation dated 22.07.2019 to all the three respondents seeking patta and instant writ petition has been filed with a prayer to mandamus the respondents to consider the said representation and issue patta to the writ petitioners. The representation dated 22.07.2019 placed before this Court in the typed set of papers forming part of writ petition is as follows:



1997

— 162 —

S. J. O. Rasmussen, D.M.Sc.

22/5, 9:21 AM, 9/25/2015.

உதாரணம்: ௧) ௨௩ + ௩௪ =

图 1 为图 10-10 的另一种形式, 由图 10-10 可知, 图 1 中

উপস্থাপনা:

1. உயர்தர, மருமகன், தந்தையின் அன்பு, தந்தையின் அன்பு, தந்தையின் அன்பு.
2. உயர்தர, மருமகன், தந்தையின் அன்பு, தந்தையின் அன்பு, தந்தையின் அன்பு.
3. உயர்தர, தந்தையின் அன்பு, தந்தையின் அன்பு, தந்தையின் அன்பு.

SCALE

[illegible]

განმარტებულია და შედის "საქართველოს საგარეო ურთიერთობების განვითარების 2014-2016 წლების გეგმაში".

5160 22/09/2019

1. Selvaraj
2. Loganathan
3. Senthil Kumar
4. Senthil Kumar
5. Loganathan
6. Senthil Kumar
7. Loganathan
8. Senthil Kumar
9. Loganathan
10. Senthil Kumar

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comprised

45. தானியப்பெருக்கி,
கைநிலை உலர்வான்,
கைநிலை உலர்வான்

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6. There is no disputation or disagreement about revenue records placed before this Court.

7. Therefore, the writ petitioners are seeking patta for said land which is a water body qua which steps for removal is in the anvil according to State Counsel.

8. This Court, ie., Honourable Division Benches and a Honourable Full Bench have repeatedly held that plea for regularizing occupation / encroachment in water bodies is clearly impermissible.

9. Leading case in this regard is a Honourable Full Bench order in ***T.K.Shanmugam Vs. The State of Tamil Nadu represented by its Secretary*** reported in **2015(5) LW 397**. In this Full Bench order, after considering various Government Orders and judgments of this Court and after following observations and directions issued by Honourable Supreme Court, it was held 'vide order dated 30.10.2015,' that even tanks do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed.

10. Thereafter, a Honourable Division Bench (First Bench) of this Court, in W.P.No.1295 of 2009, dated 27.11.2015, after referring to the aforementioned Full Bench Order, held that the claim for encroachments qua poromboke lands to be regularized is not legally sustainable and that no relief can be granted qua such a plea. Most relevant paragraphs of this order are paragraph Nos.28 to 30 and the concluding paragraph which read as follows:

'28. That apart, while answering the reference in a Writ Petition filed at the instance of the petitioner herein, viz., T.K. Shanmugam vs. The State of Tamil Nadu [2015 (5) LW 397], the Full Bench of this Court, after considering the various Government Orders and the judgments of this Court and also following the observations and directions issued by the Hon'ble Apex Court, vide order dated 30.10.2015, has held that even 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 Act.

29. It is significant to point out that the Hon'ble Apex Court in a series of judgments, has held that statutory rules cannot be amended by Executive instructions but "if the rules are silent" on any particular point, Government

can fill up the gaps by issuing executive instructions, in



conformity with the existing rules. Having regard to the acute water scarcity recurring 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, to its original status as part of its rain water harvesting scheme, which has already been initiated.

30. This Bench also wants to put it on record that as against the directions issued by this Court from time to time for eviction of the encroachers in the water bodies, which is in the larger interest of the society, no individual has raised his little finger, except the present writ petitioner, Secretary of a Political Party, that too, under the garb of a Public Interest Litigation.

In view of the foregoing discussion and in the light of the answer to the reference rendered by the Full Bench on this issue, we are of the view that the arguments of the petitioner claiming that the encroachments in river poramboke have to be regularized, is legally not sustainable and the relief claimed in this Writ Petition cannot be granted. As such, the Writ Petition fails and the same stands dismissed but without costs.'

11. In the instant case, there is no disputation or disagreement that the writ petitioners numbering 14 are clearly encroachers qua a water body ie., 'Cuzp' in this case and needless to say that such encroachments need to be removed. Therefore, the plea of the writ petitioners seeking patta for said land cannot be entertained.

12. Writ Petition is bereft of merits and the same is dismissed. Considering the nature of the matter, this Court restrains itself from imposing costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

SSL

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.



2.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.

3.The Tahsildar,
Kovilpatti Taluk,
Thoothukudi District.

+1CC TO MR.J.SIVARAM, Advocate Sr. No. 89992

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 89811

W.P(MD)No.20642 of 2019

25.09.2019

SE(CO)

TR(31.10.2019) 7P C