



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P (MD)No.20933 of 2019

K.Arumugam

... Petitioner

vs.

1. The District Collector,
Office of the District Collector,
Madurai.

2. The Thasildar,
Madurai East,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the second respondent to grant housing patta for 8 cents of land to the petitioner in Rajagambeeram Village in Survey No.17/4, Madurai East, Madurai by considering the petitioner's representation, dated 14.06.2019 in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.S.Ramesh Kumar

For Respondents : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

ORDER

Mr.S.Ramesh Kumar, learned counsel on record for writ petitioner and Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, who has accepted notice on behalf of both respondents are before this Court.

2.With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3.Plea of writ petitioner is to direct the second respondent to grant housing patta for 8 cents of land comprised in 'Survey No.17/4, Madurai East, Madurai' (hereinafter 'said land' for



brevity) by considering writ petitioner's representation dated 14.06.2019.

4.A perusal of 14.06.2019 representation of writ petitioner reveals that writ petitioner has sought patta for said land stating that he has put up a house in what even according to writ petitioner, is Government poramboke land.

5.Learned counsel for writ petitioner, at the hearing relying on two newspaper reports at page Nos.36 and 37 of the typedset of papers forming part of the case file, submits that writ petitioner would be entitled to patta as he has put a superstructure and has been living in the said land for more than five years.

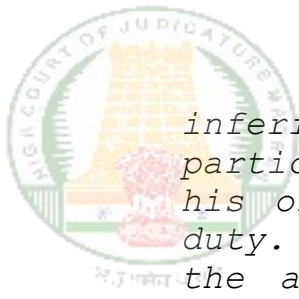
6.This Court carefully considered the case file.

7.Learned State counsel, who has accepted notice on behalf of both respondents, referring to the typedset of papers of writ petitioner (particularly page No.32 of the typed set of paper forming part of the case file), pointed out that the said land ie., Survey No.17/4 has been classified as 'Chinnakulam', besides being classified as 'Chinnakulam' there is also an endorsement which says 'POB' ('Prohibitory Order Book'), the date is shown as 10.11.2009 and the details of the proceedings also have been set out therein. What is of utmost significance is, this is a document which has been placed before this Court by writ petitioner himself as part of writ petitioner's typedset of papers. Adverting to this document, learned State counsel submits that said land is a water body, it has also found entry in Prohibitory Order Book and therefore house site patta cannot be granted as requested by writ petitioner. It was pointed out that writ petitioner is an encroacher qua said Government land.

8.With regard to the paper cuttings at page Nos.36 and 37 of the typedset of papers, this Court cannot rely on paper cuttings in matters of this nature. The law is also well-settled that writ petitioner should be able to show some legal right for seeking a Mandamus. The law was settled in Praga Tools Corporation Vs. Imanuel and others [AIR 1969 SC 1306] and the relevant portion reads as follows:

'6..... It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in

form, a command directed to a person, corporation or an



inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (cf. Halsbury's Laws of England, (3rd ed.) Vol. 11, p. 52 and onwards).

9. Be that as it may, the law regarding pleas to regularise settlement qua water bodies was settled by a Hon'ble Full Bench of this Court in *T.K. Shanmugam Vs. State of Tamil Nadu* [2015 (5) LW 397]. A Hon'ble Division Bench of this Court (following the Full Bench), vide order dated 27.11.2015 made in W.P.No.1295 of 2009 in paragraphs 28 to 30 and the concluding paragraph held 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 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.'

10. In the light of the narrative thus far and more particularly in the light of law that has been settled by a Hon'ble Full Bench of this Court, it emerges clearly from the document placed before this Court by writ petitioner himself as part of case file that writ petitioner has encroached upon a Government water body, put up a superstructure and seeks patta which is impermissible. Therefore, this Court is left with the considered view that instant Writ Petition is bereft of merits and that the same is liable to be dismissed.

11. Resultantly, instant Writ Petition is dismissed. Considering the nature of submissions made, this Court refrains itself from imposing costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The District Collector,
Office of the District Collector,
Madurai.



2. The Thasildar,
Madurai East,
Madurai District.

+1 CC to M/s.DR. R. ALAGUMANI, Advocate (SR-90445[F] dated
30/09/2019)

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-90552[F] dated
30/09/2019)

W.P(MD)No.20933 of 2019
27.09.2019

AE/ (15.10.2019) 5P 5C