



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.03.2020
PRONOUNCED ON : 20.03.2020

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CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.2344 and 3002 of 2020
and
W.M.P(MD)Nos.1993 and 2535 of 2020

W.P(MD)No.2344 of 2020

Nagoor Anifa ... Petitioner
Vs.

- 1.The District Collector,
Theni District.
- 2.The Tahsildar,
Andipatti Taluk,
Theni District.
- 3.The Block Development Officer,
Mayiladumparai Panchayat Union,
Theni District.
- 4.Varusanadu Pagudhi Kanmaai Pasana Vivasayigal Sangam
(Reg.No.247 of 2019),
represented by its President,
Vaigai Nagar, Varusanadu Main Road,
Andipatti Taluk,Theni District. ... Respondents

[R4 impleaded vide Court order
dated 04.03.2020 in W.M.P(MD)
No.3960 of 2020]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents not to cut off 5000 and odd trees and to do deforestation works in Survey No.550 in Mayiladumparai Village, Theni District as of now, if any.

For Petitioner : Mr. Niranjan S.Kumar



For Respondent : Mr.K.Chellapandian,
Nos.1 to 4 Additional Advocate General,
assisted by
Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader

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W.P(MD)No.3002 of 2020

Chinna Thangam ... Petitioner
Vs.

- 1.The District Collector,
Office of the District Collector,
Theni District.
 - 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Periyakulam,Theni District.
 3. The Tahsildar,
Andipatti Taluk, Theni District
 - 4.The Block Development Officer,
Office of the Block Development Officer,
Mayiladumparai Panchayat Union,
Theni District.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents, their men or agents from cutting off trees and from doing deforestation works in Survey No.550 in Mayiladumparai Village, Audipatti Taluk, Theni District.

For Petitioner : Mr. Niranjan S.Kumar,
for Mr.V.Balaji
For Respondent : Mr.K.Chellapandian,
Nos.1 to 3 Additional Advocate General,
assisted by
Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader
For Respondent No.4 : Mr.J.Gunaseelan Muthaiah, GA

COMMON ORDER

(Order of the Court was made by **B.PUGALENDHI, J.**)

Since the issue involved in both these petitions is one and the same, they are disposed of by way of this common order.



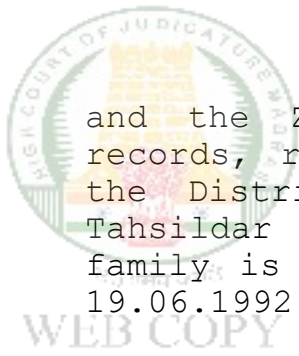
2. These writ petitions are filed as *pro bono publico*, by the residents of Varusanadu village, for issuance of a writ of mandamus, forbearing the official respondents, their men or agents from cutting the trees in survey No.550 in Mayiladumparai Village, Aundipatti Taluk, Theni District.

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3. The concern of the writ petitioners is that the Survey No.550 in Mayiladumparai village in a piece of Poramboke land to the extent of 64 acres, there are around 5000 grown up trees, existing for several decades and those trees are maintaining the ecology of the village. Now, the official respondents are attempting to cut those trees from the said survey number. Opposing the aforesaid deforestation proposal, the petitioners and other villagers approached the respondents, but it evoked no response. Hence, they filed these writ petitions. In support of their claim, they relied on their representations dated 04.02.2020 and 10.02.2020.

4. Taking notice in WP(MD)No.2344 of 2020, the Block Development Officer, Mayiladumparai Panchayat Union, filed a counter affidavit that the Survey No.550 at Varusanadu Village of Mayiladumparai Panchayat Union is classified as a water body poramboke in the revenue records and it is called Varusanadu Panjanthanki Kanmai, to an extent of 25.90.00 hectares. One Gopinath and six others have encroached upon the water body and cultivated trees in the said Kanmai and also in the water catchment area. They also applied for 2C patta, to harvest the fruits from the trees to the Tahsildar, Aundipatti Taluk and he issued 2C patta on 05.12.1996 in favour of one PNS.Gopinath and six others. Since the orders issued by the Tahsildar, Aundipatti in granting 2C Patta contrary to the Government Orders in G.O.No.705 Revenue Department, dated 19.06.1992, without any jurisdiction and also by violation of the Tamil Nadu Panchayat Act, 1994, the District Collector, Theni cancelled the resolution of the Special Officer, Varusanadu dated 03.09.1996 recommending for 2C patta and also issued necessary instructions to the Revenue Divisional Officer Periyakulam to cancel the 2C patta granted by the Thasildar. Accordingly, the Revenue Divisional Officer by his proceedings in ROC No.2476/97, dated 27.09.1997 cancelled that 2C patta issued by the Thasildar without any jurisdiction. Aggrieved over the same, those 2C pattadars filed an appeal before the District Revenue Officer and the District Revenue Officer, by his proceedings ROC.No.50071/2007/Q3, dated 11.08.2011 confirmed the orders of the Revenue Divisional Officer.

5. Aggrieved over that order, the 2C pattadars filed a review before the Commissioner of Land Administration, Chennai and also filed a writ petition in WP.No.25990 of 2011. The said writ petition was disposed of on 11.11.2011 with a direction to the Commissioner of Land Administration to dispose of the review petition within a period of three months. Accordingly, the Commissioner of Land Administration, conducted a detailed enquiry by affording opportunity to the 2C pattadars, the Village Administrative Officer



and the Zonal Deputy Tahsildar and also examined the revenue records, rejected the review petition and confirmed the orders of the District Revenue Officer, holding that the orders of the Tahsildar granting 2C patta for hundreds of members for a single family is irregular, as per G.O.No.705, Revenue Department, dated 19.06.1992.

6.During the said proceedings, the Village Administrative Officer of Mayiladumparai filed a written statement that no 2C patta register was maintained in their village. As against the orders of the Commissioner Land Administration, a writ petition was filed by the 2C pattadars in WP.No.13118 of 2012 and the same was also dismissed with a direction to the revenue officials to remove all the encroachments within a period of six weeks from the date of receipt of a copy of the order and to restore, the Panjanthanki Kanmai. The 2C pattadars also filed a writ appeal as against that order in WA.No.131 of 2020 and the same was disposed of by the First Bench of this Court at Principal Seat at Madras, by order dated 14.02.2020 confirmed the orders of the Commissioner of Land Administration dated 20.03.2012 and dismissed the writ appeal and confirmed the order passed in the said writ petition. However, the Division Bench modified the order dated 19.11.2019 passed in WP.No.13118 of 2012, by expunging the directions contained in paragraph No.6 of the said order.

7.The present two writ petitions are filed on 05.02.2020 and 12.02.2020 respectively that the trees in the water body shall not be removed.

8.Varusanadu Pagudhi Kanmaai Pasana Vivasayigal Sangam, a registered society registered under the Societies Act, filed an impleading petition in WMP(MD)No.3960 of 2020 in WP(MD)No.2344 of 2020 that they are necessary party to these proceedings and these writ petitions have been filed at the instance of the encroachers and the impleading petition was allowed by this Court by order dated 04.03.2020. According to the impleading petitioner, these writ petitions have been filed with a personal oblique motive in order to safeguard the encroachers of the land in survey No.550, which is a water body called Panjanthanki Kanmai. The said Kanmai is the main water source of their area for cultivation, irrigation, drinking and cattle feeding. Further the same is the source for cattle grass feeding in the non monsoon seasons. Due to the above said encroachment, the water catchment area of the said Kanmai is diminishing and the storage capacity of the above said Kanmai is also losing its storage capacity in a rapid manner. Only in order to bypass the order of this Court dated 19.11.2019 passed in W.P.No.13118 of 2012, the present writ petitions have been filed.

9.Heard Mr.Niranjan S.Kumar, learned Counsel for the petitioners, Mr.K.Chellapandian, learned Additional Advocate General
[https://hccs.cse.court.gov.in/hccse/Misc/J.Gunaseelan Muthaiah](https://hccs.cse.court.gov.in/hccse/Misc/J.Gunaseelan%20Muthaiah), appearing for the official



respondents and Mr.R.Shankar Ganesh, learned Counsel appearing for the newly impleaded respondent.

10. According to the petitioners, in the land in Survey No.550 of Mayiladumparai village there are 5000 trees and they play a vital role in maintaining the ecology of the village.

11. A perusal of the records shows that the Survey No.550 in Varusanadu Village Panchayat, Mayiladumparai Panchayat Union is classified as a water body poramboke. Though 2C patta was granted in favour certain persons on 05.12.1996, the same was cancelled on 27.09.1997 by the Revenue Divisional Officer, Periyakulam in ROC.No.2476 of 1997 that the said 2C patta was issued contrary to the rules and regulations. Though several round of litigations took place, the issue reached a finality that the encroachments to be removed.

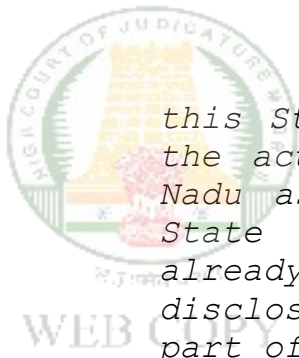
12. The importance of water bodies and the necessity for preserving the same has been discussed elaborately in the following judgments:

(i) 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."

(ii) 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."

(iii) 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."

(iv) 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.

(v) 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.'"

(vi) 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 notice 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."

(vii) 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."

13. Even after repeated orders of the Supreme Court as well as this Court, the encroachments in water bodies were neither curtailed nor removed.

14. The petitioners, claiming to be the Public Interest Litigants, filed these writ petitions for protecting environment, claiming the existence of trees would preserve the water. Both the petitioners have claimed that they are agriculturists, but when the issue was pending for the last 25 years, they have not come forward to file any writ petition. Both the petitioners have sworn that no public interest litigation was filed before this Court for the same relief. The writ petition in WP(MD)No.2344 of 2020 was filed on 05.02.2020 and it came up for admission on 06.02.2020 and the matter was adjourned to 13.02.2020, for getting instructions from the official respondents. Only thereafter, WP(MD)No.3002 of 2020 was filed on 12.02.2020 and the representation in this case was sent on 10.02.2020. It appears that since no interim injunction was granted in WP(MD)No.2344 of 2020, the writ petition in WP(MD)No.3002 of 2020 came to be filed, when the Writ Appeal was about to be taken by the Division Bench at Principal Seat at Madras.



15.A bare reading of both the affidavits filed in support of the petitions, shows that the contents are one and the same. This itself shows that they know the filing of the writ petition for the very same relief. However, made a false undertaking that no other similar writ petition is filed. The timing in which the writ petitions filed would also expose the intention behind the writ petitions.

16.When the respondents have come up with a stand that the land in Survey No.550 at Mayiladumparai is classified as water body and with the particulars of the several round of litigations that have taken place in this connection, the petitioners have not even filed a single document in support of their claim except the representation.

17.Before filing these Public Interest Litigations, the petitioners should have ascertained the reasons for the removal of the trees, from the authorities concerned and should have collected the relevant particulars.

18.The trees were grown up on the water body and were in existence for more than 50 years. 2C Patta was issued in the year 1996 by the Tahsildar without jurisdiction and the said 2C patta was cancelled in the year 1997. The encroachers were successful in dragging the proceedings for more than 23 years and the entire water body was occupied by the members of a single family.

19.In view of the above discussion, we find no public interest in the writ petitions. In the result, the writ petitions are dismissed with a cost of Rs.10,000/- each to the petitioner and the cost shall be paid towards the Hon'ble Chief Justice Relief Fund Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

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Sub Assistant Registrar(CS)

Dsk

To

1.The District Collector,
Theni District.



2.The Tahsildar,
Andipatti Taluk,
Theni District.

3.The Block Development Officer,
Mayiladumparai Panchayat Union,
Theni District.

4. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court, Madurai

+2 CC to M/s.R.SHANKAR GANESH, Advocate SR-12604,10301
+1 CC to M/s.J.GUNASEELAN MUTHIAH, Advocate (SR-12650[F] dated
20/03/2020)
+1 CC to M/s.NIRANJAN.S.KUMAR, Advocate (SR-12706[F] dated
20/03/2020)
+1.CC. To Mr.V.Balaji, Advocate in SR No.12707
+1 CC to SPL.GP (SR-12815, 12816

W.P (MD) Nos.2344 and 3002 of 2020

and

W.M.P (MD) Nos.1993 and 2535 of 2020

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