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W.P(MD)Nos.24297 & 25464 to 25468 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.24297 and 25464 to 25468 of 2018 and
Cont.P(MD)No.338 of 2018

in

W.P(MD)No.24207 of 2016

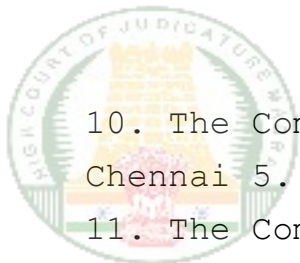
and

WMP(MD)Nos.21991,21992 ,23048 and 23057 of 2018

R.Duraichamy	... Petitioner in W.P(MD)No.24297	of 2018
G.Gnanasekaran	... Petitioner in W.P(MD)No.25464	of 2018
R.Vetriselvi	... Petitioner in W.P(MD)No.25465	of 2018
R.Ramesh Prabhu	... Petitioner in W.P(MD)No.25466	of 2018
S.Muthu Velu	... Petitioner in W.P(MD)No.25467	of 2018
S.Ramasamy	... Petitioner in W.P(MD)No.25468	of 2018

Vs.

1. The Department of Municipal Administration and Watersupply, Rep by its Principal Secretary, Fort St.George, Chennai-9.
2. The District Collector Madurai District
3. The Public Works Department Rep. by its Executive Engineer, Irrigation Section No.Ii, Periyar Vaigai Basin Sub Division No.1, Madurai-2.
4. The Tamil Nadu Slum Clearance Board, , Rep by its Superintending Engineer, 169, K.K.Nagar Main Road, Opp. Jawahar Hospital, Madurai-625 020.
5. The Assistant Engineer, The Public Works Department, Irrigation Section No.II, Periyar Vaigai Basin Sub Division No.1, Madurai-2.
6. The State of Tamil Nadu, Rep by its Secretary to Government, Public Works Department and Water Resources Organization, Fort St. George, Secretariat, Chennai 600 009.
7. The Secretary to Government, Municipal Administration and Water Supply and Sewage Department, Fort St. George, Secretariat, Chennai 600 009.
8. The Secretary to Government, Revenue Department, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai 600 009.
9. The Chief Engineer, Water Resources Organization, Chepauk, Chennai 5.



10. The Commissioner of Revenue Administration, Chepauk, Chennai 5.

11. The Commissioner, Madurai Corporation, Madurai.

12. The Commissioner of Police, Madurai City.

13. The Tahsildar, Madurai North, Madurai.

14. The Revenue Inspector, Madurai North, Madurai.

15. The Assistant Director of Survey,, Madurai.

16. The Chairman Cum Managing Director,, Tamil Nadu Generation and Distribution Corporation Ltd., 10th Floor, NPKRR Maaligai, 144, Anna Salai, Chennai 600 002.

17. The Superintending Engineer (Madurai Metro), Tamil Nadu Generation and Distribution Corporation Ltd., K.Pudur, Madurai-7.
(R6 to R17 are Suo Motu Impleaded Vide Court Order Dated 08/12/2020

... Respondents in all cases

COMMON PRAYER :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Notice dated 28.11.2018 on the file of the Respondent No.5 and quash the same as illegal and consequently forbear the Respondents from evicting the petitioner in survey No.23/24 at Nethaji Road, Bibikulam, Madurai District without following the due process of law.

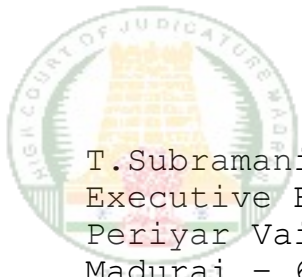
For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.K.Chella Pandian,
Additional Advocate General,
assisted by Mr.Muthu Geethaiyan,
Special Government Pleader
for R1 to R3, R5 to R10 and R12 to R15
Mr.Veerakathiravan,
Senior Advocate, Amicus Curie
Mr.P.Mahendran for Respondent No.4
Mr.R.Murali for Respondent No.11

Cont.P(MD)No.338 of 2018

D.Laxmanan

... Petitioner/Petitioner



Vs

T.Subramanian,
Executive Engineer(PWD),
Periyar Vaigai Pasana Division -II,
Madurai - 625 002.

.... Contemnor/2nd Respondent

PRAYER IN CONT P(MD)No.338 of 2018:Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the contemnor/2nd respondent for the willful disobedience of the order of this Court made in W.P(MD)No.24207 of 2016, dated 10.01.2017.

PRAYER IN WP(MD). 24207 OF 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the respondent to consider the petitioner's representation dated 17.08.2016 in view of G.O.(MS)No.540 dated 04.12.2014 to remove the encroachment in the Government Kanmai Porompoke land comprised in R.S.No.23/24, Nethaji Main Road, Bibikulam, Madurai within a time frame as may be fixed by this Court.

For Petitioner : Mr.A.Balaji

For Respondent: Mr.K.Chellapandian, Additional Advocate General
assisted by Mr.Muthu Geethaiyan,
Special Government Pleader

COMMON ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

The writ petitions have been filed challenging the notices issued by the 5th respondent, under Section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. Since the issue involved in all these petitions is one and the same, they are taken up together for hearing and disposed of by way of this common order.

2.These writ petitions have been filed on the ground that the petitioners are in occupation of the land over a period of 30 years and the area has been declared under Section 3 of the Slum Clearance Areas (Improvement and Clearance) Act. Further they are having Voter ID, Aadhaar Card, Water Connection and Civil Supplies Ration Card in their addresses. They have also sent several representations to the concerned Officials seeking issuance of patta. It is further stated that the people who are in occupation of the land are Daily Wagers and Economically Weaker Sections. The impugned notices are issued without jurisdiction and therefore, the same are to be set aside.

3.In support of these petitions, Mr.Lajapathy Roy, learned Counsel for the petitioners submitted that the petitioners are in occupation of these places for over a period of 30 years and The Tamil Nadu Slum Clearance Board has also declared these areas as Slum Area. He further submitted that if the notices are sustained by dismissing these writ petitions, nearly 1600 family will become homeless and he has also produced some of the photographs showing their poverty.



4.Mr.Veera Kathiravan, learned Senior Counsel [*Amicus Curie* appointed by this Court in W.P(MD)No.20927 of 2018, etc., Batch] has pointed out that these encroachers are wealthy people, who have encroached the lands, made constructions and let it for rent. There is not even single person below the poverty line. The learned Senior Counsel further submitted that if such water bodies are allowed to be encroached in this manner, then there will not be any source of water, for the citizens of Madurai and other living beings. Further it would amount to violation of the orders of the Hon'ble Supreme Court and the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

5.Mr.Muthugeethaiyan, learned Special Government Pleader would submit that there are 519 encroachers and the Public Works Department issued notice as early as in the year 2018, but in view of the pendency of these writ petitions before this Court, no further action has been taken.

6.Mr.Mahendran, learned Counsel appearing for the Tamil Nadu Slum Clearance Board submitted that The Tamil Nadu Slum Clearance Board, vide G.O.Ms.No.741, Revenue (L1) Department, dated 04.05.1990, has permitted the people to enter upon the land, but he has fairly conceded that this areas has not been declared as notified area as per Section 3 of the Slum Clearance Areas (Improvement and Clearance) Act,

7.This Court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

8.The water body in the heart of the city has been occupied by these petitioners and some others in the year 1990. Moreover, an improvement programme was proposed by the World Bank and 10 places were identified for the project Urban agglomerations, viz, Madras, Madurai, Coimbatore, Trichy, Salem, Vellore, Tirunelveli, Erode, Tiruppur and Tuticorin, on about 1250 hectares of private and public lands by providing off-site and on-site infrastructure including stand pipe, water supply, low cost sanitation, paths, etc.,

9.The project management of the Tamil Nadu Slum Clearance Board has proposed a general order in the form of Government Order be issued alienating free of cost, the Government lands where slums have been in existence for several years to the Tamil Nadu Slum Clearance Board for implementation of the World Bank Project.

10.Accordingly, the Government of Tamil Nadu has issued a Government Order in G.O.Ms.No.741, Revenue (L1) Department, dated 04.05.1990, as a general Government Order to alienate those of the unobjectionable long existing slum areas for implementation of the



Project, by the Tamil Nadu Slum Clearance Board.

11. The Empowered Committee under the Chairmanship of the Chief Secretary to Government has stipulated that it must be ensured that the plots are given only to the economically weaker sections of the society. The recommendations of the Empowered Committee was placed before the Government and the Government directed that those Government lands, which were unobjectionable and which do not fall within the banned category of Government lands like water course poramboke, grazing ground poramboke, etc., but which were occupied by slums for the past several years be alienated free of cost of the Tamil Nadu Urban Development Project with the assistance of the World Bank with conditions that the house sites have to be given only to the economically weaker Section persons and the respective District Collectors were requested to permit the Tamil Nadu Slum Clearance Board to enter upon such Government lands for implementation of the said World Bank aided Projects.

12. Based on this Government Order, the Tamil Nadu Slum Clearance Board was permitted to enter upon the water body at Bibikulam and a number of families were permitted to occupy these lands.

13. It would be relevant to refer to Sub-section 1 of Section 3 of the Slum Clearance Areas (Improvement and Clearance) Act, which defines Slum Area and the same is extracted hereunder:

3. Declaration of slum areas: (1) Whether the Government are satisfied that -

(a) any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighbourhood, by reason of the area being low-lying, insanitary, squalid, overcrowded or other wise; or

(b) the building in any area, used or intended to be used for human habitation are -

(i) in any respect, unfit for human habitation; or

(ii) by reason of dilapidation, over-crowding, faulty arrangement and design of such building, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, detrimental to safety, health or morals, they may, by notification, declare such area to be a slum area.

14. It is seen that Bibikulam water body has not been declared as notified area as per the Slum Clearance Areas (Improvement and Clearance) Act. However, the permission to enter upon was granted to the Slum Clearance Board to implement the World Bank Project and accordingly few people were permitted to occupy the water body at Bibikulam.



15.Bibikularm tank is situated in Survey No.23, Sathamangalam, Madurai North Taluk to an extent of 9.48.99, which lies in the heart of the City of Madurai. Taking advantage of the permission granted to enter upon, for particular persons, several other people have also encroached upon the water body and they have put up pucca constructions thereon.

16.The Slum Clearance Board, as per Government Order in G.O.Ms.No.1911/ Revenue (L1) Department, dated 28.08.1990 has permitted 98 families to occupy 3.30 Acres of land in Phase-I and 36 families in Phase -II to an extent of 1.22 Acres and in total 134 families have been permitted to occupy, this water body with the permission to enter upon, granted by the Tamil Nadu Slum Clearance Board to an extent of 4.52 Acres. Though this occupation is said to have been made in between 1990 and 1997, the Government has not issued any subsequent allotment order in favour of those occupants. This in fact, has facilitated others to occupy the entire water body and around 581 encroachments were made in the entire Bibikulam Tank.

17.A Public Interest Litigation has been filed before this Court to remove the encroachments in this water body in W.P(MD) No.2407 of 2016 and this Court by order, dated 10.01.2017, allowed the writ petition with a direction to the second respondent Executive Engineer, Public Works Department, Periyar Vaigai Irrigation Division II, Madurai to remove the encroachments in R.S.No.23/24, Nethaji Main Road, Bibikulam, Madurai within period of two months.

18.Though the Division Bench of this Court has passed an order on 10.01.2017 with a direction to remove the encroachment within two months, no steps were taken by the Public Works Department and steps were taken only after filing of the Contempt Petition in Cont.P(MD)No.338 of 2018.

19.It is seen that the second respondent conducted a detailed survey, identified the encroachments and form III notice was issued to 581 encroachers on 26.11.2018 and as against the said notice, dated 26.11.2018, some of the encroachers have approached this Court in W.P(MD)No.25039 of 2018, wherein this Court by referring the law laid down by this Court in **T.S.Senthilkumar Vs the Government of Tamil Nadu and others, reported in 2010 Writ L.R. 113**, has passed an order, dated 09.08.2019 and the relevant portion reads as follows:

"6.In the light of the above facts and circumstances of the case, this Court without going into the merits of the claim made by the petitioners in this writ petition, treats the impugned notices as Show Cause Notices, for which the petitioners are permitted to submit their detailed individual responses with supporting documents of genuineness and authenticity to the first respondent within a period of three weeks

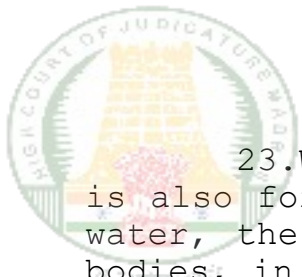


from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the same on merits and in accordance with law and if required, give the petitioners an opportunity of personal hearing and thereafter, pass appropriate orders within a period of six weeks thereafter and communicate the decision taken to the petitioners and till such time the possession and enjoyment of the petitioners in respect of the lands and the superstructures in question shall not be disturbed. It is made clear that till a decision is taken by the first respondent on the response to be submitted by the respective petitioner, they shall not create any third party right in respect of the lands in question as well as the superstructures put up therein and cooperate with the first respondent for expeditious conclusion of the enquiry. In the absence of necessary materials as to the obtaining of planning permission and putting up of superstructure in accordance with law, the Commissioner, Madurai City Municipal Corporation is directed to disconnect the drainage connection granted to the respective premises within a period of four weeks from the date of receipt of a copy of this order."

20. These petitioners are also similarly placed persons to that of the petitioners in W.P(MD)No.25039 of 2018 and one of the main grounds raised in support this writ petition is that no opportunity was given to offer their explanation.

21.The Tahsildar, Madurai North Taluk, who inspected these places has reported that all these occupants of the Bibikulam are rich and most of these occupants have put up constructions and has rented out to so many persons. These powerful persons are capable of occupying a water body, constructing houses, renting it out and are earning money out of it. The Public Works Department, being the custodian of the water bodies, is a silent spectator for the same for the reasons best known them.

22.This Court has disposed of a batch of writ petitions on 09.08.2019, in respect of the Bibikulam encroachments, to treat the said notices issued under Form III as show cause notice and to act in accordance with law within a stipulated period of time. However, the preset writ petitions, connected with those issues could not be listed and disposed. None of the Government Counsel has represented before this Court, for listing of these writ petitions. This batch of writ petitions have been taken up for hearing on the earnest steps taken by the learned Amicus Curie. This Court places its



23. Water bodies are meant not only for human beings, but it is also for all other living creatures. Realising the importance of water, the Rulers of ancient period have established several water bodies, in those days itself, when the population was very low. With the present enormous population, the Administrators, instead of creating sufficient source for water for the citizens, are allowing water bodies to be encroached and occupied and thereby destroying the water sources

24. It is a common scene in several places, in every summer people are thronging to the streets demanding water from the Corporation and the Corporations are also supplying waters by getting water from far away places in tankers and lorries and managing the situation. Even after 73 years of independence, no permanent solution is found for the common man to have sufficient potable water facility.

25. The ground water level has gone down upto thousand feet and even in thousand feet, in some places, there is no scope for ground water. These water bodies are the sources for recharge of the ground water, but we are allowing these water bodies to be obliterated at the hands of the greedy and powerful persons.

26. Realising the consequences, the Hon'ble Supreme Court and this Court time and again, have passed several orders directing the Executives and Administrators to ensure that the water bodies are in tact and preserved for the future generations.

27. It would be appropriate to refer to the decision of this Court, in **L. Krishnan v. State of Tamil Nadu and others**, reported in **2005-3-LW-313**, wherein 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.

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28. 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:

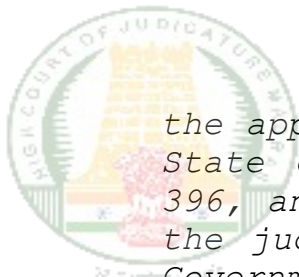
"5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people 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."

29. After the decision in **L. Krishnan's** case (cited supra), the State Government of Tamil Nadu 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.

30. 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 while upholding the Act, had several directions.

31. 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."

32. 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.'

33. Though this Court has rightly passed an order to keep the water bodies free from any encroachments, the official respondents have not acted upon. Mostly rich and power are capable of encroaching the water body and withstanding the encroachments over a period of 20 years.

34. The National Compilation on Dynamic Ground Water Resources of India, 2017, Ministry of Jal Shakti, Department of Water Resources, Central Ground Water Board have made certain assessments in respect of availability water and categorised the areas as follows:

"In the present assessment, the total annual ground



water recharge has been estimated as 432bcm. Keeping an allocation for natural discharge, the annual extractable ground water resource is 393bcm. The total current annual ground water extraction (as in March, 2017) is 249bcm. The average stage of ground water extraction for the country as a whole works out to be about 63 %. The extraction of ground water for various uses in different parts of the country is not uniform. Out of the total 6881 assessment units (Blocks/ Mandals/ Talukas/Firkas) in the country, 1186 units in various States (17%) have been categorized as 'Over-Exploited' indicating ground water extraction exceeding the annually replenishable ground water recharge. In these areas the percentage of ground water extraction is more than 100 percent. In addition, 313 units (5%) are 'Critical', where the stage of ground water extraction is between 90-100 %. There are 972 semi-critical units (14%), where the stage of ground water extraction is between 70% and 90% and 4310 assessment units (63%) have been categorized as 'Safe' where the stage of Ground water extraction is less than 70%."

This area is falling under the category of of critical zone, where exploitation of water is between 90-100%. The Water bodies are not only the source for the human being and for also other living beings and other creatures.

35.The learned counsel for the petitioners in fact has pleaded by showing some photographs exhibiting their poverty and pleaded that if these writ petitions are dismissed, it would affect the thousands of families at Bibikulam and they will become homeless.

36.The misplaced sympathy shown by the Courts has been taken advantage by these encroachers to occupy the water body. In this case, the petitioners have not occupied the water body, for their livelihood, but have occupied, rented out and earning out of it from these water bodies. This Court in W.P Nos.20994 and 15243 of 2005 [2019 SCC Online Mad 7581] held that there cannot be any misplaced sympathy or leniency or in respect of such encroachments of the Government land, water bodies, public pathways and the authorities competent are duty bound to protect the same in all respects.

37.Public Works Department is having a batallion of officers ranging from Junior Engineer to Superintending Engineer. Every Engineer is allotted with 3 or 4 water bodies. Even if 10 water bodies are allotted to each Engineer, they can very well inspect the water bodies, once in a month and can ensure that the water bodies are free from any encroachment.



38. The encroachment cannot happen in one day. It has been made over a period with the connivance of the officials. Even though several directions were issued water bodies have not been identified and their boundaries are not fixed.

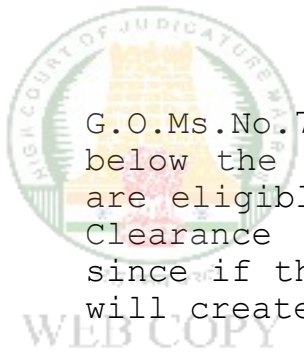
39. When this Court passed an order, the officials are depending on the Revenue Officials, to survey, identify and measure the land and mark the boundaries to proceed further with the removal of encroachments. The filing of the writ petitions, before this Court and at Principal Seat at Madras would expose the extent of encroachment and half of such writ petitions filed before this Bench are relating to encroachments. Most of the valuable time of the Court are spent for dealing with the cases relating to encroachment issues. Ultimately, the Courts are not in a position take up other important issues also. It is the duty of the concerned officials to identify the encroachments and to remove them in accordance with law.

40. the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act has been enacted in the year 2007. Even then no effective steps have been taken to remove the encroachments. Though this Court issued directions to the Public Works Department, on 09.08.2019, in W.P(MD)No.25039 of 2018, to take steps to remove the encroachments within a period of two months, the action was taken after a year. Though notice has been issued as against 581 encroachers, as on 26.11.2018 and 28.11.2018, further action has not been taken as against the encroachers by referring the writ petitions pending before this Court. Out of 581 encroachers, only few people have approached this Court and obtained an order of *status quo*. By referring this *status quo*, granted in respect of the persons, who have approached this court, the official respondents have not acted as against other encroachers, who have not challenged the notice, issued for eviction.

41. Even according to the petitioners, they are unauthorisedly occupying the water body and as per the report of the Tahsildar, the petitioners are rich and powerful and no one is below the poverty line. However, the learned Counsel for the petitioner insisted that an opportunity to be provided in view of the ratio laid down by this Court in T.S.Senthil Kumar's case cited supra.

42. In view of the disposal of the earlier writ petitions to treat the impugned notices as show cause notice and to take further action, after getting explanation from the encroacher, these writ petitions are disposed of, directing the petitioners to offer their explanation within a period of two weeks from the date of receipt of a copy of this order and the respondents are directed to take further action after receipt of the reply from the petitioners.

43. The official respondents are directed to check whether those who were given permission to enter upon the water body vide



G.O.Ms.No.741, Revenue (L1) Department, dated 04.05.1990, are really below the poverty line and if they are below the poverty line and are eligible for any other scheme, they can be shifted to the Slum Clearance Board building situated at Rajakur or any other place, since if the permission to enter upon the water body is ratified, it will create a bad precedent.

44.It is made clear that filing of writ petitions by one or two encroachers is not an impediment for the Department to proceed with the notice issued in the year 2018, as against the other encroachers. Admittedly, all the persons have encroached the water body and constructed the pucca houses and some have been rented out. The official respondents shall provide them 3 months time to make their alternative arrangements. In the meantime, the petitioners shall also offer their explanations, if any, on their occupation and take further course of action, as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and directions of the Hon'ble Supreme Court and this Court as discussed supra.

45.Insofar as the contempt petition is concerned, the officials have deliberately disobeyed the orders of this Court without any valid reasons and this Court finds that a *prima facie* contempt is committed in this case.

46.However, in view of the fact that large extent of the water body has been encroached by powerful persons, we cannot blame the officials alone for their inaction. Since more powerful persons have encroached the water body, there is no protection for the post and their life. The Government is also not providing any allotment of funds for engaging machineries to remove the encroachments. They have to spend their own money for such removal of encroachment. Therefore, the officials are also reluctant to remove the encroachments. But these reasons cannot be a ground for not doing their work and violating the orders of the Court.

47.Though a *prima facie* contempt is made out, this Court is not inclined to proceed with the contempt petition in view of the common order passed in these writ petitions permitting the petitioners to vacate the place within a period of four months. Even after four months, the encroachers may approach this Court with some other reasons for extension of time and therefore, we suggest the concerned officials respondents to obtain an undertaking from the encroachers that within a period of four months from the date of uploading of this order, they will vacate the places by making alternate arrangements. If the encroachers are not willing to give such an undertaking, the respondents shall proceed with the removal of the encroachments within a period of two weeks, after getting explanation, if any, for the notices issued in the year 2018 by disconnecting the electricity connection and the drainage connection provided to the premises of the encroachers and proceed to remove



the encroachments step by step and restore the water body to its original position. If anybody is eligible, the Government shall consider their cases, for rehabilitation as per the existing norms.

48.The Secretary, Public Works Department, Chennai, has to allot a separate fund for removing these encroachments. This Court can presume the volume of the encroachment with the number of the writ petitions filed and pending both before this Bench and before the Principal Seat at Madras.

49.Though several directions were issued from **L.Krishnan's** case (supra) to **M.K.Balakrishnan's** case (supra), there is no improvement in removing the encroachments. The officers, who are responsible for removing the encroachment are either afraid of their transfer at the hands of these powerful encroachers or for the expenditure, which they need to incur for removing these encroachments in every case. The officials are expecting surveyor to measure the land, identify the extension of the encroachments. In order to avoid such situations, this Court suggests the Government to constitute a separate Team for each Taluk, for removal of encroachments, irrespective of the classification.

50.The committee shall consist of members from the Revenue Department, ie., Tahsildar and Village Administrative Officer; Survey Department, ie., Surveyor; Police Department; Public Works Department, ie., Engineer and any other officials as required for the removal of the encroachments effectively. This committee shall not be disturbed at least for three years. One JCB or Bocklaine machinery shall be provided to these teams and the expenses required for removal of these encroachments shall be provided to this committee.

51.Since there is no effective mechanism for curbing and removing the illegal encroachments, the menace of the encroachments are increasing day by day. The effective time of the Courts are being spent on such encroachment issues and thereby, the matters which sincerely require the attention of this Court are waiting for a long period.

52.The Government, on the one hand, is allowing these water bodies to be encroached and on the other hand, is spending huge money for supplying drinking water by lorries and tankers. This is a glaring case, where the rich and powerful persons have encroached the water body, constructed pucca buildings and have also rented it out. This Court hopes and trust that the Government would take the suggestion of this Court, seriously and take appropriate steps.

53.While placing sincere appreciation to the learned Amicus Curie for his effective service, this Court requests him to monitor the process and ensure that proper actions are being taken by the Department, as directed by this Court. If anything goes wrong, the learned Amicus Curie shall bring it to the notice of this Court.

54.With the above observations and directions, all the writ petitions are disposed of and the contempt petition is also closed.



No costs. Pending interim orders, if any, shall stand terminated and consequently, connected miscellaneous petitions are also closed.

55.Call the matter for reporting compliance on 26.04.2021.

WEB COPY

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

To

1.The Chief Secretary to Government,
State of Tamil Nadu,
Secretariat, Chennai-9.

2.The Principal Secretary to Government of Tamil Nadu,
The Department of Municipal Administration and Watersupply,
Fort St.George, Chennai-9.

3. The District Collector, Madurai District

4. The Public Works Department Rep. by its Executive Engineer,
Irrigation Section No.II, Periyar Vaigai Basin Sub Division No.1,
Madurai-2.

5. The Tamil Nadu Slum Clearance Board, , Rep by its
Superintending Engineer, 169, K.K.Nagar Main Road, Opp. Jawahar
Hospital, Madurai-625 020.

6. The Assistant Engineer, The Public Works Department, Irrigation
Section No.II, Periyar Vaigai Basin Sub Division No.1, Madurai-2.

7.The Secretary to Government, Public Works Department and Water
Resources Organization, Fort St. George, Secretariat, Chennai 600
009.

8. The Secretary to Government, Municipal Administration and Water
Supply and Sewage Department, Fort St. George, Secretariat, Chennai
600 009.

9. The Secretary to Government, Revenue Department, Government of
Tamil Nadu, Fort St. George, Secretariat, Chennai 600 009.

10. The Chief Engineer, Water Resources Organization, Chepauk,
Chennai 5.

11. The Commissioner of Revenue Administration,, Chepauk,
Chennai 5.



12. The Commissioner, Madurai Corporation, Madurai.
13. The Commissioner of Police, Madurai City.
14. The Tahsildar, Madurai North, Madurai.
15. The Revenue Inspector, Madurai North, Madurai.
16. The Assistant Director of Survey,, Madurai.
17. The Chairman Cum Managing Director,, Tamil Nadu Generation and Distribution Corporation Ltd., 10th Floor, NPKRR Maaligai, 144, Anna Salai, Chennai 600 002.
18. The Superintending Engineer (Madurai Metro), Tamil Nadu Generation and Distribution Corporation Ltd., K.Pudur, Madurai-7.
19. The Executive Engineer (PWD),
Periyaru Vaigai pasana Division 2,
Madurai - 625 002.

COPY TO:

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court, Madurai.

- 6cc to Mr.T.Lajapathi Roy,Advocate, Sr No.27297,27298
- +1 cc to M/s.Special Government Pleader, Sr No.27374

W.P(MD)Nos.24297 and 25464 to 25468 of 2018 and
Cont.P(MD)No.338 of 2018
in
W.P(MD)No.24207 of 2016
23.12.2020

ns (CO)
KK(05.01.2021) 16P 28C