



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.18388 of 2017

and

W.M.P. (MD)No.14830 of 2017

R.Padmavathy

... Petitioner

Vs.

The Junior Engineer,
Water Resources Organization,
Public Works Department,
GAC Canal,
Thanjavur.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the respondent, dated 24.08.2017, issued in the name of the petitioner and her husband namely Ramamoorthy (deceased) and quash them as arbitrary and illegal.

For Petitioner : Mr.K.Baalasundharam

For Respondent : Mr.VR.Shanmuganathan
Special Government Pleader

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner is the wife of Late Ramamoorthy Swamigal and according to her, her husband had the blessings of Arulmigu Athimariamman and during his life time, he constructed and consecrated a temple viz., "Athimariamman temple" in S.F.No.42/2 near Vadavaru Railway Gate, Pulianthoppu Village, Thanjavur District and the Rajagopuram is having a height of 60 feet and presiding deity viz., Lord Siva in the form of Lingam and it is one of the biggest Lingams in Thanjavur District.

2. Mr.K.Baalasundharam, learned Counsel appearing for the petitioner would submit that the petitioner as well as her husband had been granted with free house site pattas in S.F.No.42/2 of Pulianthoppu Village, Thanjavur District, vide proceedings dated Nil.06.1991, admeasuring to an extent of 0.00.5 cents each and neither the husband of the petitioner nor the petitioner had been enclosed upon an inch of land beyond the land assigned to them



in S.F.No.42/2 and the attention of this Court has been invited to paragraph No.6 of the affidavit filed in support of the writ petition.

3. The primordial submission made by the learned Counsel appearing for the petitioner is that if proper survey is carried out in the presence of the petitioner, the truth will come out that no encroachment has been caused upon S.F.No.42/2, as alleged in the impugned notice and hence, prays for appropriate orders.

4. The writ petition was entertained and the interim orders were granted.

5. The sole respondent has filed the counter affidavit dated 24.10.2017, wherein it has been stated, among other things, that the water body viz., "Samudram Eri" is a "System Eri" (water body) under the Grand Anaicut Canal River System, situated in Pulianthope Village, Thanjavur Taluk and District and the said Tank was surveyed and the boundaries of the tank were identified and peg marked and it was found that there were 91 encroachments in the said water course poramboke in an extent of nearly 4-18 acres by putting up various kinds of encroachments and the details of which are given in paragraph No.3 of the counter affidavit and it is relevant to extract the same hereunder:

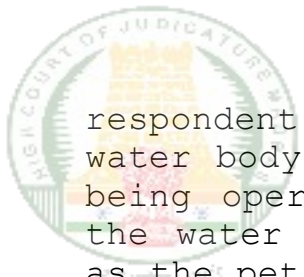
- "a) Garden and Fencing - 41 Nos
- b) Houses - 45 Nos
- c) Temple - 2 Nos
- d) Others such Over Head

Tank Burial ground etc.,- 3 Nos"

It is further pointed out that 41 encroachments, such as, gardening and fencing made in the tank bunds were removed in terms of the provisions of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007 and the Rules framed thereunder.

6. The husband of the petitioner was issued with a notice, dated 24.08.2017 under Form-III of the Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007 read with Section 6(1) of the Act, stating among other things, that he has encroached upon a part of "Samudram Eri" (water body) in S.F.No.48/2, admeasuring to an extent of 10,472 sq.meters and similarly, the petitioner has also been issued with notice on 24.08.2017 as to the encroachment caused by her in the same water body, admeasuring to an extent of 132 sq.meters. The petitioner, to the said notice, submitted her response, dated 04.09.2017, as to the good deeds and religious deeds performed by her husband and prays for protection of the said temple.

7. The learned Special Government Pleader appearing for the



respondent would submit that the majority of the encroachments in water body had been removed and in the light of the interim order being operated in this writ petition, the encroached portion of the water body in possession of the petitioner's husband as well as the petitioner have not been removed and further would add that the proceedings for removal of encroachment came to be initiated in terms of the order passed in W.P.(MD)No.21346 of 2015 filed by K.K.Ramesh, as a Public Interest Litigation.

8. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

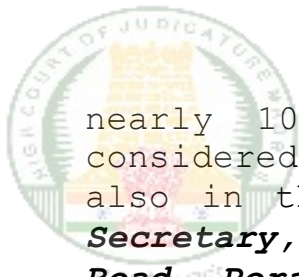
9. It is relevant to extract hereunder paragraph No.6 of the affidavit filed in support of this writ petition:

"6. I submit the respondent also issued notice to me dated 24.08.2017 alleging that I have encroached in S.F.No.48/2 for extent of 132 sq.mtr. I submit that the notice of the respondent alleging encroachment is erroneous. In fact I have not encroached any portion of S.F.No.48/2. My husband consecrated temple and constructed small house only in S.F.No.42/2 of Pulianthoppu Village and averments in the notice issued by the respondent as if the encroachment made in S.F.No.48/2 is totally erroneous."

10. It is to be noted that the stand taken by the writ petitioner in paragraph No.6 of the affidavit filed in support of this writ petition and the stand having been taken in her response dated 04.09.2017 to the impugned notice dated 24.08.2017, is not one and the same.

11. It is also surprising to note that how the concerned Revenue Authorities have granted free house site pattas admeasuring to an extent of 0.00.5 cents each to both the husband and wife viz., the husband of the petitioner as well as the petitioner. It is to be noted at this juncture that normally free house site pattas were given to a family member and not to husband and wife who constitute single family. The learned Special Government Pleader undertakes to do the needful in this regard, by instructing the officials to take appropriate action in accordance with law.

12. If the husband of the petitioner as well as the petitioner were/are very much interested in spreading the particular religion, or developing "bakthi culture" among the devotees, in all fairness, they would have put up the temple, at least, on a portion of the land, for which they have been given free assignment. However, under the garb constructing the temple and spreading religious activities, they have encroached upon



nearly 10,604 sq.meters of a prime water body and in the considered opinion of this Court, the same is impermissible and also in the light of the Full Bench Judgment in ***T.K.Shanmugam, Secretary, C.P.I.(M) North Chennai District Committee, 52 Cooks Road, Perambur, Chennai - 600 011 Vs. the State of Tamil Nadu, represented by its Secretary to Government, Department of Revenue, Fort St., George, Chennai-600 009 and Others***, reported in ***2015-5 LW-397***.

13. Now, it has become a routine practice to make a plea that it is for the official respondents to follow the due process of law. However, the fact remains that as dutiful citizens, they are expected to follow the law and causing encroachment upon public land especially water body cannot be said to be any justifiable act.

14. This Court, upon careful scrutiny of the materials and also upon hearing the rival submissions, is of the considered view that the writ petition totally lacks merit, devoid of any substance and deserves dismissal.

15. In the result, the Writ Petition is dismissed. Consequently, the interim order granted in W.M.P.(MD)No.14830 of 2017 is vacated and W.M.P.(MD)No.14830 of 2017 is also dismissed. The respondent is directed to expedite the process of eviction by following due process of law and complete the exercise as expeditiously as possible and not later than ten weeks from the date of receipt of a copy of this order and file a status report along with supporting documents and photographs before this Court. No costs.

16. **Call this matter in the third week of November 2020, for filing status report of the respondent.**

Sd/-

Assistant Registrar ()

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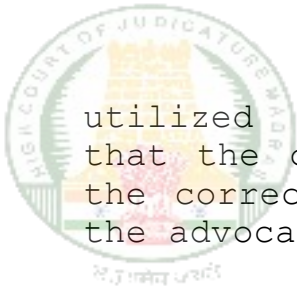
/ /2020

Sub Assistant Registrar(CS)

SSL

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utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To
The Junior Engineer,
Water Resources Organization,
Public Works Department,
GAC Canal,
Thanjavur.

Copy to
The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.
(For posting as directed)

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and
W.M.P. (MD)No.14830 of 2017
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KM (12.08.2020) 5P 3C