

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on: 08.04.2021	Judgment pronounced on: 17.04.2021
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CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

W.A.No.468 of 2019

and

CMP.No.4155 of 2019

1. P.Haribabu
2. P.Chandrasekar
3.P.Lakshmi ... Appellants/ Respondents 5 to 7

Vs.

1.Malayampattu Eri Pasanadarar Sangam
A Society registered under the Tamil Nadu
Societies Registration Act bearing Serial
No.266/2003 having office at
Malayampattu Village- Pungambadi post,
Arni Taluk, Thiruvannamalai District,
rep. By its President N.Natarajan
... Respondent/ petitioner

2.The District Collector,
Thiruvannamalai District
Thiruvannalamai.

3.The Revenue Divisional Officer
Cheyyar Thiruvannamalai District.

4.The Tahsildar
Arni Taluk- Arni Town,
Thiruvannamalai District.

5.The Assistant Settlement Officer,

Thiruvannamalai.

... Respondents/ Respondents 1 to 4

PRAYER : This Writ Appeal is filed under Clause 15 of the Amended Letters Patent of 1865 to set-aside the order dated 04.01.2019 made in W.P.No.25618 of 2005.

Prayer in WP No.25618 of 2015 : Under Article 226 of the Constitution of India prays to issue a writ of certiorarified mandamus calling for the records comprised in the proceedings of the 4th respondent dated 29.06.2000 in Mu.Mu.A2 2929/99 and the order of the 3rd respondent dated 2.9.2004 in Na.Ka.No.I 8285/2004 and quash the same and consequently forbear the respondents 5 to 7 from in any manner interfering with the rights of the members of the Petitioner's Sangam and the Villagers from having water resources for irrigation and Water Supply from the lands comprised in Survey Nos.70/5, 70/6, 70/7, 70/8, and 72/5 of Malayampattu Village, Pungambadi Post, Arni Taluk, Thiruvannamalai District.

For Appellants : Mr.V.Lakshminarayanan

For Respondents : Mr.V.Kathirvelu,

Special Government Pleader

for RR2 to 5

No Appearance for R1

JUDGEMENT

(Delivered by R.N.MANJULA, J.)

This Writ Appeal is filed against the order of the learned single Judge in W.P.No.25618 of 2005 dated 04.01.2019 quashing the order of the 4th respondent dated 29.06.2000 in Mu.Mu.A2 2929/99 and the order of the 3rd respondent dated 02.09.2004 in Na.Ka.No.1 8285/2004 and consequential directions.

2. We have heard the elaborate arguments of Mr.V.Lakshminarayanan, learned counsel for the Appellants / respondents 5 to 7 and Mr.J.Pothiraj, Special Government Pleader for Respondents 2 to 5.

3. The Writ petition was filed by the 1st respondent / petitioner against the respondents 1 to 7 for issuing a writ of certiorarified Mandamus, calling for the records comprised

in the proceedings of the 4th respondent dated 29.06.2000 in Mu.Mu.A2 2929/99 and the order of the 3rd respondent dated 02.09.2004 in Na.Ka.No. I 8285/2004 and quashing the same and consequently to forbear the respondents 5 to 7 from in any manner interfering with the rights of the members of the Petitioner Sangam and the villagers from having water resources for irrigation and water supply from the lands comprised in Survey Nos.70/5, 70/6, 70/7, 70/8 and 72/5 of Malayampattu Village, Pungambadi Post, Arni Taluk, Thiruvannamalai District.

4. The 1st respondent/petitioner by name Malayampattu Eri Pasanadarar Sangam is a Society registered under the Tamil Nadu Societies Registration Act. The society consists of members, who are Ayacutdars of Malayampattu Village, Pungambadi Post, Arni Taluk. The petitioner Sangam has been constituted for espousing the interest of the agriculturists by settling irrigation disputes, repairing water irrigation works and to reclaim the Vaikkals in the village for the purpose of facilitating effective irrigation sources for the benefit of the villagers. It is stated that the Malayampattu village has a population of about 2000 members.

5. It is submitted by the respondent/petitioner that there is a village tank in S.No. 68 and it has an Ayacut area of 150 acres. The lands which are the subject matter of the present writ petition are comprised in Survey Nos.70/5, 70/6, 70/7, 70/8 and 72/5 measuring a total extent of 4.85 acres in Malayampattu village, Pungambadi post, Arni Taluk, Thiruvannamalai District. The said lands were originally classified as "Eri Poramboke" or catchment area and it is evident from the 'A' Register and Adangal. The Village panchayatars have dug a deep bore well in May 2003, which is the main water source to the entire village and the said bore well is in existence for a very long time. The members of the petitioner Association and the villagers have been using the water from the said lands and the bore well for irrigation and drinking water purposes.

6. The Assistant Settlement Officer has passed an order on 29.06.2000, granting Ryotwari patta in respect of the above said extent of 4.85 Acres, which is a catchment area, by cancelling the classification of Eri Ulvoy and reclassifying the same into Ryotwari lands and directed issuance of patta under section 11-A of the Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act, 1948. Pursuant to the said orders of the Assistant Settlement Officer, the Tahsildar has passed an order on 02.09.2004 by making necessary changes in

the revenue records in favour the respondents 5 to 7. Aggrieved over that the petitioner Sangam has filed the writ petition challenging the orders of the respondents 3 and 4.

7. The learned Single Judge called for the revenue records (Old 'A' Registered copy) connected to the impugned survey numbers and recorded that the said 4 Acres 95 cents are the water catchment area and Eri Ulvoy of the village and it was available for the common benefit of the villagers. The 3rd respondent has also filed a report by stating that the 4th respondent/Assistant Settlement Officer, Thiruvannamalai has passed an order for granting the Ryotwari patta in respect of the said lands, in violation of the orders of the Hon'ble Supreme Court and this Court. Having found truth in the submission of the petitioner Sangam, the learned Single Judge allowed the writ petition.

8. The learned counsel for the appellants submitted that the Settlement Officer has granted patta in favour of the appellants after making an enquiry and the Tahsildar has only complied the directions of the Assistant Settlement Officer and hence the order of the Tahsildar should be challenged by way of filing the appeal before the Appropriate Appellate Authority. He further submitted that the village map is in contradiction to the 'A' register and this was omitted to be noticed by the writ Court and it mainly relied on the statement of the Tahsildar. It is further claimed that the patta in favour of the respondents 5 to 7 itself would confirm title and hence the Court has no power under Art. 226 of the Constitution of India. It is further submitted that the property for which the patta was granted is not a water body and that the concerned official respondents have not filed any counter in the writ. It is further submitted that the 1st respondent/petitioner Sangam, which is claimed to have been constituted for safeguarding the public interest, should have filed a Public Interest Litigation. By making those submissions, the learned counsel for the Appellants 1to 3/ Respondents 5 to 7 prayed to allow the appeal by setting aside the order of the learned single Judge.

9. While hearing the writ petition, the learned single Judge perused the relevant files produced by the Tahsildar, Arni through the Additional Government Pleader. The revenue entries made in the old 'A' registers connected to the Survey Nos.70/5, 70/6, 70/7, 70/8, 72/5 and 69/1 showed that the said lands are Eri poromboke lands. In fact a panchayat bore well was dug in Survey No.69/1 and it was serving as an important source of drinking water for the entire village. While allowing the writ petition, the learned single Judge has recorded as under:

"15. Considering the facts and circumstances of the lis on hand, this Court is of an opinion that the Assistant Settlement Officer has fraudulently issued the impugned order in order to favour the respondents 5 to 7 as well as other few individuals by converting the "Eri Poramboke" as patta land. Such a conversion is impermissible and the same was done on account of certain corrupt activities as the said Assistant Settlement Officer, who issued the impugned order also passed away by committing suicide. Under these circumstances, this Court is inclined to pass the following orders in view of the fact that the State is bound to protect the water bodies, water resources and Government Poramboke lands and utilize the said lands for the welfare of the public and to implement the public schemes in order to implement the constitutional principles and its Ethos."

10. The appellants 1 to 3 /respondents 5 to 7 have claimed that the Ryotwari pattas were granted in their favour only on the order of the Assistant Settlement Officer and that the said lands have now been converted and reclassified and hence the patta given in their favour is a valid one. Since the appellants 1 to 3/Respondents 5 to 7 are aware of the conversion of the classification of the lands, it is within their knowledge that the lands in question, was the Eri Ulvoy and water catchment Eri of the village. The appellants 1 to 3 / respondents 5 to 7 did not produce any contrary materials to show that the lands were not water catchment areas and that it was not used for public purpose and hence there is no public interest involved.

11. The Assistant Settlement Officer who has issued orders in favour of the appellants 1 to 3/respondents 5 to 7 for granting Ryotwari patta has not made any proper enquiry before passing the orders. Neither appropriate notices have been given to the affected or the interested parties. The Assistant Settlement Officer has passed the order without adopting the due process. Ryotwari patta in respect of the water catchment lands have been issued in a biased manner due to some vested interest. Such favoritism shown by the concerned officials had deprived the villagers their right to enjoy the common water sources.

12. The whole exercise of granting orders for Ryotwari patta was done behind the back of the village public. The pottanah Sangam has been formed for the purpose of espousing

the interest of the local agriculturists and in that capacity has filed the writ. Under these circumstances, the appellants cannot expect the Petitioner Sangam who is not a party to the enquiry alleged to have been made by the Settlement Officer, to file an appeal before the Appropriate Revenue Authority. Since the orders of the government authorities namely Assistant Settlement Officer and the Tahsildar of the Arni Taluk were not in accordance with law and against the interest of the villagers of Malayampattu, the Sangam has rightly chosen to invoke the writ law remedy.

13. The members of the respondent/petitioner Sangam are the very villagers of Malayampattu village whose primary occupation is agriculture. The Sangam has been registered under the Societies Act and it involves in settling the irrigation disputes, repairing water irrigation works and to reclaim the vaikkals in the village for the purpose of facilitating irrigation sources for the benefit of the villagers. If any irrigation sources or water management area is converted into the Ryotwari lands to detriment of the village public, they are the aggrieved people. Since the Sangam is the collection of those who are affected, it is lawful for it to file the writ petition in order to assert the rights of its members. The unlawful conversion of the catchment area into some private entitlement, no doubt affects the public interest. In this kind of situation, it might have been possible that anyone who is interested to save public interest had filed a public interest litigation. But such a possibility will not in any way deprive the rights of the aggrieved to choose to get the rightful remedy by filing a writ petition.

14. It is appropriate to extract the observations of the Constitutional Bench of the Supreme Court made in the case of S.P. Gupta Vs. Union of India and others (AIR 1982 SC 149) about the context in which the Public Interest Litigation is permitted.

"18.....If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would

be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice."

15. In the subsequent judgment of the Supreme Court in *Bandhuva Mukti Morcha Vs. Union of India & Ors.* (AIR 1984 SC

802), the Hon'ble Supreme Court has observed that the option of Public Interest Litigation is available for the purpose of protecting the rights and interest of those people who live a life for want and destitution and who by reason of lack of avenues, assertiveness and resources are unable to seek judicial redress. So the idea of Public Interest Litigation as held by the Supreme Court is to enhance the access to justice by providing more avenues.

16. An innovative remedy which has been invented for the purpose of assuring justice to the helpless should not be interpreted as an imposition on an aggrieved body like the petitioner Sangam, which has chosen a rightful course to assert the rights of its members by filing a writ petition. Hence, the arguments of the learned counsel for the Appellants 1 to 3/ respondents 5 to 7 that the petitioner Sangam ought to have filed a public interest litigation cannot be countenanced.

17. The learned single Judge has made an elaborate discussion by placing reliance on earlier judgements of this court in W.P. No. 4779/2015 dated 13.08.2018 and W.P.Nos. 26364 to 26376 of 2017 dated 10.10.2017 in connection with the strict compliance of the provisions of the Tamil Nadu Land Encroachment Act and the Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007 and has given a concrete finding about the illegality in issuing the impugned orders by the authorities by violating of the Government orders and Statutes. As there is no error of law or fact in the order of the learned Single Judge, there is no scope for any interference.

For the above reasons, we find no merits in this Appeal and accordingly the Writ Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

jrs

To

1.The District Collector,
Thiruvannamalai District
Thiruvannalamai.

2.The Revenue Divisional Officer,
Cheyyar, Thiruvannamalai District.

3.The Tahsildar,
Arni Taluk- Arni Town
Thiruvannamalai District

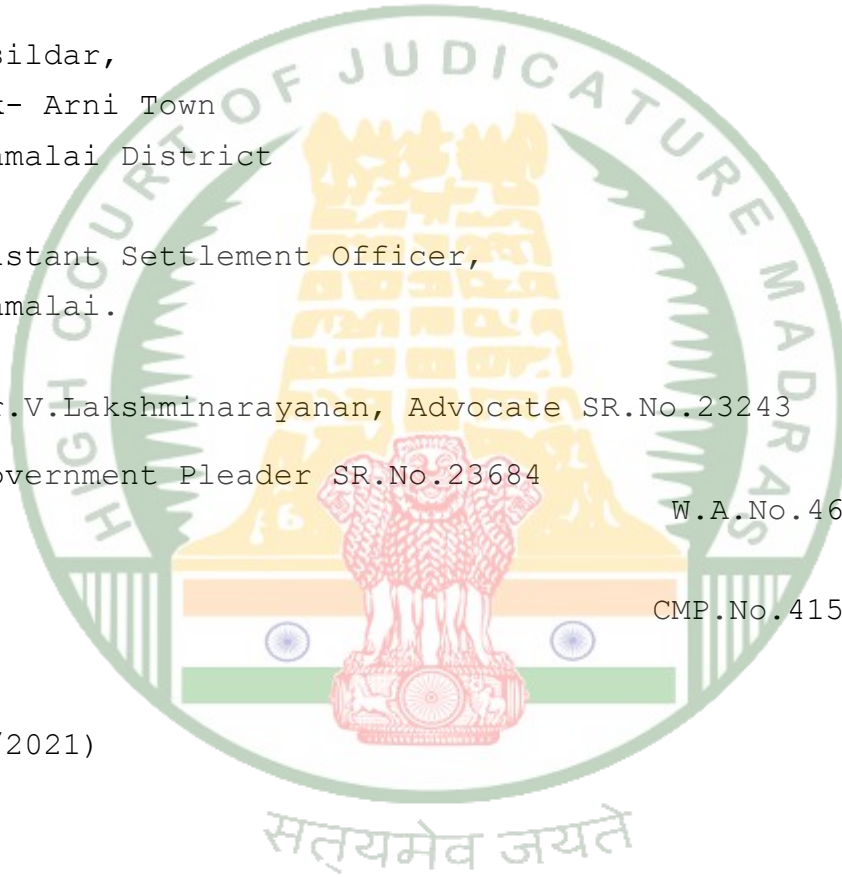
4.The Assistant Settlement Officer,
Thiruvannamalai.

+1cc to Mr.V.Lakshminarayanan, Advocate SR.No.23243

+1cc to Government Pleader SR.No.23684

W.A.No.468 of 2019
and
CMP.No.4155 of 2019

GMY (02/07/2021)



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