



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Review Application (MD) No.48 of 2021

and

W.M.P. (MD) Nos.10225 & 10226 of 2021

D.Natarajan ... Review Petitioner/7th Respondent
-vs-
1.M.Krishnamoorthy ... 1st Respondent/Writ petitioner

2.The District Collector,
District Collector Office,
Thanjavur.

3.The District Revenue Officer,
Thanjavur.

4.The Revenue Divisional Officer,
Thanjavur.

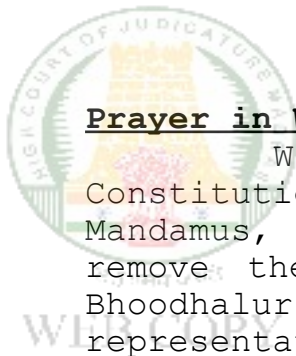
5.The Tahsildar,
Boodhalur, Thanjavur.

6.The Superintending Engineer,
Kallanai Channel Division,
Bhoodhalur,
Thanjavur District.

7.The Superintending Engineer,
Public Works Department,
Lower Cauvery Basin Circle,
Water Resources Division,
Thanjavur.

8.S.Vasudevan ... Respondents

Prayer :- Review Application filed under Order 47 Rules 1 and 2 read with Section 114 of Civil Procedure Code to review the order dated 04.06.2021 made in W.P. (MD) No.7612 of 2020.



Prayer in WP(MD). 7612/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, directing the respondents to take immediate action to remove the encroachments in the Ayyanar Eri, Maraneri Village, Bhoodhalur Taluk, Thanjavur District by considering the petitioners representation dated 09.06.2020 and take necessary action.

For Applicant : Mr.A.V.Raja
assisted by Mr.A.Senthil Kumar
For RR2 to 7 : Mr.P.Subburaj,
Special Government Pleader

ORDER

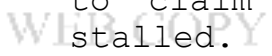
(Delivered by T.S.Sivagnanam, J.)

We have heard Mr.A.V.Raja, learned counsel assisted by Mr.A.Senthil Kumar, learned counsel for the review applicant and Mr.P.Subburaj, learned Special Government Pleader for the official respondents.

2.This Review Application has been filed to review the order and direction in W.P.(MD) No.7612 of 2020 dated 04.06.2021, at the instance of the seventh respondent in the said writ petition.

3.The said writ petition was filed by one Mr.M.Krishnamoorthy, praying for issuance of Writ of Mandamus to direct the official respondents to take immediate action to remove the encroachments in Ayyanar Eri, Maraneri Village, Bhoodhalur Taluk, Thanjavur District by considering the representation dated 09.06.2020.

4.While disposing of the writ petition, we found that the lead case filed by Mr.M.Krishnamoorthy is a Public Interest Litigation and at the time when the writ petition was entertained, the Division Bench while ordering notice, passed a speaking order dated 15.07.2020. After referring to the said speaking order, we took note of the fact that on notice being served on the official respondents, the Superintendent Engineer, Public Works Department, Water Sources Division, Lower Cauvery Basin Circle, Thanjavur District, the 6th respondent in the writ petition, filed a report and from the report, it was noted that there is an encroachment and also that 23 persons have been granted patta of which, 21 under the "Martyrs" (Thiyagigal patta) category and two people under the "Boomithana Iyakkam". Further, the report stated that the Public Works Department has addressed the Revenue Department to cancel those pattas and allot alternate places because, based on those pattas, several others are making claims. Further, it was stated that action could not be initiated against 56 encroachers, since



5. We observed that merely because a person has filed a writ petition for grant of patta, when there is no vested right for him to claim patta, action for removal of encroachments cannot be stalled. We examined the correctness of the stand taken by Mr. Ravichandran and others that the land occupied by them is not a water body/Eri and pointed out that admittedly, the land is a Government property and merely because, the Government has granted patta in favour of certain people and if the pattas are held to be illegal, another person cannot seek for a similar relief, as it would amount to perpetuating illegality. We took into consideration the report of the Tahsildar, the 6th respondent in W.P.(MD) No.10432 of 2020 etc., batch wherein, a detailed counter affidavit has been filed. That apart, the counter affidavit filed by the Assistant Engineer, Kallanai Channel Division, the third respondent in W.P.(MD) No.8577 of 2020 was also taken note of wherein, it was stated that the land is not a "Tharisu poramboke land", but it is a foreshore area of Ayyanar Eri. Further, the stand taken by the encroachers stating that "B" memo charges were collected from them and therefore, they are entitled for patta was also examined for its correctness and the same was rejected stating that levy and collection of "B" memo charges would only show that the person is an encroacher and that by itself will not give any right for grant of patta. Therefore, we found that no direction need to be issued to the authorities, as already the authorities were proceeding further in the matter and only observation be made was to keep the proceedings in abeyance till the pandemic situation gets relaxed and take action after 30.07.2021 and we have also made an observation that encroachers should be permitted to harvest the standing crops within the aforesaid period.

6. The learned counsel appearing for the applicant has referred to a sketch of Ayyanar Eri and submitted that the lands, which are adjacent to the water spread area, have been granted patta and one of the lands in which the applicant would claim patta is comprised in R.S.No.428 and this is in the middle and it is not a water body. Further. It is submitted that the persons, who have been granted patta and the other occupants and their predecessors have been in possession of the lands for several decades and some of them have Sale Deeds in their favour, wherein the Government grant, issued by the concerned District Collector, has been referred to in the Sale Document and one such Sale Deed dated 30.04.1960 was relied on.

7. In our considered view, when the classification of the land is a Government property, we cannot extend any sympathy to the review applicant and examine as to what would be the effect of the so called grant in favour of certain persons, what would be the effect of the patta granted to the "Martyrs" (Thiyagigal patta) or non-violent deaths (Aparihayana Iyakkam" etc. As long as the property is a



Government property, and it is stated to be a foreshore area of the water body, this Court cannot come to the rescue of the review applicant more so when, the writ petition filed by the first respondent was dismissed. Hence, we find that there is no error apparent on the face of the order for us to exercise review jurisdiction and the Review Application stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

To

- 1.The District Collector,
District Collector Office,
Thanjavur.
- 2.The District Revenue Officer,
Thanjavur.
- 3.The Revenue Divisional Officer,
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- 4.The Tahsildar,
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- 5.The Superintending Engineer,
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- 6.The Superintending Engineer,
Public Works Department,
Lower Cauvery Basin Circle,
Water Resources Division,
Thanjavur.

+1CC to M/S.SPL GP SR.No.29096 DATED:15.09.2021.

Rev.Aplw.(MD) No.48 of 2021
14.09.2021

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