



WEB COPY

W.P.(MD).No.11690 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2021

CORAM:

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.P. (MD) .No.11690 of 2021

and

W.M.P(MD) No.9196 of 2021

Dr.C.T.Anand

...Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar,
Sivakasi Taluk, Sivakasi.

3.The Commissioner,
Sivakasi Municipality,
Sivakasi.

4.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of Mandamus to direct the respondents to protect and preserve Velayudhan Oorani (Water body) situated in Survey Number 15, Ward No.2, Block No.4, Sivakasi Town & Taluk, Virudhunagar District having an extent of 1.0374 and restore it and prohibit utilization of the said area for any other purposes including the establishment of a micro-compost centre in the said place.

For Petitioner : Mr.R.Gowrishankar

For Respondents 1 & 2 : Mr.R.Baskaran,
Standing Counsel for Government

For 3rd Respondent : Mr.N.Dilip Kumar

For 4th Respondent : Mr.S.Bageerathran



O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

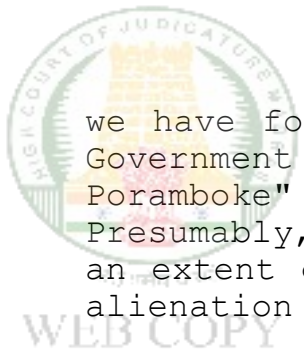
Heard Mr.N.Dilip Kumar, learned counsel for the petitioner and Mr.R.Baskaran, learned Standing Counsel for Government appearing for the respondents 1 and 2, Mr.J.Senthil Kumaraiah, learned counsel for the third respondent and Mr.Bageerathran, learned Standing Counsel for the fourth respondent - Tamil Nadu Pollution Control Board.

2.The present writ petition filed as a "Public Interest Litigation" by a Doctor, who is practising as a Dentist at Sivakasi and bringing to the notice of this Court the ugly state of affairs and the manner in which the water bodies are being slowly encroached. The appellant opposes the location of a micro-compost centre in Survey No.15, Ward No.2, Block No.4, Sivakasi Town and Taluk, Virudhunagar District, to an extent of about 1.03acres and for a direction to restore and prohibit the utilization of the area for establishment of the micro-compost centre.

3.The petitioner's case is that the land in the said survey number is a water body called as "Velayudhan Oorani". The learned counsel for the petitioner assisted this Court by filing a Google Photo Sketch, which gives a fair idea about the location of micro-compost centre and from which we are able to see that in a portion of it, there is a stagnant water, which obviously would mean that the land is a water body.

4.When we heard the matter on 14.07.2021, we directed the learned counsel for the respondent Municipality, to produce the revenue records to examine as to what is the classification of the land, more particularly, with regard to the sub division of Survey No.15. The extract from the Town Survey Register, which has been digitally signed on 11.01.2018. The classification of the land in Survey No.15 in full is "சர்க்கார் புறம்போக்கு" (sarkar poromboke) and the utilisation is "நீர் நிலை" (water body). Therefore, this town survey land register has not been shown to be incorrect by the respondents. Therefore, the petitioner is right in stating that the entire Survey No.15 has been classified as a water body. Unfortunately, the protectors of such water body namely, Government machineries have acted contrary to the public trust doctrine, which enjoins upon them a duty to protect water bodies. The manner in which the Government has proceeded to do is by carving out of an extent of 604 square mtr. out of 4280 sq. mtr. in T.S.No.15 and alienating the same in favour of the Tamil Nadu Industrial Investment Corporation Limited (hereinafter referred to as "the TIIC") for construction of their Sivakasi branch office building.

5.Surprisingly the classification of the land as mentioned in the Government Order does not state that it is a "water body", as



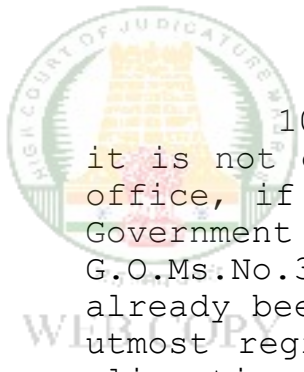
we have found it to be recorded in the Town Survey Register. The Government was informed that the land is classified as "Government Poramboke" and stands as "Veerathumamal Temple Madam Well". Presumably, for such reason, the Government permitted to carve out an extent of 604 Sq. mtr. out of the total extent and approved the alienation in favour of the TIIC Ltd.

6.It is not clear as to whether the Sivakasi branch office building of the TIIC Ltd., has been constructed in the said area or not. The classification, as mentioned in the Government order, shows a Temple and Well to be in existence. The fact remains that the land measuring to an extent of 1.03 acres has already been utilized for a micro-compost centre. The solid waste management rules framed by the Ministry of Environment mandates such micro-compost centre to be established throughout the country and with that objective and direction, the micro -compost centre has been established. Since this is not only a statutory requirement, but requirement for the protection of the environment, the Court would not be justified in interdicting such welfare measures.

7.At the same time, the Court cannot close its eyes to the action of the respondents or the Government in slowly obliterating the water body and reducing their catchment area. This has been held to be impermissible by the Hon'ble Full Bench of this Court in the case of **T.K.Shanmugham Vs. State of Tamil Nadu and others reported in 2015 (6) CTC - 369**, wherein, it was held that water bodies are held by the State in public trust for the welfare of the generation to come and therefore, protecting water bodies must be given weightage and any change of usage and classification can ever be permitted.

8.Further, it was held that it is the duty of the State to protect the water bodies and augment traditional water retaining structures and by invoking the precautionary principles and the public trust doctrine, it was held that the State as a trustee is required to maintain the national resources such as lakes, ponds, etc., and the water bodies vested with the Government or to be held by the Government only in their capacity as a trustee under the public trust doctrine and there is a little option except to strictly adhere to the trust and faith reposed and if the Government has failed to protect these water bodies, it amounts to breach of public trust and in such cases, the duty of the Government is more towards restoring the land back to its original position and thereby restore the trust reposed on it.

9. Undoubtedly, the step taken by the Government by permitting alienation of a water body in favour of TIIC Ltd., for construction of their Sivakasi branch office is a clear breach of the public trust reposed on the Government.



10. From the Google photograph produced by the petitioner, it is not clear as to whether the TIIC Ltd., has constructed branch office, if the construction has not been put up, it is time for the Government to rethink and reverse its earlier decision taken in G.O.Ms.No.355 dated 5.10.2015. However, if the construction has already been put up, all that we can do is to lament and express our utmost regret for the action done by the Government in permitting alienation of a water body.

11.As observed earlier, the micro-compost centres are the need of the hour and therefore, we are conscious of the fact that such micro-compost centre must be established to keep the environment clean. Now that since the micro-compost centre has already been established by the respondent- Municipality by spending substantial amount of money, we are not inclined to disturb the centre, but we direct the Sivakasi Municipality to ensure that a pucca compound wall with adequate revetment is constructed around the centre so that no part of any leachate from the garbage that may be shifted to the centre for the purpose of segregation gets drained.

12.Parallely, the respondent Municipality shall ensure that the water body is thoroughly clean, all encroachment removed and if there are channels which lead to the water body which may bring water when dams are opened on during rainy season, those channels also should be cleaned and the Revenue Authorities shall also extended full co-operation.

13. We direct the fourth respondent / District Environmental Engineer, Tamil Nadu Pollution Control Board, Virudhunagar, to conduct periodical inspection of the micro-compost centre and ensure that there is no pollution is caused on account of micro-compost centre to the water body, which is situated behind.

14. As observed earlier, if TIIC has not used the land, we give liberty to the petitioner to approach the Government by way of representation requesting the Government to give a rethink and if found feasible, to revise the G.O.Ms.No.355. However, if TIIC has already put up construction, whatever has been directed to be done in the micro-compost centre shall also equally apply to the TIIC Ltd., and they should ensure that there is no further encroachment. If the temple has been in existence for several years and there is a entry in the revenue record to the said effect, then the temple may be permitted to remain in the said site and the Well, if any, should be cleaned, so that the water source is protected. The above direction shall be implicitly complied with by the third respondent Municipality without any default. It is made clear that whatever construction has been put up for the micro-compost centre shall not be expanded.



15. With the above directions, the writ petition stands disposed of. Consequently connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be 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.

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Tahsildar,
Sivakasi Taluk, Sivakasi.
- 3.The Commissioner,
Sivakasi Municipality,
Sivakasi.
- 4.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Virudhunagar.

+1 CC to M/s.S.BAGEEVALAN, Advocate (SR-23268[F] dated 20/07/2021)
+1 CC to M/s.GP (SR-23312[F] dated 20/07/2021)
+1 CC to M/s.R.GOWRI SHANKAR, Advocate (SR-23374[F] dated 20/07/2021)

W.P. (MD) .No.11690 of 2021
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