



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD) Nos.15994 & 3862 of 2020

and

W.M.P. (MD) Nos.13402 & 13979 of 2020

W.P. (MD) No.15994 of 2020:

P.A.Veeramani

: Petitioner

Vs.

- 1.State rep. by the
Secretary to Government,
Revenue Department, Secretariat,
Chennai - 600 009.
- 2.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.
- 3.The District Collector,
Madurai District,
Madurai - 625 020.
- 4.The Superintending Engineer,
Public Works Department,
Tallakulam, Madurai - 625 002.
- 5.The Executive Engineer,
Public Works Department,
Tallakulam, Madurai - 625 002.
- 6.K.Laksmanakumar
- 7.The Assistant Engineer,
Public Works Department,
Irrigation Section II,
Tallakulam, Madurai District.
- 8.K.Subburam



9.The Secretary to Government,
Public Works Department,
State of Tamil Nadu,
Secretariat, Chennai.

10.The Secretary to Government,
Revenue and Disaster Department,
State of Tamil Nadu, Secretariat, Chennai.

11.The Commissioner,
Madurai Corporation, Madurai. : Respondents
[R.7 is *suo-motu* impleaded vide order dated 11.11.2020]
[R.8 is *suo-motu* impleaded vide order dated 23.11.2020]
[R.9 to R.11 are *suo-motu* impleaded vide order dated 10.12.2020]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents 1 to 5 to remove the encroachment made by the 6th respondent in Town Survey No.103, Tallakulam Village, Old Ward No.16, New Ward No.27, Block No.36, Madurai, within a stipulated time limit by considering the petitioner's representation dated 23.10.2020.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.K.Chellapandian,
Additional Advocate General

Assisted by
Mr.K.P.Krishnadoss,
Special Government Pleader
for RR.1 to 5, 7, 9 & 10

Mr.V.Raghavachari,
for Mr.M.Jegadeesh Pandian for R.6

Mr.B.Saravanan for R.8

Mr.R.Murali,
Standing Counsel for R.11

Advocate Commissioner
/ Amicus Curiae : Mr.T.Lajapathi Roy

W.P. (MD) No.3862 of 2020:

1.P.Veeramani

2.Pandiammal : Petitioners



Vs.

- 1.State rep. by the
Secretary to Government,
Revenue Department, Secretariat,
Chennai - 600 009.
- 2.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.
- 3.The District Collector,
Madurai District,
Madurai - 625 020.
- 4.The Superintending Engineer,
Public Works Department,
Tallakulam, Madurai - 625 002.
- 5.The Executive Engineer,
Public Works Department,
Tallakulam, Madurai - 625 002.
- 6.The Assistant Engineer,
Public Works Department,
Irrigation Section II,
Tallakulam, Madurai District -625 002. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to issue Assignment Order to the land situated at Ward No.16, Block No.36 in Survey No.137/2, Town Survey No.103, Tallakulam Village, to an extent of 7 cents, by considering the petitioners' representation dated 27.01.2020 and in the light of the order dated 21.01.2020 made in W.P. (MD) No.20142 of 2019.

For Petitioners : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.K.Chellapandian,
Additional Advocate General

Assisted by
Mr.K.P.Krishnadoss,
Special Government Pleader

Advocate Commissioner
/ Amicus Curiae : Mr.T.Lajapathi Roy



COMMON ORDER

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

Both the writ petitions are interlinked, having filed by the very same petition and therefore, they have taken up and disposed of by a common order.

2. For the sake of convenience and clarity, the parties are being referred to as per their rank in W.P.(MD)No.15994 of 2020.

3. This is a unique case, which we are dealing with. Encroachments have been found under the possession of the petitioners and the private respondents, namely, respondents 6 & 8. These encroachments are over the land, which has been classified as water body, though much water has been flown under the bridge with respect to the constructions made. Insofar as the encroachment made by the petitioners is concerned, it has been removed. The encroachments made by the respondents 6 & 8 still remain, as it appears that a Hotel is being run in the said place, which includes the encroached portion, wherein the Kitchen is situated, as against the other portions owned by them.

4. Having found that the water bodies are not established, we requested Mr.T.Lajapathi Roy, learned Advocate Commissioner / Amicus Curiae to suggest some solutions. Accordingly, various reports have been filed. The reports have been filed with the assistance of the official respondents, especially, respondents 4, 5 & 7.

5. Three places have been identified, as could be seen from the plan furnished before us, which was signed by the Assistant Director, Survey and Land Records, Madurai. These three places have been marked in blue color. These three places are vacant places classified as water body. The water has to start from the first blue marked portion adjoining to the existing Law College Hostel building. Though this place has also been allotted to the Law College Hostel building, the classification remains the same and the building has already been constructed with compound wall. Therefore, there is no difficulty in using this part as water body. The other two blue marked portions still remain vacant with the classification as water body.

6. From the latest report given by the Superintending Engineer, Periyar Vaigai Basin, Water Resource Organization, Madurai, sanction has already been made for a sum of Rupees One Crore, by way of G.O. (4D)No.07, Public Works (P1) Department, dated 19.01.2021, which is to be meant for only one of the aforesaid three blue marked portions. The report dated 15.03.2021, of the learned Advocate Commissioner / Amicus Curiae, as aforesaid, indicates that for a sum of Rs.88.09 Lakh, all the three identified portions, which are



obviously larger in extent and placed in three different places having the potential of increasing the aquifer, can be developed and maintained as water bodies.

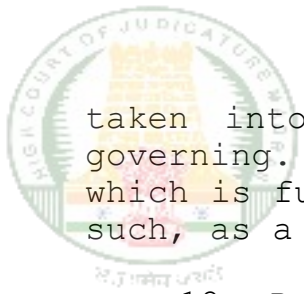
7. In such view of the matter, we direct the official respondents to see to it that the aforesaid three projects are completed within a period of four months from the date of receipt of a copy of this order.

8. The remaining issue is with respect to the encroachment made by the respondents 6 & 8 and the encroachment removed from the petitioners. The learned Counsel appearing for the petitioners submitted that in the adjoining survey number situated in S.No.102, five pattas have been given to individuals, though the classification of the land was also similar. The entire extent of land have been developed. There is an alternative outlet channel, which can be drawn through an adjoining portion, which has been encroached and used as a cycle stand. The petitioners are willing to make payment, as fixed by the District Collector. Therefore, their request may be considered either by leaving some portion or the entire portion, while facilitating the supply of water from the baby channel to the proposed water body, as indicated supra.

9. The learned Counsel appearing for the respondents 6 & 8 submitted that the very same yardstick can be adopted to them as well. The encroachment, if any, cannot be divided insofar as the constructed portion is concerned. Now, there is an ongoing Hotel. If the demolition takes place, then the Kitchen portion will go, which will result in the entire Hotel being closed. Therefore, they will have to be given an opportunity to suggest the alternative passage, so as to enable the official respondents to leave out the portion encroached by them to remain.

10. The learned Additional Advocate General and the learned Advocate Commissioner / Amicus Curiae submitted that this is an issue, which has to be considered by the District Collector in consultation with the other officials, as there are two factors which are to be considered. One is with respect to the decision to be made for grant of patta to the encroachers and the other is the augmentation of water by creating a baby channel to the main channel. Therefore, this has to be done, taking into consideration of the relevant rules along with the maintenance of the water bodies.

11. On this second issue, we do not wish to say anything except by directing the official respondents to take into consideration of two factors, namely, the development of the area, as the same has been developed, notwithstanding the classification, including for the construction of the residences for the High Court staff, Journalists, among other private persons. Therefore, the aforesaid



taken into consideration. We are quite conscious about the law governing. But then, the enactments create an exception to an area, which is fully developed and which may not be possible to keep it as such, as a water body.

12. Primarily, we are concerned with the creation of the baby channel to facilitate uninterrupted supply of water to the three water bodies, as indicated by us, earmarked in blue color in the aforesaid plan.

13. In such view of the matter, we call upon the District Collector, Madurai, to take a call after having consultation with the officials of the Public Works Department and upon affording an opportunity to the petitioner and the respondents 6 & 8, within a period of twelve weeks from the date of receipt of a copy of this order, in the light of the observations made by us supra. The District Collector can also consider the grant of patta, on terms, including fixation of the value. Till such time, *status-quo*, as on today, shall be maintained, insofar as the removal of encroachment of the respondents 6 & 8 are concerned and making further development through the land of the petitioners is concerned.

14. The eleventh respondent / Commissioner, Madurai Corporation is also directed to ensure not only the removal of garbage, which is available in the vacant place no.3, as aforesaid, but also no such activities takes place in future.

15. We once again make it clear that the aforesaid three areas, which are directed to be maintained as water bodies, shall be maintained as such and shall not be utilized for any other purpose.

16. We place on record the excellent assistance rendered by Mr.T.Lajapathi Roy, learned Advocate Commissioner / Amicus Curiae.

17. With the above observations and directions, both the writ petitions stand disposed of. There shall be no order as to costs. Consequently, all the connected pending miscellaneous petitions stand closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk



To

- 1.The Secretary to Government of Tamil Nadu,
Revenue Department, Secretariat, Chennai - 600 009.
 - 2.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 600 009.
 - 3.The Secretary to Government, Public Works Department,
State of Tamil Nadu, Secretariat, Chennai.
 - 4.The Secretary to Government,
Revenue and Disaster Department,
State of Tamil Nadu, Secretariat, Chennai.
 - 5.The District Collector,
Madurai District, Madurai - 625 020.
 - 6.The Superintending Engineer,
Public Works Department,
Tallakulam, Madurai - 625 002.
 - 7.The Executive Engineer,
Public Works Department,
Tallakulam, Madurai - 625 002.
 - 8.The Chief Engineer, Madurai with municipal Corporation, Madurai.
 - 9.The Assistant Engineer,
Public Works Department,
Irrigation Section II,
Tallakulam, Madurai District.
 - 10.The Commissioner, Madurai Corporation, Madurai.
 11. Mr.T.Lajapathi Roy, Advocate Commissioner,
No.99, Law Chamber, High Court, Madurai.
- +1 CC to M/s.R.MURALI, Advocate (SR-12331[F] dated 19/03/2021)
+1 CC to M/s.B.SARAVANAN, Advocate (SR-12336[F] dated 19/03/2021)
+1 CC to M/s.SPL GP (SR-12528[F] dated 19/03/2021)
+1 CC to M/s.C.MAYILVAHANA RAJENDRAN, Advocate (SR-12862[F] dated
22/03/2021)
+1 CC to M/s.JAGADESH PANDIAN, Advocate (SR-12229[F] dated
18/03/2021)

W.P. (MD) Nos.15994 & 3862 of 2020
18.03.2021

ns (CO)

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