

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2021

DATE OF DECISION : 21.06.2022

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.1998 to 2005 of 2012

M.E.Sekar	... Appellant in W.A.No.1998/12
R.Sundar	... Appellant in W.A.No.1999/12
E.Maliga	... Appellant in W.A.No.2000/12
V.Kalaivani	... Appellant in W.A.No.2001/12
A.Sekar	... Appellant in W.A.No.2002/12
A.Suresh	... Appellant in W.A.No.2003/12
R.Maheswari	... Appellant in W.A.No.2004/12

Women, Children Community
Development Trust,
Rep. By its Managing Trustee
Ms.R.Missie, D/o.Rajaian,
Reg.No.764/5,
33/8A, Ponnamman Koil Street,
Padi, Chennai. ... Appellant in W.A.No.2005/12

Vs

- 1.The Commissioner,
Ambattur Municipality,
Ambattur, Chennai,
Zone VII, Ambattur.
2. The Executive Engineer,
The Tamil Nadu Housing Board,
Thirumangalam, Chennai.
3. The Tahsildar,
Ambattur Municipality,
Ambattur, Chennai.
4. The Inspector of Police,
Korattur Police Station,
Korattur, Chennai. .. Respondents in all Writ Appeals

Prayer in W.A.No.1998 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.16607 of 2008, dated 27.06.2012.

Prayer in W.P.No.16607 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.33/10, Ponnamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.1999 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.24161 of 2008, dated 27.06.2012.

Prayer in W.P.No.24161 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.33/9, Ponnamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.2000 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.24162 of 2008, dated 27.06.2012.

Prayer in W.P. No. 24162/2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.33/2, Ponnamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.2001 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.24163 of 2008, dated 27.06.2012.

Prayer in W.P. No. 24163 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.35/9B, Ponnamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.2002 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.16607 of 2008, dated 27.06.2012.

Prayer in W.P.No.16607 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.33/10, Ponnamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.2003 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.24167 of 2008, dated 27.06.2012.

Prayer in W.P. No. 24167 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.31/9, Ponnamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.2004 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.24169 of 2008, dated 27.06.2012.

Prayer in W.P. No.24169/2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and

enjoyment of the property comprised in Survey No.253/1 and bearing Door No.33/9A, Ponniyamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

Prayer in W.A.No.2005 of 2012 : This Appeal has been filed under Section 15 of Letter of Patent against the order passed by the learned Single Judge in W.P.No.24939 of 2008, dated 27.06.2012.

Prayer in W.P. No. 24939 of 2008 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus forbearing the second respondent from interfering with the petitioner's peaceful possession and enjoyment of the property comprised in Survey No.253/1 and bearing Door No.33/8A, Ponniyamman Koil Street, Padi, Chennai - 50 and direct the third respondent to issue patta to the petitioner in the light of G.O.Ms.No.854, Revenue I (2) Department, dated 30.12.2008.

In all Writ Appeals

For Appellants : Mr.K.S.Ilangovan
for M/s.Achari & Antony Associates

For R1 : Mrs.Karthika Ashok
For R2 : Mr. D.Veerasekaran
For R3 : Mr.V.Manoharan, GA
For R4 : Mr.T.Arunkumar, GA

COMMON JUDGMENT

T.RAJA, J.

Challenging the impugned common order passed by the learned Single Judge in W.P.Nos.16607 and 24161 to 24169 of 2008, dated 27.06.2012, the appellants have filed these writ appeals.

2. The appellants/writ petitioners filed W.P.Nos.16607 and 24161 to 24169 of 2008 seeking for issuance of a writ of mandamus forbearing the respondents from interfering with their peaceful possession and enjoyment of the property in S.No.253/1, Ponniyamman Koil Street, Padi, Chennai, with a further direction to the third respondent Tahsildar to grant patta in the light of G.O.Ms.No.854, Revenue Department, dated 30.12.2006.

3. By the impugned common order dated 27.06.2012, learned Single Judge dismissed the said writ petitions holding that the lands in question were allotted to the Housing Board for

implementing the Housing Scheme to the general public and to all the categories of society and therefore, the question of issuance of patta in respect of the land in question does not arise. Aggrieved by the same, the writ petitioners have filed the present writ appeals.

4. Learned counsel for the appellants submitted that all their properties form part of Survey No.253/1 of Padi Village and they have been residing in that vicinity for more than 20 years and the local authorities had also provided electricity and telephone connections, etc. The certificate issued by the Deputy Tahsildar, Ambattur, classified the said land as "Eri Poromboke", however, there is no tank in existence and the entire tank area was handed over by the State Government to the second respondent/Housing Board, who have put up construction in the very tank area.

5. It is further submitted that the Government had also issued G.O.Ms.No.543, Revenue Department, dated 05.04.1988, to regularize the occupants in Survey No.253, Padi Village, which is the subject land. Further, the Tahsildar, Kanchipuram, in his proceedings dated 01.10.1996, stated that in respect of poramboke lands, proceedings are being conducted for grant of house site pattas. Subsequently, the Government also passed G.O.Ms.No.854, Revenue 1 (2) Department, dated 30.12.2006, granting house site pattas to those people who have been residing for more than 10 years in unutilized government poramboke lands. Based on the same, the writ petitioners made representation requesting grant of patta to the Chief Minister's Cell. Thereafter, the Assistant Director, Land Survey and Records Department, Thiruvallur, vide his proceedings dated 27.02.2007, directed the third respondent Tahsildar to initiate action for grant of patta to the writ petitioners in accordance with G.O.Ms.No.543, Revenue Department, dated 05.04.1988. The Village Administrative Officer, Ambattur Taluk, has also issued certificate dated 10.04.2007, stating that the writ petitioners have been residing in the subject property for more than 10 years. The Revenue Inspector, Ambattur Taluk, vide his proceedings dated 13.04.2007, has stated that the writ petitioners are eligible for house site pattas and thereby recommended their case to the third respondent Tahsildar for grant of patta. In the light of G.O.Ms.No.854, Revenue 1 (2) Department, dated 30.12.2006, the third respondent Tahsildar, has sought the opinion of the first respondent for grant of patta and thereupon, the first respondent also has recommended issuance of house site pattas to the persons living in the vicinity of S.No.253/1, through his proceedings dated 30.07.2007. However, despite the recommendation of all the authorities for grant of patta to the writ petitioners, the third respondent Tahsildar has not taken any step so far.

6. Continuing further, learned counsel for the appellants contended that when Survey No.253 in Padi Village has already been allotted to the Housing Board for the purpose of housing scheme to the homeless people, the writ petitioners being homeless persons have been residing in Survey No.253/1 for more than 10 years and therefore, they are eligible under Housing Scheme, hence, no steps can be taken to evict them. This being the actual scenario, the impugned common order passed by the learned Single Judge rejecting the prayer of the writ petitioners for grant of patta is not tenable and therefore, it is liable to be set aside.

7. Learned standing counsel for the second respondent/Housing Board, by filing a detailed counter affidavit, submitted that the Government of Tamil Nadu had started developing the Housing Scheme through the Tamil Nadu Housing Board and one such scheme called as "Anna Nagar Western Extension Scheme" during the year 1972. The lands in Survey Nos.253 classified as Tank Poramboke lost its usage as irrigation source due to lack of water flow. Therefore, in the process of acquiring the lands for the said scheme, the Government had identified the lands measuring an extent of 99.80 acres in Survey No.253 of Padi Village and thereafter, transferred the said land to the Revenue Department for alienation to the Housing Board. Subsequently, the Housing Board was permitted to enter upon the subject lands for the purpose of carrying out the developmental works vide G.O.Ms.No.2318, Public Works Department, dated 15.12.1979. Out of 99.80 acres, 63.38 acres were handed over to the Housing Board for implementing the Housing Scheme in Survey Nos.253/1, 3,4,5,6,8,9,10,11,12,13,15&16 and the balance lands measuring an extent of 36.42 acres in Survey Nos.253/2,7,14,&17 were encroached by the public and the said lands had been classified as Natham by the Revenue Department. Subsequently, the Tamil Nadu Housing Board had obtained layout approval comprising of Survey Nos.253/1,3,4,5,6,8,9,10,11,12,13,15&16 from the competent authority from time to time. Therefore, the encroachers should be removed and the land in question used by the encroachers should be handed over to the Tamil Nadu Housing Board, she pleaded.

8. Supporting the arguments of learned Standing counsel for the second respondent/Housing Board, Mr.V.Manoharan, learned Additional Government Pleader appearing for respondents 1, 3 and 4 submitted that the prayer made by the writ petitioners/appellants for grant of patta in respect of water body is not legally permissible. In this regard, by relying upon a judgment of this Court in the case of L.Krishnan vs. State of Tamil Nadu and others reported in 2005 (4) CTC 1, he has argued

that in the said judgment, directions were issued to the respondents therein to take necessary steps to remove the alleged encroachments made by respondents 6 to 12 therein as well as the petitioner therein over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents and to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

9. Again referring to the judgment of the Full Bench of this Court in the case of T.K.Shanmugam vs. State of Tamil Nadu and others reported in 2015-5-L.W.397, learned Additional Government Pleader submitted that this Court has observed that the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, do not in any manner dilute the observations/directions issued in the case of L.Krishnan vs. State of Tamil Nadu reported in 2005 (4) CTC 1. Therefore, in view of the settled legal position, directions may be issued to the respondents to take necessary steps to remove the alleged encroachments.

10. Heard the learned counsel appearing on either side and perused the materials available before this Court.

11. It is an admitted fact that in the year 1972, the Government of Tamil Nadu had started developing the Housing Scheme and one such Scheme is "Anna Nagar Western Extension Scheme". During the process of acquiring the land, the Government had identified the lands measuring to an extent of land 99.80 acres in Survey No.253 of Padi Village and thereafter, the Tamil Nadu Housing Board was permitted to enter upon the subject lands for the purpose of carrying out the developmental works vide G.O.Ms.No.2318, Public Works Department, dated 15.12.1979. Out of 99.80 acres, 63.38 acres were handed over to the Tamil Nadu Housing Board for implementing the Housing Scheme in Survey Nos.253/1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15 & 16. However, the balance lands measuring to an extent of 36.42 acres in Survey Nos.253/2,7,14&17 were encroached by the public. It is also to be noted that the Government had issued G.O.Ms.No.543, Revenue Department, dated 05.04.1988, to regularize the encroachments in Survey Nos.253/2, 7, 14 and 17 for an extent of 36.42 acres. However, the land in Survey No.253/1 of Padi Village is in possession of the Tamil Nadu Housing Board for implementing Housing Scheme as per G.O.Ms.No.2318, Public Works Department,

dated 15.12.1979. But, from the records, it is seen that the place in question is Eri Poramboke. Therefore, considering the nature of the land, in our earlier order dated 27.10.2021, we have directed the Tahsildar, Ambattur, to find out the possibility to restore the part of Oorani/water body having an extent of 6.48 acres in Survey Nos.253/1, 253/15 and 253/16 to its original position. Pursuant to the order of this Court, the Tahsildar, Ambattur, filed his report dated 29.10.2021 stating that in the subject land, more than 1000 families are living and they have obtained electricity connection, besides, they have water connection and drainage facilities. Therefore, since the people have been living for a longer period of time and that there has not been any flow of water into the Tank/Lake for several years, the Government constituted an Empowered Committee consisting of Additional Chief Secretary to the Government, Principal Secretary to Government, the Commissioner of Land Administration. Thereafter, the Empowered Committee, after obtaining the report from the District Collector, have approved the land in the lake for alienation to the Tamil Nadu Housing Board in the guise that the lake became dry and water body has lost its character and thereby on account of disuse, reclassified of the lands as "Ryotwari Manai" in respect of the lands which were developed long back.

12. In this regard, it is apposite to take note of a decision of the Full Bench of this Court in T.K.Shanmugam's case (cited supra), wherein it is held that Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures, because, this Article is not only fundamental in the governance of the Country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India. For better understanding, paragraph Nos.39 to 41 of the said judgment are extracted below:-

"39. Going back to the decision of the Division Bench in the case of Sivakasi Region Tax Payers Association (supra), the Division Bench in paragraph 27 of the judgment observed that if any particular pond or water channel, artificial or natural had fallen into dis-use for a very long period and if persons have encroached upon such lands, whether a direction can be issued for eviction and as to whether such of those persons who have encroached upon such lands have acquired any right under the law relating to limitation or

any policy of the State where the Government in its wisdom decides to confer certain right on such persons. In paragraph 31 of the judgment, the Division Bench held that G.O.Ms.No.854, is legal. However, we may note the observations in paragraph 28 of the judgment, the Division Bench observed that it should not be misunderstood for a moment that they are suggesting that all encroachments should be regularised or encroached, but if the State Government takes a conscious decision to regularise certain encroachments, which have continued for a pretty long period after the appropriate authority comes to a conclusion that such land is not required for any public purpose or for the State, the same would be within the jurisdiction of the Government to take a policy decision in the matter. We have our reservations in accepting the reasoning given by the Division Bench in paragraph 28.

40. As noticed above, the Division Bench while adding a word of caution that they are not advocating a general principle to regularise all encroachments or encourage them observed that if the State Government takes a "conscious decision" to regularise certain encroachments and if the land is not required for any public purpose, the State Government would be well within the jurisdiction to do so. Thus, the question would be as to what is a "conscious decision" and what would be the manner in which the appropriate authority will come to a conclusion that the land is not required for public purpose. In our view a "conscious decision" in such cases with particular reference to encroachment in water bodies should be in consonance with the public trust reposed on the Government in respect of such lands (water bodies). The State being a trustee of these natural resources such as tanks, lakes etc., has to necessarily act consistent with the nature of such trust. The vesting of these lands and water bodies with the Government is to benefit the public and any attempt made by the Government to act in a manner derogatory to the object for which the land was vested, has to held to be illegal. The underlying fundamental principle being that such rights are public rights are in a

higher pedestal than private rights. We may take a look of the matter from a different perspective. The Government has considered that water bodies, which have fallen into dis-use and have been encroached upon could be declared as not required for any public purpose and the encroachments could be regularised. What the Government has failed to see is the cause as to why these water bodies, lakes, tanks have fallen into dis-use. If this aspect is analysed, it would come to light that in several cases the disuse was man-made and there appears to be a cartel, which systematically works with a view to grab Government property. In such scenario while taking a "conscious decision", the Government cannot ignore the fiduciary duty of care and responsibility cast upon it and simultaneously analyse as to why such dis-use has occurred. The plethora of decisions on the point elucidate the basic principle of the public trust doctrine when the water bodies vest with the Government, placing the Government in the capacity of a trustee, there is 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 the public trust and in such cases, the duty of the Government is more onerous to restore the land back to its original position and thereby restore the trust reposed on it. Therefore, we are not inclined to accept the proposition that merely because a water body has put to dis-use that by itself would be a good ground to regularise the encroachments.

41. The next aspect would be as to how and in what manner the appropriate authority would come to a conclusion that such land is not required for any public purpose or for the State. It may be a policy decision in this regard, but such policy decision has to satisfy the touch-stone of fairness and reasonableness and satisfy Article 14 of the Constitution of India. Reading of the Government Orders show that the decision taken with regard to a particular land is not required for the Government for any public purpose is largely based on report submitted by the officials of the Revenue Department and invariably the justification is that people

have been residing for a long period of time and there has not been any flow of water into tank/lake for several years or the water is unfit for human consumption. In our view, this can hardly be a justification, since the Revenue Authorities have turned a blind eye to encroachments on lands which have, canals/channels through which the water flows into such water bodies. Once again the Government having failed to protect those feeder channels and canals cannot sight that as an excuse to say that there is no flow of water into the tank/lake and therefore, they would be justified in recommending regularisation of the encroachments."

13. In the light of the ratio laid down in the above said judgment, the Government has got fiduciary duty of care and responsibility to safeguard the water bodies and therefore, the Government cannot ignore the ground reality of being trustee of all these natural resources. In the present case, the act of the Government through G.O.Ms.No.105, Revenue and Disaster Management Department, Land Disposal Wing (LD5 (2)), dated 01.02.2021, permitting alienation of the lands of tank poramboke to an extent of 64.85 acres in Survey Nos.53/2, 253/1, etc., which are classified as Government Poramboke (Vaikal, Eri. Etc.) in favour of the Housing Board on the premise or reason that the tank poramboke land became dry and no water is coming into its tank is against the law laid down by this Court in T.K.Shanmugam's case (cited supra).

14. It is also to be noted that Padi and all its vicinities are not connected with river water. There is no river running nearby Padi to recharge the adjacent land during the rainy season. The people living on the non-riparian area are totally depending on the water tanks which harvest the rain water, through which, the bore-well also can be recharged during the summer and continuous drought season. Even a man of ordinary prudence would preserve the water-bodies, more particularly, in the non-riparian area. If there is downpour of rain on the hills situated 100 kms. away from the particular area, the river takes the water from hundreds of kilometers away from the place where it gets rain. Therefore, wherever the people are living in the river bodies, there is no requirement for them to build or dig Oorani, Kanmai, waterbody, etc. Even these areas also should have Kanmai, Oorani, waterbody, etc. to save water to cater to the agricultural needs and the drinking needs of the people, animals, etc. Keeping in mind these great ideas, our forefathers have established Oorani, Kanmai, waterbody, etc. Even if there is continuous failure of monsoon for some years,

these waterbodies would serve the drinking water needs of the people, animals, etc. Therefore, if we obliterate the waterbodies, more particularly, in the non-riparian areas, it will be a death knell to the lifeline of the people and this will have a serious ramification, not only on the economy but also on the survival of the future generation. Therefore, foreseeing this truth, Article 51-A(g) in Part IV-A of the Constitution of India says that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Therefore, since the aforesaid Article imposes a duty to ensure healthy environment not only on the State under Article 48-A but also on citizens under Article 51-A(g) of the Constitution of India, we hereby direct the respondents to restore the entire land in S.No.253/1, Ponnamman Koil Street, Padi, Chennai, to its original position, as this will serve as water body to recharge the bore-wells sunk in the nearby area during summer season and also serve as water source to the people at large.

In fine, for the reasons stated above, the writ appeals stand dismissed. No Costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
Ambattur Municipality,
Ambattur, Chennai, Zone VII, Ambattur.
- 2.The Executive Engineer,
The Tamil Nadu Housing Board,
Thirumangalam, Chennai.
- 3.The Tahsildar,
Ambattur Municipality, Ambattur, Chennai.
- 4.The Inspector of Police,
Korattur Police Station, Korattur, Chennai.

+1cc to M/s.Achari & Antony Associates, Advocate SR.No.37914

+1cc to Mr.D.Veerasekaran, Advocate SR.No.37718

W.A.Nos.1998 to 2005 of 2012

NR(CO)

GMV(21/07/2022)