



W.P. No.21720/2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
.12.2022	21.12.2022

**CORAM
THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**W.P. NO.21720 OF 2012
AND
MP.NO.1 OF 2012**

M/s.UltraTech Cement Limited,
(Unit : Reddipalayam Cement Works),
Rep. by its Vice President
Shri.T.P.Janardanan,
Reddipalayam Post,
Ariyalur District - 621 704.

.. Petitioner

- Vs -

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Govt.,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The Special Commissioner / Commissioner,
Land Administration, Ezhilagam,
Chepauk, Chennai - 600 005.
3. The District Collector,
Ariyalur District.
4. The Tahsildar,
Ariyalur Taluk.



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5. R.Sekar

.. Respondents

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(R5 impleaded, vide order dated
18.11.2015 made in MP.1/2013)

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 24.02.2012 in G.O.No.66 of 2012 (Revenue N.M.2(2) Dept.) passed by the 1st respondent and quash the same.

For Petitioner : Mr. M.Ravindran, SC
for Mr.Krishna Ravindran

For Respondents : Mr. A.Selvendran, AGP, for RR-1 to 4
Mr.C.Sivakumar, for R-5

ORDER

Assailing the order of the 1st respondent in and by which the lease, which was granted to the petitioner over the subject property, in which a manufacturing facility has been established by the petitioner, has been cancelled, on the premise that the said land is a water body, the present writ petition has been filed seeking quashment of the said order.

2. It is the case of the petitioner that the subject lands were leased out to the petitioner company by the 1st respondent for the setting up of a Cement



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factory for the upliftment and employment generation in and around the surrounding areas in view of the rich limestone deposits available in the said area. On the application of the petitioner company on 13.01.1994, lease was entered into by the petitioner company, which has been periodically extended. It is the further case of the petitioner that the classification of the lands were shown as “Government Poramboke”, though identified in the revenue records as “water body”. It is the further case of the petitioner that the said lands, though classified as “water body”, are in reality dry lands and the said lands are situated above the water level and it has lost its characteristics as a water body.

3. It is the further averment of the petitioner that pursuant to the lease, the petitioner, through very many requests, requested the Government to alienate the lands and agree to part with the value of the lands as assessed by the revenue authorities and in fact, the Block Development Officer, Ariyalur had recommended to the 3rd respondent, vide communication dated 11.3.1994 for transfer of lands in favour of the petitioner by collecting the appropriate land value, opining that the lands are situated above the water course and have been shown as not suitable for agricultural purpose and is also classified as a non-irrigating water course as classified u/s 84 (1) of the Panchayat Act.



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4. It is the further averment of the petitioner that a resolution was also passed by the Panchayat and a No Objection was also passed on 24.2.1994 favouring the alienation of the lands in favour of the petitioner. It is the further averment of the petitioner that consequent upon the preliminary inspection conducted by the Addl. Collector, Tiruchirappalli and later by the Revenue Divisional Officer, Ariyalur on the directions of the Collector, Tiruchirappalli, for determination of the valuation of the lands, a detailed report was filed in which the lands were identified as dry lands and the value of the lands was fixed at Rs.70,000/- per acre.

5. It is the further case of the petitioner that the application was filed to the 3rd respondent for the purpose of assignment of lands in favour of the petitioner. Further, lease was entered into between the petitioner and the Government, pending assignment of the lands and the lease amount was also fixed at Rs.17,80,227/- vide order of the 3rd respondent dated 8.11.1999 and that the petitioner has been paying the said amount regularly, including the enhancement that is being made every year. The petitioner has been paying the lease amounts regularly, which lease is renewed every three years with increase in lease amount.



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6. It is the further averment of the petitioner that all along the petitioner company had been given to understand that the lands would be assigned in their favour and only in such a backdrop, the lease was being continuously extended. In the aforesaid backdrop, the impugned order passed by the 1st respondent not to extend the lease is wholly unsustainable as it would adversely affect the development of the adjoining area and would have a critical impact on the employment opportunity for the persons living in and around the area in addition to having a greater impact on the financial condition of the Government as the petitioner is paying an amount of more than Rs.90 crores by way of indirect taxes to the State and Central Governments and closure of the petitioner's factory would have a huge financial loss to the exchequer and would be against public interest. Hence, the present writ petition is filed.

7. Learned senior counsel appearing for the petitioner submitted that the act of the respondents in continuously extending the lease by receiving the amounts and keeping the application of the petitioner for assignment of the land clearly shows the intent of the respondents to permit the petitioner to occupy the lands for the benefit of the public in and around the said area. It is the further submission of the learned senior counsel that sustained development of



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the locality has been taken into consideration by the revenue authorities while recommending the case of the petitioner for assignment of the lands, more so in view of the fact that a categorical opinion has been rendered by the revenue authorities, upon field inspection, wherein it has been opined that the subject lands are not only dry, but has not been put to use as a water course for a considerable period of time and that the lands are also above the water level and, therefore, would not be beneficial to be used as a water body any longer. The aforesaid fact has not been properly appreciated by the 1st respondent while passing the impugned order.

8. It is the further submission of the learned senior counsel that the Hon'ble Supreme Court in an identical situation in ***State of Rajasthan & Anr. – Vs - Ultratech Cement Ltd. (Civil Appeal No. 5841 of 2022 - dated 26.08.2022)***, with regard to the usage of lands adjoining a mining area, had held that the allotment of lands in favour of the petitioner therein would not in any way affect the ecological balance or cause any detriment to the fauna in the said area. The learned senior counsel also drew the attention of this Court to the decision of the Division Bench of this Court in ***K.Balamurugan & Ors. – Vs –State of Tamil Nadu & Ors. (W.P.No.26314 of 2007 – Dated 09.9.2008)***, wherein, in an

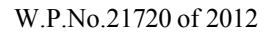


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identical scenario, the Division Bench, considering the purpose for which the water body, which had lost its characteristics, due to long non-usage, had permitted the usage of the said water body for other purposes, which are in the interest of the public.

9. It is therefore the submission of the learned senior counsel that the petitioner is in possession of vast extent of lands in and around the area and is even ready and willing to give equivalent land in the area towards assignment of the present lands by the respondents and is also willing to develop the water body in the said lands, which could be exchanged in lieu of the subject lands, which could be assigned to the petitioner.

10. It is the further submission of the learned senior counsel that not only the Government would have a larger financial loss, but also the petitioner, who, had invested large amounts on the belief that the lands would be assigned to them after the period of lease is over. The 1st respondent has failed to take into consideration the reports of the revenue authorities, with regard to assignment of land in favour of the petitioner in proper perspective and have, on a constricted view that the land is a water body, had rejected the application of the petitioner for assignment, when the said land had ceased to be a water body



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12. It is the further contention of the learned senior counsel that the Government, after carefully considering the observations of the revenue authorities, on coming to a definitive conclusion that the subject lands cannot be treated as a water body, relaxing the ban had granted the lease in favour of the petitioner even way back in the year 1996. Such being the undisputed position, and of the 1st respondent that the said land is a water body and, therefore, the lands cannot be assigned and lease cannot be extended is wholly untenable.

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provides the Government with powers to lease out even a water body for the purpose of sustainable development and the necessary measures to be undertaken by the lessee is provided in RSO 24A. When the Revenue Standing Order permits leasing out of a water body for sustainable development, the stand of the 1st respondent to cancel the lease deed, without any proper reason is wholly impermissible. It is the further submission of the learned senior counsel that the petitioner has not in any manner altered the characteristics of the land, which would in effect given the Government the necessary leverage to cancel the lease.

14. It is the further submission of the learned senior counsel that not only the petitioner is ready to give lands equivalent to the lands, which are in occupation of the petitioner, but the petitioner is even ready and willing to make the said lands as a water body as the financial burden for creation of a water body would be much less when compared to relocating the plant of the petitioner. However, without considering all the aforesaid stand taken by the petitioner, the 1st respondent had cancelled the lease which is wholly unsustainable and deserves interference at the hands of this Court.

15. Per contra, learned Addl. Government Pleader appearing for the



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respondents 1 to 4 submitted that though the subject lands were leased to the petitioner, however, the lease did not contain any clause relating to developmental activities that could be taken up on the said lands, as such acts, if permitted, would cause the water body to be re-characterized, which is impermissible.

16. It is the further submission of the learned Addl. Government Pleader that merely because lease has been granted under the provisions of the Revenue Standing Orders would not be a ground for the petitioner to seek assignment of the lands, as RSO 24 clearly speaks about the power of the Government to repossess the lands. It is the further submission of the learned Addl. Government Pleader that it has been the consistent view of this Court that water bodies should not be converted for any other development purposes, as the sustenance of the human race depends on water and, therefore, storage of water is *sine qua non* for the continuance of life on earth.

17. It is the further submission of the learned Addl. Government Pleader that the decision of the Division Bench, relied on by the learned senior counsel cannot be the basis for giving equivalent direction in the present case, as in the



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said case, though water body was utilised for some other purpose, yet the purpose was for putting up a hospital, which is another life saving measure and, therefore, a categorical finding was recorded therein by the Division Bench to have the water body utilised for the said purpose. However, in the case on hand, mere generation of employment opportunity, which would in turn benefit the petitioner, cannot be said to be a public purpose, though certain strata of people may stand to benefit, but not the whole public will benefit and, therefore, the said decision cannot be made a precedent to grant the relief sought for.

18. It is the further submission of the learned Addl. Government Pleader that the other decision of the Hon'ble Supreme Court wherein it was held that if any land lost its characteristics during the lapse of time, the re-classification of the said land and alienation of the same in favour of any company for sustained development is permissible. In the case on hand, the land has not lost its characteristics and it is still maintained in the revenue records as a water body and such being the case, merely because of non-maintenance of the water body resulting in non-storage of water would not alter the character of the land. Therefore, the attempt of the petitioner to bring the present land within the ambit of the decision in *Ultratech's case (supra)*, would not be available to the



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petitioner. Accordingly, the learned Addl. Government Pleader prayed for dismissal of the present petition.

19. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions to which this Court's attention was drawn.

20. Before proceeding to analyse the legality of the lease given in the wake of sustainable development vis-a-vis the impermissibility in the utilisation of the water body, the characteristics of the land, as is reflected in the revenue records requires to be looked into. For better understanding the classification of the disputed lands are stated in the counter affidavit filed by the respondents is as follows:-

<i>S.F.No</i>	<i>Total Extent (Hectares)</i>	<i>Extent of lease (Hectares)</i>	<i>Classification</i>	<i>Present usage by the petitioner</i>
<i>51 part</i>	<i>11.73.5</i>	<i>2.98.5</i>	<i>Kuttai</i>	<i>Lime stone stacker shed and conveyor belt.</i>
<i>102 part</i>	<i>3.64.0</i>	<i>3.51.0</i>	<i>Ramasamy Mooppanar Eri</i>	<i>Income Tax and Accounts section department building is being constructed. Lime</i>



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S.F.No	Total Extent (Hectares)	Extent of lease (Hectares)	Classification	Present usage by the petitioner
				stone stacker yard and conveyor belt
105	0.25.0	0.25.0	Vaari	The full extent of vaari is obliterated and used as a passage. One water distillation plant is put up at the end.
107	5.67.5	5.67.5	Manakkattu Eri	Cement roads, packing plant, cement loading yard, 67 M height cement silo with a capacity of 15000 MT cement production plant, conveyor belt, security office and weigh bridge and a small extent of park.
	Total	12.42.0		

From the above, it is clear that the lands, which are the subject matter of *lis* is characterized as a water body and the same is reflected in the revenue records. The said fact is not disputed by the petitioner. In the wake of the characterization of the lands in the revenue records, the permissibility for leasing out the same requires determination in the light of the provisions as contained in the Revenue Standing Orders.

21. RSO 24A deals with grant of land and buildings at the disposal of the



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Government for temporary occupation for non-agricultural purposes. Clause (3)

therein provides the form or order of grant and for better understanding, the

same is quoted hereunder :-

“1. Scope of the Standing Order :- This Standing Order dealw with temporary occupation for specified periods and for non-agricultural purposes of :

(1) land

(2) building, and

(3) land with buildings on it at the disposal of the Government.

Grants for such occupation may be made in favour of individuals, private bodies, companies or associations and local bodies.

2. Period of temporary occupation :- The maximum period should not generally exceed 3 years at a time, for bunks, shops, etc. However the Government may grant any land on lease for a period of 20 years. At the time of renewal or once in three years whichever is earlier the rent should be revised. But before revising rent, a notice should be issued to the lessee.

3. Form of order of grant. – The grant in each case should be embodied in an order in the form given in Appendix XXX-A with suitable modifications. As in the case of assignments under R.S.O. No.15, a simple form of order has been prescribed taking advantage of the provisions of the Government Grants Act, 1895 (XV of 1895). The item



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enumerated below by way of illustration will be cases for such grants :-

- (i) Recreation purposes with or without a pavilion or club house;*
- (ii) Bridges and culverts whether permanent or temporary;*
- (iii) Bunks (for trade purposes);*
- (iv) Timber and Firewood depots;*
- (v) Laying pipelines;*
- (vi) Unobjectionable sub-soil encroachments on road margins and other Government porambores;*
- (vii) Temporary occupation of Government land for performance by a touring cinema, circus or dramatic company."*

22. RSO 26A deals with Exchange of land at the disposal of the Government for private land, which is put in issue before this Court so as to enable the Government part with the lands *in lieu* of alternate lands to be provided by the petitioner. For better appreciation, RSO 26A is quoted hereunder :-

“1. When exchange may be made - The grant of land, at the disposal of the Government for land owned privately may be made in circumstances such as the following:-



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(i)Where a river, waterway, cart-track, etc., has changed its course through a private holding, the owner is willing to relinquish the land covered by the actual course in exchange for the portion registered in the accounts as river, etc.,

(ii)for straightening the course of a channel, pathway, etc., or where a channel, pathway, etc., spits up a holding into two and it can be diverted along the boundary of the holding without any inconvenience to the public.

(iii)where it is desirable to prohibit any cultivation in the bed of an irrigation tank or river and the private owner is willing to relinquish the land situated in such bed in exchange for land at the disposal of the Government;

(iv)where small extents of private land not exceeding 25 cents in each case are required for public purposes such as minor improvements in irrigation sources or construction of chavadies, cattle-pounds, wells or schools;

Note.- *If any permanent structure is to be built on the land required it must invariably be required whatever the extent of the land or its cost may be.*

G.O.Ms.2853, Rev., d, 19-9-39 B.P.Press 18, d. 15-3-39.

(v)where by an act of the Government, a private holding or any portion thereof has been rendered valueless or has been diminished in value and the private owner is willing to take land at the disposal of the Government in



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exchange for such holding or portion, as the case may be.

(vi)where a private owner is willing to provide land for the extension of village sites in exchange for land at the disposal of the Government;

(vii)where a private owner is willing to relinquish small extents of land not exceeding 25 cents in each case for the consolidation of his holding”

2. Mode of exchange.- *Such exchange should take the form of a relinquishment of the land privately owned and of an assignment subject to the usual conditions of the land at the disposal of the Government.”*

From the above, it is evident that disposal of land for temporary occupation and for shorter periods is permissible under the provisions of the Revenue Standing Orders. This Court has no quarrel with the above proposition and the provision of law, which has been in the statute book time immemorial. However, the larger issue in the present case is the grant of lease on a land, which is classified as a water body as per the revenue records.

23. The sum and substance of the contention of the petitioner lies on the sustainable development on the basis of the large scale manufacturing facility put up by the petitioner, which creates employment potential, not only for the persons residing in and around the said area, but also for persons coming from



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outside. In this regard, reliance has been placed on the decision in *Balamurugan's case (supra)*, wherein a Division Bench of this Court, with approval, permitted parting away of a water body for the purpose of construction of a hospital. The relevant portion of the said order is quoted hereunder :-

"46. In such circumstances, it will have to be held that the attempt of the District Authorities as well as the State Government proposing to convert the Mundiambakkam lake as a full fledged speciality Medical College Hospital with all facilities as a prudent step in the right direction in the interest of public at large. Such a step in our considered opinion would toe in time with the concept of 'Sustained Development' without infringing or causing any impact on the environmental set up or injuring the ecological set up. Mustering all our courage, we state that by applying the principles of sustained development which has now come to stay and by striking a balance as between the said concept vis-a-vis the environmental protection, we will be justified in affirming the action of the State in proceeding with its attempt to set up a Medical College and Hospital in the lake site. We say so because having been convinced that the so called lake has ceased to be a lake for nearly 15 years which has also provided some scope for encroachment as has been pointed out by the District Administration, if the State Government is not allowed to develop the said property in a fruitful manner it may



ultimately go into the hands of unscrupulous elements who may try to grab the lands for their personal ends. The Court cannot shut its eyes to such hard realities taking place which will not be in the interest of public at large.”

In the aforesaid case, the conversion of water body into a hospital was the subject matter before the Division Bench of this Court wherein it was held that by applying the principles of sustained development and by striking a balance as between the said concept vis-a-vis environmental protection, it was held that the attempt of the State to set up a Medical College and Hospital in the lake site was found to be justifiable, as it would serve a higher public need, more so, when the said water body had lost its characteristics and for more than a decade and a half, it had not been utilised for the purpose of storage of water.

24. Highlighting the fact that the subject lands have also lost its characteristics and, therefore, there is no embargo for the State to grant the lease, which would in turn benefit the employable public in and around the locality, the aforesaid decision is pressed into service.

25. True it is that sustainable development is the need of the hour; but the



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WEB COPY said sustainable development should not be at the cost of another sustainable factor, which has more impact on the human race than the financial oriented sustainable development. The establishment of the manufacturing utility of the petitioner definitely has an impact on the persons in and around the adjacent area, who get more employment opportunities, but when their sustenance and their living itself is put in jeopardy by robbing them of the source of water, which alone would sustain the human race, then such sustainable development has to be had a second look at, as employability cannot be a ground to put in peril the lives of the larger number of people, not only of the adjoining areas, but also of a larger circumference of people residing throughout the course of the water body.

26. It is to be pointed out that a water body not only serves the persons, who reside nearby, but it serves a multitude of people throughout the line in which the water course travels. Further, the storage of water in the water body would resultantly be available to persons, who live in far off places as the water can be pumped and transported to the said places, which would in turn benefit the public at large. Storage of water takes more precedence over development activities, as without human race, the development, which is sought to be



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achieved would be an empty drum. Therefore, maintenance of the water body in its very same character alone could be held to be public purpose when weighed against the manufacturing unit established by the petitioner, which could be said to be in the interest of the public in and around the locality, but cannot be said to be a public purpose, as in a public purpose, financial consideration is pushed to the back seat and only the necessity in the interest of the public assumes the front seat. In the case on hand, the benefit which the manufacturing unit of the petitioner sought to achieve gets diminished when pitted against the need for preserving the water body to its natural position for the benefit of human race.

27. In *Balamurugan's case (supra)*, the main reason for the Division Bench to traverse from the well accepted precedent of modifying the water body was only due to the fact that a hospital, which would cater to the public and restore the health and revive their lives from even the most calamitous situation, was the pivot, which tilted the scales in favour of establishment of the hospital. However, such is not the case on hand. In the present case, the manufacturing unit had already been established by the petitioner for a business purpose, thereby, enriching the petitioner as well, though it had a bit of public interest involved. But the establishment of the manufacturing unit of the petitioner



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cannot be said to be a purely public purpose, which would be in the interest of the public alone. Rather, it is mainly in the interest of the petitioner which also takes along with it the benefit to the public, but one which cannot be said to be a purely public purpose. Therefore, sustainable development cannot be at the expense of the life and sustenance of the human race and livelihood, and employability cannot be said to be a public purpose, which could be pushed to the forefront to gain any mileage to make this Court hold that the benefit to the public would, by itself, be a public purpose, which would necessarily attract the ratio laid down in *Balamurugan's case* to the case on hand.

28. Sustainable Development should be a balancing act between private interest and public interest in which public interest should definitely take the lead ahead of private interest. When the sustainable development tries to gain a lead over public interest by projecting the interest of the private entity, definitely the said concept of sustainable development cannot be permitted as it would be nothing but an axe with which the interest of the public gets axed.

29. Insofar as the decision of the Hon'ble Supreme Court in *Ultratech's case (supra)* is concerned, though it has been held that efflux of time has made



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the land lose its characteristics over a period of time, enabling reclassification and alienation of the said land in the favour of the company, however, it is to be pointed out that the need of the water body is realised by the petitioner even, who had even come up with a proposal to carve out a water body. Further, in the said case, the lands were adjacent to a mining field in which mining activity was carried on and in that backdrop, the Hon'ble Supreme Court held that the water course being utilized for mining activity, precluding the petitioner therein from utilizing the land for the purpose of some manufacturing activity would be arbitrary and unsustainable.

30. Though a land would lose its characteristics over a period of time, however, it is to be pointed out that the loss of characteristics is more man-made than otherwise. The necessity of the water body should be realised by the Government and steps should be taken for preservation of the same. However, unmindful of the consequences, water bodies are sought to be obliterated through clandestine means, even by revenue officials acting hand in glove and giving opinion for conversion of water body for other use by reclassifying the lands. In the case on hand, it is to be pointed out that the revenue records still hold that the subject lands are classified as water body, which has been



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extracted above and the extent of the lands in which the water body exists, clearly shows the vast expanse occupied by the water body. Such being the case, when the petitioner even has come forward to create a facility for water storage *in lieu* of permission to hold the present lands, by putting forward its case that relocation of the manufacturing facility would be financially more costlier than creation of a water body, it is to be stated that finance should not be the yard stick in which environmental utilisation should be looked into.

31. It is to be pointed out that Nature has carved out landscapes through which water flows to various parts and also has demarcated the water storage points, which would result in better utilisation of water by the human race. When such is the case, it is not for the mortals to determine the best course of water flow, when water flow is created by Mother Nature. Any interference with the flow of water would not only result in wastage of natural resources, but, in the present case, would result in the loss of precious liquid, which is the source of sustenance of the human race.

32. In the above backdrop, the decision of the Full Bench of this Court in the case of ***T.K.Shanmugam – Vs – State of Tamil Nadu &***



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Ors.(MANU/TN/3451/2015) assumes significance. In the said decision, the Full Bench of this Court, while dealing with an issue of encroachment, more specifically on a water body, had pointed out the manner in which a decision should be arrived at and in the said backdrop, held as under :-

“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



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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.

(Emphasis Supplied)

In the aforesaid decision, the Full Bench has dealt with the *conscious decision* that requires to be taken by the Government before causing any encroachment on a water body or regularising such encroachments. Going on to answer the said issue, the Full Bench held that “*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*



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“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)”.

33. In the case on hand, a similar situation, as has been projected in the case before the Full Bench, has arisen. A careful perusal of the averments and also the materials on which the averments are based clearly show that the report of the revenue authorities are based on the fact that for a long period of time there has not been any flow of water and the water body has lost its character and, therefore, the same could be assigned in favour of the petitioner. In the considered view of this Court, this cannot be a justification for parting with the lands, more so, a water body, since the Revenue Authorities have turned a blind eye to the fact that there may have been very many reasons, such as encroachment on canals/channels through which the water flows into water bodies, such as the one on hand. Therefore, the report of the revenue authorities cannot be taken cognizance of in determining the utilization of the water body, by giving away the same to the petitioner.

34. Further, when the revenue records still shows the classification of the



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lands as that of water body, it is incumbent on the revenue authorities to maintain the character of the land to be a water body and it is not open to the revenue authorities to abdicate their duty from maintaining the water body and placing the report that the same could be given over for any other purpose, which is not purely a public purpose.

35. Considering all the aforesaid factors, the 1st respondent has come to a definitive conclusion that not only the lease was extended by the Government upon which the petitioner could claim any right over the lands, but also the fact that the land is a water body, which ought to be maintained in the same condition in view of the authoritative judicial pronouncements and in such a backdrop the claim of the petitioner for holding on to the lands with alternative offers does not merit acceptance.

36. For the reasons aforesaid, the prayer as sought for by the petitioner cannot be granted and, accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.12.2022



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Index : Yes / No

Internet : Yes / No

SKT/GLN

To

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Govt.,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The Special Commissioner / Commissioner,
Land Administration, Ezhilagam,
Chepauk, Chennai - 600 005.
3. The District Collector,
Ariyalur District.
4. The Tahsildar,
Ariyalur Taluk.



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M.DHANDAPANI, J.
SKT/GLN

**PRE-DELIVERY ORDER IN
W.P. NO.21720 OF 2012**

**Pronounced on
21.12.2022**