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W.P.(MD)Nos.12939 to 12943 and 12978 to 12982 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2022

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P(MD)Nos.12939 to 12943 and 12978 to 12982 of 2022

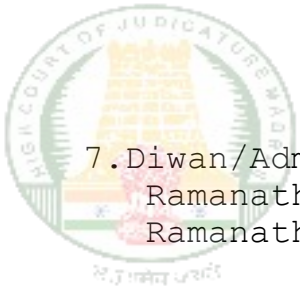
and

W.M.P.(MD)Nos.9189, 9192, 9190, 9191, 9195, 9212, 9216, 9213, 9214
and 9215 of 2022

A.Muthukumar ... Petitioner in WP(MD).No. 12939 of 2022
A.Shankar ... Petitioner in WP(MD)No.12940 of 2022
C.Poongundran Ganesh Krishnan
... Petitioner in WP(MD) No.12941 of 2022
A.Rethinam ... Petitioner in WP(MD)No.12942 of 2022
R.Karikalan ... Petitioner in WP(MD)No.12943 of 2022
S.Krishnan ... Petitioner in WP(MD)No.12978 of 2022
G.Balashankar ... Petitioner in WP(MD)No.12979 of 2022
L.Dharmalingam ... Petitioner in WP(MD)No.12980 of 2022
I.Mohammed Hanifa ... Petitioner in WP(MD)No.12981 of 2022
U.Sathya ... Petitioner in WP(MD)No.12982 of 2022

Vs.

- 1.The District Collector,
Sivagangai District, Sivagangai.
- 2.The Revenue Divisional Officer, Sivagangai.
- 3.The Tahsildar,
Ilayankudi Taluk, Sivagangai District.
- 4.The Block Development Officer,
Office of Ilayankudi Panchayat Union,
Ilayankudi Post and Taluk, Sivagangai District.
- 5.The President,
Salaigramam Village Panchayat,
Salaigramam Post, Ilayankudi Taluk,
Sivagangai District.
- 6.The Executive Officer,
Salaigramam Village Panchayat, Salaigramam Post,
Ilayankudi Taluk, Sivagangai District.



7.Diwan/Administrative Secretary,
Ramanathapuram Samasthanam Devasthanam,
Ramanathapuram. ... Respondents in all Wps.

Common Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned proceedings, dated 15.06.2022 issued by the sixth respondent and to quash the same.

For Petitioner	:Mr.M.P.Senthil in all Wps.
For R1 to R3	:Mr.S.P.Maharajan Special Government Pleader in WP(MD).No. 12939 to 12943 of 2022
For R1 to R3	:J.Ashok, AGP in WP(MD).No. 12978 to 12982 of 2022
For R4 to R6	:Mr.N.Satheesh Kumar Additional Government Pleader in all WPS.

COMMON ORDER

(Common Order of the Court was made by **S.S.SUNDAR, J.**)

These Writ Petitions have been filed as against the order passed by the Executive Officer, Salaigramam Village Panchayat, the sixth respondent herein.

2.Heard Mr.M.P.Senthil, learned Counsel for the petitioner, Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice for R1 to R3, Mr.N.Satheesh Kumar, learned Additional Government Pleader, who takes notice for R4 to R6.

3.The impugned orders, dated 15.06.2022 are the notices issued under Section 131(2) of the Tamil Nadu Panchayats Act, 1994, stating that the petitioners in these Writ Petitions have encroached a land in S.No.350, which is a part of water body (Salaigramam Periya Oorani) with a total extent of 10.52.0 Hectares. By the impugned notices, which are challenged in these Writ Petitions, the petitioners are termed as encroachers in the water body and they were directed to remove the encroachment within seven days.

4.In the affidavits filed in support of these Writ Petitions, it is stated that the entire property in S.No.350, Kilanchunai Road, Salaigramam Village, Ilayankudi Taluk, Sivagangai District, is attached to Arulmighu Varaguneshwarar Thirukovil, which is a sub temple of Arulmighu Naganathaswamy Temple, Rameshwaram. It is further stated that the parent temple is under the control of Ramanathapuram Samasthanam Devasthanam, which is managed by the hereditary trustee. It is the further case of the petitioners that

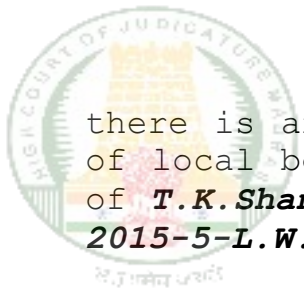


they are having shops in Kilanchunai Road, Salaigramam Village.

5.The learned Counsel for the petitioners in all these cases submitted that the petitioners are holding the lands as lessees under Ramanathapuram Samasthanam Devasthanam, which are supported by documents and that the seventh respondent has acknowledged the petitioners' holding as lessees by receiving the monthly rent. It is further stated that the proceedings initiated now by the local body is pursuant to the direction issued by this Court in a public interest litigation, wherein, the revenue officials have claimed that the property, which is the subject matter of the petitioners' enjoyment, is a Government poramboke land. It is further stated by the learned Counsel for the petitioners that the petitioners are in occupation of the respective portions of S.No.350 for a long time and that their possession as lessees have been regularised by the seventh respondent.

6.The fact that the petitioners are in occupation in a portion of water body (oorani) is not in dispute. It is stated by the petitioners that the entire property in S.No.350, which is classified as a water body, is the land attached to Arulmighu Varaguneshwarar Thirukovil, which is a sub temple of Arulmighu Naganathaswamy Temple. It cannot be disputed that the lands, which are respectively defined as estate or inam estate or minor inam estate, were taken over under the three enactments, namely, Tamil Nadu Estates (Abolition and Conversion into Ryotwari), Act 1948 (Act 26 of 1948), The Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, (Act 26 of 1963) and Tamil Nadu Minor Enams (Abolition and Conversion into Ryotwari), Act, 1963 (Act 30 of 1963). Even though private tanks, ooranis or other water bodies belong to any private person or any religious institution are not covered originally by the enactments, there were amendments subsequently indicating that no ryotwari patta shall be granted in respect of any private tank or orrani or other water bodies. Even if a ryotwari patta is granted under the provisions of the enactments, there is a specific provision by way of amendment that ryotwari patta, even if it is granted in favour of private parties, shall stand cancelled. In such circumstances, this Court is not inclined to agree with the submissions of the learned Counsel for the petitioners that the entire property in S.No.350, which is classified as oorani, is under the control of Ramanathapuram Samasthanam Devasthanam. Since the persons, under whom the petitioners claim title or right, are not entitled to hold any right or claim title to the water body, which was taken over by the Government, this Court is unable to countenance the submission of the petitioners' Counsel.

7.However, this Court finds that the notices impugned in these Writ Petitions have been issued by the Executive Officer of Panchayat, who is the sixth respondent in the Writ Petitions. When

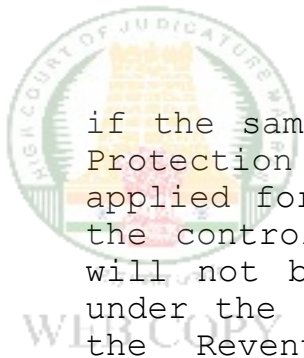


there is an encroachment in water body, which is under the control of local body, the Honourable Full Bench of this Court in the case of **T.K.Shanmugam vs. the State of Tamil Nadu and others** reported in **2015-5-L.W.397**, held as follows:

"44.The Government Orders starting from 30.12.2006 in G.O.(Ms)No.854, Revenue Department and subsequent Government Orders in G.O.Ms.No.498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. 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 and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated.

45.In the light of the above, we answer the reference on the following terms:- The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations / directions issued in L.Krishnan vs. State of Tamil Nadu reported 2005-3-L.W. 313 = 2005(4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh vs. State of Punjab, reported in 2011-3-L.W.17=(2011) 11 SCC 396, and the observations contained in paragraph 20(d) (3) of the judgment of Division Bench in T.S.Senthil Kumar, vs. Government of Tamil Nadu, reported in 2010-3-MLJ 771] and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905."

8.The local body does not have the jurisdiction or authority to initiate action for removal of encroachment in water bodies, even
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if the same is vested in it. Though the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, can be applied for removal of encroachment in water bodies, which is under the control of Public Works Department, the provisions of the Act will not be applicable in respect of the water bodies that comes under the control of local body. Therefore, this Court holds that the Revenue Department should remove those encroachments by following the provision under the Tamil Nadu Land Encroachment Act, in case, the encroachment is in respect of the water bodies, that vest with the local body. Therefore, the impugned orders challenged in these Writ Petitions cannot be sustained.

9.However, the encroachment in water bodies cannot be permitted. Therefore, the impugned notices issued by the sixth respondent are quashed and the third respondent is directed to follow the procedure, as contemplated under the Tamil Nadu Land Encroachment Act. It is not in dispute that the petitioners have encroached the land in S.No.350, which is classified as oorani. Therefore, there is no dispute that the entire building in which the petitioners are in occupation falls within the water body. Therefore, there is no requirement of survey or demarcation of the encroachment in this case, as directed by this Court in the case of **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in **2010 (3) MLJ 771**, and by this Court following the judgment of Honourable Supreme Court in the case of **Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]**. However, the procedure contemplated under the Land Encroachment Act shall be strictly followed by the third respondent while removing the encroachment from the water body.

10.Considering the fact that the local body has no power or jurisdiction to initiate action for removal of encroachment in exercise of their power under Section 131(2) of the Act, this Court directs the third respondent to proceed further, as indicated in the judgment of Honourable Full Bench of this Court, referred to above. The Tahsildar, the third respondent, is granted eight weeks time to report this Court as to the removal of encroachment of petitioners and other encroachers.

11.It is noticed that the local body has also put up construction in the bund, which is not permissible and it is also contrary to the directions issued by the Honourable Supreme Court. The local body or any Government Agency or statutory authority, who have encroached into or put up any construction in any land, which is classified as a water body, have to vacate and shift the building to some other place, so that the entire water body and bund or water catchment area, if any, which is also part of oorani, is available to the public serving the purpose, as a water body and they should be maintained, as a water body as per the direction of this Court.

12.With the above directions, these Writ Petitions are



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allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.Post the matter for reporting compliance on 24.08.2022.

Sd/-

Assistant Registrar(CS-III)

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/07/2022

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Revenue Divisional Officer, Sivagangai.

3.The Tahsildar,
Ilayankudi Taluk, Sivagangai District.

4.The Block Development Officer,
Office of Ilayankudi Panchayat Union,
Ilayankudi Post and Taluk, Sivagangai District.

+2 CC to M/s.M.P. SENTHIL, Advocate (SR-27648[F] dated 23/06/2022)

+1 CC to M/s.SPL.GP (SR-27954[F] dated 24/06/2022)

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22.06.2022

KS (CO)

KB(04.07.2022) 6P 8C