



W.P.(MD)No.15364 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	22/11/2022
Delivered on	02/12/2022

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.(MD)No.15364 of 2018
and
W.M.P.(MD)No.13853 of 2018**

Kalaiselvan

.. Petitioner

Versus

- 1.The District Collector,
O/o.the District Collector,
Thanjavur District.
- 2.The Sub Collector,
O/o.Sub Collector Office,
Katcheri Road,
Kumbakonam,
Thanjavur District.
- 3.The Thasildar,
Taluk Office,
Pappanasam,
Thanjavur District.
- 4.The Revenue Inspector,
O/o.Revenue Inspector Office,
Saliyamangalam,
Pappanasam Taluk,
Thanjavur District.



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5.V.R.Venkadachallam Chettiyar

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the A1 notice (அ1 விளம்பர அறிவிப்பு) issued by the fourth respondent dated 18.06.2018 and quash the same.

For Petitioner : Mr.S.Venkatesan

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R-1 to R-4

No appearance for R-5

ORDER

R. MAHADEVAN, J.

Challenging the A1 notice (அ1 விளம்பர அறிவிப்பு), dated 18.06.2018 issued by the fourth respondent, the petitioner has preferred this writ petition as a public interest litigation to quash the same.

2. The necessary facts leading to the filing of this writ petition would run thus:

2.1. The petitioner is a resident of Thalavaipalayam, Kathirinatham Panchayat, Papanasam Taluk, Thanjavur District.

2.2. On 18.06.2018, the fourth respondent issued A1 notice, thereby calling upon the public to send their objections, if any, within a period of 15 days, for



grant of patta in favour of the fifth respondent in respect of the lands in S.Nos. 461/2A, 461/2B and 468/2 situated in Thalavaipalayam Revenue Village, Papanasam Taluk, Thanjavur District.

2.3. According to the petitioner, as per the Record of Rights' Register (ROR) pertaining to the year 1934, the lands in S.No.461/2A measuring an extent of 22 acres 48 cents and S.No.468/2 measuring an extent of 2 acres 60 cents were originally, classified as Pudhu Eari Paichal Aatharam, which is used by the public for the purpose of agriculture and storage of water. Subsequently, in the ROR of the year 1960, the lands in S.Nos.461/2 and 468/2 were renumbered as S.No.468/6 and noted as 'Tharis'; and that, there is a National Highways running from Nagapattinam to Mysore in the said lands, the Tamil Nadu Electricity Board acquired 4 acres for the purpose of power station, the Government of Tamil Nadu granted a lease in respect of a part of the land to the Indian Petroleum Corporation for the period of 99 years, and the balance land is worth about Rs.100 Crores, which is sought to be given to the private parties. The said lands are necessary for the public; and if any patta is granted to the fifth respondent, irreparable loss and hardship would be casued to the Government exchequer.

2.4. Stating so, the petitioner filed his objections to the notice impugned herein, by way of representation dated 21.06.2018, to the respondent authorities. However, there was no response on the same.



2.5. In this regard, the petitioner has already filed a Writ Petition viz., W.P.(MD)No.14684 of 2018, which came to be dismissed on the ground that the fifth respondent was not made as a party to the proceedings.

2.6. Adding all the necessary parties, the petitioner has come forward with this Writ Petition, for the relief as stated supra.

3.1. Upon notice, the first respondent filed a status report dated 19.11.2022, wherein, it is *inter alia* stated that as per ROR Register in 1934, S.F.No. 461/2 with an extent of Ac 22.48 cent was classified as Pudhu Eri Paichal Aadharam and S.F.No.468/2 with an extent of Ac 2.60 cent was classified as Pudhukulam @ Chinna Eri. Subsequently, in 1961, after finalising the settlement survey and resettlement survey, S.F.No.461/2 with an extent of Ac 22.48 cent and S.F.No. 468/2, which was renumbered as S.F.No.468/6, with an extent of Ac 2.60 cent, were reclassified as Government Punjai Tharisu. At present, as per the updating of Registry (UDR) and in computer records (Tamil Nilam), S.F.No.461/2 was further subdivided and numbered as S.F.No.461/2A with an extent of 6.64.5 Hectares and S.F.No.461/2B with an extent of 2.45.0 Hectares and entered as Government poramboke lands.

3.2. It is further stated by the first respondent that the notice issued by the fourth respondent dated 18.06.2018 which is impugned in this writ petition, was subsequently, cancelled by the third respondent, vide proceedings in Na.Ka.No.



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4250/2018/A4 dated 27.07.2018, but the said fact was not brought to the notice of this court by the petitioner.

3.3. The status report further proceeds to state that during the pendency of this writ petition, the fifth respondent has filed a writ petition viz., W.P.(MD)No. 11877 of 2021 seeking a direction to the respondent authorities to rectify the mistake crept-in in the UDR patta with regard to S.No.461/2 (New No.461/2A and 2B - 11.24 Acres) at Thalavaipalayam Village, Papanasam Taluk, by considering his representation 20.01.2021. By order dated 15.07.2021, the said writ petition was disposed of, directing the District Revenue Officer, Thanjavur, to consider the said representation and pass appropriate orders, on merits and in accordance with law, within a period of six weeks. Accordingly, considering the facts and circumstances of the case and on the basis of enquiry conducted, the Additional Collector (Revenue), Thanjavur, by proceedings in Na.Ka.No.25644/2021/Vu(2) dated 07.01.2022, passed an order, rejecting the claim of the fifth respondent, after having concluded that the lands comprised in S.Nos.461/2A, 2B and 468/6 of Thalavaipalayam Village, Papanasam Taluk, Thanjavur District, are required for the Government in future and hence, patta cannot be issued to the fifth respondent.

3.4. To substantiate the averments made in the status report, the first respondent has filed all the relevant documents in the form of typed set of papers dated 21.11.2022.



4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 4 and also perused the materials placed before this court.

5. In this writ petition, the petitioner has questioned the A1 notice issued by the fourth respondent for issuance of patta to the fifth respondent in respect of the subject lands, which were originally, classified as Pudhu Eari Paichal Aatharam, in the revenue records. Stating that there are various Government projects taking place in the said lands; if patta is granted to the fifth respondent, there will be a huge loss to the revenue; and hence, the lands are necessary to the government for public purpose, the petitioner has sought to quash the said notice.

6. However, in view of the subsequent development that the notice issued by the fourth respondent which is impugned herein, has been cancelled by the third respondent by proceedings dated 27.07.2018 and the Assistant Collector (Revenue), has passed the order on 07.01.2022 that the subject lands are required for the Government and hence, patta cannot be granted to the fifth respondent, this court is of the opinion that the petitioner's grievance has been properly addressed by the respondent authorities and hence, no further order needs to be passed in this regard, except recording the status report and the documents filed by the first respondent in the form of typed set of papers dated 21.11.2022.



7. At the same time, it cannot be slightly brushed aside that the fourth respondent, without properly verifying the documents submitted by the fifth respondent in the light of the revenue records maintained by the Department, has issued the A1 notice, for the purpose of grant of patta to him, in respect of the lands that were originally water body and sub division taken thereafter.

8. It is the bounden duty of the Government authorities who are being trustees of the natural resources, to protect, safeguard and maintain the water bodies from encroachments. In this context, it is relevant to refer to the decision of the Full Bench of this Court in ***T.K.Shanmugam v. The State of Tamil Nadu and others [2015 (5) LW 397]***, wherein, after considering various Government Orders and the judgments of this Court as well as the Hon'ble Supreme Court, it was categorically held that "*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*".



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9. Applying the aforesaid legal proposition to the facts of the present case, wherein, without proper enquiry, an attempt was made to grant patta in respect of the property originally marked as water body, this court is of the view that such a carefree attitude on the part of the fourth respondent, while discharging the public duty, cannot be countenanced. Therefore, it would be appropriate to direct the higher authorities to conduct enquiry and take appropriate action in accordance with law, against the officer concerned, who was responsible for issuance of such A1 notice dated 18.06.2018, and file a report to this court.

10. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [J.S.N.P., J.]
02.12.2022

Speaking / Non-speaking order
Internet : Yes.
Index : Yes/No

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To

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and
J.SATHYA NARAYANA PRASAD, J.

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Pre-delivery order in
W.P.(MD)No.15364 of 2018

02/12/2022