



WP (MD) No. 2078 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

and

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 2078 of 2016 &
W.M.P.(MD)Nos.1792 and 1793 of 2016

M. Gopalakrishnan

.. Petitioner

Versus

1. The Government of Tamil Nadu
Land Administration Department
represented by the Additional Chief Secretary/
Commissioner for Land Administration
Chepauk, Chennai
2. The Principal Secretary to Government of Tamil Nadu
Public Works Department
Fort St. George
Chennai
3. The Principal Secretary to Government of Tamil Nadu
Tamil Development Department
Fort St. George
Chennai
4. World Tamil Sangam
represented by Special Officer
Madurai



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5. The Director
Tamil Development Department
Tamil Development Campus
First Floor, Halls Road
Egmore, Chennai - 600 008

6. The Chief Engineer
Public Works Department
Water Resources Organisation
Periyar Vaigai Basin Division
Madurai

7. The District Collector
Madurai

8. The Madurai Corporation
represented by the Commissioner
Madurai

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to restore the Tallakulam Kanmoi (water body) to its original status by removing all the constructions put up in the water body - Tallakulam Kanmoi located in S.No.805/1A (previously S.No.805) over an extent of 21.19.098 Hectares = 52.34 acres.

For Petitioner : Mr. N. Dilip Kumar

For Respondents : Mr. S.P. Maharajan
Special Government Pleader for RR1 to 7

Mr. R. Murali for R8



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ORDER

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[Order of the Court was made by **R. MAHADEVAN, J.**]

The petitioner, a resident of Sambiranipatti Village, Kidaripatti Post, Melur Taluk, Madurai District, has come forward with this writ petition, in the nature of Public Interest Litigation, praying to issue a Writ of Mandamus directing the respondents to restore the Tallakulam Kanmoi (water body) located in Town Survey No. 805/1A (previously T.S.No.805) measuring an extent of 21.19.098 Hectares = 52.34 acres to its original position by removing all the constructions put up therein.

2. The petitioner would state that Tallakulam Kanmoi, which serves as a perennial source of drinking water in Madurai District, was encroached by various parties viz., Government, Madurai Corporation, Institutions, Private Organizations and others. According to the petitioner, the Government Law College, Madurai, Madurai Corporation office, Eco Park, Tamil Isai Sangam along with Raja Muthiah Mandram, MADITSSIA Hall, Petrol Bunk, Sanitary complex, Commercial Tax Office, Banks, Swimming pool, Adult Education Programme Office, Sengunthar School, District Educational Office, Television Station, Agricultural Office, Local Planning Commission Office, Yatri Nivas and several other buildings have mushroomed in the Tallakulam Tank area in the land comprised in T.S.No.805, which was classified as water body and



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was subsequently sub-divided as T.S.Nos.805/1A1, 1A/4A, 1A/1B, 1A5 to 1A11. By reason of such encroachments made in the water body, the catchment area has reduced considerably. Even the remaining area is sought to be encroached by the respondents and hence, the same has to be protected.

3. The petitioner further pointed out that apart from the aforesaid constructions, the Government issued G.O. Ms. No.574 dated 01.04.1982 earmarking 14.15 acres of land in T.S.No.805/1A1 (presently T.S.No. 805/1A11) to the World Tamil Sangam under BSO 24 through the Commissioner of Land Administration and the same was followed by G.O. Ms. No. 867 dated 10.05.1982. On the basis of the said Government Orders, the Corporation of Madurai passed Resolution No.350 dated 13.12.1996 to grant no objection for transfer of the said land to World Tamil Sangam subject to condition that it shall construct a long canal across the Kanmoi to facilitate carriage of water through Karumbalai to Vandiyoor Taluk.

4. It is also stated by the petitioner that as per the revenue records, the classification of the land continues to remain as Tallakulam Kanmoi. However, the District Collector, Madurai, sent a communication dated 16.08.2005 to the Chief Engineer, Public Works Department, requesting consent for change of classification of the said land. While so, the Tamil



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University, Thanjavur submitted an application dated 15.07.2003 for transfer of the land, based on which, a proposal was preferred by the Revenue authorities in Form-I under the Revenue Standing Orders 23 and 23-A. Subsequently, the Commissioner of Land Administration by letter dated 18.12.2006 returned the said proposal for rectification of certain defects. At this stage, the Government issued an order vide G.O.Ms.No.380 dated 20.09.2010 proposing to form a World Tamil Sangam. Thereafter, by G.O. Ms. No.237, the Government directed the Director of Tamil Development to register the World Tamil Sangam, form bye-laws and take other necessary action. Consequently, the Government issued G.O.Ms.No.234 dated 12.07.2012 sanctioning Rs.100 crores to establish World Tamil Sangam. Thus, it is clear that World Tamil Sangam is sought to be established in the land, which is classified as water body and thereby the perennial water resource in the Madurai city is sought to be destroyed. Therefore, the petitioner is before this court with the present writ petition as a *pro bono publico*.

5. Upon notice, the seventh respondent / District Collector, Madurai, filed a detailed counter affidavit, wherein, it is *inter alia* stated that originally, the land comprised in S.No.805 measuring to an extent of 50.42 acres was classified as Kanmoi poramboke - Tallakulam Kanmoi in the A register.



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However, the Tallakulam tank is defunct over a long period of time, with no source of water or ayacut area due to the mass urbanization. In view of necessity, the said land was sub-divided and was given to various agencies, viz., Government departments, private parties, etc. right from the year 1970 and that, several buildings such as corporation building, commercial taxes office, law college, agricultural and education department offices have already come up and are in existence for more than 50 years. Hence, the restoration of tank would pose huge problem to the departments as well as public at large. The counter affidavit further proceeds to state that in the year 1980, the entire encroachments made in S.No.805 of North Madurai village by way of construction of houses, sheds, thatched houses, roads etc, by the encroachers were removed and they were provided tenements by the Slum Clearance Board. It is also stated therein that the Government, by G.O.Ms.No.574 Revenue Department dated 01.04.1982, allotted an extent of 14.15 acres in T.S.No.805/1A11 to establish Ulaga Tamil Sangam at Madurai and by G.O.Ms.No.237 dated 14.10.2011, accorded sanction of Rs.100 crores for the same. Further, the Public Works Department constructed the building with four side cover to drain the flood water freely and swiftly to reach Vandiyur Kanmoi; and the building was inaugurated and is used by the general public from 01.03.2016 onwards. Thus, according to this respondent, the prayer made in this writ petition is not maintainable at this point of time.



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6. The fourth respondent / Director of World Tamil Sangam, Madurai, in their counter affidavit, stated that the petitioner, a resident of the locality, was well aware of the fact that the tank in question was abandoned long back and there was no inlet of water or water channel provided thereof. Further, several constructions were made in the land in question fifty years back, which is now serving as a commercial locality. While so, the present writ petition is hopelessly barred by laches, as the petitioner did not raise any objection, at the time of proposing to establish World Tamil Sangam. The counter affidavit further proceeds to state that the announcement to establish World Tamil Sangam was made during the 5th World Tamil Conference held in Madurai in January, 1981 and the said Sangam is a centre for higher research for tamil language and to propagate the values of tamil language and its literature, globally. Pursuant to the same, the Government passed G.O. Ms. No.574, Revenue Department dated 01.04.1982 allotting 14.15 acres of land in Survey No. 805/1A11 and G.O. Ms. No.867, Education, Science and Tamil Development Department dated 10.05.1982 directing the District Collector to handover the land to the Assistant Director of Tamil Development, Madurai. Accordingly, the land in question was handed over to the fourth respondent on 03.06.1982 itself. Therefore, the Government issued G.O. Ms. No.237, Tamil Development, Religious Endowment and Information Department dated



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14.10.2011 according administrative sanction for disbursement of Rs.100 crores to establish World Tamil Sangam at Madurai. Consequently, the construction work was handed over to the Public Works Department, which inturn, completed the construction with architectural designs confirming to world standards; and the provision of channel has been made in the said construction for easy flow of water as an abundant caution in the case of flood or heavy rain in future. Finally, the building was opened and was put to usage of the public from 01.03.2016 onwards. Therefore, the allotment of land by the Government is for a bonafide and noble purpose of formation of World Tamil Sangam at Madurai, which will cater the need of the research scholars, students, etc.

7. The fourth respondent in their counter affidavit further stated that though the land is classified as Kanmai in the revenue records, it is not a water body in reality and the land remained as vacant site for the past 50 years and hence, the Government thought it prudent to utilise it for the public purpose. Moreover, in order to safeguard such land from the clutches of encroachers, the Government accorded sanction to construct various buildings in accordance with rules, to meet the burgeoning needs of the people in the locality. The construction of World Tamil Sangam was made to facilitate free flow of water without affecting the building, which is unique in its nature; and



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as per the interim order of this court dated 29.01.2016, the vacant land lying to the north of the portion shown as canal in the sketch at page no.117 of the paper book, is kept as such and without any construction. Thus, the fourth respondent submitted that the request of the petitioner to demolish the various constructions in order to restore the Tallakulam tank to its original position, is impractical and hence, prayed for dismissal of the writ petition.

8. The learned counsel for the petitioner submitted that there is no justification on the part of the respondents in putting up constructions in land classified as water body and destroying the perennial water resource. The respondents as instrumentalities of the Government, are expected to protect the welfare of the citizens by earmarking and/or protecting the existing water bodies, instead, permitted massive constructions to be put up by various stakeholders. The endeavour of the State must be to protect the water body and to maintain ecological balance, which would pave way to provide a healthy environment and enable the citizens to enjoy a quality life, which is the essence of the fundamental right as guaranteed under Article 21 of the Constitution. In this context, the learned counsel placed reliance on the order passed by the Full Bench of this Court in **T.K. Shanmugam v. State of Tamil Nadu and others [2015 (6) CTC 369]** wherein it was held that the Government Orders which seek regularisation of encroachments in tank beds,



water channels or area abutting and on margins of water channels, are deemed to have been superseded, in the light of the directions issued by the Hon'ble Supreme Court in **Jagpal Singh and others v. State of Punjab and others [2011 (11) SCC 396]**, wherein it was observed that *the State holds all the water bodies in public trust for the welfare of this generation and all succeeding generations and the Government cannot destroy a tank*. Stating so, the learned counsel prayed this court to pass appropriate orders to protect the water body from being encroached further by the respondents.

9. On the other hand, the learned Special Government Pleader for the respondents 1 to 7 as well as the learned counsel for the eighth respondent reiterated the averments made in the counter affidavits and submitted that there is no threat to the environment in the changed circumstances and the construction is well in accordance with the rules in force and therefore, the writ petition is liable to be dismissed.

10. We have considered the submissions made by the learned counsel appearing for both sides and also perused the materials available on record.

11. On 29.01.2016, when the matter was taken up for consideration, this court passed the following order:



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"Notice of motion returnable by three weeks.

Private notice is also permitted.

It is stated that the land lying to the north of the portion shown as canal in the sketch at page no.117 of the paper book is still lying vacant.

In view of the earlier orders passed, at least said land shall be kept as such without any construction."

12. It is an admitted fact that originally, the land in S.No.805 of Madurai North Village, presently, Madurai North Taluk, was classified as water body - Tallakulam Kanmoi, as per 'A' register. However, due to urbanisation, several constructions and developments have been made in the said land by the Government, Madurai Corporation and Private parties and are in existence for the past 5 decades. Now, the petitioner has come forward with this writ petition seeking a direction to the respondent authorities to restore the Tallakulam Kanmoi to its original status by removing all the constructions made therein. On the other hand, the respondent authorities specifically stated that there was no water supply or channel in the land in question and the buildings are existing therein for more than 50 years and hence, restoring the tank would cause serious prejudice to various departments. Similarly, the fourth respondent stated that the construction of World Tamil Sangam is well within the rules in force; there is no obstruction in flow of water due to its existence; and as directed by this court, by order dated 29.01.2016, the land lying to the north of the portions shown in the sketch at page no.117 of the paper book is kept vacant and without any construction.



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13. There cannot be any second opinion that the encroachments in respect of water bodies have to be necessarily removed as per the procedure contemplated under the Land Encroachment Act. However, it could be seen from the pleadings and submissions made by the parties, several buildings referred to by the petitioner, have come into existence atleast five decades before and the same have been permitted to be constructed in order to meet the growing demands of the general public. Such buildings include Corporation of Madurai and other Departments of the Government. It is the categorical stand of the respondents that there is no channel to supply water to the tank / ayacut area and the classification of the land in question was changed decades back and the land was converted into buildings in the year 1970 itself. Therefore, the relief sought by the petitioner viz., restoring the land in question to its original status viz., water body, is not feasible for consideration at this stage.

14. Today, Mr. S.P. Maharajan, learned Special Government Pleader appearing for the respondents 1 to 7 and Mr. R. Murali, learned counsel for the eighth respondent/Madurai Corporation in unison, on instructions, submitted that the remaining extent of vacant land morefully described in Page No.117 of the typed set of papers marked in "green color" will be kept as such and there will not be any further encroachment by any of the authorities for any other purposes. Such statements made by the learned counsel for the respondents is agreeable to the petitioner as affirmed by the learned counsel for the petitioner.



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WEB COPY 15. In view of the above, this court is of the opinion that no further order needs to be passed herein, except recording the aforesaid submissions made by the learned Special Government Pleader for the respondents 1 to 7 as well as the learned counsel for the eighth respondent. Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) (J.S.N.P. J.)
14.11.2022

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Index : Yes / No

Internet : Yes / No

To

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