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W.A.No.214 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.02.2023

Judgment Pronounced on : **20.03.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.214 of 2023
and
C.M.P.Nos.2132, 2134 & 2139 of 2023

M/s. UltraTech Cement Limited,
(Unit : Reddipalayam Cement Works)
Rep. by its Unit Finance and Commercial Head,
Mr.Purna Chandra Samantaray,
Reddipalayam Post,
Ariyalur District – 621 704.

... Appellant

Versus

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
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.



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4. The Tahsildar,
Ariyalur Taluk.

5. R.Sekar

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, pleased to set aside the order dated 21.12.2022 passed in W.P.No.21720 of 2012 and quash the impugned order dated 24.02.2012 in G.O.No.66 of 2012 passed by the first Respondent herein and consequently direct the Respondents to grant long term lease or assignment of the said lands in favour of the Appellant Company.

For Appellant : Mr.M.Ravindran, Senior Counsel
for D.Sreenivasan

For Respondents
1 to 4 : Mr.P.Muthukumar,
State Government Pleader

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

This Writ Appeal is directed against the order of the learned Single Judge, dated 21.12.2022, in and by which, the Writ Petition filed by the appellant with the prayer seeking to quash the *G.O.No.66 of 2012 (Revenue N.M.2(2) Dept.)* passed by the first respondent, thereby, refusing to renew the lease of the lands ad-measuring an extent of 12.42 Hectares.



2. The brief facts leading to the filing of the Writ Appeal is that the petitioner is a Company incorporated under the Companies Act, 2013. It is in the business of manufacturing cement. The predecessor of the petitioner Company namely, *M/s.Dharani Cements Limited* had established its cement manufacturing facility at *Reddipalayam* Village, *Ariyalur* Taluk and District in its own patta lands. While so, to expand the capacity of their factory, they specifically requested for the lands adjacent to their patta lands in *Reddipalayam* in Survey Nos.102, 105, 107 and 51 totally ad-measuring 12.06.5 hectares, by their application, dated 13.01.1994. In their application itself, they have clearly mentioned that the Survey No.102 is classified as *Ramasamy Moopanar Eri*, Survey No.105 is classified as *Vari Poramboke*, Survey No.107 is classified as *Manakkattu Eri* and Survey No.51 is classified as *Kuttai*. On the said application, after calling for reports from the authorities concerned, including the reports that on ground, there was no stagnation of water in the lands and that it will not affect the water courses, ultimately, by *G.O.(Standing)No.1256*, dated 25.11.1996 of the Revenue (D.1) Department, the Government decided to lease out the said lands for a period of three years for a lease rent of 14 % of the market value of the property per year by relaxing the prohibition for handing over/assigning



water bodies. Thereafter, the said *M/s.Dharani Cements Limited* had sold their shares to one *M/s.Grasim Industries Limited*, who made constructions on the said lands and considering the said aspects, by an order, dated 18.11.1999, the lease rent was fixed at Rs.5,93,409/- per annum and they were directed to deposit the entire lease rent of Rs.17,80,227/-.

3. It is stated by the petitioner that they have duly deposited the said amount, pursuant to which, the lease deed has been entered into on 18.11.1999, in which, even specific permissions were granted to uproot, cut down or destroy trees, plants, groves or bushes to make the land fit for their purposes. The period of lease originally expired on 25.11.1999. Thereafter, the predecessor of the appellant namely *M/s. Grasim Industries Limited* had paid the lease rent up to the year 2002. Again, by paying the entire lease rent upto 24.11.2012, they prayed that the lease period be renewed. While considering the said request, the order impugned in the Writ Petition was passed on 24.02.2012 refusing to renew the lease in favour of the predecessor of the appellant on the ground that firstly, there has been an objection for leasing out the water bodies in favour of the Company as one *R.Sekar* had filed the W.P.No.9873 of 2003 and judgment is expected in the



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said Writ Petition. Secondly, this Court, by an order, dated 27.06.2005, in W.P.No.20186 of 2000, has directed that all encroachments in water bodies have to be removed and water bodies have to be maintained as such.

4. It was also further reasoned that water had to be diverted to another channel on account of the same. The impugned order also states that on account of the rampant mining activity in the area and several bore wells being dug by the industries, water table has gone down to dangerous levels. Further, the District Collector as well as the Executive Engineer of Water Supply and Drainage Board have given reports and after examination of the same, the Principal Secretary and the Land Commissioner have recommended not to renew the lease. It was also further ordered in the impugned order that since the lease rent has been paid up to 24.11.2012, the said period can be treated as lease and thereafter, possession can be taken from the appellant. Aggrieved by the same, the Writ Petition has been filed.

5. After considering the pleadings of the parties, by an order, dated 21.12.2022, the learned Single Judge factually found that the lands in question are water bodies. Thereafter, the learned Single Judge reasoned



that the nature has carved out landscapes through which water flows and stagnates, which are demarcated as water storage points. Allowing the same to be interfered would not only result in wastage of natural resources, but, would lead to the very sustenance of the human race and therefore, held that it cannot be turned as sustainable development and on that basis, when the authorities have come to a conclusion that the lease cannot be renewed, Court cannot interfere into the same and dismissed the Writ Petition. Aggrieved by the same, the present Writ Appeal is filed before this Court.

6. Heard *Mr.M.Ravindran*, learned Senior Counsel appearing for the appellant and *Mr.P.Muthukumar*, learned State Government Pleader appearing for the respondents 1 to 4.

7. *Mr.M.Ravindran*, learned Senior Counsel, taking this Court elaborately through the various reports obtained from the Local Panchayat, Revenue Department, Irrigation Department etc., at the time of grant of first lease, would submit that it can be seen that though the lands in question were classified as water bodies, on the ground that there was absolutely no water stagnation and the lands in question were not in a lower level, so as to facilitate the water stagnation and hence the lands were leased out to the



predecessor of the appellant. The lease rent has been duly and correctly paid with the additional rates for every three years.

8. He would further submit that the factory has been established and several facilities including pipelines, conveyor belts etc., have been located in the leased lands and now, the entire factory is in such a way that without the lease hold lands, the unit cannot run. The industry is running properly by obtaining all clearances and paying taxes to the State and generates employment and caters to the essential need of people producing cement. While so, without any basis whatsoever the impugned order was passed refusing to renew the lease. He would submit that firstly, the two reasons stated in the impugned order regarding the writ petition filed before this Court will not hold good. He would submit that the writ petition filed by the said Sekar was ultimately dismissed by this Court and therefore, the said objection is not sustainable. The other objection regarding the judgment of this Court in *L.Krishnan Versus State of Tamil Nadu* (W.P.No.20186 of 2000) is also unsustainable as this Court only directed for removal of illegal encroachments on water bodies and it does not apply to the case in which the appellant has been lawfully granted lease.



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9. Learned Senior Counsel also took this Court to yet another Government order of the year 2019, which granted lease of the lands which are also classified as water bodies, to contend that only in the case of the petitioner, such a drastic decision has been taken. The learned Senior counsel relied upon the judgement of this Court in ***K.Balamurugan & 7 others Vs. State of Tamil Nadu***¹, more fully relying upon the paragraph Nos. 25 to 27 to bring home the point that in somewhat similar situation where also the land in question which was sought to be converted into Medical College and Hospital, was a water body as per the revenue records but there was no water flow for the past 15 years, this Court ultimately upheld the conversion by following the principles of sustainable development and therefore, the decision of the respondent in the instant case is illegal. The learned senior counsel further relied upon the Hon'ble Full Bench judgment of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu***² to again contend that repeatedly this Court has been dealing with only encroachments and not the lease hold rights as claimed by the appellant.

1 2008 4 (LW) 220

2 2015 5 (LW) 397



10. To press home the point that the appellant having set up an industry, is entitled for renewal on the principles of Doctrine of Legitimate Expectation, he relied upon the judgment of Hon'ble Supreme Court in ***State of Jharkhand and others vs. Brahmputra Metalics Ltd.***³, particularly paragraph Nos. 40 to 50 of the said judgment rendering that the Doctrine of Substantive Legitimate Expectation as one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression. Finally, the learned senior counsel relied upon the judgment in appellant's own case arising out of the State of Rajasthan in which it had set up an industry in the State of Rajasthan, wherein also in identical situation, the grant of 'Johad' land which is a water body to the appellant was ultimately upheld by the Hon'ble Supreme Court of India in ***State of Rajasthan vs. M/s. UltraTech Cement Limited***⁴. Therefore, the learned senior counsel would submit that the impugned Government order is unreasonable and arbitrary.

11. *Mr. Ravindran*, Learned Senior Counsel would submit that it is violative of the Doctrine of Legitimate Expectation and the appellant

3 2020 SCC Online SC 968

4 2022 SCC Online SC 1102



industry itself would come to a grinding halt on account of the same.

Further, the said decision is taken without affording an opportunity to the appellant company and therefore, is violative of principles of natural justice and he would submit that the learned single Judge simply dismissed the writ petition without considering the above and would pray that this Court should interfere with the same.

12. Opposing the above submissions, *Mr.P.Muthukumar*, learned State Government Pleader would submit that as per the Revenue records including 'A' register, the lands in question are clearly water bodies. Even though a decision was initially granted to lease out the said lands, subsequently, this Court in its judgment of ***L.Krishnan Vs. State of Tamil Nadu*** (cited *supra*) had given a positive direction in respect of all the water bodies in State to restore such natural water storage resources, which have been classified in revenue records to its original position. The said direction has also been reiterated later by the Hon'ble Full Bench of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu*** (cited *supra*). In that view of the matter, even if erroneously the water bodies have been leased out, now the State is duty bound to restore the lands to its original position and therefore



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considering the on ground situation including the water table in the area, course of the flood water, etc., the appropriate authorities namely the Executive Engineer, Water Supply and Drainage Board and the District Collector have recommended not to renew the lease and the petitioner has no right whatsoever to compel the Government to give its land for lease. When the nature of poramboke lands is objectionable, the same cannot be alienated or filtered away in any manner whatsoever.

13. We have considered the rival submissions made on either side and perused the material records of the case. The revenue records produced before us clearly show that all the four survey numbers are water bodies. As a matter of fact, two of the survey numbers are lakes. The appellant's predecessor itself in its first application clearly describes the lands as water bodies. This being the situation, after considering the mandate of Article 48 A to safeguard the environment and the various decisions of the Hon'ble Supreme Court of India including the directions in ***M.C.Mehta Vs. Union of India***⁵, this Court in *L.Krishnan Vs. State of Tamil Nadu (W.P.No.20186 of 2000)* held that the water bodies have to be maintained as such and all encroachments of the water bodies have to be removed.

⁵ (1997) 3 SCC 715



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14. While considering the validity of the *Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007*, the Hon'ble Full Bench of this Court had directed that irrespective of the fact that whether the water bodies maintained by the Public Works Department or not, all water bodies are entitled for protection. As a matter of fact, more particularly in paragraph No.41 of the Hon'ble Full Bench judgment of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu*** (cited supra) had categorically held that the lack of flow of water or the area becoming residential or otherwise cannot be a justification to convert these water bodies and this would only showcase the failure of the Government to protect the feeder channels and canals and that failure cannot be an excuse to regularize encroachments etc. It is useful to extract paragraph No. 41 of the said judgment which reads as hereunder:-

“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 touchstone of fairness and reasonableness and satisfy Article



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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)

15. The Hon'ble Supreme Court had laid down the principles of sustainable development in ***Vellore Citizens' Welfare Forum Vs. Union of India and Ors.***⁶ and thereafter, reiterated the constitutional mandate as enshrined in Article 48-A, 51-A of the Constitution of India and the public

⁶ (1996) 5 SCC 647



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trust Doctrine in its judgment in ***Intellectual Forum, Tirupathy Vs. Andhra Pradesh and others***⁷. In the judgment of ***K.Balamurugan & 7 others vs. State of Tamil Nadu*** (cited supra) relied upon by the learned Senior Counsel, the law laid down by the Hon'ble Supreme Court of India through the above mentioned and other judgments, has been summarized in paragraph 36 which is extracted hereunder :-

“36. On an analysis made from the above decisions, we find that the following principles have to be kept in mind while dealing with the issue relating to environmental protection viz..

(i) Natural resources' which includes lakes, forests, rivers, wildlife are held by the State as a trustee of the public and can be disposed of only in a manner that is consistent with the nature of such a trust.

(ii) The public trust doctrine is more than an affirmation of State power to use public property for public purposes.

(iii) The Courts when confronted with a situation where violation of such public trust doctrine is put against the State, the Courts while scrutinising such actions of the State, have to make a distinction between the State's general obligation to act for the public benefit, and the special obligation which is entrusted with it as a trustee of

⁷ (2006) 3 SCC 549



such public resources.

(iv) The three types of restrictions on Governmental authority as stated by Prof.Sax, assumes significance which are as follows:

(a) The property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

(b) The property may not be sold, even for fair cash equivalent;

(c) The property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.

(v) The Court has to strike a balance between sustainable development and environment protection.”

16. Thus, even though the water bodies are entrusted with the State, the State itself holds the same in public trust to use the properties only in a manner that is in consistence with the nature of such a trust. The property must be maintained for the particular type of use i.e., traditional uses or uses particular to that form of the resources. Lakes cannot be effaced/erased for the purpose of expansion of an industry. In the above judgment, (*K.Balamurugan & 7 others - cited supra*), even though the construction of medical college was permitted, still the same was allowed because the



water channels were to be built and maintained and the development was not to affect the original purpose. Similarly, in the Government order relied upon by the learned senior counsel in G.O.Ms.No.418 dated 08.11.2019 it can be seen that the authorities have given no objection only because the alleged encroachment is in the form of railway track and when the flow of water is not affected, linear projects such as road ways or railways with culverts/bridges are exceptional developments which can come on water bodies. Therefore, the said Government Order or the judgment in *K.Balamurugan & 7 others versus State of Tamil Nadu (cited supra)* cannot come to the aid of the appellant.

17. Merely because once the appellant Company was permitted to establish its unit in the water body in the State of Rajasthan, the appellant Company cannot eye for the adjacent water bodies wherever it establishes its factory. As a matter of fact, it would not be a legitimate expectation but an illegitimate expectation. When the State authorities being the lawful custodian of the water bodies have taken a decision not to renew the lease, the appellant has no right whatsoever to compel them to renew/extend the lease. When the lands in question are water bodies, the appellant cannot



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have any legitimate expectation that the same would be continued. In the matter of renewal of lease, there was absolutely no question of complying with the principles of nature justice. The reasons stated in the impugned order citing the Collector and the Executive Engineer's report about the floods, ground water exploitation sensing the need for restoration of the water bodies in their original form, coupled with the mandatory obligation of law imposed by the Judgment of this Court are well founded and as such, do not require any interference by this Court.

18. Therefore, finding no merits, this Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(T.R., ACJ.)

(D.B.C., J.)

20.03.2023

Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

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To

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1. Principal Secretary to Government,
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.
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