



W.P. No.5662 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. No.5662 of 2019 & W.M.P. No.6449 of 2019

Nagore Meeran

Petitioner

v

1 The District Collector
Kanchipuram District
Thiruvallur 602 001

2 G. Vasudevan

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the first respondent to remove the encroachments made by the second respondent in the water body in S.No.45/3 measuring 0.87 cents (35 ares) in Arapanancheri Village, Kanchipuram District.

For petitioner

Mr. N.A. Nassir Hussain
for Mr. L. Kowser Nissar

For R1

Mr. A. Selvendran
Special Government Pleader



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ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed seeking a writ of mandamus directing the first respondent to remove the encroachments made by the second respondent in the water body in S.No.45/3 measuring 0.87 cents (35 ares) in Arapanancheri Village, Kanchipuram District.

2 According to the petitioner, he is the President of a masjid registered with the Tamil Nadu Wakf Board; the wakf is comprised in S.No.48, adjacent to which, there is a kuttai (water body) in S.No.45/3; the said kuttai (water body) and the pathway to the Arabic School run by the petitioner, have been encroached by the second respondent by raising construction; hence, he addressed a representation dated 04.02.2019 to the first respondent seeking removal of encroachments; finding no response, this writ petition has been filed seeking the aforesaid prayer.

3 The petitioner's grievance is that if the encroachments made in the kuttai (water body) which is the only water source in that area, are not removed, during rainy season, the water from the wakf would not drain out and further, the water table in the area will do down, besides leading to inundation.



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4 The case of the second respondent is that he is before this Court to assist this Court and ensure that there is no encroachment in the water body and that he is not at all an encroacher; the contention of the petitioner that the second respondent has encroached the water body is only imaginary; the petitioner is a history sheeter and there are criminal cases pending against him.

5 Mr. A. Selvendran, learned Special Government Pleader appearing for the first respondent, submitted that as per the extract of the “A” Register, S.No.45/3 is a kuttai (water body) and it has to be restored.

6 Heard both sides and perused the materials available on record.

7 At the threshold, it is apropos to point out that the Supreme Court, in **Sarvepalli Ramaiah (dead) and others v District Collector, Chittoor District and others (2019) 4 SCC 500**, has held in unequivocal terms that water bodies should not be allowed to be alienated or encroached even in the event of they becoming dry. The relevant paragraphs from the said judgment read thus:

“48. The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies



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including those that might have dried up or fallen into disuse. The appellants and/or their predecessor-in-interest had not challenged the Gazette Notification of 3-9-1984 notifying the entire Survey No. 234 at Tiruchanoor as “Peddacheruvu Poramboke”, that is, tank.

49. This Court has time and again emphasised the need to retain and restore water bodies and held that water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry. Reference may be made to the judgments of this Court in:

- (1) *Susetha v. State of T.N.* [*Susetha v. State of T.N.*, (2006) 6 SCC 543] ;
- (2) *M.C. Mehta v. Union of India* [*M.C. Mehta v. Union of India*, (1997) 3 SCC 715] , and
- (3) *Intellectuals Forum v. State of A.P.* [*Intellectuals Forum v. State of A.P.*, (2006) 3 SCC 549]”

8 In the instant case, concededly, there is an encroachment in the water body, viz., S.No.45/3 and whether the encroachment is by the second respondent or any other person is immaterial. What is important is that encroachment should not be allowed to remain in the water body.

9 Hence, the first respondent is directed to take immediate steps to remove the encroachment in S.No.45/3 by strictly adhering to the decision of a Coordinate Bench of this Court, in which, one of us (SVNJ) was a Member, in **N.Sankar v The Principal Secretary, Town and Country Planning, Government of Tamil Nadu and 3 others¹**, to avoid disciplinary proceedings being initiated against the officials in the event of they failing in their duty to remove the encroachment, and also bearing in mind the Government Order in



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G.O. (Ms.) No.64, Revenue and Disaster Management Department dated 08.02.2022, issued constituting various Committees specifically for removal of encroachments in Government lands with priority given to water bodies.

In the result, this writ petition stands allowed. No costs. Connected W.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
30.10.2023

cad

To

The District Collector
Kanchipuram District
Thiruvallur 602 001



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S. VAIDYANATHAN, J.

and

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