



W.P.No.6670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.P.No.6670 of 2023

M.Ponnammal

.. Petitioner

Vs.

1. The District Collector,
Kallakurichi,
Kallakurichi District-606 202.
2. The District Revenue Officer,
Kallakurichi,
Kallakurichi District.
3. The Revenue Divisional Officer,
Kallakurichi,
Kallakurichi District-606 202.
4. The Thasildar,
Chinnasalem,
Kallakurichi District-606 202.
5. The Block Development Officer
(Village Panchayat),
Kallakurichi,
Kallakurichi District-606 202.



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6. N.Ammase

7. R.Rajesh

8. R.Arunachalam

9. M.Muthulashmi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 to 5 herein to remove the encroachment made in and over the Government Odai Poramboke Land (water body) comprised in Survey No.307/3 situated at Etuthavaainatham Village, Kallakurichi Taluk and District by the respondents 6 to 9 herein, so as to enable free water flow in the said Odai poramboke land within a limited time frame to be fixed by this Court by considering the petitioner's representations, dated 17.07.2021, 26.02.2022 and 26.12.2022.

For petitioner : Mr.P.Rajavel

For respondents: Mr.P.Muthukumar, State Govt. Pleader,

assisted by Mr.P.Balathandayutham, Spl.G.P. for RR-1 to 5



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ORDER

(The Order of the Court was made by S.Vaidyanathan,J)

This Writ Petition has been filed praying for issuance of a Writ of Mandamus to direct the respondents 1 to 5 herein to remove the encroachment made in and over the Government Odai Poramboke Land (water body) comprised in Survey No.307/3 situated at Etuthavaainatham Village, Kallakurichi Taluk and District by the respondents 6 to 9 herein, so as to enable free water flow in the said Odai poramboke land within a limited time frame to be fixed by this Court by considering the petitioner's representations, dated 17.07.2021, 26.02.2022 and 26.12.2022.

2. In the prayer made in the above context, it is seen that a Full Bench and a Division Bench of this Court, has directed that the Government should ensure that there is no encroachment on the water-bodies.

3. This Court, in W.P.No.28656 of 2004, by order dated 10.07.2017, has exhaustively dealt with the aspect of Odai Poramboke encroachment, based on the Full Bench decision and Division Bench decision of this Court, and the relevant portion of the same reads as follows:



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"5. It is worthwhile to notice a Full Bench decision of this Court in W.P.No.1294 of 2009, dated 30.10.2015 (*T.K.Shanmugam Vs. The State of Tamil nadu and others*), wherein the Full Bench has exhaustively dealt with the encroachment on water bodies, the relevant portion of which are extracted hereunder:

"12. A Public Interest Litigation was filed by one Mr.L.Krishnan seeking for a direction against the Government and the Revenue Officials to remove encroachments made by certain private parties in a Odai Poraomboke in Villupuram District. While disposing of the Writ Petition, the Division Bench pointed out that ponds, tanks and lakes have been an essential part of the people's natural resources, however in recent years, these have been illegally encroached by unscrupulous persons and this has had adverse effect on the lives of the people. Further, it was pointed out that day in and day out, many petitions are filed by way of Public Interest Litigation alleging encroachments into ponds/tanks/lakes/odai Poramboke etc., in different parts of the State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu, it was pointed out that a time has come where the State has to take some definite measures to restore the already earmarked water storage tanks, ponds and lakes as disclosed in the revenue records to its original states as part of its rain water harvesting scheme. The Court took judicial



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notice of the action initiated by the State Government by implementing the water harvesting scheme as a time bound programme. It was further pointed out that it is imperative that such natural resources provided for water shortage facilities are maintained by the State Government by taking all possible steps both by taking preventive measures as well as by removal of unlawful encroachments. After

referring to the decision of the Hon'ble Supreme Court in the case of *Hinch Lal Tiwari Vs. Kamal Devi* reported in 2001 (6) SCC 496, it was held that the endeavour of the State should be to protect the material resources like Forests, Tanks, Ponds etc., in order to maintain ecological balance, which would pave the way to provide a healthy environment and enable the people to enjoy a quality life, which is essence of the right guaranteed under Article 21 of the Constitution. It was further held that in the State of Tamil Nadu having regard to the precarious water situation prevailing in the major part of the year, it is imperative that such noted water storage resources, such as tanks, odai, oornis, canals etc are not obliterated by encroachers. Reference was also made to Article 48-A of the Constitution. The Division Bench after referring to the other decisions of the Hon'ble Supreme Court in *Kesavananda Bharathi Vs. State of Kerala* reported in 1973 (4) SCC 225;



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Animal and Environment Legal Defence Fund Vs. UOI, reported in 1997 (3) SCC 549; *M.C.Metha Vs. UOI* reported in 1997 (3) SCC 715, issued certain directions. The directions issued were two fold, firstly, a positive direction to remove the encroachments over odai poramboke which was complained of in the said Public Interest Litigation, secondly, a direction to the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

... ..

30. It is to be noted at this juncture, during summer, water bodies would appear dry, but during rainy days/monsoon, stream would be in place to drain/take the water to the water bodies and percolation takes place which in all probability results in surcharge of ground water. Thus, on account of the default of the Revenue officials or on account of collusion of official machinery with encroachers can hardly be a premium to justify encroachments. The theory of



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adverse possession, would not stand attracted in such cases. The encroachers are in fact trespassers into Government property. In terms of the Standing Orders of the Board of Revenue, the Village Administrative Officer has a duty to report any encroachment in any Government land in his village. The present scenario of rampant encroachment is on account of the failure of the Revenue Administration to protect Government lands. If such acts of trespassers/encroachers are to be treated as pardonable and be rewarded for their illegal act in the form of regularisation/accommodation to say the least, it would be an absolute degradation and collapse of the public trust vested with the State to protect the lands and water bodies. If the Government is interested in allocating the poor and downtrodden, it should bring out a scheme for rehabilitating them and not to condone their act of trespass, reclassify the law and then grant patta to those encroachers.

... ..

32. **Thus it is the duty of the State to protect, conserve and augment traditional water retaining structures.**

... ..

44. 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



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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 regularising their possession which has to be deprecated.

45. 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."

6. Further, a Division Bench of this Court, in W.P.No.1295 of 2009, by order dated 27.11.2015, has followed the above said Full Bench decision of this Court, and the relevant portion of the said order passed by the Division Bench reads as follows:

"3. Cases of



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encroachment on water bodies are really alarming. Water bodies are potential source for drinking water for human and cattle. Only with a view to protect the same and to help the environment and develop ecology, the Government has enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007). The very object of the Act is to find the exact boundary of each Tank in Tamil Nadu and also to detect encroachments for eviction as per the procedure laid down in the said Act. Occupation of the water bodies by way of encroachment will deprive water to the public in larger interest ignoring the Public Trust Doctrine.

.. ..

17. The Hon'ble Supreme Court as well as this Court, in a catena of decisions, have time and again held that no encroachment should be tolerated over the water bodies which constitute part of the precious natural resources.

....

19. The fact remains that the encroachers have been issued with eviction notice in accordance with the provisions of the Act. Therefore, the petitioner in



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the guise of representing the encroachers, has got no vested right to prevent the encroachment being removed, that too, to restore the water body. On the other hand, the encroachers are bound to vacate and hand over vacant possession of the property.

20. ... Further, assuming that the said families have been in possession of the property for a considerable period, that would not confer any right on them over the land for the simple reason that admittedly, they are encroachers, that too, in a water body, which needs to be protected in the interest of public.

... ..

26. At this juncture, this Court, taking judicial notice of the fact that even during the hearing of this case, the State of Tamil Nadu is seriously affected by unprecedented floods, i.e. during November 2015, and because of that, number of people were dead and many people lost their property, is compelled to put its views that the entire loss due to the flood was due to maladministration and the prevailing practices by the authorities as almost all the water bodies and water courses were allowed to be encroached upon



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resulting in reduction in their flood storing and carrying capacity, forcing the water to deviate from its regular course and enter the residential areas causing devastating effects. The authorities have permitted construction of houses in the water bodies. This resulted in inundation of these areas during flood and all these houses submerged under the flood water. This shows that despite the orders of the Court, the authorities pretend to act swiftly in removing encroachments but only in a selective manner and not in a planned and determined manner.

.. ..

28. That apart, while answering the reference in a Writ Petition filed at the instance of the petitioner herein, viz., *T.K.Shanmugam Vs. State of Tamil Nadu (2015 (5) LW 397)*, the Full bench of this Court, after considering the various Government Orders and the judgments of this Court and also following the observations and directions issued by the Hon'ble Apex Court, vide order dated 30.10.2015, has held that *even the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act,*



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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 Act.

29. **Having regard to the acute water scarcity recurring in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already earmarked water storage tanks, ponds and lakes, to its original status as part of its rain water harvesting scheme, which has already been initiated.**

.... .."

(emphasis supplied by us)

4. Hence, in view of the above judgment of the Full Bench and the Division Bench of this Court, as extracted supra, no encroachment would be permitted in the Odai Poramboke (water bodies).

5. This Court is of the view that if there is any encroachment in the water bed, it should be removed and the encroachers should be dealt with in iron hands, more so, in all cases where there is encroachment on the water-bodies, be it Odai Poramboke or any other water body meant for free flow



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of water.

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6. Learned State Government Pleader appearing for the respondents submitted that the encroachment in the present Odai Poramboke has already been identified and they seek time to remove the encroachment and there was lot of objections and in order to avoid law and order situation, the removal of the encroachment has been deferred, as they require assistance of the Police for the purpose of removal of encroachment.

7. It is further submitted by the learned State Government Pleader that if this Court directs that with the help of the jurisdictional Police, as also the concerned Block Development Officer, the encroachment in the present water-body shall be removed to ensure that there is free water flow in the present Odai Poramboke, the same will be complied with.

8. Accordingly, as requested by the learned State Governance Pleader appearing for the official respondents, the encroachment on the present Odai Poramboke shall be removed within a period of one month from the date of receipt of a copy of this order, and for removing such encroachment, the official respondents shall seek the assistance of the jurisdictional Police and the concerned Block Development Officer, who shall assist the official



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respondents herein to remove the encroachment in the present Odai
Poramboke.

9. With the above observations/direction, this Writ Petition is
disposed of. There shall be no order as to costs.

(S.V.N., J) (R.K.M., J)
03.03.2023

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation: Yes/no
cs

To

1. The District Collector,
Kallakurichi,
Kallakurichi District-606 202.
2. The District Revenue Officer,
Kallakurichi,
Kallakurichi District.
3. The Revenue Divisional Officer,
Kallakurichi,
Kallakurichi District-606 202.
4. The Thasildar,



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Chinnasalem,
Kallakurichi District-606 202.

5. The Block Development Officer
(Village Panchayat),
Kallakurichi,
Kallakurichi District-606 202.
6. The Public Prosecutor,
High Court, Madras
(with a request to comply with
para 7 of this order by directing the Police concerned)



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S.VAIDYANATHAN, J

and

R.KALAIMATHI, J

CS

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