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W.P.No.11766 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

and

THE HONOURABLE MS. JUSTICE P.T.ASHA

Writ Petition No.11766 of 2018

and

WMP. Nos. 13735 & 13736 of 2018

A.Ezhilmani

.. Petitioner

Versus

1. The Revenue Divisional Officer,
Udayarpalayam,
Ariyalur District.

2. The Tashildar,
Taluk Office Aandimadam,
Ariyalur District.

3. The Block Development Officer,
Panchayath Union Office,
Aandimadam, Ariyalur District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Na.Ka.No.A/254/2018 dated 09.02.2018 and to quash the same and for a direction directing the second respondent to rectify the classification of land comprising in Survey No.177/9 in the name of the petitioner and in Survey No.177/10 as Vaari.

For Petitioner : Mr.T.Arulselvan

For R1 & R2 : Mr.A.Selvendran,
Special Government Pleader



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ORDER

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(Order of the Court was made by R. MAHADEVAN, J.)

The petitioner has come up with this writ petition to quash the notice dated 09.02.2018 issued by the third respondent with respect to removal of the encroachment made by the petitioner in Survey No.177/9 and also direct the second respondent to rectify the classification of land comprising in Survey No.177/9 in the name of the petitioner and in Survey No.177/10 as Vaari.

2. The petitioner, in the affidavit filed in support of the writ petition, would contend that his father purchased the land comprised in Survey No. 177/9 of Aathukurichi Village, Andimadam Taluk, Ariyalur District and he was in possession of the same for a long time. It is also claimed that his father had also obtained Patta No.29 in respect of the aforesaid land in his name. It is further stated that a water channel (*vaari*) passes adjacent to the aforesaid land in Survey No. 177/10 and not in the land in Survey No.177/9 as could be evident from the Field Measurement Book maintained by the office of the Head Quarters Deputy Tahsildar, Andimadam. After the death of his father, the petitioner is in possession of the aforesaid land along with his family.



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3. The grievance of the petitioner appears to be that when he verified the "A" Register maintained by the Revenue Department, to his dismay, it was noticed that the land in Survey No. 177/9 has been erroneously classified as Vaari. Therefore, the petitioner submitted a representation on 02.01.2018 to the respondents to change the nature and classification of the land in Survey No.177/9, but there was no response, hence, he filed WP No. 2611 of 2018 before this Court. By order dated 07.02.2018, this Court disposed of the writ petition with a direction to the Revenue Divisional Officer, Udayarpalayam, Ariyalur District to consider the request of the petitioner and to pass orders thereon. Pursuant to such direction, the third respondent issued a notice dated 09.02.2018 erroneously stating as if one Pavadairayan, relative of the petitioner, had encroached upon the land in Survey No. 177/9 and directed to remove such encroachment. On receipt of such notice dated 09.02.2018, the petitioner submitted a reply through his counsel on 21.02.2018 reiterating that he is in possession of the land in Survey No. 177/9 and not Mr. Pavadairayan. Further, the *Vaari* flows only through the land in Survey No.177/10 and the land in his possession in Survey No.177/9 has been erroneously re-classified in the revenue records. Notwithstanding such explanation, the respondents attempted to dispossess the petitioner on 30.04.2018 and therefore the present writ petition has been filed.



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4. Today, when the matter is taken up for consideration, the learned Special Government appearing for the respondents 1 & 2 submitted that the land comprising in Survey No.177/9 is classified as "*Vaari*" in the "A" Register maintained by the Revenue Department. The petitioner has been in occupation of the water body and claims that the land, which is in his occupation has been erroneously classified as "*Vaari*". According to the learned Special Government Pleader, even though it is claimed by the petitioner that his father had purchased this land and also obtained Patta, no such document has been filed along with this writ petition to substantiate the same. In any event, the land which is in occupation of the petitioner has been classified as "*Vaari*" (water channel) in the revenue records. As long as the classification of the land in Survey No. 177/9 remains as "*Vaari*" (water channel) in the "A" Register, the petitioner has no semblance of right, interest or title to be in possession of such land. Therefore, the learned Special Government Pleader prays for dismissal of the writ petition.

5. In reply, the learned counsel for the petitioner submitted that the petitioner would be satisfied, if liberty is granted to him work out his remedy before the authority concerned.



6. On appreciation of the rival submissions, we find no merits in the case put forth by the petitioner. It is not in dispute that the land comprised in Survey No.177/9, which is in occupation of the petitioner, is classified as a water body in the "A" Register maintained by the Revenue Department. When once a land is classified as a Water Body in the A Register, the power to re-classify such land, for any reasons to be recorded thereof, vests only with the Government. As long as the land in question is classified as "Vaari" (water Channel), the petitioner cannot assert any right over such lands. While so, this writ petition is not maintainable, as observed by the Division Bench of this Court in the case of **T.K. Shanmugam, Secretary, C.P.I. (M), North Chennai District Committee, Perambur, Chennai vs. The State of Tamil Nadu, rep. by its Secretary to Government, Department of Revenue, Fort St. George, Chennai and others** wherein it was held as follows:-

"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, ie., 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 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



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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.

27. It has become inevitable for this Court to put on record that the authorities in power cannot destroy the water bodies or water courses formed naturally for the benefit of mankind for ever and it is beyond the power of the State to alienate or re-classify the water bodies for some other purposes without compensating the effect of such water bodies.

28. That apart, while answering the reference in a Writ Petition filed at the instance of the petitioner herein, viz. [T.K. Shanmugam vs. The 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, 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. It is significant to point out that the Hon'ble Apex Court in a series of judgments, has held that statutory rules cannot be amended by Executive instructions but "if the rules are silent" on any particular point, Government can fill up the gaps by issuing executive instructions, in conformity with the existing rules. 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 ear marked water storage tanks, ponds and lakes, to its original status as part of its rain water harvesting scheme, which has already been initiated.

30. This Bench also wants to put it on record that as against the directions issued by this Court from time to time for eviction of the encroachers in the water bodies, which is in the larger interest of the society, no individual has raised his little finger, except the present writ petitioner, Secretary of a



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Political Party, that too, under the garb of a Public Interest Litigation.

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In view of the foregoing discussion and in the light of the answer to the reference rendered by the Full Bench on this issue, we are of the view that the arguments of the petitioner claiming that the encroachments in river poramboke have to be regularized, is legally not sustainable and the relief claimed in this Writ Petition cannot be granted. As such, the Writ Petition fails and the same stands dismissed but without costs.

7. In the light of the above, this writ petition is dismissed. However, liberty is granted to the petitioner to work out his remedy in a manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J] [P.T.A., J]

06.02.2023

Index : Yes / No
Internet : Yes / No
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