



*W.P. No. 12647 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S. VAIDYANATHAN**

**AND**

**THE HON'BLE MR.JUSTICE K. RAJASEKAR**

W.P. No. 12647 of 2019

&

W.M.P. No. 12880 of 2019

K. Rajavadivelu

..Petitioner

Vs.

1. The District Collector,  
Nagapattinam District,  
Nagapattinam.
2. The District Revenue Officer,  
O/o. Of District Collector Campus,  
Nagapattinam District.
3. The Tahsildar,  
Nagapattinam.
4. N. Jothi Ramalingam

..Respondents



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Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 3<sup>rd</sup> respondent to remove the encroachment in Survey No. 328/17 in pursuant of the order of the 2<sup>nd</sup> respondent dated 24.03.2017 in Na.Ka.No. 2702/2016.

For Petitioner :: Ms.S. Uma Maheswari  
For Respondents :: Mr.A. Selvendran,  
Special Govt. Pleader  
for R1 to R3  
Mr.S. Parthasarathy  
for R4

#### O R D E R

*(Made by S. Vaidyanathan,J.)*

The present writ petition has been filed for issue of a Writ of Mandamus directing the 3<sup>rd</sup> respondent to remove the encroachment in Survey No. 328/17 in pursuant of the order of the 2<sup>nd</sup> respondent dated 24.03.2017 in Na.Ka.No. 2702/2016.

2. The case of the petitioner is that he is the owner of the lands at S.No. 328/2, Sikkal Village, Nagapattinam District. On the western side of the petitioner's property, there is a pond by name "Senkazhani Kulam" alias



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Sangili Kuttai in S.No. 328/17. According to the petitioner, the 4<sup>th</sup> respondent has encroached upon the said water body, due to which, the area of the water body has been reduced. Though the petitioner had given repeated representations to respondents 1 to 3 for necessary action to remove the encroachment created by the 4<sup>th</sup> respondent, they were of no avail. It is his further case that the 4<sup>th</sup> respondent has filed O.S. No. 65 of 2014 on the file of District Munsif Court, Nagapattinam against respondents 1 to 3 herein and another seeking mandatory injunction to grant patta in respect of the encroached portion and quoting the pendency of civil suit, the 4<sup>th</sup> respondent has prevented the authorities from taking action. The petitioner would also state that vide proceedings dated 29.08.2016, he was informed by the 3<sup>rd</sup> respondent that action would be taken depending upon the outcome of the civil suit as against which the petitioner preferred an appeal before the 2<sup>nd</sup> respondent by means of a representation requesting to take action against the encroachment in the water body. Pursuant to the same, the 2<sup>nd</sup> respondent conducted spot inspection and on finding that there are encroachments, directed the 3<sup>rd</sup> respondent to remove the same. Even thereafter, no action has been taken by the 3<sup>rd</sup> respondent. Hence, the



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petitioner filed an I.A. in the pending suit to implead himself as a party to the suit. Immediately thereafter, the suit is said to have been withdrawn by the 4<sup>th</sup> respondent. Now, the grievance of the petitioner appears to be that even after the withdrawal of the suit, no action has been taken by the 3<sup>rd</sup> respondent to implement the orders of the 2<sup>nd</sup> respondent. Further, the petitioner would state that the 4<sup>th</sup> respondent is attempting to manipulate the records and has gone even to the extent of changing the classification of land in Survey No. 328/17. Hence, the present writ petition with the prayer aforesaid.

3. However, as per the counter filed by the 4<sup>th</sup> respondent, the properties in S.Nos. 328/15 and 328/17 were settled in his favour by his mother by means of a registered settlement deed dated 25.03.1990 and right from the date of settlement, he is in peaceful possession and enjoyment of the same. Based on the said settlement deed, the 4<sup>th</sup> respondent applied for patta and patta was issued only to an extent of 2613 sq.ft and no patta was issued in respect of the remaining extent of 12605 sq.ft. Therefore, the 4<sup>th</sup> respondent had made a representation to the Revenue Divisional Officer to



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grant patta to the entire extent of 15318 sq.ft. An enquiry was conducted by the Revenue officials and on their recommendation, the Revenue Divisional officer had directed the Village Administrative officer and the 3<sup>rd</sup> respondent to issue patta only to an extent of 9148 sq.ft, which necessitated the 4<sup>th</sup> respondent to file a suit in O.S. No. 65/2014 before the District Munsif Court, Nagapattinam, for a mandatory injunction to the 3<sup>rd</sup> respondent to grant patta in respect of the land comprised in S.No. 328/15A to an extent of 2613 sq.ft and in respect of the land comprised in S.No. 328/17 to an extent of 12605 sq.ft. During the pendency of the suit, the 4<sup>th</sup> respondent was asked to approach the 1<sup>st</sup> respondent for issuance of patta for the entire extent and therefore, the suit was withdrawn. Thereafter, on 10.06.2019, a representation was submitted by him to the 1<sup>st</sup> respondent for issuance of patta to the entire extent of 15318 sq.ft. and the same is pending. That being so, the 4<sup>th</sup> respondent would state that the petitioner, without any basis, had made a representation to the 3<sup>rd</sup> respondent that he had encroached upon the pond and that without any enquiry or notice, the 2<sup>nd</sup> respondent had directed the 3<sup>rd</sup> respondent to remove the encroachment on the pond. According to the 4<sup>th</sup> respondent, there is no encroachment as



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alleged by the petitioner and that the suit was withdrawn for the reason that he was advised to prefer an appeal to the 1<sup>st</sup> respondent and not as alleged by the petitioner.

4. According to the learned counsel for the petitioner, the revenue records have been altered, pursuant to which, the extent of “*Kulam*” which was 12605 sq.ft has been reduced and patta has been issued to an extent of 9148 sq.ft to various persons in S.No. 328/17 after classifying the same as “*Natham land*”.

5. In response to the same, Mr.A. Selvendran, learned Special Government Pleader appearing on behalf respondents 1 to 3 would submit that though it is true that such a classification was made, but he would submit that the Revenue Divisional Officer has no power to alter the classification of the property and so, it was cancelled and the extent of 12605 sq.ft in S.No. 328/17 classified as *kulam* has been restored.

6. Heard both parties.



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7. Though it is stated by the learned counsel for the contesting respondent that an appeal has been preferred to the 1<sup>st</sup> respondent on 10.06.2019 and that the same is pending, a perusal of the same reveals that it is a representation and not an appeal. However, in order to give an opportunity to the 4<sup>th</sup> respondent to agitate the same so that he is not out of time, the authority concerned is expected to treat the representation dated 10.06.2019 as an appeal and pass appropriate orders within a period of 3months from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner as well as the contesting respondent. The authority concerned shall take into account the judgment of the Apex Court rendered in *Sarvepalli Ramaiah (Died)rep. by LRs and others V. District Collector, Chittoor and others* reported in (2019) 4 SCC 500 wherein it was held that water bodies cannot be encroached upon even if they have become dry or fallen into disuse, while passing appropriate orders.



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**S. VAIDYANATHAN,J.**

**AND**

**K. RAJASEKAR,J.**

nv

8. The writ petition is disposed of accordingly. No costs.

Connected W.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)  
19.12.2023

nv

To

1. The District Collector,  
Nagapattinam District,  
Nagapattinam.
2. The District Revenue Officer,  
O/o. Of District Collector Campus,  
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