



WEB COPY

W.P. No.34820 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.34820 of 2018

R. Prema

Petitioner

v

- 1 The District Collector
Kancheepuram District
Kancheepuram
- 2 The Tahsildar
Chengalpet Taluk
G.S.T. Road
Chengalpet, Kancheepuram District
- 3 The District Revenue Officer (DRO)
O/o Collector
Kancheepuram District – 631 501
- 4 The Revenue Divisional Officer (RDO)
Chengalpet Region
G.S.T. Road, Chengalpet
Kancheepuram District 603 001
- 5 The Deputy Director
Town & Country Planning
R.D.M.A. Building Complex
GST Road, Chengalpet
- 6 The Director
Town & Country Planning
No.802, Anna Salai, Chennai 600 002



- 7 The Block Development Officer
Kattankulathur Panchayat Union
G.S.T. Road, Kattankulathur
- 8 The Assistant Engineer
Tamil Nadu Electricity Board
G.S.T. Road
Guduvanchery
Chengalpet Taluk
Kancheepuram District
- 9 The Village Administrative Officer
Kayarambedu Village
Chengalpet Taluk
Kancheepuram District
- 10 The Director
Directorate of Vigilance & Anti Corruption
No.293, MKN Road
Alandur
Chennai 600 016
- 11 Urbanrise Project LLP
Plot No.A, No.36/1
Gandhi Mandapam Road
Kotturpuram, Chennai 600 085
- (Cause title amended vide order dated 14.02.2019 made in W.M.P. No.4992 of 2019 in W.P. No.34820 of 2018)
- 12 The Assistant Executive Engineer
O/o the Assistant Executive Engineer
Public Works Department
Kancheepuram 601 501
(R12 impleaded vide order dated 08.04.2019 made in W.M.P. No.10315 of 2019 in W.P. No.34820 of 2018)

Respondents



Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 to 4 and 6 to 8 and 10 to take necessary action to remove the encroachments into the Periya Eri and its water channels, comprised in S.No.368 at No.27, Kayarambedu Village, Chengalpet Taluk, Kancheepuram District, on the basis of the petitioner's representation dated 23.07.2018.

For petitioner Mr. R. Thanjan

For RR 1-7, 9 & 12 Mr. A. Selvendran
Special Govt. Pleader

RR 8 & 10 Given up *vide* Court order dated 04.01.19

For R11 Mr. V. Chandrasekaran

ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed seeking a writ of mandamus directing the official respondents to take necessary action to remove the encroachments found in Periya Eri and its water channels, comprised in S.No.368 at No.27, Kayarambedu Village, Chengalpet Taluk, Kancheepuram District, on the basis of the petitioner's representation dated 23.07.2018.

2 Today, when the matter was taken up for hearing, the learned counsel for the petitioner submitted that the eleventh respondent is attempting to encroach the Periya Eri and its water channels to construct houses there.



3

According to Mr. A. Selvendran, learned Special Government Pleader

appearing for respondents 1-7, 9 and 12, it is true that the water body has been encroached and in fact, standing crops are there. He produced a communication dated 27.02.2023 addressed to him by the Tahsildar, Chengalpet, and the same is scanned below:

அனுமரன் திருமதி.த.தனலாட்சி வட்டாட்சிவர் (பொ) செங்கல்பட்டு	பெறுந் அரசு சிறப்பு வழக்குரைஞர், சென்னை உயர்நீதிமன்றம், சென்னை
ந.க.எண்.638/2023/ஆ.2 நாள்.27.02.2023	
ஆய்மா, பொருள் பார்வை	வழக்கு - செங்கல்பட்டு மாவட்டம் - மற்றும் வட்டம் - காட்டாங்கொளத்தூர் குறுவட்டம் - காயரம்பேடு கிராமம் - ஏரி வகைப்பாடு - சர்வே எண்.368-ல் ஆக்கிரமிப்பு உள்ளதாக திருமதி.பிரேமா க'பெ ராகவன் என்பவர் சென்னை உயர் நீதிமன்றத்தில் தொடுத்த நீதிப்பேராணை வழக்கு எண்.34820/2018 - வழக்கு தொடுத்துள்ளது - அறிக்கை அனுப்புக - தொடர்பாக 1.திருமதி.பிரேமா க'பெ ராகவன் என்பவர் சென்னை உயர்நீதிமன்றத்தில் தொடுத்த நீதிப்பேராணை வழக்கு எண்.34820/2018 2. சம்மந்தப்பட்ட ஆவணங்கள். (())
மேற்படி பொருள் தொடர்பாக தங்களின் கனிவான கவனம் கொண்டு விழைகிறேன்.	
செங்கல்பட்டு மாவட்டம் மற்றும் வட்டம், காட்டாங்கொளத்தூர் குறுவட்டம், காயரம்பேடு கிராமம், ஏரி வகைப்பாடு சர்வே எண்.368 -ல் ஆக்கிரமிப்பு உள்ளதாக திருமதி.பிரேமா க'பெ ராகவன் என்பவர் சென்னை உயர் நீதிமன்றத்தில் தொடுத்த நீதிப்பேராணை வழக்கு எண்.34820/2018 வழக்கு தொடுத்துள்ளது தொடர்பாக விசாரணை செய்து எனதறிக்கையினை பின்வருமாறு தெரிவித்துக் கொள்கிறேன்.	
செங்கல்பட்டு மாவட்டம் மற்றும் வட்டம், காயரம்பேடு கிராமம், சர்வே எண்.368, பரப்பு 68.04.5 ஏக்கர் பரப்பளவில் ஏரி அமைந்துள்ளது. இதில் மாமரம், தென்னை மரங்கள் உள்ளிட்ட 100 -க்கும் மேற்பட்ட மரங்கள் உண்டு. மேலும் கீழ்க்கண்ட நபர்கள் மேற்படி ஏரியில் பின்வரும் விவரப்படி ஆக்ரமணம் செய்து வருகின்றனர்.	



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வ.கண்	பெயர்	சமூகப் பிள்ளை	பரப்பு கணம் (ஏக்கர்)
1	திரு.சுமேத்	காய்கறி	0.30.0
2	திரு.வேங்கடநாதன்	நெல்	0.40.0
3	திரு.பார்த்தியன்	நெல்	0.80.0
4	திரு.வெங்கடேசன்	காய்கறி	0.30.0
5	திரு.காணப்பன்	காய்கறி	1.30.0
6	திரு.சேகர்	நெல்	0.40.0
7	திரு.குமார்	நெல்	0.20.0
8	திரு.விராகவன்	காய்கறி	0.70.0
9	திரு.பழனி	நெல்	0.80.0
10	திரு.அவிகு	நெல்	0.80.0
11	திரு.சண்முகம்	காய்கறி	0.30.0
12	திரு.கோவிந்தசாமி	நெல்	0.20.0
13	திரு.வேங்கு நாயக்கர்	நெல்	0.60.0
14	திரு.கண்ணன்	நெல்	0.70.0
15	திரு.ஏழுமலை	நெல்	0.80.0

மேற்படி நபர்கள் சுமார் 40 வருடங்களாக பயிர் செய்து வருகின்றனர். 10-க்கும் மேற்பட்ட தரைக்கிணறுகள் உள்ளன. மேற்படி ஆக்கிரமிப்புகளை அகற்றும் பொருட்டு தமிழ்நாடு ஏரி மற்றும் குளங்கள் பாதுகாப்பு மற்றும் ஆக்கிரமிப்பு அகற்றுதலை விதிகள் (விதி) -2 உள்விதி (1) கறு (2) -ன் கீழ் படிபடி 1 மற்றும் 2 தயார் செய்து பொதுமயனித்துறைக்கு அனுப்பி வைக்கும் பொருட்டு நடவடிக்கை மேற்கொள்ளப்பட்டு வருகிறது என்பதை பணிபுடல் தெரிவித்துக் கொள்கிறேன்.

மூலக்கள் உண்மையுள்ள

திரு.செல்வந்திரன்
27.2.23
வட்டாட்சியர் (பொ)
செங்கல்பட்டு

புது
27/02/2023

4 Based on the above communication, Mr. Selvendran submitted that there are 15 encroachers who have been cultivating paddy and vegetables in the encroached area, for nearly forty years, besides mango and coconut trees; there is no relief sought against the eleventh respondent and he has no comments to offer;



the authorities will ensure that the eleventh respondent does not encroach the Periya Eri and its water channels.

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5 The eleventh respondent has filed a counter affidavit dated 26.02.2019 stating that there is no relief sought against them in the writ petition and that there is also planning permission obtained on 20.08.2018 for constructing flats to fulfil the Prime Minister's vision "Housing for all before 2022"

6 The learned counsel for the eleventh respondent submitted that the Periya Eri is in S.No.368, whereas, the eleventh respondent constructs buildings only in S.Nos.122/1A, 122/1B, 122/1C, 122/1D, 122/1E, 122/1F, 122/1G,122/1H,122/2, 122/3, 126/1, 127, 117/1D, 117/1E and 117/1F and in fact, the eleventh respondent, in their counter affidavit dated 26.02.2019, have categorically stated that they will ensure free flow of water.

7 Further, it is seen that while granting planning permission dated 20.08.2018, several conditions have been imposed and two of such conditions are as under:

"16. The patta channel passing through the site i.e. S.No.122,126,127 and 117 should be maintained as it is without any obstruction of water flow.

17. In the alignment of channel, proper structures should be constructed in the proposed site before commencement of work. It is to be ensured by Regional Deputy Director, Chengalpattu Region."

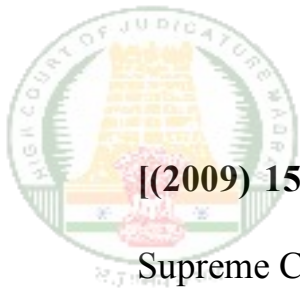


8

In view of the above, we direct that the encroachments made by 15 encroachers, as identified by the officials *vide* communication dated 27.02.2023 which is scanned above, need to be removed after harvest and not stopping with that, it should also be ensured that there is no further encroachment on the Periya Eri and its water channels. In case, the eleventh respondent complies with the condition and there are no encroachments made by him, he may be permitted to go ahead with the construction. In case, any encroachment is made by the eleventh respondent on the Periya Eri or its water channels, needless it is to state that construction shall not be permitted to be continued.

9 Before parting, apposite it is to point out that the Apex Court, in a catena of cases, has come down heavily on illegal constructions and encroachments and suffice to advert to the following two judgments. **In Priyanka Estates International Pvt. Ltd. v State of Assam [(2010) 2 SCC 27]**, the Supreme Court declined the appellant's prayer for directing the respondents to regularize the illegal construction and observed as follows:

“It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”



[(2009) 15 SCC 705] pertaining to buildings constructed in violation of rules, the

Supreme Court held thus:

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"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

With the above directions and observations, this writ petition stands disposed of. Costs made easy.

(S.V.N., J.) (K.R.S., J.)
08.08.2023

cad



To

- 1 The District Collector
Kancheepuram District
Kancheepuram
- 2 The Tahsildar
Chengalpet Taluk
G.S.T. Road
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Kancheepuram District
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S. VAIDYANATHAN, J.
and
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