



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Special Original Jurisdiction)

Friday, the Twenty First day of April Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

WMP(MD) No.3146 of 2023

IN

WP No.9099 of 2004

BOSE K

... PETITIONER/PETITIONER

Vs

1 THE DISTRICT COLLECTOR
MADURAI DISTRICT, MADURAI

2 THE TAHSILDAR
USILAMPATTI, MADURAI DISTRICT

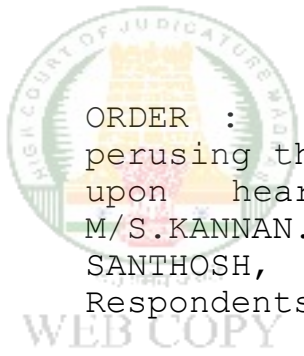
3 THE DISTRICT FOREST OFFICER
MADURAI, MADURAI DISTRICT

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 1647 days in filing the petition to restore the order dated 03.06.2016 in WP.No. 9099 of 2004 on the file of this Honble Court to be disposed on merits.

Prayer in WP No. 9099/ 2004 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, order or direction, calling for the entire records leading to the issue of proceedings bearing Na.Ka.No.B3/14150/03 dated 16.02.2004 on the file of the Tahsildar, Usilampatti the 2nd respondent herein and Quash the same and forbear the Respondents 1 to 3 or their men, servants or agents or contractors and workers from entering into an putting up any construction or fencing and preventing or interfering with the peaceful enjoyment of the Kalam thrashing field in an extent of 0.18.0 hectares (A 0.40 cents) of land in S.No. 321/3, Matharai, Nakkalapatti Village, Usilampatti Taluk, Madurai District.



ORDER : This petition coming up for orders on this day, on perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.SRIDHAR, Advocate for M/S.KANNAN.P.T, Advocate for the petitioner and of MR.G.V.VAIRAM SANTHOSH, Additional Government Pleader on behalf of the Respondents, the court made the following order:-

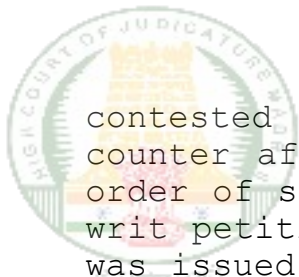
This petition is filed to condone the delay of 1647 days in filing the petition to set aside the order dated 03.06.2016 and restore the writ petition in W.P.(MD)No.9099 of 2004

2. The petitioner filed the above writ petition as against the proceedings of the Tahsildar, Usilampatti, in Na.Ka.No.B3/14150/03, dated 16.02.2004 and also for a consequential direction to the third respondent not to make any alteration on the disputed property in Survey No.321/3, Matharai, Nakkalapatti Village, Usilampatti Taluk, Madurai District.

3. The subject land in Survey No.321/3, to an extent of 0.18.0 hectares (approximately 40 cents) situated at Matharai Village, was originally classified as Kalam in A Register. By the impugned proceedings dated 16.02.2004, the Tahsildar handed over the subject land to the Forest Department, pursuant to the letter of the District Collector, Madurai, dated 11.02.2004.

4. The writ petition originally filed before the Principal Seat was transferred to this Bench after establishment of this Bench in the year 2004. When the case was listed for hearing on 03.06.2016, there was no representation for the petitioner and therefore, the writ petition was dismissed for non-prosecution on 03.06.2016. The petitioner, after knowing about the dismissal order dated 03.06.2016, engaged an Advocate to file applications in W.M.P.(MD) SR.Nos.52727, 52728 and 52729 of 2016 to set aside the order dated 03.06.2016 and to restore the writ petition and miscellaneous petition. Those applications were not followed up by the petitioner properly and subsequently, it was also misplaced. Therefore, the present petition has been filed to set aside the order dated 03.06.2016 passed in W.P.(MD)No.9099 of 2004 and restore the same with a delay of 1647 days.

5. Mr.Sridhar, learned Senior Counsel appearing for the petitioner submits that this writ petition was filed by him before the Principal Seat in the year 2004 and considering the merits in this writ petition, this Court, by order dated 05.04.2004 in W.P.M.P.No.10617 of 2004, granted an order of interim injunction in favour of the petitioner, which was subsequently modified as an order of status quo at the instance of the respondents in W.P.M.P.No.1050 of 2004 dated 06.07.2004. Thereafter, the application filed by the respondents to modify the order dated 06.07.2004 passed in W.P.M.P.No.2735 of 2005 was also dismissed by the Principal Seat on 17.02.2006. The writ petition was hardly



contested for nearly two years and this Court, after filing the counter affidavit, has modified the interim injunction order as an order of status quo. After the establishment of Madurai Bench, the writ petition was transferred to Madurai Bench. However, no notice was issued to the petitioner as well as to the counsel. Therefore, this case was not followed up by the petitioner and when the case was listed for hearing on 03.06.2016, there was no representation for the petitioner. The writ petition was dismissed for non-prosecution by order dated 03.06.2016.

6. The learned Senior Counsel appearing for the petitioner further submits that on 22.08.2016, the 3rd respondent measured the subject land for constructions. Thereafter, on verification, the petitioner found the order dated 03.06.2016 and immediately, engaged a Senior Counsel and filed applications in W.M.P(MD)SR.Nos.52727, 52728, 52729 of 2016 to set aside the order dated 03.06.2016, to restore the writ petition and miscellaneous petition. The said applications appear to have been returned for certain compliance and thereafter, it was misplaced either in the office of the counsel or in the office of the Registry. The Counsel, who followed up this case before this Bench, also died during Covid 19. Therefore, the petitioner could not follow up the case and restore the earlier applications in W.M.P(MD)SR.Nos.52727, 52728, 52729 of 2016. Hence, he has filed the present application for restoring the writ petition with a delay of 1647 days. This delay had occurred in view of the aforementioned reasons and there is a mistake on the part of the counsels also.

7. The learned Senior Counsel has also relied on the provisions under Sections 125 and 134 of the Tamil Nadu Panchayat Act 1994 and submits that it is the duty of the Village Panchayat to regulate and preserve the lands, which were allotted for common purpose. The subject land is also allotted for the purpose of Kalam, which cannot be re-classified without the permission of Village Panchayat. However, the District Collector, Madurai, who is not the competent authority, has re-classified the subject land and also handed over the land, which needs to be preserved as a Kalam, to the 3rd respondent Department, without any intimation to the Village Panchayat and without obtaining any resolution from the Village Panchayat. Therefore, the impugned order itself is illegal, which needs to be interfered with and the petitioner is having a good case in the writ petition.

8. The learned Senior Counsel has also relied on a Judgment of the Division Bench of this Court in **Vengaivasal Village Panchayat vs. State of Tamil Nadu and others**, reported in **AIR 2005 Madras 226** and submits that in that case, an attempt was made to re-classify a property of Vengaivasal Village Panchayat from cart-track (tz;oghij) to natham poromboke by the Government for assigning the same to the employees of Raj Bhavan to have quarters and the Division



Bench of this Court has observed as follows:

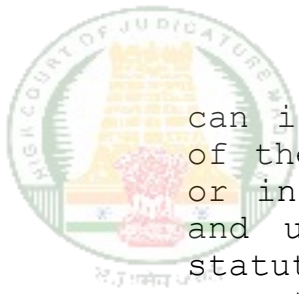
"17. A bare reading of the definition of "public road" specifically includes a "cart-track" and therefore, there cannot be any dispute that the impugned Vandipatti Poromboke (cart-track) is covered within the definition of "public road" under Section 2(28) of the Act. Consequently, by operation of Section 125(1) of the Act, referred to above, the impugned Vandipatti Poromboke (cart-track), which is read into the definition of "public road", shall vest with the Village Panchayat. Such a vested right conferred on the village panchayat with respect to the public road, in our considered opinion, cannot be interfered or encroached even by the Government, without giving any opportunity to the Village Panchayat (local body) and getting their consent for such reclassification.

18. In the instant case, at no point of time, the Government had sought for the consent of the Village panchayat by appropriate resolutions for the proposal of reclassification of the impugned land from Vandipatti Poromboke (cart-track) to Natham Poromboke. Obviously, there is a glaring violation not only to the principles of natural justice but also to the procedure contemplated for such reclassification.

....
23. The power conferred on the Government under Section 125(2) of the Act is not absolute and independent but the same is subject to the power conferred under Section 125(1) of the Act protecting the vested right of the village panchayats, which is endowed with such powers and authority as may be necessary to enable them to function as institutions of self-government, as provided under Article 243G of the Constitution of India. If that be so, we are unable to agree with the view of the learned Single Judge that mere consultation of the panchayat is required and not their consent.

.....
26. In view of the ratio enunciated from the decision in Government of Andhra Pradesh and Anr. v. Syed Akbar, we do not find any difficulty to answer the legal issue raised in this appeal in negative to the effect that the Government shall not resort to exercise their powers under the Board Standing Orders which have no statutory force, ignoring the statutory provisions, viz., Section 125(2) of the Act, which could be exercised, in our considered opinion, by following appropriate procedure contemplated under law.

27. It is trite law that the court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court



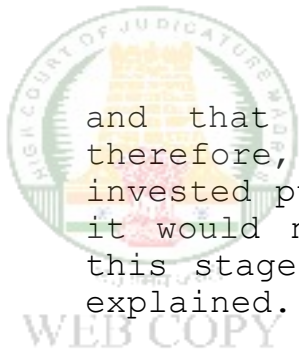
can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words, vide *Nasiruddin v. Sita Ram Agarwal*, (2003) 2 SCC 577: (AIR 2003 SC 1543).

.....
29. In the instant case, we are satisfied that the impugned G.O. is obviously passed ignoring the provisions of Sections 125(1) read with Sections 2(28) and 125(2) of the Act, as no steps have been taken by the Government to issue any notification till date, in a manner contemplated under law, and therefore, the impugned order is liable to be set aside."

9. The learned Senior Counsel also conceded that a similar writ petition has also been filed by the Nakkalpatti Panchayat President in W.P.(MD)No.3698 of 2009, which was dismissed by order dated 15.02.2018. Further, he submits that in view of the decision taken by the Division Bench in ***Vengaivasal Village Panchayat v. State of Tamil Nadu and others***, the order passed by this Court in W.P.No.3698 of 2009 has to be treated as *per incuriam*. He further submits that if the petitioner is not provided an opportunity to establish his case, his legal right would be defeated and the illegality committed by the District Collector, Madurai and the Tahsildar, Usilampatti, would be confirmed.

10. The learned Additional Government Pleader submits that the land in Survey No.321/3, to an extent of 0.18.0 hectares, situated at Matharai, Nakkalpatti Village, Usilampatti Taluk, Madurai District, is a Government Promboke land and it was handed over to the Forest Department by proceedings of the District Revenue Officer, Madurai in Na.Ka.No.121422/2003/Y2 dated 11.02.2003. The property was handed over by the Tahsildar, Usilampatti, by his consequential proceedings dated 16.02.2004, which under challenge in this writ petition and the original order dated 11.02.2003 has not been challenged.

11. The learned Additional Government Pleader further submits that the Forest Department has also taken over the possession of the property in the year 2004 and constructed an anti coach shed, an overhead tank, etc. by investing public money to the tune of Rs.2,44,404/-. The petitioner has not followed up the writ petition and allowed the writ petition to be dismissed for default on 03.06.2016. The Nakkalpatti Panchayat President has also challenged the same order by filing a writ petition in W.P.(MD)No.3698 of 2009



and that was also dismissed by this Court on 15.02.2016. Therefore, the issue becomes final and the Department has also invested public money by putting up some constructions. Therefore, it would not be appropriate to entertain the present petition at this stage. Further, the delay of 1647 days has not been properly explained. Hence, the petition is liable to be dismissed.

12. This Court considered the rival submissions made and perused the materials placed on record.

13. The Petitioner has filed this writ petition as against the communication of the Tahsildar, Usilampatti, dated 16.02.2004, handing over the subject land in Survey No.321/3 to the Forest Department. The A Register produced by the petitioner discloses that the subject land in Survey No.321/3 was originally classified as Kalam. In view of the decision passed by the Division Bench in **Vengaivasal Village Panchayat v. State of Tamil Nadu and others**, the land, which was classified as Kalam, cannot be converted without the permission of the Village Panchayat. It is not known, how the District Revenue Officer, Madurai, by his proceedings dated 11.02.2003, has re-classified the subject land and handed over it to the 3rd respondent Department. The petitioner is having a good case in view of the decision of the Division Bench of this Court in **Vengaivasal Village Panchayat v. State of Tamil Nadu and others** reported in **AIR 2005 Madras 226**. However, the petitioner has not prosecuted this case in a proper manner and has allowed to be dismissed for non prosecution on 03.06.2016.

14. The petitioner claims that the writ petition, which was originally filed before the Principal Seat, was listed before this Court without any notice to the petitioner and to the counsel. Even if a suit is transferred from a Munsif Court to another Munsif Court, in all fairness, the transferee Court ought to have issued a notice to the parties about the transferring of the case. In this case, no notice was issued to the petitioner as well to the counsel. The petitioner, after knowing about the dismissal order, filed applications in W.M.P(MD)SR.Nos.52727, 52728, 52729 of 2016 to set aside the order dated 03.06.2016, to restore the writ petition and miscellaneous petition. These applications were also not properly followed up by the petitioner herein and therefore, the present application has been filed.

15. The counsel, who was engaged to file W.M.P(MD)SR.Nos.52727, 52728, 52729 of 2016, also died during Covid 19 and therefore, the petitioner was not in a position to contest the applications which were filed in the year 2016 and therefore, the petitioner has now filed to set aside the order dated 03.06.2016 with a delay of 1647 days.



16. The applications earlier filed by the petitioner's counsel is a reputed senior counsel of the Principal Bench and the application filed by the petitioner's counsel before Madurai Bench is also a respected Counsel of this Bench. Though they are not designated as Senior counsels, they are counsels of reputation, which cannot be ignored. The petitioner has also made out a case from the provisions of law under Section 125 and 132 of the Tamil Nadu Panchayat Act and with the Judgment of the Division Bench of this Court, in **Vengaivasal Village Panchayat vs. State of Tamil Nadu and others**, reported in **AIR 1995 Madras 226**.

17. It is true that a similar writ petition filed by Nakkalpatti Panchayat President was dismissed by this Court in W.P. (MD) No.3698 of 2008 on 15.02.2018, wherein, the relevant provisions under Sections 125 and 132 of the Tamil Nadu Panchayat Act, were not discussed and the ratio laid down by this Court in **Vengaivasal Village Panchayat vs. State of Tamil Nadu and others**, reported in **AIR 2005 Madras 226** was not brought to the knowledge of this Court.

18. Therefore, this Court, in order to provide an opportunity to the petitioner to establish his case, is inclined to condone the delay with a cost of Rs.50,000/- (Rupees fifty thousand only) which has to be paid by the petitioner to the 3rd respondent, however, with a condition that the petitioner should co-operate for early disposal of the writ petition within a period of four weeks from the date of restoration of the writ petition.

19. Accordingly, this petition is allowed with a cost of Rs.50,000/- (Rupees fifty thousand only) which has to be paid by the petitioner to the 3rd respondent, however, with a condition that the petitioner should co-operate for early disposal of the writ petition within a period of four weeks from the date of restoration of the writ petition.

20. Post the matter on 27.04.2023.

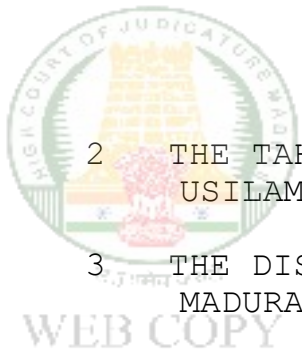
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21/04/2023

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24/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

OGY
TO

1 THE DISTRICT COLLECTOR
MADURAI DISTRICT, MADURAI



WMP(MD)



23

- 2 THE TAHSILDAR
USILAMPATTI, MADURAI DISTRICT
- 3 THE DISTRICT FOREST OFFICER
MADURAI, MADURAI DISTRICT

ORDER
IN
WMP (MD) No.3146 of 2023
IN
WP.No.9099 of 2004
Date :21/04/2023

PKP/SSS/SAR- /24.04.2023/ **8P/4C**