



W.P(MD)No.1084 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1084 of 2015

1. S.PL.PL. Palaniappa Chettiar (Died)

2.Egammai

3.Muthu

4.Thayal Nayaki

5.Meenakshi

6.Nachammai

7.Seethalakshmi

... Petitioners

(Petitioners 2 to 7 are substituted vide order dated 27.06.2023 in W.M.P.(MD)No.11589 of 2022 in W.P.(MD)No.1084 of 2015 by BPJ)

Vs.

1.The Sub Collector,
Devakottai,
Sivagangai District.

2.The Commissioner,
Karaikudi Municipality,
Karaikudi.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing Na.Ka.A1-3343-2008 dated10.2008 passed by the 1st respondent and quash the same and consequently forbear the respondents from raising any construction in the tank, bund or the catchment area of Siddhi Vinayaga Koil Oorani comprised in old Survey No.332/29/1, Correlation To R.S.No.332, Ward/Block No.2-13, measuring 28,008 sq.ft. covered by old patta No.334, Sekkalaikottai village, Karaikudi.

For Petitioners : Mr.RM.Arun Swaminathan

For Respondents : Mr.D.Gandhiraj,
Spl. Government Pleader.

ORDER

Heard both sides.

2.The writ petitioner passed away and his legal heirs have come on record.



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3.By the impugned order, the Sub Collector, Devakottai had set aside the mutation made in favour P.L.Palaniappa Chettiar and four others. The property comprised in S.No.332, Block No.13, Ward No.2 in Karaikudi was a tank. It was reclassified as site. What was originally classified as sarkar poramboke kulam was mutated as belonging to private individuals. It was this reclassification that was interfered with by the Sub Collector, Devakottai vide order dated 30.10.2008. Questioning the same, the present writ petition came to be filed.

4.The leaned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5.The respondents have filed counter affidavit and the learned Special Government Pleader took me through it contents. The learned Special Government Pleader submitted that the impugned order is well reasoned one and that it does not warrant interference. He pressed for dismissal of the writ petition.



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6.I carefully considered the rival contentions and went through the materials on record. It is beyond dispute that the tank was dug by certain public spirited belonging to nagarathar community. However, during settlement proceedings, it was classified as sarkar poramboke kulam. Challenging the same, the said P.L.Palaniappa Chettiar and others filed R.P.No.426 of 1963 before the Director of Survey and Settlement, Madras. Vide order dated 15.10.1965, the order of the Settlement Enquiry Tahsildar was set aside and the matter was remanded to the file of the Assistant Settlement Officer, Madurai for fresh enquiry and disposal. Thought the remand was made way back in the year 1965, for about 30 years, nothing transpired. In the year 1995, a notorious official by name Muthukrishnan proceeded to pass an order in favour of P.L.Palaniappa Chettiar and others. I take judicial notice of the fact that the Government passed a general order for undoing the various orders passed by the said Muthukrishnan in his capacity as Assistant Settlement Officer, Madurai. The impugned order will have to looked at in this background. When almost all the other orders of the said Muthukrishnan have been rendered void, no exception can be taken to the same approach adopted by the Sub Collector, Devakottai.



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7.However, certain basic facts cannot be lost sight of. From a reading of the materials on record including the judgment dated 11.08.1961 made in O.S.No.100 of 1960 on the file of District Munsif Court, Devakottai. I can safely come to the conclusion that the Oorani was dug by the petitioners' ancestors. The tank is located right in front of Siddhi Vinayagar Temple. The learned counsel for the petitioner alleges that certain vested interest have cast an evil eye and are committing encroachment. The water body is also known as Teppakulam. Thus, the character of a temple tank is beyond dispute.

8.While I sustain the impugned order, I have to necessarily issue consequentially direction bearing in mind the character of the water body. The writ petition is therefore disposed of with the following directions:-

- (i) The impugned order is sustained.
- (ii) The water body shall be protected as such and shall be kept free of all encroachments. The encroachments that are presently found



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shall be removed after adopting due process of law. This exercise of removal of encroachments shall be completed within a period of five months from the date of receipt of a copy of this order.

(iii) The tank that is located in front of a temple should be maintained as such and shops should not be allowed to be constructed around the temple tank.

(iv) Inlets and outlets of the tank shall be restored and preserved intact. No costs.

13.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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G.R.SWAMINATHAN, J.

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