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W.P.(MD)Nos.3739 OF 2017 etc.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

**W.P.(MD)Nos.3739 of 2017, 8444, 9117, 9338, 9376,
9397, 9557, 9667 to 9671, 10587, 10589 of 2018 & 6441
to 6445, 24615 of 2022**

AND

**W.M.P.(MD)Nos.7975, 8499, 8615 to 8619, 8632, 8654,
8655, 8694, 8695, 8794, 8795, 9655, 9657 of 2018,
15757 of 2020 & 5005, 5006 to 5009, 18693 of 2022**

W.P.(MD)No.3739 of 2017

Lakshmikanthan

... Petitioner

Vs.

1. The District Collector,
Collectorate,
Ramanathapuram District.

2. The Sub Collector,
Paramakudi,
Ramanathapuram District.

3. The Commissioner of Land
Administration,
Chepauk Chennai.

(R-3 is impleaded vide Order dated 23.11.2017
in W.M.P.(MD)No.3524 of 2017)

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Pa.Mu.(A4) 5060/2015 dated 23.12.2016 on the file of the second respondent and quash the same and consequently direct the second respondent to measure, reclassify and issue patta to the petitioner's house property in door No.10/295B measuring 1878 sq.mts. in T.S.No.2, 3 and 4 in Block 5, Ward H in Paramakudi Town, Ramanathapuram District within the stipulated period.

For Petitioner : Mr.D.Senthil

For Respondents : Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.K.Balasubramani,
Special Government Pleader.

* * *

COMMON ORDER

Heard the learned counsel on either side.

2. The case of the respondents is that the petitioners had committed encroachment in respect of Vaigai river. Form III notices had been issued under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007.



3. The learned counsel appearing for the petitioners pointed out that the encroachment of river poramboke cannot be dealt with under 2007 Act and he relied on the decision of the Hon'ble Full Bench reported in **2015 (6) CTC 369 (T.K.Shanmugam V. State of Tamil Nadu)**. Paragraph Nos. 10 and 45 of the said judgment had held as follows:-

“ 10. The order of reference dated 05.08.2015, passed by the First Bench in W.P.No. 1294 of 2009, reads as follows:-

The public interest litigation seeks patta rights for the persons who have encroached on land, which is undisputedly water course land. The claim of the petitioner is predicated on a long period occupation.

2. The submission of the learned counsel for the petitioner is that the judgment of the Division Bench of this Court in L.Krishnan Vs. State of Tamil Nadu (2005 (4) CTC 1) seeking removal of encroachment from water bodies is general in character, as also the observations of the Honourable Supreme Court in different judicial



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pronouncements. He submits that this aspect has been examined by the Division Bench of this Court in Sivakasi Region Tax Payers Association Vs. State of Tamil Nadu, rep., by its Secretary to Government & Others (CDJ 2008 MHC 2127), where it has been observed that in pursuance to the judgment of the Division Bench of this Court in L.Krishnan's case (supra), the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, came into being. This Act provides for checking encroachment and eviction of encroachment in tanks which are under the control and management of Public Works Department. It is, thus, submitted that such of the tanks which do not fall within the purview of the Act cannot be subjected to requiring protection from encroachment and this, persons like the petitioner cannot be evicted.

3. The question thus arises for consideration is whether the provisions of the



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said Act in effect in any manner dilutes the wider compass of the observations made in L.Krishnan's case (supra) or any other judgments of the Hon'ble Supreme Court, requiring protection of water bodies.

4. We are of the view that this matter needs to be examined by a Larger Bench of this Court. Papers be prepared. The matter be laid before the Full Bench on 02.09.2015.

5. We appoint Mr.Naveen Kumar Murthi as Amicus to assist us in this matter and a complete set be supplied by the Registry to him.

...

45. In the light of the above, we answer the reference on the following terms:-

“ The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations/directions issued in ***L.Krishnan Vs. State of TamilNadu reported in 2005 (4) CTC 1***, as quoted with the approval



by the Hon'ble Supreme Court in ***Jagpal Singh Vs. State of Punjab, reported in (2011) 11 SCC 396***, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in ***T.S.Senthil Kumar, Vs. Government of Tamil Nadu, reported in 2010(3) MLJ 771*** and that 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 Tamil Nadu Land Encroachment Act, 1905.”

4. Under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, rivers are specifically dealt with. We are therefore of the view that the encroachment on river poramboke will have to be dealt with under the provisions of the Tamil Nadu Land Encroachment Act 1905.



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5. In this view of the matter, Form III notices are quashed. The competent authorities are at liberty to take action as per law. These writ petitions stand allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)

7th November 2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PMU

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