



W.P.(MD)No.26946 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.26946 of 2022

I.Kalanthar Ashik Ahamed

... Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Ramanathapuram District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Thiruvadanai Taluk,
Ramanathapuram District.
- 3.The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.
- 4.The Block Development Officer,
Thondi Union Office,
Thiruvadanai Taluk,
Ramanathapuram District.
- 5.The Executive Officer,
Thondi Panchayat,
Thiruvadanai Taluk,



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Ramanathapuram District.

6.J.Saigul Akbar

7.Sagitha Parveen

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 5 to remove the encroachment made by the respondents 6 & 7 in the Oorani (water body) in Survey No.88/3 an extent of 4 acres and 39 cents in Therkuthoppu Village, Thondi Union, Thiruvadanai Taluk, Ramanathapuram District by considering the petitioner's representation dated 21.11.2022 within a period as stipulated by this Court.

For Petitioner :Mr.S.Atham Ali

For Respondents :Mr.R.Ravindran
Additional Advocate General
assisted by
Mr.K.Bala Subramani
Special Government Pleader for R1 to R5

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the official respondents. The sixth respondent could not be served and notice issued to him has been returned with an endorsement 'left'. The seventh respondent has been served and her name is printed in the cause list. But there is no appearance on her behalf.



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2. The case of the petitioner is that there has been encroachment in the petition mentioned water body known as Salaikulam. Notice was issued to the official respondents and status report has been filed. We also called upon the learned Special Government Pleader to produce the original 'A' register.

3. It is seen therefrom that Survey No.88/3, Thondi Village was classified as Salaikulam and it measured an extent of 1.76.5 hectares. It is seen that in the year 2000, this survey number was sub-divided into Survey No.88/3, 88/4 & 88/5. The then District Collector, Ramanathapuram had also issued patta in favour of as many as 31 persons. Doubt arises in our minds whether the District Collector was competent to effect subdivision and reclassification of Survey No.88/3.

4. We are clearly of the view that answer is in the negative. If at all, it is only the Commissioner of Land Administration who can make re-classification. In any event, the water body could not have been subdivided or reclassified. All water bodies will have to be preserved as such. According to the official respondents, Salaikulam as on date measures an extent of 1.76.5 hectares. They also concede that they have identified as many as 29



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encroachers. The 6th respondent and the husband of the 7th respondent

are figuring as encroachers. In the status report filed by the jurisdictional

Tahsildar, the following stand has been taken:-

“9. It is humbly stated that the third respondent having considered the reports and also by verifying with all the revenue and village records prepared his detailed report in Na.Ka.B5/5795/2022, dated 07.03.2023 relating to the encroachments made in Survey No.88/4(Salaikulam).

10. It is humbly stated that as per the report of the third respondent dated 07.03.2023, there are 29 encroachments identified by the authorities in the water body called Salaikulam Oorani in Survey No.88/4. The report was also furnished showing all the details relating to the said encroachers and the extent of encroachments.

11. It is humbly stated that the name of the 6th respondent is there in the list at Serial Nos.2 & 4 in the tabulation and who was encroached 0.00.40 Hectares and 0.00.32 Hectares respectively. The name of the 7th respondent's husband namely Niwas Ali is listed in Serial No.16 and he encroached to an extent of 0.00.30 Hectares.

12. It is humbly stated that since Salaikulam Oorani is a water body and it is under the maintenance and control of the 5th respondent Town Panchayat, the report of the 3rd respondent dated 07.03.2023 was submitted to the 5th respondent on 10.03.2023 for further action. Further, the 3rd respondent had also furnished Form-I notice which contains the list of encroachers in Survey No.88/4 to the 5th respondent.”

5. We direct the official respondents to take effective follow up measures. Of-course, the official respondents will comply with the principles of natural justice and keep in mind due process of law while implementing the



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decision to remove the encroachment. We also direct the first respondent to revisit the issue of reclassification and issuance of patta made in the year 2000.

Notices shall be issued to the persons concerned. If it is found out that ineligible persons have been issued with patta, the same shall be cancelled after following due process of law. The endeavour of the official respondents should be to restore the original character of the Salaikulam whose extent was 1.76.5 hectares. The removal of encroachment of the persons already mentioned in the status report will be carried out within a period of sixteen weeks from the date of receipt of a copy of this order. The jurisdictional Sub-Registrar of the Registration Department shall not register any transaction pertaining to Survey No.88/3, Thondi Village. The first respondent is directed to communicate this direction to the jurisdictional Sub Registrar.

6. The Writ Petition is allowed on these terms. No costs.

[G.R.S., J.] [B.P., J.]
11.04.2023

NCC : Yes / No
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and

B.PUGALENDHI, J.

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