



W.P.(MD)No.27314 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2023

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CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.(MD)No.27314 of 2023

P.Vellivadi

: Petitioner

Vs.

- 1.The District Collector,
Dindigul District,
Dindigul.
- 2.The Assistant Director (Panchayat),
Dindigul,
Dindigul District.
- 3.The Tahsildar,
Natham Taluk,
Dindigul District.
- 4.The Block Development Officer,
Sendurai Village Panchayat,
Natham Taluk,
Dindigul District.



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5.The Panchayat President,
Sendurai Village Panchayat,
Natham Taluk,
Dindigul District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents to lay the road in S.Nos.559/1, 544/1, 544/2, 538/1, 538/2A, 538/2B, 538/2C situated at Mamarathupatti – Rengaiyan Servaikaranpatti (southern side) at Sendurai Village, Natham Taluk, Dindigul District based on the petitioner's representation dated 13.10.2023, 06.11.2023.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

O R D E R

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed in this Court on 09.11.2023 as a 'Public Interest Litigation' ['PIL' for the sake of brevity].



2.Mr.S.Sivakumar, learned Counsel on record for PIL petitioner is before us.

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3.Factual matrix in a nut shell as per the averments of PIL petitioner are that there is a need to lay road in 'Survey Nos. 559/1, 544/1, 544/2, 538/1, 538/2A, 538/2B, 538/2C' in Mamarathupatti – Rengaiyan Servaikaranpatti (southern side) at Sendurai Village, Natham Taluk, Dindigul District [hereinafter 'said survey numbers' for the sake of convenience and clarity]; that PIL petitioner has sent representations dated 13.10.2023 and 06.11.2023; that PIL petitioner submits that there is inaction necessitating the filing of this captioned PIL in this Court.

4.Learned Counsel for petitioner reiterated the aforementioned facts.

5.Issue notice to official respondents.

6.Mr.M.Senthil Ayyanar, learned Government Advocate accepted notice for all five respondents.

7.Learned State Counsel on instructions pointed out that all the seven survey numbers *qua* said lands are water bodies. To



be noted, even according to the typed set of papers placed before us by PIL petitioner, Survey Nos.538/1, 538/2A, 538/2B and 538/2C have been classified as 'Odai' and Survey No.559/1 has been classified as 'Vaari Odai'. As regard Survey Nos.554/1 and 554/2, the revenue records placed before us by learned State Counsel shows that the classification is 'Odai' [to be noted learned State Counsel has placed before us the 'A' register]. This means that all the aforementioned seven survey numbers which form part of PIL petitioner's prayer are water bodies. On this short point, this Court is of the view that the prayer cannot be acceded to in the light of ***T.K.Shanmugam's*** principle ie., law laid down by a Division Bench of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu*** reported in ***2016-1-L.W. 168*** which in turn has followed the Full Bench ratio in another ***T.K.Shanmugam Vs. The State of Tamil Nadu*** reported in ***2015 (5) LW 397***. Relevant paragraphs in ***T.K.Shanmugam's*** case reported in ***2016-1-L.W. 168*** are paragraph Nos.26, 27 and 28 which read as follows:

'26.At this juncture, this Court, taking judicial notice of the fact that even during the hearing of this case, the State of Tamil Nadu is seriously affected by unprecedented floods, ie., during November 2015, and because of that, number of people were dead and many people lost their property, is compelled to put its views that the entire loss due to the flood was due to maladministration and the prevailing practices by the authorities as almost all the water bodies and water courses



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were allowed to be encroached upon resulting in reduction in their flood storing and carrying capacity, forcing the water to deviate from its regular course and enter the residential areas causing devastating effects. The authorities have permitted construction of houses in the water bodies. This resulted in inundation of these areas during flood and all these houses submerged under the flood water. This shows that despite the orders of the Court, the authorities pretend to act swiftly in removing encroachments but only in a selective manner and not in a planned and determined manner.

27.It has become inevitable for this Court to put on record that the authorities in power cannot destroy the water bodies or water courses formed naturally for the benefit of mankind for ever and it is beyond the power of the State to alienate or re-classify the water bodies for some other purposes without compensating the effect of such water bodies.

28.That apart, while answering the reference in a Writ Petition filed at the instance of the petitioner herein, viz., T.K. Shanmugam vs. The State of Tamil Nadu [2015 (5) LW 397], the Full Bench of this Court, after considering the various Government Orders and the judgments of this Court and also following the observations and directions issued by the Hon'ble Apex Court, vide order dated 30.10.2015, has held that even 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 Act.'



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8.Be that as it may, learned State Counsel on instructions submits that alternate road has been provided and that is vide Survey Nos.570, 561 and 540. Learned State Counsel submits that this alternate road is a 1km long road.

9.The narrative thus far means that while the prayer cannot be acceded to, an alternate arrangement has also been put in place by the State. This by itself means curtains are down on the captioned PIL. As regards the alternate road, the sketch placed before us is as follows:





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10.Captioned Writ Petition ie., PIL petition is disposed of as closed. There shall be no order as to costs.

[M.S.,J.] & [R.S.V.,J.]

16.11.2023

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
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