



WP(MD)No.9099 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.9099 of 2004

K.Bose

: Petitioner

Vs.

1.The District Collector,
Madurai.

2.The Tahsildar,
Usilampatti,
Madurai District.

3.The District Forest Officer,
Madurai,
Madurai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Na.Ka.No.B3/14150/03 dated 16.02.2004 on the file of the Tahsildar, Usilampatti / the second respondent herein and quash the same and consequently, forbearing the respondents from entering into and putting up any construction or fencing and preventing or interfering with the peaceful



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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.

For Petitioner : Mr.S.Sridhar,
Mr.P.T.Kannan
For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

This writ petition is filed as against the proceedings of the Tahsildar, Usilampatti, in Na.Ka.No.B3/14150/03, dated 16.02.2004. By the impugned proceedings, the Tahsildar handed over the land in S.No.321/3 to an extent of 0.18.0 hectares to the third respondent / Forest Department for the purpose of constructing a wireless room. This order appears to have been passed based on the orders of the District Revenue Officer, Madurai, in Na.Ka.No.121422/2003/Y2, dated 11.02.2004.

2.The case of the petitioner is that he is having five acres of agricultural lands adjacent to the subject land and his family was using these lands for more than 60 years as thrashing field. There is no forest area nearby this land. However, in order to utilize some funds received by the Forest Department, the then District



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Collector, who was the husband of the then District Forest Officer, has passed the order allotting this land to the Forest Department.

3.Learned Counsel appearing for the petitioner made his submissions as follows:-

3.1.The thrashing ground in S.No.321/3 is exclusively meant for use as a Kalam and the revenue records also reflect the same as Government Kalam, till date.

3.2.The land is in the exclusive possession and enjoyment of the petitioner's family for several decades. The thrashing land “Kalam Medu” is an easement to the remaining portion of the petitioner's lands and the enjoyment of his agricultural lands is dependant upon the land in S.No.321/3.

3.3.The classification of the land has not been changed and the agricultural lands cannot be used for constructing any buildings.

3.4.As per Sections 125 and 135 of the Tamil Nadu Panchayat Act, 1994, the land which has been classified as Kalam (Thrashing field) vest with the Panchayat



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and the same cannot be interfered or encroached even by the Government, without providing an opportunity to the Village Panchayat.

3.5.He also drew the attention of this Court to the decision of the Division Bench of this Court in *Vengaivasal Village Panchayat v. State of Tamil Nadu* [*AIR 2005 Madras 226*] and submitted that in the said case, an attempt was made to reclassify a property of Vengaivasal Village Panchayat from cart-track to Natham poromboke by the Government for sanctioning the same to the employees of Raj Bhawan to have quarters, wherein, this Court has interfered and set aside the order of reclassification passed by the Government.

4.The first respondent / District Collector and the third respondent / District Forest Officer have filed their respective counter affidavits and they have not disputed the classification of the land in S.No.321/3. They have also not disputed the averment made by this petitioner that the wife of the then District Collector is the District Forest Officer at the relevant point of time.

5.Sum and substance of the averments made in the counter affidavit filed by the respondents are as follows:-



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5.1.A request was made from the Forest Department for utilizing the subject land for construction of forest range office building, staff quarters, Timber godown, seed storage shed and wireless communication room. Based on this request, the District Revenue Officer had inspected the land on 07.02.2004 and granted permission to enter upon the land to the Forest Department, by proceedings in ROC.No.Y2/121422/03 dated 11.02.2004 and the site was also handed over to the District Forest Officer, Madurai, by the Thasildar, Usilampatti, vide proceedings in Na.Ka.No.B3/14150/03 dated 16.02.2004, which is impugned in this writ petition.

5.2.The District Collector has further stated that this petitioner, taking advantage of the position that the subject land is adjoining his lands and that he was also issued with a B-memo, has occupied the same. The petitioner had applied for grant of long term lease of this land for commencing a College and the said request was rejected.

5.3.The Thrashing Ground known as Kalam is meant for common use by the farming community of the vicinity at the time of harvest and therefore, the alleged exclusive use of subject land by the petitioner is illegal. The subject land being



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Kalam poromboke meant for the public use and also vested with local body, could not be leased to the petitioner, who has planned to use it for remunerative and commercial purpose. The petitioner is the Principal of Pasumpon Muthuramalinga Thevar College, Usilampatti and thereby, he becomes ineligible even otherwise.

5.4.The land being classified as 'Kalam' is meant for use only as Thrashing Ground. The petitioner has got easy access to his patta lands separately through Theni – Madurai National Highway Road. Hence, the contention of the petitioner that the subject land is exclusively used by the petitioner for storage of hay stack, using as passage for Tractor and other equipment, stay of agricultural labourers during agriculture season is not true to the facts. Government poromboke land cannot be set apart for exclusive use of a private individual, who is already having lands on his own.

5.5.The writ petitioner, an encroacher of the Government poromboke land, has no *locus standi* to question the legal and constitutional validity of transfer of Government Poromboke land from one department to another for *bona fide* government purpose.



6.This Court paid its anxious consideration to the rival submissions and also to the materials placed on record.

7.It is an admitted case of the petitioner and the respondents that the land in S.No.321/3, Matharai, Nakkalapatti Village, Usilampatti Taluk, is classified as Kalam (Thrashing Field) in the revenue records, which is meant for the farming community at the time of harvest.

8.The land is classified as Kalam (Thrashing field) vests with the village panchayat and the village panchayat is having powers to regulate the use of such porambokes, subject to the restrictions imposed under the Tamil Nadu Panchayats (Restriction Control to Regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000. However, the District Collector in consultation with the village panchayat may by notification exclude those lands from its operation as per Section 134 (3) of the Tamil Nadu Village Panchayat Act. It is relevant to extract the provisions under Section 134 of the Tamil Nadu Panchayat Act, 1994 as under:

“134. Village Panchayat to regulate the use of certain porambokes in ryotwari tracts.-



(1) *The provisions of this section shall apply only in ryotwari tracts.*

(2) *The following porambokes namely, grazing grounds, threshing floors, burning and burial-grounds, cattle-stands, cart-stands and topes shall vest in the Village Panchayat, and the Village Panchayat shall have power, subject to such restrictions and control as may be prescribed to regulate the use of such porambokes, provided the porambokes are at the disposal of the Government.*

(3) *The Collector, after consulting the Village Panchayat, may by notifications exclude from the operation of this Act, any porambokes referred to in sub-section (2), and may also modify or cancel such notification.*

(4) *The Village Panchayat shall also have power, subject to *such restrictions and control as may be prescribed, to regulate the use of any other poramboke which is at the disposal of the Government, if the Village Panchayat is authorized in that behalf by an order of the Government.*

(5) *The Village Panchayat may, subject to such restrictions and control as may be prescribed, plant trees on any poramboke, the use of which is regulated by it under sub-section (2) or sub-section (4).”*

9.The origin for the said section can be traced to the Board Standing Orders, which deals with the transfer of the lands from one department to another



department of the State Government. Board Standing Order No.23 A mandates for consultation before any transfer of the land and the same is extracted hereunder:

“BSO.No.23(4).Consultation with Panchayats:

Before transfer proposals are sanctioned, porambokes which are statutorily vested in the panchayats should be withdrawn, in exercise of the powers conferred under the Tamil Nadu Panchayats Act, 1958. Panchayats should be invariably consulted in respect of the transfer of the public lands. But the consultation does not preclude the objections of the Panchayats being cover-ruled by the authority competent to do so, if it is necessary in the public interest.”

10.A Division Bench of this Court, in an identical issue in **Vengaivasal Village Panchayat's** case (supra), has held 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 Vandi patti 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.

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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 & another v. Syed Akbar*, 2004 (5) CTC 506, 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 courts 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.

...

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.”

11. In this case, the subject land is classified as Kalam. Admittedly it has been in the use of the petitioner, who is the adjacent land owner having agricultural lands in the village. The petitioner's encroachment is also endorsed



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vide B-Memo. Another admitted fact is that the then District Forest Officer is the wife of the then District Collector and for the purpose of the utilising, the land has been allotted to the Forest Department. It appears that this land which is classified as Kalam has been hurriedly handed over to the Forest Department without following the due process of law. Neither the petitioner nor the panchayat was put on notice before taking any decision. Having recognised this petitioner as encroacher, before taking any decision, the respondents ought to have provided an opportunity. Similarly as mandated under Sections 134(3) of the Act, the panchayat ought to have been consulted before handing over the possession of the Forest Department.

12.It appears that the District Revenue Officer has passed an order on 11.02.2004 to the District Forest Officer to enter upon the lands. Based on that order the Tahsildar by the impugned order handed over the possession of the lands to the Forest Department. The order of the District Revenue Officer was challenged in WP(MD)No.3146 of 2023, considering that the issue is pending before this Court in this writ petition, the said writ petition was dismissed.



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13.The enter upon permission was granted by the District Revenue Officer dated 11.02.2004 and the impugned order of handing over the land was passed on 16.02.2004. The writ petition was filed on 02.04.2004 and this Court granted an order of interim injunction in favour of the petitioner on 05.04.2004. On the application filed by the respondents to vacate the interim order, this Court by order dated 06.07.2004 has modified the interim order as that of the order of status quo.

14.In the meantime, the writ petition in WP(MD)No.3698 of 2009 was filed challenging the orders of the District Revenue Officer, dated 11.02.2004 and the consequential order passed by the Thasildar, Usilampatti, dated 16.02.2004. The said writ petition was dismissed by this Court on 15.02.2018. However, the Panchayat has not preferred any appeal as against that order. The subsequent writ petition filed by this petitioner in WP(MD)No.13016 of 2023 was also dismissed by this Court considering the orders passed in WP(MD)No.3698 of 2009 and also considering the pendency of the present writ petition.

15.The learned Counsel for the petitioner claims that he was unaware of the earlier order passed by the District Revenue Officer, dated 11.02.2004.



After knowing the same, that order was challenged in WP(MD)No.13016 of 2023 and this Court has dismissed the writ petition to work out his remedy in this writ petition.

16.The District Revenue Officer in this case has permitted to enter upon to the 3rd respondent the Forest Department without any consultation with the panchayat. This land is classified as Kalam (Thrashing field), which is vested with the village panchayat under Section 134(2) of the Tamil Nadu Panchayat Act. The Panchayat is having powers to regulate the use of such poramboke. The District Collector is the competent authority to decide the utility of the land, however, after consultation with the village panchayat as per Section 134(3) of the Tamil Nadu Panchayat Act. Admittedly no such consultation was made with the village panchayat in this case.

17.In the light of the above discussion and also in view of the decision of this Court in Vengaivasal Village Panchayat's Case cited supra, this writ petition is allowed. The impugned order is set aside. Liberty is granted to the District Collector to take a decision afresh after providing an opportunity to the petitioner and also in consultation with the village panchyat as contemplated under



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Section 134(3) of Tamil Nadu Panchayat Act. No costs. Consequently connected miscellaneous petition is closed.

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NCC : Yes / No

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