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W.P.No.16006 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

**W.P.No.16006 of 2016
and
W.M.P.No.13839 of 2016**

J.Elumalai

... Petitioner

Vs.

1. The Public Works Department (Irrigation),
Kezhlpalaru Lower Basin Division,
Rep. by Executive Engineer,
O/o.Collectorate, Kancheepuram.

2. The District Collector,
Kancheepuram District.

3. The Block Development Officer,
Walajabad Union (Village Panchayat),
Walajabad, Kancheepuram District.

4. The Tahsildar,
Walajabad Taluk, Kancheepuram District.

5. M/s.Oragadam City Developers

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the proceeding made in L.No.Eva.B1(Mu)/ G.5 (Inno Geo City) 821/Misc/2015 dated 14.09.2015 by the 1st respondent and quash the same and consequentially direct the respondents 1 and 3 to conduct proper enquiry on the basis of the report made in Na.Ka. 11824/ 2015/B1 dated 19.6.2015 by the 4th respondent to find out actual encroachments made by the 5th respondent contrary to the Approved Plan and remove the same

For Petitioner	: M/s.G.Ethirajulu
For R1 to R4	: Mr.A.Selvendran, Special Government Pleader
For R5	: No appearance

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The proceedings dated 14.09.2015 issued by the 1st respondent /
Public Works Department (Irrigation), Kezhlpalaru Lower Basin Division



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is under challenge in the present writ proceedings.

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2. The challenge has been made by the writ petitioner mainly on the ground that the Block Development Officer granted permission to develop road in the Government poromboke land in Village Survey No.118, Devariyaambakkam. That apart, water body in that locality has been encroached upon for the purpose of developing a pakka road for the benefit of the promoter, who in turn developed the property and sold the same to many third parties.

3. The Writ Petition has been instituted in the year 2016 and pending for the past more than eight years. We could able to find that the parties have developed the scope of Writ Petition by producing subsequent photographs taken from 2020 onwards. Due to the expansion of the scope of writ proceedings, several allegations are consequently raised. The report of the District Collector would reveal that no encroachments are allowed for personal gains and roads are formulated as part of development and to provide access to the people residing in that



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locality.

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4. The learned Special Government Pleader appearing for the respondents 1 to 4, Mr.Selvendran would submit that the District Collector has conducted an inspection and not identified any encroachments so far. Water body in that locality has been protected and over bridges are constructed for the purpose of formation of road for the benefit of the people without obstructing the free flow of water from the water bodies.

5. The learned counsel for the petitioner, Mr.G.Ethirajulu would oppose the said contention by stating that the Government lands are encroached upon by the promoters for laying roads, which is impermissible. He drew the attention of this Court with regard to the principles laid down by the Full Bench of this Court in the case of ***T.K.Shanmugam -vs- State of Tamil Nadu*** reported in 2015 5 Law



Weekly 397. The Full Bench of this Court has heavily come down and held that the water bodies are to be protected and no encroachments are to be allowed. All the encroachments in the water bodies are to be removed by invoking the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007. Several directions were issued to ensure protection of water bodies across the State.

6. We have no contra opinion with reference to the legal principles, since the Hon'ble Supreme Court has time and again emphasized that water bodies are to be preserved to protect the environment. However, in the present case, the learned Special Government Pleader, Mr.Selvendran would contend that the District Collector has not identified any encroachments in the water body. However, over bridge has been constructed without obstructing free flow of water for formation of road for the benefit of the people residing in that locality.

7. In view of the complex facts portrayed before us, the definite grievances of the writ petitioner is unable to be traced out. Thus, we



direct the District Collector to protect the water body in all respects in that locality. In respect of Government poromboke lands, if any encroachments are identified, all such encroachments are to be removed by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905, Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007, as the case may be. At the outset, developments are to be made within the ambit of the scheme and the layout approved plan under the Town and Country Planning Act. Any violations, encroachments or deviations are to be strictly dealt with by the District Collector in the manner known to law.

8. In view of the fact that the permission was granted in the impugned order to construct over bridge for the formation of road for the benefit of the people, we are not inclined to interfere. However on account of efflux of time, the District Collector is directed to instruct the Tahsildar and the 1st respondent / Public Works Department (Irrigation) to ensure the protection of water bodies and ensure smooth and unobstructed water flow from the water bodies. The encroachments in the



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Government Poromboke lands are also directed to be evicted by following the procedures, as contemplated.

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9. With these directions, the Writ Petition stands disposed of.

Consequently, the connected Miscellaneous Petition is closed. No costs.

(S.M.S.,J.) (K.R.S.,J.)
26.02.2024

skr

Index : Yes

Speaking order

To

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and
K.RAJASEKAR, J.

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