



W.P.No.36431 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.36431 of 2016

1.R.Mohandass
2.Jeyasoundararajan
3.S.D.Kumaresan
4.S.Baskar
5.G.L.Narayanan
6.M.Gunasekaran
7.K.Jerome
8.V.K.Kirubakaran
9.V.S.SureshBabu
10.G.Alexander
11.R.S.Sakthivel
12.G.K.Stalin
13.E.Gunasekaran
14.M.Senthilkumar
15.S.Ramamurthy
16.R.Ilangovan
17.R.Sudalaiandi @ Selvaraj

... Petitioners

Vs.

1.The Commissioner,
Salem Municipal Corporation,

Page 1



W.P.No.36431 of 2016

Salem – 636 001.

2.The Secretary to Government,
Revenue Department,
State of Tamil Nadu.

3.The Secretary to Government,
Public Works Department,
State of Tamil Nadu.

4.The District Collector,
Salem.

5.The Revenue Divisional Officer,
Salem.

... Respondents

*[R2 to R5 are impleaded as per order of Court
dated 24.10.2016 in W.P.No.36431 of 2016]*

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the impugned resolution dated 09.09.2016 in subject No.5 passed by the respondent and quash the same.

For Petitioners	:	Mr.S.Vijay Anand for Mr.M.Rajendiran
For R1	:	Ms.N.Devi Standing Counsel
For R2 to R5	:	Mrs.V.Yamuna Devi Special Government Pleader



W.P.No.36431 of 2016

WEB COPY

ORDER

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

This writ petition is filed challenging the resolution dated 09.09.2016 in subject No.5 passed by the 1st respondent.

2. There are 17 petitioners and it is stated that all these petitioners are working either as Reporter or Photographer in various newspapers and TV Channels. It is the case of the petitioners that the Salem District Administration distributed patta to several Press Reporters at subsidized cost during 2007, pursuant to the policy decision taken by the then Hon'ble Chief Minister. It is stated that they were granted patta in respect of a water body known as "Kollankuttai", which was filled up with sewage water and there was no sign of presence of such water body. Stating that the property lost its character as a water body and it was never used for storing or carrying water at recent times, the District Administration issued pattas to the journalists vide G.O.(Ms) No.638, Revenue (Ni.Mu.3.1) Department, dated 02.11.2007, after converting the land from Odai Poramboke into Natham Poramboke. A subsequent order was also issued in G.O.(Ms)



W.P.No.36431 of 2016

No.252, Revenue (Ni.Mu.3.1) Department, dated 20.05.2008, regarding the terms and conditions of allotment. It is the specific case of the petitioners that the Salem Corporation also had put up some construction (Sanitary Complexes) in the adjoining lands catering to the needs of the public.

3.While so, it is admitted that the 1st respondent/Commissioner passed a resolution on 09.09.2016 for cancellation of pattas issued to the petitioners and to restore the water body by name Kollankuttai. It is stated that the said resolution was pursuant to the orders of this Court in the writ petition in W.P.No.27545 of 2016 filed by an individual by name P.Subramani to remove the encroachments in Kollamkuttai lake. The said P.Subramani has also filed another writ petition in W.P.No.5163 of 2016 for issuance of a Writ of Mandamus to direct the officials respondents to take necessary steps to remove the encroachments in Kollankuttai lake situated in Old Survey No.18/3, present Town Survey Nos.112/3, 113/3, 114/3, 115/3, 116/3, 120/3, 121, 122 and 123, measuring an extent of 3.31 Acres at Kannankurichi Main Road, Hastampatti, Salem, and also to direct the official respondents to take necessary steps to remove the debris and other wastages found in the said lake. The petitioners themselves have produced before this Court a copy of



W.P.No.36431 of 2016

the order passed in W.P.No.5163 of 2016. The said writ petition was allowed following the judgment of the Full Bench of this Court in ***T.K.Shanmugam v. State of Tamil Nadu*** reported in **2015 (5) LW 397** and the District Collector was directed to conduct a survey to verify the extent of encroachment of water area and to remove all the encroachments within one month from the date of receipt of the order.

4.Though the petitioners admit all the above facts, the contention of the petitioners is that they have constructed houses and living there after paying all the taxes from 2010 with a fond hope that they would not be disturbed. Since the petitioners had spent their hard earned money and had also obtained patta pursuant to the directions of the Hon'ble Chief Minister, the impugned resolution dated 09.09.2016 is described as arbitrary.

5.The 1st respondent/Commissioner, Salem Corporation, has filed a counter affidavit admitting issuance of patta to an extent of 56,628 sq. ft. in the water body to the Press Reporters in the year 2008 and the possession of the allottees. Even though several private persons were granted patta under Section 11 of the Tamil Nadu Estate (Abolition and Conversion) Act, 1948, it is stated that the Revenue officials have taken steps to cancel the pattas



W.P.No.36431 of 2016

issued to them. They also admit that the State Government has put up some construction in the lake area for Sewerage Treatment Plant. The possession of the Corporation in the lake area with regard to some of their activities, is also referred to. However, the Commissioner, Salem Corporation, has finally stated in the counter affidavit that the Corporation has removed the amenities provided to the occupants in Kollankuttai Lake, after removing the structures raised by the private persons. It is also stated that the Corporation has also removed the structures raised by the Corporation in the lake. It is stated that, it is only to fulfill the requirements of public and to restore the water body for the benefit of all the citizens, the impugned resolution was passed.

6.The 4th respondent has filed a Status Report admitting the patta issued to the Press Reporters without changing the classification of Lake into Natham. It is stated that, certain conditions laid down in the pattas as per the Board's Standing Orders were violated. As per the directions of this Court in W.P.No.5163 of 2016, by order dated 11.02.2016, Show Cause Notice was issued to all the encroachers on 29.09.2016 and pattas were cancelled for violation of conditions. It is stated that the structures put up



W.P.No.36431 of 2016

in the lake would be demolished soon by following due process of law.

WEB COPY

7. Since it is now established that patta had been given to Press Reporters without following the Standing Orders or Circulars and several precedents of this Court, from the facts that are admitted and brought to the notice of this Court, this Court has no hesitation to hold that the lands in which the petitioners are in occupation are classified as a water body. Even the Corporation has demolished the constructions put up by them by encroaching a portion of the water body. This Court has issued several directions for removal of encroachments in water bodies. It is only pursuant to the directions of this Court in several matters, the State Government has brought about a legislation known as Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

8. After referring to several judgments, the Full Bench of this Court, in *T.K. Shanmugam's case (supra)*, has observed that the common thread which runs through the manual of Revenue Administration is to preserve water courses and any encroachment in the water body should be regarded as highly objectionable and to be removed. The Full Bench, while answering



W.P.No.36431 of 2016

the reference by holding that the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, do not, in any manner, dilute the observations made in the case of ***L.Krishnan and others v. State of Tamil Nadu*** reported in ***(1991) 2 MLJ 150***, issued several directions for removal of encroachments in water bodies throughout the State. It is observed that the decision of Government to regularise the encroachments in the water bodies and make allotments to the water bodies, is also condemned. In case the Government is interested in allocating the poor and downtrodden, it should bring out a scheme for rehabilitating them and not to condone their act of trespass, reclassify the land and then grant patta to those encroachers. Finally, the Full Bench has held as follows :

“44.The Government Orders starting from 30.12.2006 in G.O.(Ms)No.854, Revenue Department and subsequent Government Orders in G.O.Ms.No.498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national



environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated.

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 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



W.P.No.36431 of 2016

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.”

9.The Full Bench relied upon several judgments of the Hon'ble Supreme Court, including the judgment of the Division Bench of this Court in ***Sivakasi Region Tax Payers Association, represented by its Secretary v. The State of Tamil Nadu and others*** reported in **2008 (4) LW 415**. However, this Court was informed that the Hon'ble Supreme Court has reiterated that there cannot be any regularisation of encroachment in water bodies. In view of the same, this Court finds no merit in this writ petition. As a consequence, the water body should be restored by removing all the constructions.

10.Accordingly, this writ petition is dismissed. The respondents shall remove all the encroachments and occupation in the water body known as "Kollan Kuttai Lake". However, the petitioners may make further representation to the Government seeking allotment of house sites in unobjectionable area in accordance with the Revenue Standing Orders as



W.P.No.36431 of 2016

may be applicable to them. If any representation is submitted, the official

respondents may consider the same on merits and in accordance with law

subject to availability of alternative lands feasibility and entitlement, within

a period of twelve weeks from the date of receipt of such representation.

No costs.

(S.S.S.R., J.) (N.S., J.)
08.02.2024

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

1.The Commissioner,
Salem Municipal Corporation,
Salem – 636 001.

2.The Secretary to Government,
Revenue Department,
State of Tamil Nadu.

3.The Secretary to Government,
Public Works Department,
State of Tamil Nadu.

4.The District Collector,
Salem.

5.The Revenue Divisional Officer,
Salem.



WEB COPY



W.P.No.36431 of 2016

S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

mkn

W.P.No.36431 of 2016

08.02.2024