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W.P.No.15242 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.15242 of 2024

and

W.M.P.No.16583 of 2024

in

W.P.No.15242 of 2024

E.Sekar
S/o.Elumalai

... petitioner

Vs.

1. Government of Tamil Nadu
Rep. by its Secretary
Revenue and Disaster Management
Fort St.George
Chennai.
2. The Commissioner of Land Administration
Ezhilagam
Chepauk, Chennai.
3. The District Collector
Tiruvannamalai District
Tiruvannamalai.

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4. The District Revenue Officer
Tiruvannamalai District
Tiruvannamalai.
5. The Revenue Divisional Office
Tiruvannamalai District
Tiruvannamalai.
6. The Tahsildar
Tiruvannamalai Taluk
Tiruvannamalai District.
7. The Block Development Officer
Tiruvannamalai Union
Vengikkal
Tiruvannamalai.
8. The President
So Keezhnachipattu Panchayat
Thiruvannamalai.
9. The President
Nochinmalai Panchayat
Thiruvannamalai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Na.Ka.Va.A.5/5122/2021 dated 27.05.2024 on the file of 7th respondent, quash the same and directing the respondents to reclassify the S.No.20/1 by deleting the entry as water body and also to grant patta to the petitioner in S.No.20/1 or to provide alternative accommodation in the very same



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So.Keezhnachipattu Village in the light of G.O.Ms.No.318 dated 30.08.2019
on the file of Revenue and Disaster Management Department.

For Petitioner : Mr.R.Rajarajan
For Respondents : Mr.A.Selvendran
Special Government Pleader,
For R1 to R6
Dr.S.Suriya
Additional Government Pleader
For R7 to R9

ORDER

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

This common order will govern the captioned 'Writ Petition'
{hereinafter 'WP' for the sake of brevity} and 'Writ Miscellaneous Petition'
{hereinafter 'WMP' for the sake of brevity} thereat.

2. Captioned WP pertains to a 'Government land comprised in
S.No.20/1 in So.Keezhnachipattu Village, Tiruvannamalai Taluk,
Tiruvannamalai District' {hereinafter 'said land' for the sake of convenience
and clarity}.



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3. Mr.R.Rajarajan, learned counsel on record for writ petitioner submits that R7 (jurisdictional Block Development Officer i.e., BDO, Vengikkal, Tiruvannamalai District) has made 'proceedings dated 27.05.2024' [hereinafter 'impugned proceedings' for the sake of convenience and clarity] {proceedings addressed to Panchayat Presidents of So.Keezhnachipattu and Nochimalai Villages} and marked copies to other revenue officials. Learned counsel submits that in and by impugned proceedings, R7 has directed the addressees to be ready for removal of encroachments in said land. Learned counsel also submits that said land has been classified as water body (ஏரி புறம்போக்கு) as of today and writ petitioner is entitled to seek reclassification of the same vide 'G.O.Ms.No.318 dated 30.08.2019' {hereinafter 'said GO' for the sake of brevity}. There are further limbs of prayer for grant of patta qua said land as well as provision of alternate accommodation. Learned counsel for writ petitioner Mr.R.Rajarajan adverted to these limbs also. Learned counsel submitted that in the light of the impugned proceedings, writ petitioner is under threat of eviction and therefore, the captioned WP and WMP thereat have been filed.



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WEB COPY 4. Issue notice to respondents.

5. Mr.A.Selvendran, learned Special Government Pleader accepts notice for R1 to R6 and Dr.S.Suriya, learned Additional Government Pleader accepts notice for R7 to R9.

6. Owing to multiple earlier proceedings and narrow scope of the captioned main WP, with the consent of both sides, main WP was taken up in the Admission Board itself.

7. Suffice to say that there is no disputation or contestation that said land as of today has been classified as a water body i.e., ஏரி புறம்போக்கு (Eri Promboku) in the revenue records. This takes us to the first plea qua reclassification vide said GO. A careful perusal of said GO and more particularly, sub-paragraph No.(vii) of paragraph No.4 thereat makes it clear that as regards water bodies (நீர்நிலைகள்) canals (கால்வாய்கள்) and roads (சாலைகள்) all of which have been classified as 'objectionable



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encroachments' there is only provision for alternate accommodation and there is no provision for reclassification. To be noted, reclassification is only with regard to 'unobjectionable encroachments.' Therefore, it is not necessary to dilate further on these aspects of the matter and it will suffice to say that as a sequitur, this draws the curtains on reclassification plea.

8. Now that reclassification plea has been given a closure, we deem it appropriate to refer to the lead case qua water bodies namely, ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} and paragraph Nos.44 and 45 which are of relevance read 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



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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 2005-3-L.W. 313 = 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh vs. State of Punjab, reported in 2011-3-L.W.17 = (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 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. There is no dispute that **T.K.Shanmugam** case is holding the field and in this light, as regards grant of patta or alternate site, we find that alternate site issue has already been given a quietus by way of an order being 'order dated 15.02.2024 made in W.P.No.15598 of 2023' {hereinafter 'said judicial order' for the sake of brevity, convenience and clarity}. To be noted, sole writ petitioner in the captioned matter before us (E.Sekar) is petitioner No.23 in W.P.No.15598 of 2023 (name mentioned as Sekar).

10. Learned counsel for writ petitioner very fairly confirms the position that sole writ petitioner in the captioned WP is petitioner No.23 in the aforementioned W.P.No.15598 of 2023. The earlier writ petition in W.P.No.15598 of 2023 pertains to Survey No.28/1 situate at So.Keezhnachipattu Village, Tiruvannamalai Taluk, Tiruvannamalai District.



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To be noted, there are as many as 28 writ petitioners in W.P.No.15598 of 2023 and sole writ petitioner in the captioned WP is petitioner No.23 thereat (as mentioned supra). Therefore, what applies to S.No.28/1 would apply to S.No.20/1 also as we are informed that they are contiguous and as of today have been classified as water bodies i.e., ஏரி புறம்போக்கு (Eri Poramboke). In this regard, paragraph No.4 of said judicial order dated 15.02.2024 is of relevance and the same reads as follows:

'4. The Government has suggested alternate accommodation for the petitioners at S.No.89, Kolapudi Village, Tiruvannamalai District, that is at a distance of 1 km. It is for the petitioners to accept the same. According to learned counsel for the petitioners, there is one another land near the subject writ land. That is for the Government to consider.'

11. Adverting to aforementioned paragraph No.4 of said judicial order, learned Special Government Pleader, on instructions, submits that the State stands by / reiterates the aforementioned stand. To put it differently, alternate site provision offer stands. Learned Special Government Pleader adds that it is for the writ petitioner to accept the same. This by itself draws the curtains on the plea regarding alternate site or patta.



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12. In the light of the narrative thus far, as reclassification is impermissible, the question of patta in water body does not arise and **T.K.Shanmugam** principle operates. As regards location of alternate site, we make it clear that it is at the discretion of the State and in any event, learned State counsel has fairly submitted that paragraph No.4 of said judicial order i.e., order dated 15.02.2024 in W.P.No.15598 of 2023 is reiterated.

13. Before we proceed further, we make it clear that there have been other judicial proceedings / other judicial orders over a period of time pertaining to this matter but we deem it appropriate to not to burden this order with all those details as the same are not imperative for disposal of captioned WP, more so, in the light of the narrative thus far and in the light of the stand taken by learned State counsel. This leaves us with the last limb of prayer which is left i.e., challenge to impugned proceedings. We find that R7 has made only proceedings and that is an inter office



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proceedings *inter se* revenue officials and owing to the narrative thus far, in the light of ***T.K.Shanmugam*** principle and reclassification in water body being impermissible even vide said GO relied on by writ petitioner (even in writ prayer), we find no ground to interfere with the impugned proceedings.

14. Sum sequitur of the discussion and dispositive reasoning thus far is, captioned WP and prayer limbs thereat do not cut ice with us and they stand dismissed albeit recording the stated position of learned State counsel. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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