



W.P.No.16111 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.16111 of 2024

&

W.M.P.No.17641 of 2024

in

W.P.No.16111 of 2024

1. S.Mariappan
2. S.Subramani
3. P.Lakshmi
4. Chandra
5. P.Kuppusamy
6. Pachiyammal
7. S.Periyasamy

... Petitioners

Vs.

1. The Assistant Engineer
Department of Water Resources
Rasipuram, Namakkal District
2. The Tahsildar
Rasipuram Taluk, Namakkal District

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to consider and pass order on the representation of the petitioners dated 06.06.2024 for providing alternative residents to the petitioners within a time frame to be fixed by this Court.

For Petitioners : Mr.K.A.Mariappan

For Respondents : Mr.A.Selvendran
Special Government Pleader

ORDER

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

Captioned 'Writ Petition' ['WP' for the sake of brevity] pertains to encroachment in 'Konaripatti Eri' ['Konaraipatti Lake'], a water body in Konaripatti Village, Rasipuram Taluk, Namakkal Taluk' [hereinafter 'said lake' for the sake of convenience and clarity].

2. The seven writ petitioners before us have assailed independent notices issued to them under 'Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007' (Tamil Nadu Act 8 of 2007)' [hereinafter 'said Tanks Act' for the sake of convenience and clarity].



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3. Mr.K.A.Mariappan, learned counsel for writ petitioners is before us in the Admission Board.

4. Notwithstanding very many averments in the support affidavit and grounds, learned counsel predicated and projected his submission on the lone point that writ petitioners have put up construction and have been in occupation for a very long period. Considering that it is a water body, we are of the view that this argument does not cut ice with this Court. To be noted, the lead case in this regard is ***T.K.Shanmugam's*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} and the relevant paragraphs are paragraph Nos.44 and 45 and the same 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 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.'

5. Be that as it may, with the intention of knowing the current position, we issued notice regarding admission to the respondents.

6. Mr.A.Selvendran, learned Special Government Pleader accepts notice for both the respondents and submits (on written instructions i.e., communication dated 24.06.2024 bearing reference ந.க.எண் 4293/2024/ டி5 from the second respondent) that the enquiry as to whether the writ petitioners are owning lands elsewhere is being conducted and that is likely to consume some time.

7. As regards alternate site and the question as to whether the writ petitioners are owning lands elsewhere, it is purely at the discretion of the



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State. In this regard, G.O.Ms.No.526, Revenue and Disaster Management Department, Land Disposal Wing, LD-1(2) Section dated 19.10.2023 is of relevance. As regards water bodies it is not unobjectionable encroachment. Allotment of alternate site is only qua unobjectionable encroachments. Therefore, the proceedings already initiated vide notices under aforementioned Tanks Act i.e., notices dated 28.05.2024 shall be proceeded with, carried to its logical end and concluded as expeditiously as the business of the respondents would permit but in any event within four weeks from today i.e., by 22.07.2024.

8. We make it clear that alternate site or the enquiry as to whether writ petitioners own lands elsewhere is independent of the proceedings vide aforementioned notices as alternate site is not a matter of right and it is only at the discretion of the State, that too if the writ petitioners do not own land or property elsewhere.

9. While we make it clear that it is open to the State to consider provision of alternate site but removal of encroachment on water body i.e., tank is imperative and independent of alternate site. Let the notices dated 28.05.2024 under said Tank Act be carried to its logical end and concluded



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within the aforementioned time frame.

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WEB COPY 10. We dispose of the aforementioned WP with the aforementioned observation. There shall be no order as to costs. Consequently, the connected writ miscellaneous petition is closed.

(M.S.,J.)

(K.G.T.,J.)

24.06.2024

Index : Yes / No

Neutral Citation : Yes / No

gpa

P.S. I: Upload forthwith

P.S.II : All concerned including Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.

P.S:III Though the captioned Writ Petition is disposed of by this order, let the writ petition appear in the cause list under the cause list caption 'FOR REPORTING COMPLIANCE' on 26.07.2024.

To

1. The Assistant Engineer
Department of Water Resources
Rasipuram, Namakkal District
2. The Tahsildar
Rasipuram Taluk, Namakkal District

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