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W.P.No.20525 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P.No.20525 of 2024

M.Megarasan
S/o.Munusamy

.. Petitioner

Vs.

1. The Principal Secretary to Government
Revenue Department
Secretariat, Chennai-600 009.
2. The District Collector
Chengalpattu Collectorate
Chengalpattu District - 603 001.
3. The Chief Engineer
(Water Resources Organization)
Public Works Department
Chennai Region
Chennai-600 005.
4. The Project Director
DRDA, Chengalpattu - 603 001.
5. The Revenue Divisional officer
Revenue Division Office
Madurantakam
Chengalpattu - 603 306.



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6. The Thasildhar
Tashildhar Officer
Madurantakam
Chengalpattu - 603 306.

7. The Block Development Officer
BDO Office, Madurantakam
Chengalpattu - 603 306.

8. The President
Kodithandalam Village
Pukkathurai Panchayat Union
Chengalpattu - 603 306.

7. Valli
W/o.Aasai Thambi

8. Priya
W/o.Sathya

11. Sathik
W/o.Mariyam

12. Poonkodi
W/o.Dillibai

13. Kamala
W/o.Dhesinghu (Late)

14. Eagavalli
W/o.Gopal

15. Kantha
W/o.Theivasigamani

16. Neelavathi
W/o.Sunthar



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17. Pathamavathi
W/o.Muthu
18. Meenatchi
W/o.Sekar
19. Parimala
W/o.Maghendiran
20. Rani
W/o.Mari
21. Malar
W/o.Arumugam
22. Ramachandiran
W/o.Selvam
23. Senthamarai
W/o.Selvam
24. Amutha
W/o.Mogan
25. Indira
W/o.Kannan
26. Sekar
W/o.Chandaresan
27. Santhi
W/o.Harikrishnan
28. Nalini
W/o.Arul
29. Sundharambal
W/o.Kanniyappan



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30. Church

Kodithandalam

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondent Nos.1 to 7 to take appropriate action to remove the encroachments made by respondent Nos.9 to 30 in Survey Nos.15 and 16 in Kodithandalam "Thangal Ullvai" water body lake, Kodithandalam Village, Pukkathurai Panchayat, Madurantakam Taluk, Chengalpattu District as per the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and considering the representations of the petitioner dated 17.07.2023, 11.12.2023, 18.12.2023, 22.01.2024, 29.01.2024, 05.02.2024, 19.02.2024 respectively and to implement the order passed by the 6th respondent to 7th respondent vide proceeding in Na.Ka.5696/2023/Aa1 dated 29.09.2023 within a reasonable time period.

For Petitioner : Mr.R.Senthilnathan

For Respondents : Mr.P.Balathandayutham
Special Government Pleader
for R1 to R6
Mr.V.Prasanth Kiran
Government Advocate
for R7 and R8



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ORDER

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

Captioned 'Writ Petition' {hereinafter 'WP' for the sake of brevity} pertains to alleged encroachment in a water body.

2. Mr.R.Senthilnathan, learned counsel on record for writ petitioner submits that R9 to R30 have encroached upon a 'lake in Kodithandalam Village (Pukkathurai Panchayat) Madurantakam Taluk, Chengalpattu District and that this lake is known as Thangalulvai' {hereinafter 'said water body' for the sake of brevity}.

3. Learned counsel for writ petitioner submits that writ petitioner has sent a barrage of representations and as many as seven representations are adverted to in the prayer. To be noted, the dates of representations are 17.07.2023, 11.12.2023, 18.12.2023, 22.01.2024, 29.01.2024, 05.02.2024, 19.02.2024. Learned counsel also submits that R6 and R7 have already made proceedings dated 29.09.2023 bearing reference Na.Ka.5696/2023/Aa1.



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4. Issue notice to official respondents i.e., R1 to R8.

5. Mr.P.Balathandayutham, learned Special Government Pleader accepts notice for R1 to R6. Mr.V.Prasanth Kiran, learned Government Advocate accepts notice for R7 and R8.

6. Learned State counsel, on instructions, submits that survey has been done, encroachment has been noticed and steps are underway.

7. In the light of the stated position of learned State counsel, the scope of captioned WP has dwindled vastly. Therefore, with the consent of learned counsel on both sides, we take up the main WP in the Admission Board.

8. We are acutely conscious that R9 to R30 (private respondents) are not before us. Therefore, we will be putting in a safety valve as regards private respondents (R9 to R30) who are alleged encroachers.



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9. The alleged encroachment being in water body, the eviction proceedings will obviously be under 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (Tamil Nadu Act 8 of 2007)' {hereinafter 'Tanks Act' for the sake of convenience, clarity and brevity} and 'Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' {hereinafter 'Tanks Rules' for the sake of convenience, clarity and brevity}. As regards TANKS Act and Rules thereunder, a Hon'ble Full bench in ***T.K.Shanmugam*** case {***T.K.Shanmugam Vs. State of Tamil Nadu [2015 (5) LW 397]***} has made it clear that alleged encroachers should be put on notice and relevant paragraph in ***T.K.Shanmugam*** case is paragraph No.15 which reads as follows:

'15. Certain provisions of Tank Act namely, Sections 4 to 10 were challenged in a Writ Petition with a prayer to declare those provisions as null and void and contrary to Article 14 of the Constitution of India on the ground that those provisions confer upon the executive, unguided and uncanalised discretionary power, since they denied to the persons aggrieved an opportunity of being heard. The said Writ petition was heard by a Division Bench to which one of us (M.Sathyanarayanan,J.) was a party. The Division Bench took note of the various decisions including the decision in the case of Sivakasi Region Tax Payers Association (supra), disposed of the Writ Petitions without



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declaring the provisions of the Act as unconstitutional, since no opportunity is given and held that there is nothing in the Act which excludes the principles of natural justice, the Act (Tank Act) does not specifically indicate that the encroachers do not have right to be heard and issued the following directions vide judgment dated 10.02.2010, reported in 2010 3 MLJ 771.

(a)The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b)The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c)As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.(emphasis laid)

(d)The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding



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generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands. (emphasis laid)

(e)The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. (emphasis laid)

(f)We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections



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and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.'

10. Aforementioned procedure which has been read into Tanks Act safeguards the interest of R9 to R30 as they would be show caused and given an opportunity to respond to the same. In this regard, we make it clear that all rights and contentions of R9 to R30 are preserved for this purpose and we superadd that we have not expressed any view or opinion on the alleged encroachment. This also means that all questions are left open.

11. In the light of the narrative thus far, let the proceedings under TANKS Act and Rules thereunder (said to be in the anvil by learned State counsel) be commenced, continued and concluded in accordance with law and solely on the merits of the response of alleged encroachers i.e., R9 to R30. This means that the matter will be examined by the authorities concerned under Tanks Act and Rules thereunder untrammelled by this order.



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12. Let the aforementioned procedure be concluded as expeditiously as the business of authorities concerned would permit preferably, within 16 weeks from today i.e., by 14.11.2024.

13. Captioned WP disposed of in the aforementioned manner with the aforementioned observations / directives and preservation of rights in the aforesaid manner. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
25.07.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking order / Non-speaking order

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

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