



WP.Nos.26007, 26012 & 26015/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP.Nos.26007, 26012 & 26015/2024

&

WMP.Nos.28413, 28414, 28422, 28423, 28424 & 28425/2024

A.Vijayakumar

... Petitioner in
WP.No.26007/2024

U.Jayamurugan

... Petitioner
in WP.No.26012/2024

P.Pon Balasubramaniyan

... Petitioner
in WP.No.26015/2024

Vs.

1.The District Collector
Chennai District,
Singaravelar Maligai
Chennai 600 001.

2.The Tasildar
Ambattur Taluk
Chennai 600 053.



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3.The Assistant Engineer
PWD Water Resources Organisation
Chennai 600 052.

4.The Section Officer
PWD-Irrigation Division,
Water Resources Organization
Senkundram, Chennai 52.

... Respondents in all Writ
Petitions

Prayer in WP.Nos.26007, 26012 & 26015/2024 : Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records relating to Form-III in Notice No.960/PA/File-11/dated 29.07.2024 of the 4th respondent and quash the same, and consequently direct the respondents to follow the directions issued by this Court in T.S.Senthilkumar V. Government of Tamil Nadu and others reported in 2010 [3] MLJ 771 for the proceedings under Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

For Petitioners in all
Writ Petitions : Mr.K.Sakthivel
For Respondents in all
Writ Petitions : Mr.M.Habeeb Rahman,GA

COMMON ORDER

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

(1)These batch of writ petitions have been filed challenging the order in Form-III directing the petitioners to remove encroachment in the water body. Impugned notice is under the Tamil Nadu Protection of Tanks and



Eviction of Encroachment Act, 2007.

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(2) The contention of the petitioners is that the petitioners are in possession of small parcels of land in S.No.813/2B in Korattur Village from 1970 and that taking note of their enjoyment for a considerable time, the District Collector of Chengalpattu issued direction under Revenue Standing Order 21 to give patta to all persons who are in possession of land in the said survey field. It is further stated that after issuance of patta in favour of petitioners, they had put up houses and paid taxes to the Local Body.

(3) A writ petition was filed in WP.No.13907/2020 for removal of encroachment in Korattur Lake particularly referring to SF.No.813. This Court has issued general directions for removal of encroachment as it is admitted that S.No.813/2B is a water body. It is also reported by the learned Government Advocate that the encroachment had also been removed on 21.08.2024.

(4) The question now to be decided is whether the writ petitions challenging the order of eviction directing the petitioners to vacate the property could be sustained or not.



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(5) Learned counsel for the petitioners relying by the judgment of the Division Bench of this Court in ***T.K.Senthil Kumar Vs. Government of Tamil Nadu and Others*** reported in **2010 [3] MLJ 771**, submitted that the procedure contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, was not followed as directed by this Court. A further submission was also made to the effect that the petitioners are poor people and have no place to reside and therefore, the Government granted patta, in recognition of their enjoyment.

(6) The learned Government Advocate, on instructions submitted that patta has been wrongly given to several persons and therefore, proceedings have also been initiated against persons who are responsible for regularising encroachment in water bodies.

(7) A Full Bench of this Court in ***T.K.Shanmugam Vs. State of Tamil Nadu and Others*** reported in **2015 [5] LW 397**, has, after elaborately discussing the public Trust Doctrine, held that merely because the water body vest with the Government, the Government is not the owner of the water body and that the Government is expected to maintain the same for



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the benefit of the public and keep the property as a water body for the benefit of the public. The following are the relevant paragraphs:-

"29. Reverting back to the Sivakasi Region Tax Payers Association's case, in paragraph 28, it was observed that it should not be misunderstood, as if the Division Bench was suggesting that all encroachments should be regularised or encouraged, but the State Government to take a conscious decision, if the land on which there are encroachments for a long period and such land is not required for any public purpose or for the State and a person remaining in adverse possession for more than 30 years acquires such right over the property. The other observations contained in para 30 of the judgment are that the Government Order (G.O. No. 854) makes it amply clear, where the environment is not affected in the sense, the area is not in use as lake or water source either natural or artificial and not required for any public use and for the use of the State then only the property can be settled.

30. With respect we do not agree with the said observations, since the object of the enactments which have held the field from 1905 does not speak of any such exemption, rather the underlying principle was to



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preserve and protect water bodies. It is to be noted at this juncture, during summer, water bodies would appear dry, but during rainy days/monsoon, stream would be in place to drain/take the water to the water bodies and percolation takes place which in all probability results in surcharge of ground water. Thus, on account of the default of the Revenue officials or on account of collusion of official machinery with encroachers can hardly be a premium to justify encroachments. The theory of adverse possession, would not stand attracted in such cases. The encroachers are infact trespassers into Government property. In terms of the Standing Orders of the Board of Revenue, the Village Administrative Officer has a duty to report any encroachment in any Government land in his village. The present scenario of rampant encroachment is on account of the failure of the Revenue Administration to protect Government lands. As observed T.N. Senthilkumar, (supra), the State holds all the water bodies in public trust for the welfare of this generation and all succeeding generation. Thus it would be preposterous to suggest that a trespasser with or without the connivance of the officials enters into



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occupation of Government land, gradually defaces its identity then puts forth a plea that it is no longer a water body or a water channel and seeks for regularisation of his trespass be rewarded with a patta. If such acts of trespassers/encroachers are to be treated as pardonable and be rewarded for their illegal act in the form of regularisation/accommodation to say the least, it would be an absolute degradation and collapse of the public trust vested with the State to protect the lands and water bodies. If 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 law and then grant patta to those encroachers.

31. We may at this stage examine the origin, scope and object of the Public Trust Doctrine. Most scholars identify the Justinian code of sixth century Rome as the genesis of the Public Trust Doctrine - the doctrine of 'res communes' which claims that some things are 'common to mankind - the air, running water, the sea, and consequently the shores of the sea [and] the right of fishing in a port, or in rivers, is common to all men [see Joseph L. Sax, 'Public Trust



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Doctrine in Natural Resource Law: Effective Judicial Intervention', 68 Michigan L. Rev. 471 (1970)]. It has been further observed that the title to these essential resources was vested in the State, as the sovereign, in trust for the people. Res communes were excluded from private control and the trustee was charged with the duty of preserving the resources in a manner that made them available for certain public purposes. It has been further explained that the legal or moral concept of common ownership later emerged as more of a reservation of 'a series of particular rights to the public' to engage in certain activities, thus limiting 'the prerogatives of private ownership'. There is therefore now a nearly universal notion that resources such as watercourses should be protected from complete private acquisition in order to preserve the lifelines of communal existence. The common property resources are those resources not controlled by a single entity and access to which is limited to an identifiable community of individuals or states. No one user has the right to abuse or dispose of the property. Any dealing with the property has to take into account the entitlements of others. Besides, users of common



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property share rights to the resource and are subject to rules and restrictions governing the use of those resources [John Gowdy, Coevolutionary Economics - The Economy, Society and the Environment (Boston: Kluwer, 1994)] & [Daniel W. Bromley & Michael M. Cernea, The Management of Common Property Natural Resources 'Some Conceptual and Operational Fallacies' (Washington, DC: The World Bank, Discussion Paper No. 57, 1989).]. In England, this concept appears in the common law, particularly through the writings of Bracton and Fleta, England's Magna Carta, and commentary by Blackstone. Paragraph 5 of the Magna Carta made explicit reference to the guardianship of land extending the guardianship to houses, parks, fish ponds, tanks, mills and other things pertaining to land. As early as 1865, the English House of Lords defined the concept of public trust in the case of Gann v. Free Fishers of Whitstable, House of Lords, 3 March 1865, 11 E.R. 1305 : (1865) 11 H.L. Cas. 192, holding that the bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is by law vested in the crown. But this ownership of the crown is for the



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benefit of the subject, and cannot be used in any manner so as to derogate from, or interfere with the right of navigation, which belongs by law to the subject of realm. This imposed a high fiduciary duty of care and responsibility upon the sovereign[Godber Tumushabe et al., Sustainably Utilising our Natural Heritage: Legal Implications of the Proposed Degazettement of Butamira Forest Reserve (Kampala, ACODE, Policy Research Series, No. 4, 2001)]. Further elaborating the concept of public trust, the English Common Law distinguished between property that was transferable to private individuals and property that was held in trust for the public traditionally waterways. The property held in trust for the public is the dominant estate and encapsulates the public's trust rights, ranging from fishing, fowling and navigation to other broader rights like recreation. [Gerald Torres, 'Who Owns the Sky', 19 Pace Envt' 1. L.Rev. 515, 530 (2002)]

32. Whatever approach is taken, the fundamental emphasis is on communal rather than private rights. In cases where communal rights protector negates the rights of some, it implies a denial of the application of the Public Trust Doctrine. Natural resources have traditionally been found either under the sovereignty of



a particular state or in the so-called global commons. Where the resources are held by a state, the essence of the Public Trust Doctrine is that the state or governmental authority, as trustee, has a fiduciary duty of stewardship of the public's 'environmental capital'. Thus it is the duty of the State to protect, conserve and augment traditional water retaining structures.

33. The Supreme Court of the United States of America in Illinois Central Railroad Co. v. People of the State of Illinois, [146 US 387 : 36 LEd 1018 (1892)], pointed out that the State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in execution of this trust, is permissible.

34. In Michigan Law Review, Vol. 68, No. 3 (Jan. 1970), Pages 471-566, Prof. Sax said that three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine, namely:

- ‘1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;*
- 2. the property may not be sold, even for fair cash equivalent;*
- 3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.’*

35. The Hon'ble Supreme Court in Indian Council for Enviro-Legal Action v. Union of India, [(1996) 5 SCC 281], held that there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

36. Thus, the public trust doctrine requires that



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natural resources such as lakes, ponds etc., are held by the State as a 'trustee' of the public and can be disposed of only in a manner that is consistent with the nature of such a trust.

37. Bearing the above legal principle in mind, we have to consider as to whether by virtue of the various Government Orders issued from time to time infringes or violates the public trust doctrine with particular reference to water bodies.

.....

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 Article 14, 19 and 21 of the Constitution and also the various laws enacted by the 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."



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(8) This Court in ***WP.No.2406/2018 dated 19.03.2024 [C.M.Mohan Vs. The District Collector, Tiruvallur District and 4 Others]***, following the judgment of the Full Bench in ***T.K.Shanmugam case [cited supra]*** and several other precedents has elaborately discussed the obligation of State to protect tanks and to remove the encroachment in water bodies since water body is always a communal land which does not vest with the Government for its disposal as the Government only hold the property for the benefit of whole public. This Court repeatedly reiterated the legal position that the Government has no authority or power to regularise any encroachment in the water bodies. It is relevant to extract the following paragraphs:-

"11.In M.C.Mehta V. Kamal Nath reported in 1997 [1] SCC 388, this Court dealt with the Public Trust Doctrine in great detail. The Court observed as under:-

"35.We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those



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charged with administrative responsibilities, who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the Courts. If there is a law made by Parliament or the State Legislatures the Courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But, in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the nature resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find in necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

12.In Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, reported in AIR 2006 SC 1350, the Hon'ble Supreme Court has considered the Public Trust Doctrine. It is seen that the Hon'ble Supreme Court in the said judgment has quoted the following passage of a judgment of the United States Supreme Court in Illinois Central Railroad Company Vs. People of the



State of Illinois reported in 1892 [146] US 537, to reiterate the Doctrine of Public Trust which reads thus:-

"The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.

[...]the State holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible."

13. The Hon'ble Supreme Court in ***M.C.Mehta V. Kamal Nath*** reported in 1997 [1] SCC 388 and in ***M.I.Builders V. Radhey Shyam Sahu*** reported in 1999 [3] SCR 1066, has held that the State as a Trustee, is under legal duty to protect the natural resources, and acknowledged the principle that any property which is subject to Public Trust Doctrine like river bed, water body etc., always be available for use by general public and it is the responsibility of the State to protect and hold them for the benefit of public. It is to be noted that the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, itself was enacted pursuant to the decision of this Court in



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L.Krishnan Vs. State of Tamil Nadu reported in 2005

[4] CTC 1, wherein a Division Bench of this Court pointed out the importance to restore water storage tanks, ponds, lakes etc., as disclosed in revenue records to its original status as part of rain water harvesting scheme. When the State of Tamil Nadu issued a Government Order vide G.O.Ms.No.854 dated 30.12.2006 to regularise encroachments in a water body, the validity of the said Government Order was upheld by a Division Bench in the case of ***Sivakasi Region Tax Payers Association Vs. State of Tamil Nadu*** reported in 2008 ***[5] MLJ 1425***. However, the said judgment of the Division Bench was held no longer a good law by a Full Bench of this Court in ***T.K.Shanmugam Vs. The State of Tamil Nadu and Others*** reported in ***AIR 2016 Mad 25***. While approving the judgment of Division Bench in ***L.Krishnan's*** case ***[cited supra]***, following the judgment of the Hon'ble Supreme Court in ***Hinch Lal Tiwari Vs. Kamala Devi*** reported in 2001 ***[6] SCC 496***, the Full Bench of this Court has also approved the judgment in ***T.S.Senthilkumar Vs. Government of Tamil Nadu and Others*** reported in 2010 ***[3] MLJ***



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*771, laying emphasis on the Public Trust Doctrine. In other words, the Full Bench of this Court in **T.K.Shanmugam's case [cited supra]**, has acknowledged and reiterated the position that the State holds all the water bodies in public trust for the welfare of this generation and all the succeeding 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 or water charged lands.*

14.The judgments above referred to are only a few which this Court could immediately lay hands and it is to be noted that the Doctrine of Public Trust was recognized by our Courts to hold that the State cannot claim absolute ownership over the natural resources or other communal lands which are always meant for the benefits of public.

15.This Court takes judicial notice of several precedents to indicate the need of the hour to preserve water bodies all over the country. Under the Tamil Nadu Estates Land Act, 1908, the power was given to the District Collector to divert the disused communal lands. Section 20-A of the Estates Land Act, 1908,



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reads as follows:-

20A. Power of District Collector to divert disused communal lands.

(1) Subject to such rules as the State Government may prescribe in this behalf, the District Collector may on the application of the landholder, a ryot or any other person interested -

(a) declare that any land or any portion of any land which is set apart for any of the purposes referred to in sub-clauses (a) and (b) of clause (16) of section 3 is no longer required for its original purpose; and

(b) by order in writing direct-

(i) that any such land or portion in respect of which such declaration is made be used for any other specified communal purpose; or

(ii) if such land or portion is not required for any communal purpose, that it be converted into [ryotwari land] [Substituted for 'Government Ryotwari Land' by the Adaptation Order of 1937.] or landholder's ryoti-land according as the reversionary rights in such land vest under the terms, express or implied, of the sanad, title-deed or other grant in the Government or in the landholder:

Provided that before making any such



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declaration and order, the District Collector shall have due regard to any other customary rights of the landholder or the ryots in the user of such land or portion and shall satisfy himself that the exercise of such rights would otherwise be provided for adequately if the declaration and order are put into effect:

Provided further that in the case of any land of the description referred to in sub-clause (a) of clause (16) of section 3 the reversionary rights in which vest in the landholder under the terms express or implied, of the sanad, title-deed or other grant, any order under sub-clause (i) of clause (b) shall be made only with the consent of the landholder.

(2) Without the written order of the District Collector under clause (b) of sub-section (1), no land which is set apart for any of the purposes referred to in sub-clauses (a) and (b) of clause (16) of section 3 shall be assigned or used for any other purpose. Nothing contained in this sub-section shall affect or take away or be deemed to affect or take away the customary rights of the landholder or the ryots in the user of any such land."

16. Under the same Act, Section 3[16] defines what is 'Ryot Land' which does not include beds and



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bunds of tanks and of supply, drainage, irrigation channels etc. The only statutory provision under Section 20-A of the Estates Land Act, 1908, which enable the District Collector, is not re-enacted under any legislation. It is to be noted that by virtue of Section 3 of the Tamil Nadu Estates [Abolition and Conversion into Ryotwari] Act, 1948 [Act 26/1948], the Tamil Nadu Estates Land Act, 1908 is deemed to have been repealed in their application to the estate. After the repeal of the Tamil Nadu Estates Land, 1908. the power which was available to the District Collector earlier for reclassification of the land, is not available and there is no statute which gives the power or right either to the Government or to the District Collector or to anyone under the Government, to reclassify the land which was originally classified as water body. There is a statutory prohibition for assignment or granting patta in respect of communal properties like tanks, even if it is in the enjoyment of any individual. Even though the ownership over the private tank and oorani was recognized earlier; the Government introduced amendment in all the three Acts, namely, the Tamil Nadu Act 26/1948, the Tamil Nadu Act 26/1963 and the



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Tamil Nadu Act 30/1963, prohibiting the issuance of Ryotwari patta in respect of private tank or oorani. Even patta granted earlier in respect of private tank or oorani, is liable to be cancelled. That being the case, though all water bodies vest with the Government under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act 26 of 1948), Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Act 26 of 1963) and Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (Act 30 of 1963), the Government does not become the owner of the lands and the Government has only holding as communal lands for the benefit of public. Every Tank or communal land which vest with the Government under the three enactments, remains as a public land and the Government, will not get proprietary right over the land to confer private ownership. This position is made clear in several judgments in respect of land classified as communal lands except waste or orable lands. Without even a statutory prohibition for conversion of land for other purposes, this Court has issued directions to provide alternative land in case the



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Government wants to use those lands which are classified as Grazing lands for some other public purposes.

17. Without a statutory backing, this Court finds that the Government is not expected to deal with or assign lands which are in existence as water bodies. Therefore, this Court finds that the assignment or transfer of land in favour of the 4th respondent/BSNL is void and unenforceable."

(9) Assuming for a moment that the patta has been granted in favour of individuals who have encroached in water bodies, the same will not confer any right and title as the Government itself has no power to regularise such encroachment in the water body. A water body is a property which is always to be maintained as such for the communal benefit. Therefore, the patta granted in favour of petitioners is a void document which will not give any right to the petitioners. Therefore, this Court is unable to appreciate the contentions of the learned counsels for the petitioners.

(10) Be that as it may, the petitioners have filed writ petitions challenging the order after the encroachment is already removed. Therefore, no relief



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can be granted. However, if the petitioners are in possession of the property for their residence for a considerable time, the respondents shall consider giving alternative sites in a nearby vicinity if it is available. This direction of this Court cannot be taken as a mandatory. However, the respondents shall honestly consider the grievance of the individuals as the removal of encroachment en-masse is likely to affect the livelihood of the individuals. Wherever there are lands available and identified for allotment of assignment in favour of houseless poor, the petitioners will be given preference.

(11) With the above observations, the writ petitions stand **dismissed**.

Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [K.R.S., J.]
06.09.2024

AP

Internet : Yes

NOTE: Issue order copy on 11.09.2024



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To

- 1.The District Collector
Chennai District,
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Chennai 600 001.
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