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WP (MD) No.15203 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2023
Pronounced on : 11.03.2024
CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**
AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP (MD) No.15203 of 2023 and
WMP (MD) Nos.12799,12801 and 12802 of 2023

G.Mathialagan

... Petitioner

Vs

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of Revenue,
Fort St.George, Chennai - 600 009.
- 2.The Chief Engineer,
Office of the Chief Engineer,
Department of Highways,
Chennai.
- 3.The District Collector,
Office of the Collector,
Thanjavur.
- 4.The Divisional Engineer,
Department of Highways,
Thanjavur.
- 5.The Assistant Divisional Engineer,
Department of Highways,
Kumbakonam.
- 6.The President,
Ariyapadai Veedu Panchayat,
Cholan Maaligai Village,
Kumbakonam Talukm,
Thanjavur District.



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7.J.Senthil Thambi,
Assistant Divisional Engineer,
Kumbakonam.

8.M.Mathialagan
Zonal Deputy Tahsildar,
Kumbakonam Taluk.

9.Lakshmanaperumal,
Village Administrative Officer,
Cholan Maaligai,
Kumbakonam Taluk,

... Respondents

[R6 to R9 are impleaded vide
Court order dated 05.10.2023 in
WP(MD)NO.15203 of 2023]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus to call for the records relating to the impugned order GO.Ms.No.644 Revenue [Ni.Mu4(1)] Department dated 12.11.2008 on the file of the 1st respondent and the consequential impugned order No.09/Encroachment /2023/Dated 02.06.2023 of the 5th respondent and quash the same and consequently directing the 1st respondent not to convert Vellakarai Vaaikaal poramboke comprised in S.Nos.239/2, 245/2, 248/2, 249/3 and 327/2 as road.

For Petitioner : Mr.U.Karunakaran

For Respondents :Mr. R.Baskaran,

Nos. 1 to 5 Addl.Advocate General

Assisted by Mr.K.Balasubramaniam
Special Government Pleader



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ORDER

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The petitioner an encroacher of a water channel namely Vellakarai Vaaikaal has filed this writ petition challenging the assignment of this water body to the Highways Department vide a government order in GO(Ms)No. 644, Revenue [Ni.Mu4(1)]Department dated 12.11.2008 and the notice issued by the Highways Department dated 02.06.2023.

2.The impugned government order was issued in the year 2008 pursuant to the letter of the District Collector, Thanjavur dated 07.02.2008 and the letter of the Commissioner, Land Administration dated 25.04.2008. By the said government order, the government has accepted the recommendation of the District Collector, Thanjavur to transfer the land in S.Nos.239/2, 248/2, 249/3 and 327/2 to an extent of 1.26.5 hectares to the Highways Department.

3.Admittedly these lands were originally classified as a channel and Vellakarai. The lands in S.Nos.245/2, 248/2, 249/3 and 327/2 are classified as channel and the land in S.No.239/2 is classified as Thirumalairajan Vellakarai.



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In Sozhan Maaligai Village, Kumbakonam Taluk, Thanajvur District a river by name Thirumalairajan river flows crossing Patteeswaram and Sozhan Maaligai village.

4.Pursuant to the said government order the Divisional Engineer, Highways department has issued notice to this petitioner on 02.06.2023 that this petitioner is an encroacher of the Highways department's land and the same would be removed by the Highways department on 28.06.2023. Only thereafter the petitioner had the knowledge of the impugned government order and challenging the same, he has filed this writ petition.

5.The learned Counsel for the petitioner submits that the lands sought to be transferred is a water body namely Vellakarai Vaaikaal, which is used as natural flood and rain water drainer in that area. It is only a small stretch of land behind the patta lands and is not used as a road. The State Highways road is passing through near to these lands in dispute and there is no need for any road as claimed by the Highways department. This proposal itself is only to facilitate a Politician to create access to his land.



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6.The learned Counsel further submits that in the event if any road is laid, the entire houses and the existing road would get submerged in the flood. He also submits that the Hon'ble Supreme Court and this court in a number of judgments directed that the water bodies have to be maintained in tact. He also produced several photographs and demonstrated that there is no road in existence and there cannot be any necessity for any road in that place.

7.The Divisional Engineer Highways Department has filed a counter affidavit stating that though this land was earlier classified as a Vaaikaal, the said land was used as a road for more than two decades. Considering the same, these lands were transferred to the Highways Department vide the impugned government order. He also questions the *locus standi* of this petitioner, who happens to be an encroacher of the very same land, to challenge the transfer of the lands for the public purpose.

8.The learned Additional Advocate General appearing for the respondents has raised a preliminary issue that the



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impugned government order passed in the year 2008 is challenged in the year 2023 and therefore, on the ground of laches, this writ petition is liable to be dismissed. Further he admits that the lands sought to be transferred vide the government order are water courses, which are classified as a water channel and the land S.No.239/2 is situated on the bank of the Tirumalairajan river, which is now used as a pathway ghat. According to him, this water channel is not having any source of water and there is no Aycut lands. This channel was used as a flood carrier channel, when there is a heavy rain and flood in Tirumalairajan river and for the past 25 years, there is no heavy flood in Tirumalairajan river and these land are also used as a passage and pathway. The land in S.No.239/2 runs through the middle of the village and also used as an ancillary track to main road to reach the bathing ghat of Tirumalairajan river. The people of Pambaipadaiyur and Old Thennur village are using this land as a pathway, otherwise, they have to take Marthanallur - Patteeswaram road to reach the Bagavathiamman temple. He also pointed out that this petitioner and other patta holders have encroached upon this land. The petitioner has filed this



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writ petition, when they were directed to evict.

He also pointed out the previous litigation initiated as against this government order in WP(MD)No.19186 of 2015 was dismissed as infructuous.

9.We considered the rival submissions made and perused the materials placed on record.

10.A government order passed in the year 2008 is challenged in this writ petition in the year 2023. Therefore this writ petition is attacked on the ground of laches. By this government order, the lands in S.Nos.239/2, 248/2, 249/3 and 327/2 to an extent of 1.26.5 hectares, which were classified as a water channel was reclassified and transferred to the Highways Department for laying road. Though this government order was passed in the year 2008, admittedly the road was not laid by the Highways Department so far. The respondents have taken steps to lay the road by evicting the encroachers including the petitioner by issuing a notice under Section 28 of the Tamil Nadu Highways Act only on 2.06.2023.Immediately the petitioner has collected this government order and filed this writ



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petition. Therefore, we are not inclined to dismiss this writ petition on the ground of laches.

11. Another ground taken by the respondents is that though these lands are classified as a water channel, it was used as a flood carrier during the heavy flood of water in Tirumalairajan river. According to him, there is no heavy flow of water for the past 25 years and therefore it was used as a pathway by the residents of two hamlets to reach a nearby temple. Only a small extent of 1.26.5 hecatres alone was transferred. Admittedly there is a Highways road between Maruthanallur and Patteeswaram adjacent to the lands in dispute. The respondents have also admitted that the residents of these hamlets can also reach the temple through this Maruthanallur - Patteeswaram road. As per the stand of the respondents *per se* they are attempting to create a short-cut pathway as if a highways road in order to facilitate two hamlets to reach the temple. Even according to the respondents, the land in S.Nos.239/2 was used as a flood barrier Vellakarai. All other survey numbers are admittedly a water channel.



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The grievance of the petitioner is that if any road is laid in this buffer area, then the road would sub-merge in the flood. This was not at all considered by the District Collector while making his recommendation and by the government while passing the government order.

12.The Divisional Engineer, Highways Department has made a request on 30.03.2006 to transfer this water body to the Highways Department that these lands were not used as a water body for the past 25 years. The District Collector has made a proposal to the Commissioner of Land Administration and within a month, the order for reclassification was issued by the Commissioner of Land Administration vide his letter VI/7362/2008 dated 25.04.2008. The District Collector has subsequently passed an order to change the classification in the revenue records and also recommended to the government for passing the government order in the year 2008. It same was accepted by the government and the impugned government order dated 12.11.2008 came to be passed on the following grounds:



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(i) the lands classified as Vellakaraivaikal (canal) proramboke was being used as road for the past 25 years
(ii) the road being used by the department of highways
(iii) the transfer or conversion of the land will not affect the irrigation or drainage of water (iv) the transfer or conversion of the land will not affect the local general public and (v) prior to the recommendation of transfer of transferring of land the authorities had followed the formalities as notice under A-1 publication.

13. Though this government order was passed in the year 2008, fortunately the road is not laid so far. The Hon'ble Supreme Court and this Court time and again reiterated that the water bodies cannot be allowed to obliterated.

14. The available records disclose that this land is used as a water channel and as barrier preventing inundation of water from Tirumalairajan river and therefore, it has to be maintained as a water course and can never be allowed to be converted into a road. Moreover from the materials placed, we are satisfied that



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there is no necessity for any road in this place and even according to the respondents they are attempting to lay the road in order to facilitate two hamlets to reach a temple in a short-cut way when they are already having a road via Maruthanallur- Patteeswaram road. The government order is passed without any basis and reasoning and also against the guidelines issued by the Hon'ble Supreme Court. Therefore, it is liable to be quashed and accordingly, the impugned government order and the subsequent impugned notice are quashed.

15.In the result, this writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

[GRSJ]

[BPJ]

.03.2024

Index : Yes / No

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Chennai - 600 009.
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**G.R.SWAMINATHAN, J
and
B.PUGALENDHI, J**

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