



W.P.Nos.22408 of 2022 etc. batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.22408, 22435, 22418, 22420, 22427, 22432 and 22415 of
2022

and

W.M.P.Nos.21470, 21472, 21482, 21464, 21466, 21479 and 21475
of 2022

Kamalanathan

.. Petitioner in
W.P.No.22408/2022

B.Mogana

.. Petitioner in
W.P.No.22435/2022

Sivan Nayagi

.. Petitioner in
W.P.No.22418/2022

T.Adhikesavan

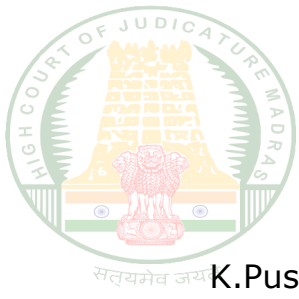
.. Petitioner in
W.P.No.22420/2022

Jayavel

.. Petitioner in
W.P.No.22427/2022

Vedagiri

.. Petitioner in
W.P.No.22432/2022



W.P.Nos.22408 of 2022 etc. batch

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K.Pushpavalli

.. Petitioner in
W.P.No.22415/2022

Vs

1.The State of Tamil Nadu,
rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai-600 009.

2.The Assistant Engineer,
Public Works Department,
Water Resource Organisation,
Adayar Irrigation Division,
St. Thomas Mount,
Chennai-600 016.

3.The District Collector,
Thiruvallur District,
Thiruvallur.

4.The Revenue Divisional Officer,
Thiruvallur District.

5.The Tahsildar,
Poonamallee Taluk,
Thiruvallur District.

.. Respondents
in all WPs

Prayer in W.P.Nos.22408, 22435, 22418, 22420, 22427 and 22415 of 2022 : Petitions filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records issued in Form-III dated 29.7.2022 Rule 6(1) issued by the second respondent and quash the same and further directing the third to fifth respondents to issue patta to the petitioner with respect to S.No.167/2, Koladi Village, S.No.694, 695 of Ayanambakkam Village, Poonamallee Taluk, Thiruvallur District based on the petitioner's application dated 08.08.2022.



W.P.Nos.22408 of 2022 etc. batch

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Prayer in W.P.No22432 of 2022 : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records issued in Form-III dated 29.7.2022 Rule 6(1) issued by the second respondent and quash the same and further directing the third to fifth respondents to issue patta to the petitioner with respect to S.No.166, Koladi Village, S.No.694, 695 of Ayanambakkam Village, Poonamallee Taluk, Thiruvallur District based on the petitioner's application dated 08.08.2022.

For the Petitioners : Mr.V.M.Venkatramana
in all WPs

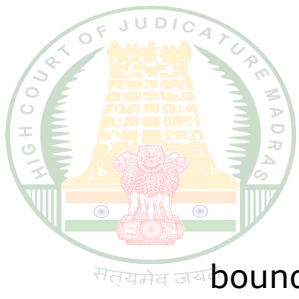
For the Respondents : Mr.A.Selvendran
in all WPs Spl. Government Pleader

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

By these writ petitions, a challenge is made to the notices issued in Form-III under Rule 6(1) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007 [for brevity, "*the Rules of 2007*"].

2. The challenge to the notices has been made mainly on the ground that without issuing notices in Form-II, notices in Form-III have been caused. In the absence of notices in Form-II showing the



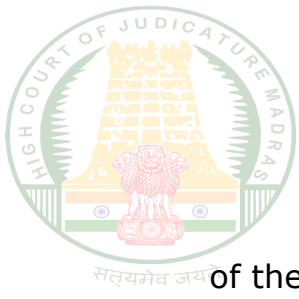
W.P.Nos.22408 of 2022 etc. batch

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boundary of the tank, it cannot be said that the petitioners have encroached on the lands of water tank. The second respondent ought to have called for the petitioners' explanation before issuing a notice in Form-III.

3. Learned counsel for the petitioners submitted that notices in Form-III were given with a direction to remove the encroachments, leaving hardly any time for the petitioners to even approach the respondent authorities to seek survey of the land to get determination of the boundaries of the tank and, accordingly, writ petitions were filed even without raising objection to the notices in Form-III. The prayer is to set aside the notices looking to the peculiar facts and circumstances of the case.

4. Learned counsel further submitted that notice to remove the encroachment cannot be caused without complying the principles of natural justice and, in the instant case, the petitioners were not given opportunity to prove their rightful possession on the land in question. It is also submitted that the petitioners are not in possession of the land of Odai, thus, prayed for an interference in the notices in Form-III



W.P.Nos.22408 of 2022 etc. batch

of the Rules of 2007.
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5. Learned Government Pleader appearing for the respondents submitted that notices in Form-III were given in accordance with law. Coming to the facts, it is stated that notices in Form-III were given after publishing notices in Form-II. Further, the petitioners have failed to show their ownership on the land or right to possess it. The lands of tanks and waterbodies are required to be safeguarded and, therefore, notices were rightly issued to the petitioners.

6. Learned Government Pleader further submitted that the Rules of 2007 do not contemplate an opportunity of hearing, but before action is taken, the encroacher has to be put to notice with a request to remove the encroachment and the compliance aforesaid has been duly made. Thus, a prayer is made to dismiss the writ petitions.

7. We have considered the rival submissions and also perused the materials available on record.



W.P.Nos.22408 of 2022 etc. batch

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8. Before addressing the issues raised by the parties, it would be gainful to refer to the object behind the enactment of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 [for short, "*the Act of 2007*"]. The Act of 2007 provides measures for checking the encroachment on the land of tanks and at the same time for eviction. It would not be out of place to mention that on account of rampant encroachment on waterbodies and tanks, the State of Tamil Nadu suffered drought and in contrast floods. This happened for the reason that whenever there was rain, water could not accumulate in the tanks on account of encroachments and in contrast, the condition of the flood was seen at times due to non-availability of area where water can store on account of the encroachments on the waterbodies or tanks. The need of the hour is to protect/safeguard waterbodies/tanks.

9. Before advertng to the merits of the case, it would be appropriate to refer to the relevant statutory provisions governing the issue. Section 7 of the Act of 2007 and Rule 6 of the Rules of 2007 read as under:

Section 7 of the Act of 2007:



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W.P.Nos.22408 of 2022 etc. batch

"7. Eviction of encroachment. - (1) *If the officer specified in sub-section (2) of Section 6 is of opinion that any person has encroached upon any land within the boundaries of the tank and that the encroacher should be evicted, the officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice.*

(2) *Where, within the period specified in the notice under sub-section (1), the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the tank, the officer referred to in sub-section (2) of section 6 shall remove the encroachment and take possession of the land within the boundaries of the tank encroached upon, by taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to that officer.*

(3) *Any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after a notice under subsection (1), be liable to forfeiture."*



W.P.Nos.22408 of 2022 etc. batch

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Rule 6 of the Rules of 2007:

"6. Eviction of Encroachment.- (1) *If any person has encroached upon any land of the tank, the officer referred to in sub-rule (3) of Rule 4, shall prepare a notice in Form III and call upon the person concerned to remove the encroachment.*

(2) *Notwithstanding anything contained in sub-rule (1), such notice shall be served by delivering a copy either to the encroacher or to a member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof in some conspicuous part of his last known residence or in any part of the area encroached upon or in any of the offices of the Village Chavadi, Village Panchayat, District Collector, Revenue Divisional Officer, Tahsildar, Village Administrative Officer, Panchayat Unions and in the Section, Sub-Division and Divisions concerned of the Water Resources Organisation of the Public Works Department as the officer deems fit and proper.*

(3) *If the encroacher has not removed the encroachment within the period specified in the notice referred to in sub-rule (1), the officer shall inform the area Station House officer of Police Department, in*



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W.P.Nos.22408 of 2022 etc. batch

writing to provide adequate Police personnel, as may be necessary and shall remove the encroachment or obstructions or any building or any crop or any product raised on the land or anything deposited and forfeit them and take possession of the land as specified in sub- sections (2) and (3) of Section 7 of the Act.

(4) The officer shall also impose the cost of eviction against such person, by preferring a complaint against such person with the competent Judicial Magistrate for recovery.”

10. It is not that the compliance of the aforesaid provisions has not been made, because compliance of Form-I and Form-II was made earlier to the notice in Form-III. Learned Government Pleader stated that boundaries of the tanks have been demarcated after causing survey and published on the notice board of the Public Works Department and based on the aforesaid only, notice in Form-III was issued. In the light of the aforesaid, we cannot accept the argument of learned counsel for the petitioners that notices in Form-III have been issued in violation of the provisions of the Act of 2007 and the Rules of 2007.



W.P.Nos.22408 of 2022 etc. batch

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11. The issue, however, remains is in reference to the judgment of this Court in the case of ***T.S.Senthil Kumar v. The Government of Tamil Nadu and others (2010) 3 MLJ 771***, where the provisions of the Act of 2007 and the Rules of 2007 were analysed. It was on the challenge to the constitutional validity of certain provisions. The challenge to the provisions was not accepted. It was held that for protection and improvement of environment, waterbodies, forests and wild life are to be safeguarded. It is after analysing the facts of that case and finding that safeguards are required to be taken to protect the tanks, the Division Bench referred to various judgments of the Apex Court, including the decision of a Division Bench of this court in *L. Krishnan v. State of Tamil Nadu, AIR 2005 Mad 311*, and observed in paragraph (8) as under:

"8. In L. Krishnan v. State of Tamil Nadu A.I.R. 2005 Mad 311, the public interest litigation was filed for removal of encroachments on an odai poramboke and the First Bench of this Court made the following observations:

'5. Since time immemorial ponds, tanks and lakes have been used by the people of our Country, particularly in rural areas, for collecting rain water for use for various



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W.P.Nos.22408 of 2022 etc. batch

purposes. Such ponds, tanks and lakes have thus been an essential part of the people's natural resources. However in recent years these have been illegally encroached upon in many places by unscrupulous persons who have made their constructions thereon, or diverted them to other use. This has had an adverse effect on the lives of the people.

6. It is also relevant to state that day in and day out, many such petitions are being filed by way of 'public interest litigation' alleging encroachments into ponds/tanks/lake/odai porambokes etc. in different parts of this State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already ear marked water storage tanks, ponds and lakes, as disclosed in the revenue records to its original status as part of its rain water harvesting scheme. We also take judicial notice of the action initiated by the State Government by implementing the water harvesting scheme as a time bound programme in order to ensure that the frequent acute water scarcity prevailing in this State is solved as a long time measure. In fact, the classification as Ooranis, Odais, and Lakes in the revenue records are all areas identified in the villages where the rain water gets stored enabling the local villagers to use the same for various purposes throughout the year inasmuch as most parts of the State are solely dependent on seasonal rains both for agricultural operations as well as for other water requirements. Therefore, it is imperative that such natural resources providing for water



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W.P.Nos.22408 of 2022 etc. batch

storage facilities are maintained by the State Government by taking all possible steps both by taking preventive measures as well as by removal of unlawful encroachments.

7. In this context, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court reported in Hinch Lal Tiwari v. Kamala Devi and Ors. MANU/SC/0410/2001 : AIR 2001 SC 3215. Paragraphs 12 and 13 are relevant for our present purpose which read as under:

'12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government,



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W.P.Nos.22408 of 2022 etc. batch

including the Revenue Authorities i.e. Respondents 11 to 13 having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.'

8. A reading of the above referred passages of the said Judgment shows that the endeavour of the State should be to protect the material resources like forests, tanks, ponds, hillock, mountain, etc., in order to maintain the ecological balance. The Hon'ble Supreme Court has highlighted that such maintenance of ecological balance would pave the way to provide healthy environment which would enable the people to enjoy a quality life which is essence of the right guaranteed under Article 21 of the Constitution. While on the one hand, the State is bound to maintain the natural resources with a view to keep the ecological balance intact and thereby provide a healthy environment to the public at large in the State of Tamil Nadu, having regard to the precarious water situation prevailing in the major part of the year, it is imperative that such noted water storage resources, such as tanks, odais, oornis, canals etc. are not obliterated by encroachers.

9. In this connection reference may be made to Article 48A of the Constitution which states:



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W.P.Nos.22408 of 2022 etc. batch

'Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.'

10. No doubt the above provision is in the Directive Principles of State Policy, but it is now well settled that the fundamental rights and directive principles have to be read together, since it has been mentioned in Article 37 that the principles down in the Directive Principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The Directive Principles embody the aim and object of the State under a Republican Constitution, i.e., that it is a welfare State and not a mere police State, vide *Kesavananda Bharati v. State of Kerala* (1973) 4 S.C.C. 225 (vide paragraphs - 134, 139 and 1714) and embodies the ideal of socio-economic justice, vide *Union of India v. Hindustan Development Corporation* A.I.R. 1994 S.C. 988 (990).

12. Apart from the above we may also refer to Article 51A(g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court, vide *Animal and Environment Legal Defence Fund v. Union of India* (1997) 3 S.C.C. 549 (supra, vide para-15).

13. In *M.C. Mehta v. Union of India* (1997) 3 S.C.C. 715 (vide para - 1) the Supreme Court observed:



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W.P.Nos.22408 of 2022 etc. batch

'Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.'

14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondents 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No. 100/1 at No. 247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.



W.P.Nos.22408 of 2022 etc. batch

It is only after this judgment that the aforesaid Act came to be passed."

After considering the aforesaid decisions, the Division Bench in

T.S.Senthil Kumar (supra), issued the following directions:

"20. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore v. J.V. Bhat, 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka, AIR 1991 SC 1117, where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(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



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W.P.Nos.22408 of 2022 etc. batch

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.

(d) 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, and water charged lands.

(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.

(f) We uphold the Act, while we provide for observance of principles of natural justice



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W.P.Nos.22408 of 2022 etc. batch

within the Act itself, as under.

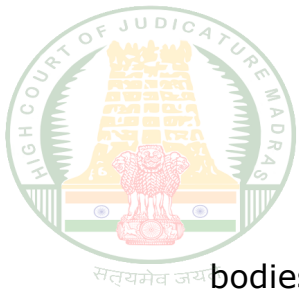
(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey 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 and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."

[emphasis supplied]

12. In ***T.K.Shanmugam v. State of Tamil Nadu, (2015) 8 MLJ 1 (FB)***, the Larger Bench of this Court considered the judgment of the Division Bench of this court in the case of *L.Krishnan* (supra) and held that the said decision did not limit its direction to water



W.P.Nos.22408 of 2022 etc. batch

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bodies under the control of Public Works Department and it will also apply to all natural water resources in different parts of the State. It was further held that wherever encroachments are found, steps should be taken for removal of it in accordance with the relevant provisions of law. Paragraphs (26) and (27) of the judgment in the case of **T.K.Shanmugam** (supra) are relevant and are quoted hereunder:

"26. Thus, the Division Bench in L. Krishnan, did not limit its direction to water bodies under the control of the Public Works Department. In fact, it has issued directions for all natural water resources in the different parts of the State of Tamil Nadu and wherever illegal encroachments are found to take steps for removal of the encroachments in accordance with the relevant provisions of law. The State Government thought fit to enact the Tank Act and though the object of the enactment was couched on a border principle, the Act was restricted to the encroachments in tanks which are under the control and management of the Public Works Department. The question would be as to whether this would in any manner alter the position or could have an effect of diluting the directions/observations of the Division Bench in L. Krishnan's case. The answer to this question shall be



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W.P.Nos.22408 of 2022 etc. batch

an emphatic "NO".

27. Section 11 of the Tank Act, specifically states that the operation of other laws not to be affected, as the provisions of the Tank Act shall be in addition to and not in derogation of any other law for time being in force. Thus, the encroachments in respect of water bodies which are not covered under the provisions of the Tank Act have to be necessarily removed by resorting to the procedure under the Land Encroachment Act. We are not inclined to ignore the directions issued by the Division Bench in L. Krishnan's case, as general observations, as observed in Sivakasi Region Tax Payers Association's case. We may hasten to add that in L. Krishnan's, the Division Bench issued positive direction to the State Government and this cannot be brushed aside as general observations and more so in the light of the observations in the case of Jagpal Singh, wherein pointed directions were issued by the Hon'ble Supreme Court to all the Chief Secretaries. In Sivakasi Region Tax Payers Association's case though the Division Bench upheld the G.O. Ms. No. 854, it held that the said G.O., must read along with the provisions of the Land Encroachment Act, Tank Act and Standing Orders of Board of Revenue. If that be the interpretation, the



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W.P.Nos.22408 of 2022 etc. batch

question would be whether the State Government would be empowered to issue Government Orders for regularising encroachments in water bodies on the ground that the water body has lost its character and it is no longer a water body on account of disuse. We may answer this query by referring to the observations of the Hon'ble Supreme Court in the case of Jagpal Singh:-

"19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."



W.P.Nos.22408 of 2022 etc. batch

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13. The notice in Form-III issued under Rule 6(1) of the Rules of 2007 contemplates that before the actual removal of the encroachment, the encroacher should be put to notice with reasonable time of 21 days to remove the encroachment.

14. In view of the judgment in the case of **T.S.Senthil Kumar** (supra), principles of natural justice has to be followed and for that a party receiving notice in Form-III is given liberty to raise his objection relating to classification of the land or nature of encroachment within two weeks.

15. The petitioners have approached this court without raising an objection or giving representation against the notices in Form-III. It is as per the judgment of the Division Bench of this court in the case of **T.S.Senthil Kumar** (supra) for observance of principles of natural justice. In case of submission of objection within two weeks of the notice, the authorities were directed to consider it and pass an order. The petitioners failed to raise objection on receipt of the notice. In any case, to afford an opportunity of hearing before encroachment is removed, the petitioners were allowed to raise their objections before



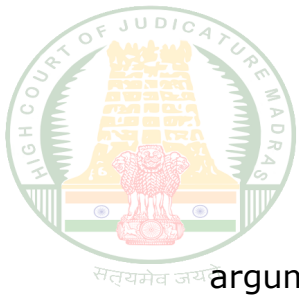
W.P.Nos.22408 of 2022 etc. batch

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this Court to touch upon the issue as to whether the petitioners can establish their right in the land in question.

16. We have called upon learned counsel for the petitioners to refer the documents which may establish the right of the petitioners in the land in question so as to send the matter back to the authority concerned to pass an order on the objections, if any raised before this Court. It is for giving the opportunity of hearing to those having right in the land and not for one who has no legal right to defend. The post-decisional hearing is not required in such a matter where a party fails to establish his/her right even after an opportunity given by the Court.

17. Learned counsel for the petitioners could not refer any document to prove right of the petitioners in the land in question. On the other hand, photographs have been shown by the petitioners to show that even the Public Works Department had constructed a road on the land of Odai and the land occupied by the petitioners are close to it. We cannot endorse the action of the Public Works Department, if they have constructed a road on the land of Odai, rather, in that case, even it needs to be removed. We otherwise cannot accept the



W.P.Nos.22408 of 2022 etc. batch

WEB COPY

argument aforesaid and if the said plea is accepted, then the encroachment overall in the State of Tamil Nadu on waterbodies and tanks cannot be removed though the encroachment on waterbodies and tanks is not permissible as per the provisions of the Act and the Rules and also the judgment of the Apex Court and even the judgment of the Larger Bench in the case of **T.K.Shanmugam** (supra). It does not permit or give authority to the Government to even issue patta in the land of waterbodies and tanks.

18. When the petitioners failed to establish their right over the land in question and in the absence of an objection to the notice under challenge before approaching this Court, the allegation of non-compliance of Form-II remains for the sake of it. In this regard, it is appropriate to refer to the following paragraph of the judgment in the case of **Escorts Farms Limited v. Commissioner, (2004) 4 SCC 281**, wherein it is held as under:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that



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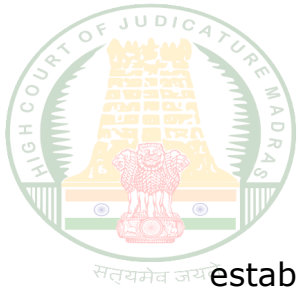


W.P.Nos.22408 of 2022 etc. batch

*the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. **Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.***

[emphasis supplied]

19. In the light of the judgment referred above, we are of the opinion that there would be no purpose in sending the matter back for hearing on the objections, when it was not even raised on receipt of the notice in Form-III to extend the benefit of the judgment in the case of **T.S.Senthil Kumar** (supra). The right to raise objection on receipt of the notice was given by this Court so that if right can be



W.P.Nos.22408 of 2022 etc. batch

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established in the land in question, the notice issued in Form-III may not be given effect. Admittedly, the petitioners have failed to show any right on the land in question.

20. In the instant case, the action for removal was taken only pursuant to the order passed in W.P.No.1372 of 2020 [D.Dayaanand v. The Secretary to Government and others], decided on 05.03.2020. Therein, the Co-ordinate Bench issued direction to the respondent authorities to remove the encroachments from the waterbodies and tanks and further to curtail the mushroom growth of the encroachments.

21. Taking the overall facts into consideration and the fact that an opportunity of hearing has been given by this Court, the petitioners have failed to prove their right on the land. It cannot be on the ground that even the Public Works Department has constructed a road on the Odai and their possession is beyond the road. It does not establish a right to occupy the land without title. The petitioners have even failed to raise objection within two weeks of the notices as mandated by this Court in the case of **T.S.Senthil Kumar** (supra) and



W.P.Nos.22408 of 2022 etc. batch

WEB COPY

the judgment of the Larger Bench in the case of **T.K.Shanmugam** (supra). The petitioners failed to show any right in the land in question and even failed to submit objection to the notices in Form-III prior to approaching this Court. In our considered opinion, sending the matter back to give an opportunity of post-decisional hearing would be nothing but a futile exercise, especially when the matter pertains to encroachment on land of water tank and issue of boundary cannot be raised in a writ jurisdiction being a question of fact and otherwise without a right to occupy the land.

22. The water bodies play a significant role in maintaining the ecology and environment, besides being a source of drinking water. Usage of land earmarked as waterbody for any other purpose would be detrimental to the society at large, as the State at times suffers drought and in contrast floods because water cannot accumulate on account of encroachments on the waterbodies/water tanks.

23. The Apex Court in the case of **Jagpal Singh v. State of Punjab, (2011) 11 SCC 396** held as under:

*"19. In **this connection we wish to say that our***



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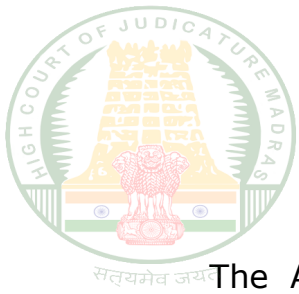
W.P.Nos.22408 of 2022 etc. batch

ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in, etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rainwater harvesting methods, which served them for thousands of years.

20. Over the last few decades, however, ***most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.*** Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so-called auctions is not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."

[emphasis supplied]

The Apex Court has appreciated the ancestors who could foresee the value of water which is essentially required by everyone on the earth.



W.P.Nos.22408 of 2022 etc. batch

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The Apex Court in the case of **Jagpal Singh** (supra) had further observed that encroachments made by few greedy people on ponds contributed to water shortage in the country. Therefore, we need to give sanctity to the subject.

24. Time and again, this court, held that unchecked encroachment of waterbodies has vastly reduced the area which was reserved in the interest of public and ecological balance. It is the bounden-duty of the officials of the Revenue Department and the Public Works Department to preserve and protect government lands which have been reserved for specific purposes. Indisputably, such encroachments could not have taken place without the knowledge of the authorities.

25. Before parting with this case, it is necessary to observe that if rampant encroachment of waterbodies and tanks is regularised, it would lead to encouraging encroachments and the ultimate result would be facing drought and in contrast floods.



W.P.Nos.22408 of 2022 etc. batch

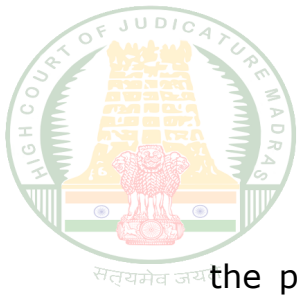
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26. If we take care of the nature, nature will take care of us.

The problem of global warming is prevalent only because of the failure of the human being to take care of the nature. It is the bounden duty of every citizen to maintain water-bodies, tanks, grazing land and even forests. If we keep on affecting the nature, it would affect the human beings and it is happening day-in and day-out in the form of natural disasters like Tsunami, Earthquake, etc.

27. In such view of the matter, we are unable to accept the prayer made by the petitioners to direct the Government to issue patta in respect of waterbodies/tanks. Rather, for that, the petitioners were given an opportunity to refer the provision of law, but they failed to do so.

28. Finding that learned counsel for the petitioners could not refer to any right of the petitioners in the land in question and otherwise an opportunity of hearing has been given by this court, instead of sending the matter for post-decisional hearing, we hold that



W.P.Nos.22408 of 2022 etc. batch

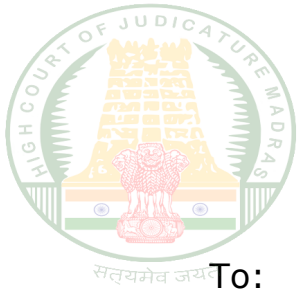
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the petitioners have not made out a case warranting interference in the notices in Form-III impugned herein.

29. Accordingly, the writ petitions fail and they are dismissed. There will be no order as to costs. Consequently, all connected miscellaneous petitions are closed.

(M.N.B., C.J.) (N.M., J.)
30.08.2022

Index : Yes
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W.P.Nos.22408 of 2022 etc. batch

To:

WEB COPY

- 1.The Secretary,
State of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai-600 009.
- 2.The Assistant Engineer,
Public Works Department,
Water Resource Organisation,
Adayar Irrigation Division,
St. Thomas Mount,
Chennai-600 016.
- 3.The District Collector,
Thiruvallur District,
Thiruvallur.
- 4.The Revenue Divisional Officer,
Thiruvallur District.
- 5.The Tahsildar,
Poonamallee Taluk,
Thiruvallur District.



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W.P.Nos.22408 of 2022 etc. batch

THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

bbr

W.P.No.22408 of 2022
etc. batch

30.08.2022