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W.P.No.13493 of 2021

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and

W.M.P.Nos.14361 and 14363 of 2021

THE HONOURABLE CHIEF JUSTICE

and

D.BHARATHA CHAKRAVARTHY, J

(The Order of the Court was made by The Honourable Chief Justice)

The Writ Petition has been filed to seek a direction for removal of the encroachments in the water-tank in S.No.68/2 situated in the centre of the Karadivavi Village in Palladam Taluk, Tiruppur District.

2. Learned Additional Advocate General submitted that many encroachments have been removed and the respondents are in the process of removing the other encroachments on the water-bodies. It could not be carried out in the absence of the allotment of alternative lands to the encroachers, and thus, time has been prayed to remove the remaining encroachments also.

3. A reference to paragraphs 10 and 11 of the status report was made, to indicate that while certain encroachments have been removed, 20 encroachers identified would also be removed on allotment of land to them in S.No.197/2.

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4. Learned Additional Advocate General could not refer to any provision of

law, which mandates the State Government to allot a land to the encroachers.

However, he prayed that till alternative lands are allotted, the encroachments may not be removed.

5. The encroachments are on the water-bodies. The allotment of alternative lands to the encroachers, would only promote the tendency to encroach on the Government land and the water-bodies. For years, the Officers remained silent spectators and failed to take any action in reference to the encroachments on the water-bodies. Therefore, there is a total failure on the part of the Officers concerned to remove the encroachments on the water-bodies and even on catchment-areas. The encroachment of the water-bodies would lead to shrinkage of the water-bodies, destroying them to the maximum and creating acute water scarcity. At times, in the absence of storage facilities to store the water during rainy season, it causes floods.

6. In view of the above, learned Additional Advocate General could not clarify as to why the Officers are promoting the encroachers by allotting alternative lands else-where. It may be a Government policy or decision. However, in the absence of any statutory provision, it would lead to promoting encroachment of the lands on the water-bodies and the same cannot be

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endorsed.

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7. In the above context, it is worthwhile to mention a decision of the Supreme Court in the case of ***Joginder Vs. State of Haryana, (2021) 3 SCC***

300 : 2021 SCC OnLine SC 59 at page 305:

"**13.** It is required to be noted that the persons in illegal occupation of the government land/panchayat land cannot, as a matter of right, claim regularisation. Regularisation of the illegal occupation of the government land/panchayat land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the government land/panchayat land are not entitled to regularisation. As observed by this Court in the recent decision in *State of Odisha v. Bichitrananda Das* [*State of Odisha v. Bichitrananda Das, (2020) 12 SCC 649*] , an applicant who seeks the benefit of the policy must comply with its terms. In the present case, the policy which was formulated by the State Government which culminated in Rule 12(4) of the 1964 Rules specifically contained a stipulation to the effect that the illegal/unauthorised occupation up to a maximum of 200 sq yd only can be sold on regularisation and on fulfilment of other conditions mentioned in Rule 12(4) of the 1964 Rules. The petitioners are found to be in illegal occupation of the area of more than 200 sq yd. Therefore, one of the conditions mentioned in Rule 12(4) is not satisfied and therefore both, the competent authority as well as the High Court, have rightly held that the petitioners are not entitled to the benefit of the provisions of Rule 12(4) of the 1964 Rules. We are in complete agreement with the view taken by the High Court as well as the competent authority.

14. At this stage, the decision of this Court in *Jagpal Singh* [*Jagpal Singh v. State of Punjab, (2011) 11 SCC 396* :

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(2011) 3 SCC (Civ) 694] is required to be referred to. In the said decision, this Court had come down heavily upon such trespassers who have illegally encroached upon on the Gram Sabha/Gram Panchayat land by using muscle powers/money powers and in collusion with the officials and even with the Gram Panchayat. In the said decision, this Court has observed that "such kind of blatant illegalities must not be condoned". It is further observed that "even if there is a construction the same is required to be removed and the possession of the land must be handed back to the Gram Panchayat". It is further observed that "regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village". Thereafter, this Court has issued the following directions: (SCC pp. 401-402, para 23)

"23. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."



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In view of the above also, the prayer of the petitioners for regularisation of their illegal occupation of the panchayat land cannot be accepted."

8. In the light of the aforesaid and by way of interim order, the respondents are directed to remove the remaining encroachments by 04.04.2022 and file a report accordingly.

(M.N.B., C J) (D.B.C.J)
23.03.2022

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