

(2009) 08 MAD CK 0023

In the Madras High Court

Case No : Writ Petition (MD) No. 6602 of 2005 and W.P.M.P. No. 7161 of 2005

The President, Malayalathanpatti Residents Welfare
Association

APPELLANT

Vs

The District Collector and The Executive Engineer, Public
Works Department (W.R.O), Periyar Main Canal Division

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 08 MAD CK 0023

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Viswalingam, for the Appellant; So. Paramasivam, Government
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The association has filed this writ petition in respect of thirty five of their members whose list has been given insisting that

they have all encroached into the poramboke area and have put up a construction in survey No. 15, Malayalathanpatti, Kodikulam II Bit, Madurai

North Taluk, Madurai District and they have to get the benefit under G.O. Permanent No. 166, Revenue Department dated 27.03.2000.

2. The only contention raised before this Court is that G.O. Permanent No. 166, Revenue Department dated 27.03.2000 contemplates the

Constitution of a Committee which has to pass necessary orders and the encroachers will come under the benefit of G.O. Permanent No. 166,

Revenue Department dated 27.03.2000. Even though this is a tank poramboke, only if the Collector and other officials inspect the property they

can be removed or ordered to be so. The petitioners have stated that they have

been in long possession of this encroachment land and they having been allowed to put up construction, they will be put to heavy loss if they are evicted.

3. The Government has filed a detailed counter. The counter has been filed by the District Collector, Madurai who is the competent authority under

G.O. Permanent No. 166, Revenue Department dated 27.03.2000. In respect of regularization in Paragraph 6 of the counter, the District

Collector has specifically stated that G.O. Permanent No. 166, Revenue Department dated 27.03.2000 will apply only when the lands are not

required for Government purpose and assignment can be given for those residing thereon for more than 10 years and in so far as the present

petitioner's association members are concerned, the Public work authorities who are the competent authorities has given a report insisting that the

lands are required for future and in such circumstances, the considered opinion of the technical Department like Public Works Department need to

be given due merit, it is considered as not feasible to grant assignment in accordance with the G.O. referred to thereon.

4. The Government also relied upon the judgment rendered in W.P. No. 22274 of 2007 dated 02.06.2007 filed by the Secretary, Sivakasi Region

Tax Payers Association, wherein this Hon'ble Court has reiterated that fact that the water course area should be kept intact, only then irrigation

system shall flourish and useful to drain the water at the time of flood as well as heavy rains and also granted stay of the assignment of lands in the

water course and water body poromboke and based on the order of this Court, the Special Commissioner and Commissioner of Land

Administration, Chennai in Letter Mp.F1/27403/2006 dated 09.07.2007 and stayed further issue of house site pattas in the said areas. As per the

decision of this Court, the plea of the association is not maintainable and they also would further contend that the association cannot file a writ

petition in respect of those persons who have occupied in different areas and above all these things from the photographs produced by the

petitioner himself would show the encroachments area has been even utilized to put up Air conditioned houses which are constructed in this

encroached area and they do not deserve any leniency.

5. In so far as the encroachment is concerned G.O. Permanent No. 166, Revenue

Department dated 27.03.2000 will not apply to the lands

encroached in as much as in this case the land is a tank poramboke and definitely in the time of floods the area would be required, and as per the

advise and recommendation of the Public Works Department authority, this land cannot be considered to be applicable under G.O. Permanent

No. 166, Revenue Department dated 27.03.2000.

6. Heard both parties. From the affidavit of the Collector who is a competent authority who has categorically stated that the land in question was

required by the Public Works Department authorities to maintain a tank poramboke area as in the circumstances of flood or other calamities any

encroachments will totally hamper the safeguard of the area itself and such encroachment are illegal. The Collector also specifically stated that the

G.O. Permanent No. 166, Revenue Department dated 27.03.2000 will apply only if the land is not required by the Government, whereas in this

case as the Public Works Department authorities have opined that the area is required in the future, if floods affected such area, it is definitely

required and such recommendation by the competent authority namely Public Works Department could not be brushed aside and hence the

applicability of G.O. Permanent No. 166, Revenue Department dated 27.03.2000 as claimed by the association cannot be granted and above all

these things the plea made by the Government Advocate and from the photographs it is seen that big houses have been constructed with A/C

facilities would only denote that the encroachers cannot be treated as landless poor. In any view of the matter, as stated above, the association

cannot fight for the cause of the alleged encroachers who had to individually satisfy the requirements for the implementation of the said G.O, which

aspects cannot be considered in this writ petition.

7. In this connection, I am guided by the two Division Bench judgment of this Hon"ble Court. The first judgment reported in L. Krishnan Vs. State

of Tamil Nadu and Others, , in which the Hon"ble then Chief Justice Markandey Katju (as he then was) and Justice F.M. Ibrahim Kalifulla have

categorically held that when the land in question has been classified as "Odai Poramboke" in the revenue records then there should be specific

steps taken to make an overall study of all such encroachments in respect of lands which have been classified as lands meant for the purpose of

storage of water(i.e., ponds, tanks, lakes, etc.) and such a step required to be taken by the State in order to improve the water storage facility

prevailing in the State since in many parts of Tamil Nadu people are suffering from an acute shortage of water.

8. The Division Bench further held that it is imperative that such natural resources providing for water 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. Finally after relying

upon the various judgments of the Hon"ble Supreme Court, the Division Bench has held as follows:

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.

9. The latest judgment is reported in 2008 1 MLJ 417 (Anti Corruption Movement, rep. by its General Secretary, Saligramam, Chennai v.

Government of Tamil Nadu, rep. by Secretary, Public Works Department, Chennai and Ors.), in which the Hon"ble then Chief Justice Ajit

Prakash Shah(as he then was) and Justice P.Jothimani have held as follows:

Having considered the difficulties expressed by the learned Government Pleader in carrying out the process of removal of encroachments, we pass

the following order:

(i) The Secretaries, Public Works Department, in consultation with the respective District Collectors, are directed to decide the programme of

evicting the encroachments in the water bodies falling in Categories "A" and "B" referred to above, by the end of November 2007 and complete

the process of removal of such encroachments by the end of May 2008.

(ii) The State Government is at liberty to consider, in appropriate cases, grant of alternative sites for re-location of the encroachments, as per their

policy decision. All the authorities concerned like the local authorities as well as the police officials, will extend their full cooperation to the the

Public Works Development/District Collectors for effectively implementing the policy decision of the Government of removal of encroachments

from water bodies.

(iii) No Civil Court shall entertain any suit or proceeding in connection with the removal of the encroachments in the water bodies and every

person, who has put up any construction in such water bodies and who is aggrieved by the action taken by the authorities of removal of such

encroachment from the water bodies, is at liberty to move this Court under Article 226 of the Constitution of India and all such applications shall

be placed before the First Bench of this Court.

(iv) The State Government is directed to identify and take stern action against the land grabbers who have sold the lands in the water bodies to

innocent purchasers, which would act as a deterrent. the survey numbers of the lands in various water bodies in question are directed to be notified

and the Registration Department concerned is directed not to register any transaction in respect of such lands falling under the water bodies.

(v) In respect of the Porur tank, the respondents have already removed all the encroachments and the said water body is free of any

encroachment. In case any encroachment is made on the water body in future, it will be open for the authorities to remove such encroachment even

without, issuing any notice to such encroachers.

(vi) It is also made clear that even after the encroachments from the water bodies are removed as per the policy decision of the State Government,

the respective District Collectors shall keep a close watch over such water bodies and in case of any fresh encroachment thereon, the District

Collectors are at liberty to remove the same with the help of police, wherever necessary, without any notice, to such encroachers.

10. The endeavor of the Division Bench judgments is categorically to say that the District Collector will take necessary steps for removal of the

encroachments in respect of tanks, ponds, Odai and continued to be maintained as the same. Even if any subsequent encroachments are made, the

District Collectors are at liberty to take necessary steps to remove all such encroachments.

11. When that being the case, all the decision reported by this Hon''ble Court are to be respectfully carried out by the authorities. The arguments of

the petitioner association claiming that the encroachments in river poramboke has to be regularized is legally not sustainable. Therefore following

the Division Bench Judgments of this Hon''ble Court the Association is not entitled to claim the relief in the writ petition.

12. In any view of the matter, as stated supra, since the Government is requiring the land, the question of implementation of G.O. Permanent No.

166, Revenue Department dated 27.03.2000 will not arise. In so far as the petitioner association is concerned if at all the individuals are entitled,

they have to prove the same before the authority concerned in accordance with law and this petition filed by the association calling upon them to

implement G.O. Permanent No. 166, Revenue Department dated 27.03.2000 is legally not sustainable. Hence the petition is dismissed. No costs.

Consequently the connected miscellaneous petition is also closed.