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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.09.2016**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.[MD].No.4435 of 2016

S.Jamal Mohammed .. Petitioner

Vs.

1.The District Collector,
Tanjore District, Tanjore.

2.The Revenue Divisional Officer,
O/o.the Revenue Divisional Office,
Tanjore District.

3.The Tahsildar,
Pattukottai Taluk,
Tanjore District.

4.The Executive Engineer,
O/o.the Executive Engineer,
the Public Works Department,
Tanjore, Tanjore District.

5.The Assistant Executive Engineer,
O/o.the Assistant Executive Engineer,
the Public Works Department,
Kalanai Channel Sub Division,
Pattukottai, Tanjore District.

6.K.Ahamed Thasim ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 1 to 5 to remove the encroachments made by the respondent No.6 in Survey No.71/1 in Periya Eri Channel, Eripurakarai Village, Pattukottai Taluk, Tanjore District within a stipulated time.

For Petitioner : Mr.T.Lajapathi Roy
For respondents 1 to 5: Mr.M.Govindan,
Special Government Pleader
For 6th respondent : Mr.E.Balasubramanian

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O R D E R

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

The petitioner has come up with this Public Interest Litigation seeking a direction to the respondents 1 to 5 to remove the encroachments made by the respondent No.6 in Survey No.71/1, which is a channel known as Periya Eri Channel, Eripurakarai Village, Pattukkottai Taluk, Tanjore District.

2.We have heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the respondents 1 to 5 and the learned counsel appearing for the 6th respondent.

3.The learned counsel appearing for the petitioner would submit that the sixth respondent is the encroacher. But, the learned counsel appearing for the sixth respondent would submit that he has not encroached upon the land comprised in Survey No.71/1 at all and that his property is situated only in Survey No.71/3.

4.The fifth respondent herein viz., the Assistant Executive Engineer, PWD, Kalanai Channel Sub Division, Pattukottai, has filed a detailed counter affidavit, wherein in paragraph No.6, he has stated as follows;

> "6.It is respectfully submitted that with the assistance of the Revenue officials, a details perambulation was made and that in the CMP channel vested with the Public Works Department passing through Athiramapattinam, Aeripurakarai and Narasingapuram Villages, 67 encroachments were identified and notices under Sections 6 and 7 of the Act were served on the encroaches on 24.03.2016 and that since the encroachers have not come forward for removing their illegal encroachments or offered their explanation, eviction was fixed on 03.08.2016 and assistance from the Revenue and Police officials were sought for. But due to unavoidable circumstances, the eviction was postponed to 27.09.2016 and the assistance from the Revenue and Police officials were sought for. On 27.09.2016 the illegal encroachments made in the channel will be removed and the channel restored to its original position."

5. In our considered view, if the sixth respondent is really encroached upon the land comprised in Survey No.71/1, it is for the authority concerned to remove the same by following the procedure established by law. Therefore, we do not like to express any opinion on the stand taken by the sixth respondent that he has not encroached upon the land comprised in Survey

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No.71/1. However, we are inclined to dispose of the Writ Petition recording the stand taken by the fifth respondent in paragraph No.6 of his counter affidavit, as extracted above. Accordingly, this Writ Petition is disposed of. No costs.

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Sd/-
Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To
1.The District Collector,
Tanjore District, Tanjore.

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O/o.the Revenue Divisional Office,
Tanjore District.

3.The Tahsildar,
Pattukottai Taluk,
Tanjore District.

4.The Executive Engineer,
O/o.the Executive Engineer,
the Public Works Department,
Tanjore, Tanjore District.

5.The Assistant Executive Engineer,
O/o.the Assistant Executive Engineer,
the Public Works Department,
Kalanai Channel Sub Division,
Pattukottai, Tanjore District.

+1 CC to Mr.T.LAJAPATHI ROY, Advocate, SR No.56219
+1 CC to Mr.E.BALASUBRAMANIAN, Advocate, SR No.55792
+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.56403

Order made in
W.P.[MD].No.4435 of 2016
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