

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.17399 of 2017

and WMP.No.18902 of 2017

1.Lower Bhavani Farmers Federation
Represented by its Vice President,
A.Ramasamy,
Son of Late S.R.Appachi Gounder

2.E.A.Lakshmanan, ... Petitioners

vs.

1.The District Collector,
Erode District, Erode.

2.The District Revenue Officer,
Erode District, Erode.

3.The Revenue Divisional Officer,
Erode Taluk, Erode District.

4.The Sub Collector,
Gobichettypalayam Taluk,
Erode District.

5.The Tahsildar,
Erode Taluk, Erode District.

6.The Tahsildar,
Bhavani Taluk,
Erode District.

7.The District Surveyor,
Erode District, Erode.

8.The Executive Engineer,
Bhavani Sagar Dam,
Public Work Development (Water Resource Organisation),
Sathyamangalam.

9.The Superintending Engineer,
Tamil Nadu Generation of Electricity and
Distribution Corporation (TANGEDCO)
Gobichettypalayam, System, Gobichettypalayam Taluk,
Erode District.

10.The Commissioner,
Bhavani Municipality,
Bhavani Taluk, Erode.

11.Selvaraj
12.Susila Sundaramurthy
13.E.S.Yegambaram
14.Viswanathan
15.Myilsamy
16.E.S.Perumal
17.E.R.Palanisamy
18.Malathi
19.Senthil
20.Vijayakumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the official respondents 1 to 10 to remove the encroachment in the river bed of Bhavani River i.e., S.F.No.808/1 in Bhavani Taluk of Erode District.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mrs.M.E.Rani Selvam
Additional Government Pleader
for R1 to R8
Mr.S.K.Rameshwar for R9
Mr.P.Srinivas for R10
Mr.I.C.Vasudevan for R11 to R20

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner is the Vice President of the petitioner Association and their endeavour appears to be removal of the encroachments in S.No.808/1 in Bhavani Taluk, which is classified as "River Poromboke". The petitioner would further state that Bhavani Sagar Dam across river Bhavani was constructed during 1948 - 1955 and an extent of 2,07,000 acres get irrigation through Lower Bhavani Project Canal (L.B.P. Canal) and modernization was also done. It is further averred by the petitioners that the area between Bhavani river on one side and Lower Bhavani Project (LBP Canal) on the other side being irrigated by LBP Canal water is termed as LBP ayacut and the lands fall near Bhavani river bed is called Bhavani ayacut which is very small and few farmers not covered under the above ayacut are called non-ayacutars and their water source for

irrigation is their own well. It is the specific case of the petitioners that the lands in S.No.808/1 of Bhavani Village is a water course and the private respondents had encroached upon the same and in this regard, the petitioners had submitted very many representations and some of the encroachers, namely E.S.Perumal, E.R.Palanisamy and E.S.Vijayakumar, viz., respondents 16, 17 and 20, had filed W.P.Nos.25413 of 2014 and 27480 of 2014 and the said writ petitions are pending. The grievance expressed by the petitioners is that though very many representations were sent to the respondents for removal of encroachments, no order has been passed and hence, came forward to file this writ petition.

3. The writ petition was entertained on 10.07.2017 and thereafter, some of the official respondents had filed their counter.

4. The seventh respondent has filed the counter affidavit stating among other things that though the writ petitioners expressed grievance that the survey stone fixed at "B" point between S.No.43/5 of Elavamalai Village and S.No.808/1 of Bhavani Village is not correct, it is not so for the reason that the District Administration had initiated action and the Revenue and Survey Officers had conducted inspection and found that boundary stones were fixed at correct point and there was no error. Insofar as the removal of encroachments is concerned, the District Administration is taking all efforts to identify the encroachments on the Government Poromboke land and action is being taken to evict the encroachers and as such, the petitioners cannot have any grievance.

5. The ninth respondent has filed the counter affidavit stating among other things that in the light of the grievance expressed by the petitioners, through the Collector of Erode District, action was initiated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and further action is to be pursued.

6. The eighth respondent has filed the counter affidavit stating among other things that to evict the encroachments as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the Bhavani river in this survey number was surveyed by the team of surveyors comprising Erode and Bhavani Taluks and boundaries were demarcated by the Survey Department and boundary stones were laid by the Water Resources Department and the area encroached by the encroachers were listed out by the respective Tahsildar and totally, twelve persons had encroached the river poromboke and cultivating in these lands, which affects the free flow of water, particularly at the time of flood seasons and also causes soil erosion in the central river bed and further action will be taken in accordance with law.

7. The learned counsel appearing for the petitioners would submit that in the light of the categorical stand taken by the respondents in their counter affidavits, there cannot be any impediment to direct the respondents to remove the encroachments forthwith from the water body.

8. Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing for the respondents 1 to 8 would submit that action under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, will be taken as expeditiously as possible.

9. Mr.I.C.Vasudevan, learned counsel appearing for the respondents 11 to 20/private respondents would submit that most of the lands under the encroachments are patta lands and only a smaller extent has been encroached upon water course and in respect of patta lands, action cannot be taken at all and prays for interference.

10. A perusal of the counter filed by the respondents would indicate that survey has been done and action is likely to be taken under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and as and when action has been initiated under the said Act by issuance of notice under Form-III, the private respondents are at liberty to submit their response by enclosing relevant authenticated documents and upon receipt of the same, the concerned official respondents shall consider and dispose of the same as expeditiously as possible in accordance with law.

11. In the light of the above facts and circumstances, this Court directs the Executive Engineer, Public Works Department (Water Resource Organisation), Bhavani Sagar Dam, Sathyamangalam, Erode District to initiate proceedings under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, by issuing notice to the private respondents under Section 7 of the said Act, within a period of six weeks from the date of receipt of a copy of this order and upon receipt of the same, the private respondents are at liberty to submit their response/explanation by enclosing relevant authenticated documents within a period of four weeks thereafter and upon receipt of the same, the said official shall give disposal as expeditiously as possible as per law.

12. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm

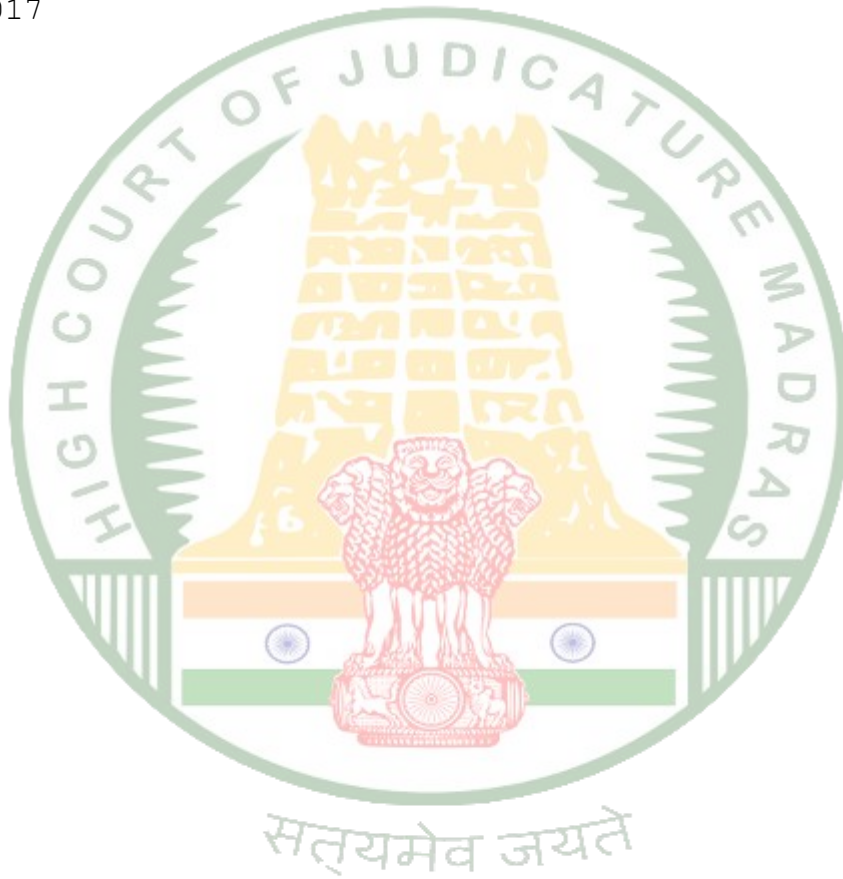
To

- 1.The District Collector,
Erode District, Erode.
- 2.The District Revenue Officer,
Erode District, Erode.
- 3.The Revenue Divisional Officer,
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- 9.The Superintending Engineer,
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Distribution Corporation (TANGEDCO)
Gobichettypalayam, System Gobichettypalayam Taluk,
Erode District.

+1 cc to Mr.I.C.Vasudevan Advocate sr 81236
+1 cc to Spl Govt Pleader sr 81712
+1 cc to Mr.M.Guruprasad Advocate sr 81544

W.P.No.17399 of 2017

gmr (co)
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