



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 02.02.2018

CORAM

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

AND

THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.P.(MD)No.2056 of 2018

and

W.M.P(MD)Nos.2293 and 2294 of 2018

Dharmalingam

.. Petitioner

Vs.

1. The District Collector,
Collector's Office,
Tirunelveli District,
Tirunelveli.

2. The Tahsildar,
Taluk Office,
Sivagiri,
Tirunelveli District.

3. Block Development Officer,
Panchayat Union Office,
Vasuthevanallur Panchayat Union,
Vasuthevanallur,
Tirunelveli District.

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records challenging the impugned proceedings of the third respondent Na.Ka.No.92/42/2017 dated 24.11.2017 to quash the same and direct the third respondent not to vacate the petitioner from the land in Survey No.187 and 295/5 of Thenmalai II Village, Meenatchipuram Panchayat, Vasuthevanallur Panchayat Union, Sivagiri Taluk, Tirunelveli District.

For Petitioner : Mr.S.Radhakrishnan

For Respondents : Mr.D.Muruganantham

Addl. Govt. Pleader for R1 and R2

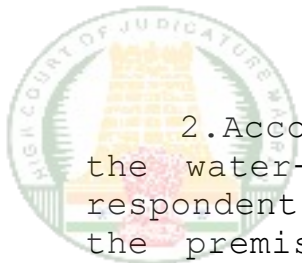
Mr.S.Angappan

Govt. Advocate for R3

ORDER

[Order of the Court was delivered by **N.KIRUBAKARAN, J**]

The petitioner is the owner of the property comprised in S.No.187 and he is said to have been encroached upon the water channel comprised in S.No.295/5 to an extent of 00380 sq.ft. The said properties are located in Themalai II Village, Vasuthevanallur Panchayat.



2. According to the respondents, the petitioner encroached upon the water-body and raised coconut trees. Therefore, the third respondent has given notice calling upon the petitioner to vacate the premises. Challenging the same, the petitioner has come before this Court.

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3. Mr. S. Radhakrishnan, learned counsel appearing for the petitioner would submit that the water-body is not in use right from 1965. Apart from the petitioner, about 9 persons have also encroached upon water body. When that being the position, the petitioner and one Thangavelu alone have been directed by the officials with *mala fide* motive.

4. On the other hand, Mr. D. Muruganantham, learned Additional Government Pleader would submit that only after surveying the properties and based on the Tahsildar's report only, the show cause notice has been issued calling upon the petitioner to vacate the land, since it is water-body.

5. Heard the parties and perused the records.

6. There is no dispute with regard to the property comprised in S.No.187 and 295/5 is classified as water-body. The petitioner has not denied the fact that it is water-body and his only contention is right from 1965, the Odai is not used. Since this is only a show cause notice, the petitioner is directed to give reply within a period of four weeks giving the details of his defence. On receipt of the said reply, the third respondent has to pass orders, after giving opportunity to the petitioner within a period of eight weeks thereafter. Till the order is passed by the third respondent and a copy of the order is served upon the petitioner, the petitioner should not evict from the premises. It is made clear that even if the petitioner has to be evicted, the coconut trees which have been planted, should not be disturbed.

7. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.



2. The Tahsildar,
Taluk Office,
Sivagiri,
Tirunelveli District.

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3. Block Development Officer,
Panchayat Union Office,
Vasuthevanallur Panchayat Union,
Vasuthevanallur,
Tirunelveli District.

+1cc to Mr.S.Radhakrishnan, Advocate Sr.No.46080

+1cc to Spl.Government Pleader Sr.No.46237

SKN

VB/SKN/RSK/SAR4/20.02.2018/3P/6C

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