



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM:

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**  
and  
THE HONOURABLE **MRS.JUSTICE R.THARANI**

**Writ Petition (MD).No.3609 of 2018**  
and  
**W.M.P. (MD) .No.3740 of 2018**

R.Vinoth

... Petitioner

Vs.

1. The Assistant Engineer,  
Public Works Department,  
Water Resources Organization,  
Irrigation Division No.2,  
Kottakaraiyaru Sub-Division,  
Ilayankudi,  
Sivagangai District.

2.S.Asaitambi

3.Katturaja

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a writ of certiorari, calling for the records of the first respondent vide his impugned notice in Letter No.19/Vu.Po.2/Ilai/ dated 02.02.2018 and to quash the same so far as petitioner concerned.

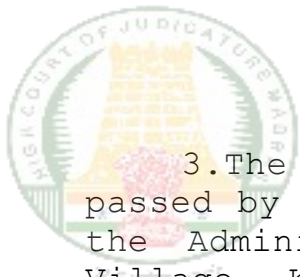
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|----------------|---|-----------------------------------------------|
| For Petitioner | : | Mr.D.Rameshkumar                              |
| For Respondent | : | Mr.S.Dhayalan (For R1)<br>Government Advocate |

### **ORDER**

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.D.Rameshkumar, learned counsel for the petitioner and Mr.S.Dhayalan, learned Government Advocate accepts notice on behalf of the first respondent.

2.In the light of the glaring error, which is apparent on the face of the impugned order, we are inclined to dispose of the writ petition without giving notice to the respondents 2 and 3.



3.The petitioner is aggrieved by an order dated 02.02.2018, passed by the first respondent and the said order is addressed to the Administrators of Mariamman and Pillaiyar Kovil, Pukkulam Village, Kalladithidal Post, Visavanoor Group, Ilaiyankudi. In the impugned order, there is a reference to the order passed in W.P(MD).No.21381 of 2017, dated 05.01.2018, citing the said order, the respondent has issued the impugned eviction notice. The copy of the order passed in W.P(MD).No.21381 of 2017 has been filed in the typed set of papers. The said writ petition was filed by the second respondent herein, who prayed for a direction to direct the Official respondents, which includes the first respondent herein to remove the encroachments on the bank of Kanmai situated in Pukkulam Village, Ilaiyankudi Taluk, Visavanoor Group, Sivagangai District, stating that it is the Government property and to prevent the encroachments in future and maintain the same for public use. By considering the petitioner's representation dated 19.09.2017, we find that the second respondent/petitioner withdrew the writ petition with liberty to send appropriate representation to the Jurisdictional Public Works Department Official, for removal of encroachments in form of temple on the bank of water body and also made an endorsement to that effect in the writ petition. The Division Bench recorded the same and dismissed the writ petition as withdrawn with liberty as sought for by the second respondent/petitioner.

4.Thus, there was no direction issued by the Division Bench to carryout eviction. Therefore, the first respondent committed a serious illegality as if the Court had directed eviction to be undertaken. Thus the first respondent has not only misled the petitioner but has also committed contempt of the order passed by this Court. For illegality committed by the first respondent, he is not only bound to be proceeded for contempt, but the department action should also been initiated against him. Even assuming that there was an encroachment by the petitioner in Survey No.564-A & 564-B are classified as temple lands, the first respondent without issued notice on relevant statue cannot proceed directly for evicting the alleged encroachment. Thus the impugned proceeding are wholly illegal. The impugned proceeding does not state as to whether the second respondent has given fresh representation as represented by him in W.P(MD).No.21381 of 2017. Thus we find that the impugned action is high-handed action and cannot be sustained.

5.With the above reason, the writ petition stands allowed and the impugned order is quashed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)



To

The Assistant Engineer,  
Public Works Department,  
Water Resources Organization,  
Irrigation Division No.2,  
Kottakaraiyaru Sub-Division,  
Ilayankudi,  
Sivagangai District.

+ 1 cc TO Mr.D.Rameshkumar , Advocate in SR No. 50028  
+ 1 cc TO The Special Government Pleader in SR No. 50619

mm/rmk

AE/SKN RSK/AR1/02.03.2018/3P/4C

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