



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMARW.P. (MD) No.19311 of 2018

S.Asaithambi

... Petitioner

vs.

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The Tahsildar,
Ilayangudi,
Sivagangai District.

3.The Executive Engineer,
Public Works Department,
Sivagangai District.

4.The Assistant Engineer,
Public Works Department,
Ilayangudi,
Sivagangai District.

5.R.Vinoth

6.Krishnan

7.Velu

8.Annadurai

9.Krishnan

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to take necessary steps to remove the encroachments on the bank of Kanmai situate at Pukkulam Village, Ilayangudi Taluk, Visavanoor Group, Sivagangai District which is belongs to Government property and prevent from encroacher in future and maintaining the same for public use and considering the petitioner's representations dated 19.09.2017 and 28.08.2018.

For Petitioner : Mr.T.Sakthikumaran

for Mr.K.Seemaraj

<https://hcservices.ecourts.gov.in/Reservices> For R4 : Mr.A.K.Baskarapandian

Special Government Pleader

For R6 :

Mr.D.Rameshkumar

O R D E R

[Order of the Court was made by **M.M.SUNDRESH, J.**]

This is third round of litigation. The petitioner earlier approached this Court, *inter alia* alleging that there was an encroachment in the water body. This Court, by the order dated 05.01.2018, in WP(MD)No.21381 of 2017 was pleased to pass the following order.

"The learned counsel appearing for the petitioner, on instructions, seeks permission of this Court to withdraw this writ petition with a liberty to send appropriate representation to the jurisdictional Public Works Department official, for removal of encroachment in the form of temple on the banks of the water body and also made an endorsement to that effect.

2.This Court heard the submission of the learned Government Advocate appearing for the respondents.

3.In the light of the endorsement so made, this writ petition is dismissed as withdrawn and the liberty sought for by the petitioner is granted. No costs."

2.Construing the aforesaid order as a positive direction, effective notice was issued. That notice became the subject matter of the writ petition filed in WP(MD)No.3609 of 2018. This writ petition was disposed of by the order dated 21.02.2018. The following is the operative portion of the said order:

"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

and is a 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."

3.The aforesaid order was passed based upon the report, which indicates, *prima facie* that water body has been encroached upon by the private respondents therein. Seeking action on the same in pursuant to the representation dated 28.08.2018, the present writ petition has been filed.

4.The learned counsel appearing for the petitioner submitted that the report of the PWD department has never been challenged, doubted and then taken into consideration. What has been stated by the Division Bench in WP(MD)No.3609 of 2018 is only an observation in the event of the land belonging to a temple. Therefore, the respondents 3 and 4 ought to be directed to take appropriate action as per law.

5.The learned counsel appearing for the sixth respondent would submit that the land in question is belonged to a temple. That was the observation of the Division Bench in WP(MD)No.3609 of 2018. There was a sub division which took place later. Thus, the writ petition will have to be dismissed.

6.The learned Special Government Pleader appearing for the respondents 1 to 4 would submit that it is not correct to state that the land is a temple land. It forms part of the water body, belonging to the respondents 3 and 4. However, action would taken by following due procedure.

7.The order of the Division Bench in WP(MD)No.3609 of 2018 cannot be termed as one giving positive finding on the nature of the land. Admittedly, the report of the PWD department has not been looked into. The Division Bench did not appreciate the factum of issuing notice by treating the order passed by this Court as a positive one. Therefore, there is no clear and positive finding regarding the nature of land. In any case, this is a matter to be considered by the respondents 3 and 4. Therefore, suffice it direct them to take appropriate action in the manner known to law after following due procedure and after issuing notice to the private respondents as well as to the petitioner. The needful shall be done within a period of eight weeks from the date of receipt of a copy of this order. It is well open to the private respondents to produce all the documents to prove that the land in question is only a temple land and not a water body.

8.The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-III)

<https://hcservices.ecourts.gov.in/hcservices/> True Copy //

Sub Assistant Registrar (CS-IV)



To

1.The District Collector,
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2.The Tahsildar,
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3.The Executive Engineer,
Public Works Department,
Sivagangai District.

4.The Assistant Engineer,
Public Works Department,
Ilayangudi,
Sivagangai District.

+1 CC To MR.K.SEEMARAJ, Advocate SR. NO.86081

+1 CC To MR.D.RAMESH KUMAR, Advocate SR. NO. 86256

+1 CC TO The Special Government Pleader SR.NO. 86372

W.P. (MD) No.19311 of 2018
24.09.2018

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