



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

WEB COPY

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P(MD)NO.17500 OF 2019
and
W.M.P(MD)Nos.13979 and 13981 of 2019**

C.Karpagam :Petitioner

.vs.

1.The Assistant Engineer,
Water Resources Organization PWD,
Irrigation Department,
Periyakulam,
Theni District.

2.The Executive Engineer,
Water Resources Organization PWD,
Manjalaru Irrigation Division,
Periyakulam,
Theni District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the order in Letter No Ko.14/UPO/Pa.Pi/2019, dated 30.07.2019, on the file of the first respondent and to quash the same.

For Petitioner :Mr.G.Prabhu Rajadurai

For Respondents :Mr.VR.Shanmuganathan
Special Govt.Pleader

O R D E R

[Order of the Court was made by **K.RAVICHANDRABAABU.,J.**]

The Petitioner is aggrieved against the communication, dated 30.7.2019, issued by the first respondent, wherein and whereby, the



Petitioner was informed that the encroachment made by the Petitioner in the subject-matter property will be removed on 8.8.2019, since the Petitioner has not come forward to remove the same, despite a notice in Form-III was issued on 22.2.2019.

2.Heard both sides.

3.The main contention of the Petitioner is that before issuing Form-III, the authorities should have conducted a survey and thereafter, issued Form-II notice to the Petitioner. Therefore, it is contended that without resorting to those procedures, the impugned proceedings cannot be issued. The learned counsel for the Petitioner further submitted that from the impugned proceedings, the Petitioner is not in a position to know which portion of the property is identified as an encroachment by the respondents. He further submitted that even in Form-III notice, it is referred only as 0.00.25 sq.ft alone as an encroachment and therefore, unless the said encroached portion is identified by the respondents, they cannot resort to the demolition proceedings on 8.8.2019.

4.On the other hand, the learned Special Government Pleader who takes notice for the respondents, based on instructions, submitted that a survey was already conducted on 13.6.2018 and it was found that the Petitioner has encroached 0.00.28 sq.mtr and consequently, Form-II notice was also issued to the Petitioner on 11.2.2019. He further submitted that even before issuing the present impugned communication, two Form-II notices were issued to the Petitioner and therefore, she is not justified in contending that the procedures have not been followed in this case.

5.Upon hearing the learned Counsels appearing on either side and perusing the materials placed before this Court, it is evident that the authorities have conducted the survey and found that the encroached portion is measuring 0.00.25 sq.mtr. Further in Form-II notice issued on the Petitioner, area encroached upon by the Petitioner is referred to as 0.00.25 sq.ft. Therefore, it appears that there is some confusion with regard to the total extent of property encroached by the Petitioner. In any event, as the area encroached by the Petitioner is to be identified by the authorities, so as to enable the Petitioner to remove such encroachment, we are inclined to dispose of the Writ Petition, with the following directions:

(a)the respondents are directed to identify the exact portion of property by way of encroachment, which forms part of the construction put up by the Petitioner in her private property;

(b)while identifying the property, the respondents shall also



find out the exact extent and earmark the same for the purpose of removal of such encroachment;

(c) on identifying the encroached portion and its extent as stated supra, the Petitioner shall remove such encroachment within a period of three months thereafter.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)

vsn

To

1.The Assistant Engineer,
Water Resources Organization PWD,
Irrigation Department,
Periyakulam,
Theni District.

2.The Executive Engineer,
Water Resources Organization PWD,
Manjalaru Irrigation Division,
Periyakulam,
Theni District.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-80824[F] dated 09/08/2019)

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KK/SAR/28.08.2019/3P-4C/