



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.[MD]No.19547 of 2019

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O.Homerlal

.. Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
At Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

3.The Thasildhar,
Kalkulam Taluk,
Kalkulam,
Kanyakumari District.

4.The Commissioner,
Thukalai Panchayat Union,
Thukalai,
Kanyakumari District.

5.Sugumaran Nair

6.Ponnaiah

7.Baby

8.Selvam

9.Muthusamy Kumar

10.Saraswathi

11.Vijayakumar

12.Sathiyaraj

13.Jeyakumar

14.Madavan Pillai

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to remove the encroachment made in the water body comprised in survey no.245/12 in Valvachakoastam Village, Kalkulam Taluk, Kanyakumari District as per the proceedings of the fourth respondent dated 09.02.2019 by considering the representation of the petitioner dated 17.06.2019 and restore the water body to its original shape and size along with catchment area within a stipulated time that may be fixed by this Court.

For Petitioner	: No Appearance
For R1 to R3	: Mr.A.Muthukaruppan, Additional Government Pleader
For R4	: Mr.A.Thiagarajan, Government Advocate

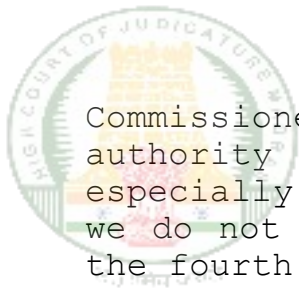
O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

This writ petition has been filed by a practising Advocate in Kanyakumari District designed as a Public Interest Litigation to direct the official respondents more particularly, the fourth respondent namely, Commissioner, Thuckalai Panchayat Union, to implement his proceedings dated 09.02.2019 and to restore the water body to its original shape. By the said proceedings, notice was issued to the ninth respondent in this writ petition and the notice states that there is an encroachment, and there are five coconut trees planted unauthorisedly. The petitioner has enclosed the copy of the notice issued by the ninth respondent.

2.All these have been set out by the petitioner in his representation dated 17.06.2019 which was sent by registered post on 18.06.2019 and appears to have been delivered in the office of the official respondents as per the tracking information down loaded from the official website of the postal department. The petitioner has enclosed the Form-I proceedings in the typed set of papers from which it is seen that the nature of encroachments have also been clearly set out.

3.Considering the prayer sought for, we propose to dispose of this writ petition at the admission stage. We do not propose to go into the allegations made by the petitioner against the private respondents. But, we note that the fourth respondent has already issued a notice. If such is the situation, it goes without saying that the fourth respondent should take the matter to the logical end by following the procedure which is stipulated under the relevant law. Merely by issuing notice and not effecting further action would mean that the fourth respondent has abdicated his powers as the



Commissioner of the Panchayat Union. There is a duty cast upon the authority to ensure that the Government property is protected, especially water bodies should be free from encroachments. However, we do not propose to issue any positive direction except to direct the fourth respondent to proceed further in accordance with law.

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4. For all the above reasons, the Writ Petition is disposed of with a direction to the fourth respondent to proceed further pursuant to the notice dated 09.02.2019, if he has not passed any final orders till date. In the event the fourth respondent has not passed any orders then, the fourth respondent shall issue fresh notice to the private respondents and initiate appropriate action and conclude the proceedings within a period of three [3] months from the date of receipt of a copy of this order. We make it clear that in the event it is confirmed that there is encroachment, then the fourth respondent should not cut down the standing trees but should preserve the same. However, this will not apply to any construction put up in the Government land. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

MR/GNS

To

1. The District Collector,
Kanyakumari District,
At Nagercoil.
2. The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.
3. The Thasildhar,
Kalkulam Taluk,
Kalkulam, Kanyakumari District.
4. The Commissioner,
Thukalai Panchayat Union,
Thukalai,
Kanyakumari District.

+1 CC to M/s.GP (SR-86275[F] dated 12/09/2019)

W.P. [MD]No.19547 of 2019

10.09.2019

JM/11.10.2019/3P/6C

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