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WP.(MD) No.8641 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2020

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.8641 of 2020

and

W.M.P. (MD) No.7988 of 2020

(Through Video conferencing)

A.Jacob David Mullar

...Petitioner

-Vs-

1.The Junior Engineer

PWD/WRO, Irrigation Section No.2

Periyar - Vaigal Base in Sub Division No.1

Madurai - 2.

2.The Tahsildar

Madurai North Taluk

Madurai.

3.The Survey Officer

Madurai North Taluk

Madurai.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents from removing the alleged encroachment of the Plan Marked Channel by the petitioner, lies in his patta land in S.No.9/3, S.Alangulam Village, Madurai North Taluk, Madurai without issuing show cause notice in Form-III along with details of encroachment in Form-I and hearing the objections of the petitioner and to direct the 3<sup>rd</sup> respondent to survey the said property with reference to the revenue survey sketch, town survey sketch and the documents of the title of the petitioner.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.R.Murugan

Addl. Govt. Pleader

ORDER

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

The petitioner is a purchaser of a house site in respect of an approved lay out admeasuring to an extent of 816 sq. ft., in plot No.5 of patta land in Survey No.9/3 at Sammantha Alangulam Village (S.Alangulam), Madurai North Taluk. It is admitted by the

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petitioner that a plan marked channel is passing from North to South and draining the water into S.Alangulam Tank and it is also evident from the Field Measurement Book.

2. It is also the claim of the petitioner that neither the father of the petitioner nor the petitioner had obliterated the said channel and insofar as their land is concerned, it continues to be in existence and even in the compound wall put up by the petitioner by protecting his property, sufficient space has been laid out so as to enable the water to pass through the said channel without any obstruction. The grievance expressed by the petitioner is that all of a sudden, the first respondent has issued impugned Form-II notice, as if the petitioner is an encroacher and obstructing the said water channel and upon receipt of the same, the petitioner has submitted a detailed representation, dated 04.06.2020 and despite receipt and acknowledgment, no orders have been passed and in the meanwhile, the first respondent continues to threaten the petitioner with eviction proceedings and left with no other option only, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner by drawing the attention of this Court to paragraph No.18 of the Tamil Nadu Survey Manual, would submit that all roads, cart-tracks and channels shown as proambokes in the revenue accounts and those which are included in the ryotwari holdings and which exceed 20 links (4 metres) in width, should be demarcated in separate survey fields and since the plan marked channel exists the said measurement, a separate sub-division should have been given and further pointed out that due process of law in terms of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder have not been complied with and hence, prays for appropriate orders.

4. *Per contra*, Mr.R.Murugan, the learned Additional Government Pleader appearing for the official respondents has drawn the attention of this Court to the report of the first respondent dated 11.08.2020 and would submit that the decision to issue impugned notice has been taken only after the field inspection and demarcation and further points out that one Mohammed Zakkariah also obstructed the said channel by putting a full-fledged construction and that apart, the sister of the petitioner has also constructed a house in Survey No.7 in the form of unauthorised construction and since action has been taken strictly in accordance with law, for which, the petitioner cannot make a complaint and prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submission and also perused the materials placed on record.

6. Admittedly, the channel runs through the land of the



petitioner is a plan marked channel and the scope of Revenue Standing Order 26(15), which deals with plan marked channel or pathway came up for consideration before a Division Bench of this Court in **J.Jagadesh Vs. Tahsildar Modakurichi Taluk, Erode District** reported in **2018 (1) CWC 529** and it has been held that though in the case the pathway has been shown as "Nilaviyal Vandi Pathai", if there is an obstruction and if there is an encroachment, it is open to the Government to initiate appropriate action in accordance with law.

7. It is also relevant to extract Revenue Standing Order 26(15) hereunder:

*"15.Encroachments on Plan-marked details.- A Plan-marked channel or pathway running in a patta land is a Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the Plan-marked detail so as to close its entrance to and exit from his lands. In the case of pathways and Cart-tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of Plan-marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment."*

8. A Division Bench of this Court, in which one of us is a party (MSNJ), while upholding the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder had issued certain directions. It is relevant to extract paragraph No.20(a) to 20(f) of the said order.

*"20.....*

*(a). The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.*

*(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.*

*(c) As already stated, the State will ensure that*



alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank proamboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(1) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."

9. This Court, taking into consideration the above facts and circumstances and in the light of the settled legal position, directs the first respondent to consider and dispose of the petitioner's representation dated 04.06.2020, on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and till such time, shall defer further decision in terms of



the impugned Form-II notice dated 02.06.2020. It is also made clear that the petitioner, till the disposal of the representation by the first respondent, shall not create any third party rights in respect of the said water course/channel in question. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (Crl Side)

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Sub Assistant Registrar(CS)

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**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Junior Engineer  
PWD/WRO, Irrigation Section No.2  
Periyar - Vaigal Base in Sub Division No.1  
Madurai - 2.
- 2.The Tahsildar  
Madurai North Taluk  
Madurai.
- 3.The Survey Officer  
Madurai North Taluk  
Madurai.

+1 CC to M/s.H. ARUMUGAM, Advocate ( SR-15719[F] dated  
02/09/2020 )

**W.P. (MD) No. 8641 of 2020**  
**and W.M.P. (MD) No. 7988 of 2020**  
**31.08.2020**

**KK(08.09.2020) 5P 5C**