



WEB COPY

W.P(MD)No.18197 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.18197 of 2020

and

W.M.P (MD)No.15180 of 2020

Arunachalam

... Petitioner

Vs.

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Superintending Engineer,
Public Works Department WRD,
South Vellar Basin Division,
Tiruchirappalli Zone,
Pudukkottai Road,
Tiruchirappalli.

3.The Executive Engineer,
PWD/WRD,
South Vellar Basin Division,
Pudukkottai.

4.The Assistant Engineer,
PWD/WRD,
Irrigation Section,
Avudaiyarkovil,
Pudukkottai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 4th respondent in his proceedings in Nil, dated 20.11.2020 and quash the same as illegal and consequently direct the respondents to consider the petitioner's representation dated 25.11.2020 by following the procedure contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

For Petitioner

: Mr.C.Mayilvahana Rajendran

For Respondents

: Mrs.M.Muthugeethaiyan,
Special Government Pleader



ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

The writ petition has been filed as against the notice issued by the 4th respondent Assistant Engineer, PWD, WRD, Irrigation Section, Avudaiyarkoil, Pudukkottai District.

2.Heard Mr.C.Mayilvahana Rejendran, learned Counsel appearing for the petitioner and Mr.M.Muthugeethaiyan, learned Special Government Pleader, appearing for the respondents.

3.The case of the petitioner is that he has not encroached any Government land and he has purchased the property situated in Survey No.113/8, Vilanur Village, Avudaiyarkoil Taluk, Pudukkottai District, vide Document No.1896 of 2013, dated 16.05.2013 on the file of the Sub Registrar Office, Aranthangi. He has also obtained electricity connection and has been residing in the place for the past 30 years.

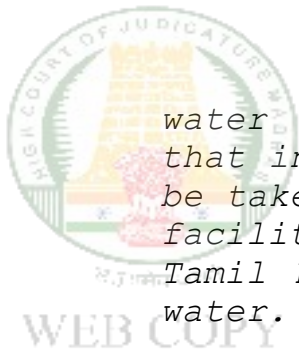
4.It appears that the Vilanoor, Pasanadharargal Sangam, a Registered Body using water body has filed a writ petition in W.P (MD)No.11030 of 2020 for a mandamus, to remove the encroachments in the Vilanoor in Survey No.104/1 Veelimangalam Revenue Village and Supply Channel of Vilanur Eri situated in S.F.Nos.275, 283, 284, 285 ,303, 302, 274, 311, 332, 333, 335, 336, 338, 337,358,359 and 360 of Eluntrimangalam Revenue Village of Avudaiyarkovil Taluk, Pudukkottai District.

5.In the said writ petition, this Court directed the official respondents, to file individual Counter affidavits / status reports as to the extents of water ways /water bodies in the light of the A - Register pertaining to the Vilanur Village and the details of the encroachment and its removal. This Court further directed the official respondents to file necessary photographs and supporting documents that these waterways and water bodies are maintained properly. Only in pursuance to the directions of this Court, it appears, the 4th respondent has issued the impugned notice, dated 20.11.2020.

6.At this stage, it would be appropriate to refer to the decision of this Court, in **L.Krishnan v. State of Tamil Nadu and others**, reported in **2005-3-LW-313**, wherein a Division Bench of this Court has held as follows:

"4. ...We feel it appropriate to pass this order and give certain other directions to the first respondent State Government to make an overall study of all such encroachments in respect of the lands which have been

encroached upon as lands meant for the purpose of storage of



water (ie., ponds, tanks, lakes etc.). We are of the view that in the present day context, such a step is required to be taken by the State in order to improve the water storage facility prevailing in this State since in many parts of Tamil Nadu people are suffering from an acute shortage of water.

5. Since time immemorial ponds, tanks and lakes have been used by the people of our Country, particularly in rural areas, for collecting rain water for use for various purposes. Such ponds, tanks and lakes have thus been an essential part of the people's natural resources. However in recent years these have been illegally encroached upon in many places by unscrupulous persons who have made their constructions thereon, or diverted them to other use. This has had an adverse effect on the lives of the people.

7. This decision rendered in **L. Krishnan v. State of Tamil Nadu** was subsequently approved by the Hon'ble Supreme Court in **Jagpal Singl & others v. State of Punjab & others**, reported in **2011-3-LW-17**, wherein, the Hon'ble Supreme Court has held as follows:

"5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs."

8. After the decision in **L. Krishnan's** case (cited supra), the State Government of Tamil Nadu has enacted the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, with a view to provide measures for checking encroachments, eviction of encroachments and for the protection of the tanks.

9. The constitutional validity of this Act was challenged in **T.S. Senthil Kumar v. State of Tamil Nadu & others**, reported in **(2010) 3 MLJ 771**, that no opportunity was provided in the Statute to the aggrieved parties. A Division Bench of this Court has discussed the issue in detail and while upholding the Act, had several directions as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 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 poramboke 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:

(i) 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."

10. In view of the above directions, this petitioner is having a remedy before the authorities concerned, and he can very well submit his explanation if any for the impugned notice, within a period of two weeks from the date of receipt of a copy of this order and the official respondents shall take further course of action within a period of four weeks therefrom. Till then, the petitioner shall not be disturbed.

11. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar (CS)

dsk

To

1. The District Collector,
Pudukkottai District, Pudukkottai.
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