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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.35705 OF 2016

Anbu Chezhan

...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Public Works Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Executive Engineer,
Tamil Nadu Public Works Department,
Thiruvallur District,
Thiruvallur.
4. The Director of Tamil Nadu Panchayats,
Kuralagam,
Chennai - 600 108.
5. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai, Chennai - 600 005.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 24.8.2016 by constructing Flood Protection wall in Periya



Eri, Thirunindravur and remove the Muds and raise the height of the Eri to save the water from over flowing and further, complete the flood protection wall as per the original scheme to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.C.Kathiravan
Government Advocate
[For R1 to R4]

Mr.S.Prabhu
[For R5]

ORDER

The relief sought for in the present writ petition is to direct respondents to consider the representation of the petitioner dated 24.8.2016 by constructing Flood Protection wall in Periya Eri, Thirunindravur and remove the Muds and raise the height of the Eri to save the water from over flowing and further, complete the flood protection wall as per the original scheme.

2. The petitioner is the 12th Ward Councilor of Thirunindravur Town Panchayat and states that 10th, 11th, 12th and 13th Wards comprising of 7500 houses and a total population of 10,000 peoples and the peoples were allotted with Slum Clearance Board Tenements and they are not the encroachers. The land was allotted in low level area and during rainy seasons, the house were submerged. Earlier, the writ petitioner filed W.P.No.35920 of 2007 and this Court passed an order on 12.12.2007, granted the relief. However, the respondents have not constructed the flood protection wall and therefore, the petitioner is constrained to move the present writ petition.

3. The Third respondent / The Executive Engineer, Public Works Department, Thiruvallur District filed a counter, stating that "with the administrative sanction accorded in the Government order dated 22.03.2010, the retaining wall was constructed for a length of 750 m as per the standards and it is denied that the contractor had cheated the work and not



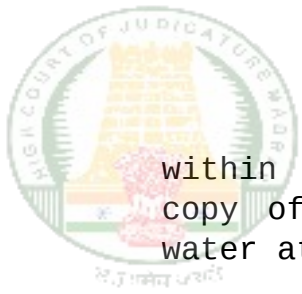
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completed and only 50% of the wall was erected. The wall is available still at the site and it can be seen that the wall was constructed for a length of 750m as per the standards based on the maximum water level realized in the tank in the previous monsoonal rains. He inundation during the rains of November and December, 2015 was due to the extraordinary very heavy rain not experienced in the recent past. It is also respectfully submitted that construction of any new structure abutting the water body nearby is made only after detailed study of the nature of water body, maximum capacity, maximum water level, water spread area and other featuring hydrology of the water body and there was no lapse on the part of the respondent department in designing the protection wall in Tirunindravur Tank since the estimate was based on the above specific features of hydrology pertaining to the tank. It is also submitted that the supply to the lands irrigated by the tank has also to be maintained, which is a riparian right of the pattadars of the ayacuts fed by the tank. It is also denied that the contractor had cheated the work and did not complete and only 50% of the wall was erected as against the original proposal."

4. In view of the fact that as per the scheme, a wall has already been constructed, the grievance of the petitioner was redressed.

5. This apart, the learned counsel for the petitioner made a submission that there are several encroachments in the water flowing area, which would affect the free flow of water.

6. The Constitutional Courts have repeatedly held that such encroachments in water bodies and River Beds are to be removed for free flow of water and in the interest of public at large. The flood situations are man-made on many occasions, and more specifically, due to encroachments in water bodies. Considering these aspects, the Act is enacted namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. Therefore, the authorities competent are bound to evict the encroachers in water bodies. The Second respondent / District Collector is directed to conduct an inspection through the team officials and identify the encroachments in all such water bodies and in Government lands and evict those encroachers by following the procedures as contemplated under the provisions of the above said Act. The said exercise is directed to be done



within a period of four months from the date of receipt of a copy of this order. The respondents must ensure free flow of water at Periya Eri, Thirunindravur, by removing the Muds, etc.,

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7. With these directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary,
Public Works Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Executive Engineer,
Tamil Nadu Public Works Department,
Thiruvallur District,
Thiruvallur.
4. The Director of Tamil Nadu Panchayats,
Kuralagam,
Chennai - 600 108.
5. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai, Chennai - 600 005.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.49854

+1cc to Mr.S.Prabhu, Advocate, S.R.No.49541

+1cc to the Government Pleader, S.R.No.49778

W.P.No.35705 of 2016

SJ(CO)

RLP(05/10/2021)