



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2021**

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS. JUSTICE S.ANANTHI**

**W.P. (MD)No.2433 of 2021
and
WMP (MD) No.2007 of 2021**

(Through Video Conferencing)

Athiparasakthi : Petitioner

Vs.

The Junior Engineer
Office of the Junior Engineer,
Public Works Department/Water Supply Department
South Canal Division
Thenthirupperai
Eral Taluk
Thoothukudi District.

: Respondent

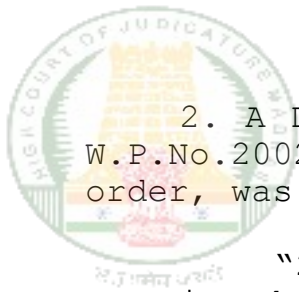
PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order issued by the respondent dated 16.12.2020 under Section 6(1) of the Tamilnadu Land Encroachment Act and quash the same as illegal and unconstitutional and consequently forbearing the respondent from in any manner removing the trees grown in petitioner property comprised in S.No.613 situated at Mela Athoor Village, Tiruchendur Taluk, Thoothukudi District.

For Petitioner : Mr.S.Mandhiralingeswaran
For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Challenge is made to the order of the respondent dated 16.12.2020 issued under Section 6(1) of the Tamil Nadu Land Encroachment Act.



2. A Division Bench of this Court in a writ petition filed, in W.P.No.20021 of 2008 dated 10.02.2010, challenging the virus of the order, was pleased to held as follows:

"20. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases in Mysore v. J.V.Bhat (supra) and (ii) Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka (supra), where the Supreme Court dealt with the Mysore Slum (Improvement and clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(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 poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and 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

<https://hcservices.ecourt.gov.in/hcservices/> 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.

WEB COPY

(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 Organisation, 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."

3. In view of the same, the respondent is directed to issue a show cause notice to the petitioner within two weeks from the date of receipt of a copy of this order and on receipt of the reply to be given by the petitioner, shall pass orders thereafter.

4. The writ petition stands disposed of accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

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

The Junior Engineer
Office of the Junior Engineer,
Public Works Department/Water Supply Department
South Canal Division
Thenthirupperai
Eral Taluk
Thoothukudi District.

+1 CC to SPL GP (SR-4663[F] dated 12/02/2021)

Order made in
W.P. (MD) No.2433 of 2021
Dated: 10.02.2021

VB (15.03.2021) 4P 3C