



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P (MD)No.4203 of 2022

and

WMP (MD)No.3602 of 2022

Smt.J.Nisha

... Petitioner

vs.

1.The District Collector,
Nagercoil,
Kanyakumari District.

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

3.The Assistant Engineer,
Water Resource Organization-Public Works Department,
Nagercoil,
Kanyakumari District.

4.The Tahsildar,
Agasteeswaran Taluk,
Nagercoil,
Kanyakumari District.

5.The Village Administrative Officer,
Putheri, (previously Vadaseri),
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records related to the impugned proceedings of the Assistant Engineer, WRO-PWD, Irrigation Section, Nagercoil Letter No.Ko.12/117/2022 dated 24.02.2022 along with annexure in Form-III and quash the same and consequently forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of her residential house bearing Door No.1/222N1-A, Putheri Village Panchayat, (previously Vadaseri) having an extent of 3 cents in Survey No.463/2 (now classified in Survey No.463/2A1A1), Putheri, (previously Vadaseri), Agasteeswaram Taluk, Kanyakumari District.



For Petitioner
For Respondents

: Mr.N.Dilip Kumar
: Mr.J.Ashok
Additional Government Pleader

ORDER

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The petitioner who is termed as an encroacher, claims that the property in question is a patta land situate within Survey No.463/2. According to the petitioner, it is not a water body as claimed by the respondents. The respondents seek to evict the petitioner invoking the powers under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

2. While upholding the constitutional validity of the said enactment, a Division Bench of this Court in **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in (2004) 3 Mad LJ 771, has issued the following directions in matters of removal of encroachment:-

(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.''

3. Admittedly, the directions issued by the Division Bench are not scrupulously adhered to by the respondents in these eviction proceedings. Hence, the writ petition is allowed and the impugned



eviction proceedings are quashed. Liberty is reserved to the respondents to take action for removal of encroachment strictly in accordance with the directions issued by the Division Bench. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (A.E.)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
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Kanyakumari District.
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- 5.The Village Administrative Officer,
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Agasteeswaram Taluk,
Kanyakumari District.

+1 cc to Mr.N.DILIPKUMAR, Advocate, SR.No.11375

+1CC to Special Government Pleader SR.No.11228

ORDER MADE IN
W.P(MD)No.4203 of 2022
DATED : 09.03.2022

SA(18.03.2022) 3P 8C