



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

W.P. (MD) No.7019 of 2022

S.M.A.Pongandhimathinathan

... Petitioner

-vs-

1.The Additional Chief Secretary /
Commissioner of Land Administration
Ezhilagam, Chepauk
Chennai-05

2.The District Collector
Collectorate
Thoothukudi District

3.The Revenue Divisional Officer
O/o.the Revenue Divisional Officer
Kovilpatti
Thoothukudi District

4.The Tahsildar
Oottapidaram Taluk Office
Thoothukudi District

5.M/s.Ind Barath Thermal Power Limited
rep.by the Managing Director
Pudiamputhur Road
Swaminatham Village
Oottapidaram Taluk Office
Thoothukudi District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents 1 to 4 to remove the encroachment made by the respondent No.5 on the water bodies namely Swaminatham Panchayat Pond, Odai, Aandal Oorani and common pathway situated in Survey Nos.136/1, 139/1, 140/3, 141/2, 141/3, 142/2, 142/5, 145/1, 145/3, 147/3, Swaminatham Village, Oottapidaram Taluk, Thoothukudi District, in the light of the order in W.P.(MD) No.14652 of 2019, dated 17.09.2019 and in POC No. D4/29015/2014, dated 18.02.2020, on the file of the



respondent No.2 and restore the water bodies, within the time stipulated by this Court.

For Petitioner : Mr.Pinaygash.I.

For Respondents : Mr.S.R.A.Ramachandran

Additional Government Pleader for R1 to R4

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O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

Alleging that M/s.Ind Barath Thermal Power Limited (fifth respondent herein) have encroached into certain water bodies in Saminatham Village, Ottapidaram Taluk, Thoothukudi District, the petitioner filed a Public Interest Litigation in W.P.(MD) No.15304 of 2014 for a direction to the Revenue Authorities to remove the said encroachments.

2. A Division Bench of this Court, by order dated 02.09.2015, issued the following directions to the Revenue Authorities:

"3. The grievance of the petitioner appears to be that there are some encroachments on public revenue lands, more particularly, on the public water bodies and therefore, he made a representation to the first respondent to take action and remove the encroachments made by the fifth respondent. Since no final order has been passed, the present writ petition has been filed for the relief stated supra.

4. At the hearing, the learned Special Government Pleader appearing for the respondents 1 to 3, on instructions, submits that appropriate action would be taken as per Section 7 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, (in short 'the Act') after issuing notice to the alleged encroacher on the water bodies. 5. In such view of the matter, the competent authority as specified in sub-section (2) of Section 6 of the Act, is directed to consider the claim of the petitioner and initiate appropriate action as per Section 7 of the Act, after affording due opportunity of hearing to the alleged encroacher on the water bodies, as expeditiously as possible."

3. Since the Revenue Authorities were dragging their feet, the petitioner once again filed a Public Interest Litigation in W.P. (MD) No.14652 of 2019 specifying the survey numbers, in which M/s.Ind Barath Thermal Power Limited have made encroachments. In



the said writ petition, a Division Bench of this Court, by order dated 17.09.2019, issued the following directions:

"8. In our considered view, the area which is abutting the Power Plant, which according to the official respondents have been levelled, is now being reclaimed. But, however, the machineries, which have been installed by the petitioner / Power Plant should not be disturbed for the present and should abide by the orders to be passed by the District Collector as it is stated by the petitioner / Power Plant themselves that enquiry had been completed on 08.12.2017 and on the said date, some elaborate submissions have been made.

9. Though both the writ petitioners were heard by the District Collector, that hearing took place in December, 2017. Therefore, we direct that a fresh hearing to be conducted in which both the writ petitioners be heard in the matter and the revenue officials should place all the records before the District Collector, Thoothukudi, who after considering all the records shall pass final orders, within a period of three weeks from the date on which the personal hearing is concluded. The date of personal hearing shall be fixed within a period of fifteen days from the date of receipt of a copy of this order. The ultimate action to be initiated as against the petitioner / Power Plant shall depend upon the orders to be passed by the District Collector.

10. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed."

4. Pursuant to the directions of this Court, the District Collector, Thoothukudi District, after hearing the contesting parties, namely, the petitioner and the fifth respondent herein, has passed a detailed order dated 18.02.2020 holding that M/s.Ind Barath Thermal Power Limited have encroached into the Government lands abutting a water body in Survey Nos.140/3, 145/3, 141/2 and 141/3 and also encroached into a cart track in Survey Nos.145/1 and 147/3. The District Collector has issued the following directions to the Tahsildar and Block Development Officer (Village Panchayat) of Ottapidaram:

12) It is hereby ordered that the respondent company Ind- Barath Thermal Power Ltd, Saminatham should remove the encroachments such as Machineries, Buildings, Compound wall, Cement floor as noted in Sl.No.1, 2 in Survey No.140/3 &



145/3 "Odai Poramboke" land within a period of three months from the date of receipt of this order. A culvert should be constructed by the company in S.No.141/2 "Odai Poramboke" land for free flow of water as noted in Sl.No.3. The company should maintain the Survey No.141/3 as "Oorani" and Survey No. 147/3 as "Vandipathai" as noted in Sl.No.4 and 6. The company should remove the encroachments such as Iron Tank, cement road as noted in SL.No.5 within a period of 3 months from the receipt of this order.

16) The Tahsildar, Ottapidaram and Block Development Officer (Village maini Panchayat), Ottapidaram are hereby directed to mark and evict the encroachments made by the company in the above fields by following due procedures as per the provisions of Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) in case the company failed to act upon this order.

The Revenue Divisional Officer, Kovilpatti is directed to follow the eviction process and report the compliance report."

5. Alleging that the Revenue Authorities are not complying with the directions of the District Collector, the present Public Interest Litigation has been filed.

6. On notice, Mr.S.R.A.Ramachandran, learned Additional Government Pleader appearing for the respondents 1 to 4, has stated that the Revenue Authorities were not able to comply with the directions of the District Collector, because the assets of M/s.Ind Barath Thermal Power Limited are now vested with the National Company Law Tribunal, Hyderabad Bench in Company Petition No.(IB)-CP (IB) No.745/7/HDB/2019 and the Bench has appointed one Mr.Sudeep Bhattacharya as Interim Resolution Professional (IRP) to administer the affairs of M/s.Ind Barath Thermal Power Limited.

7. The learned Additional Government Pleader further submitted that the Revenue Authorities are not able to gain access into the factory of M/s.Ind Barath Thermal Power Limited for the removal of a 100 Meter Chimney and other equipments that have been installed on the encroached lands.

8. We are recording the aforesaid submissions and marking a copy of this order to the Presiding Officer, National Company Law Tribunal, Hyderabad Bench and Mr.Deepak Maini, present Interim Resolution Professional, who shall bring these facts to the notice of the National Company Law Tribunal and after obtaining appropriate orders from the Tribunal, he shall assist the Revenue Authorities in the removal of encroachments.



9. With the above observations, this writ petition is closed. No costs.

Sd/-

Assistant Registrar(CS-I)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Additional Chief Secretary /
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai-05.
- 2.The District Collector,
Collectorate,
Thoothukudi District.
- 3.The Revenue Divisional Officer,
O/o.the Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.
- 4.The Tahsildar,
Oottapidaram Taluk Office,
Thoothukudi District.

Copy To

- 1.The Presiding Officer,
National Company Law Tribunal,
Hyderabad Bench.
- 2.Mr.Deepak Maini,
C/100, Sec-2,
Noida,
Uttarpradesh-201 301,
Email.deepak.maini@insolvencyservice.in
Cell-9711191523.
- 3.Fifth respondent viz.,
M/s.Ind Barath Thermal Power Limited
rep.by the Managing Director



W.P.(MD) No.7019 of 2022

Pudiamputhur Road
Swaminathan Village
Oottapidaram Taluk Office
Thoothukudi District

+1 CC to M/s.SPL.GP (SR-24573[F] dated 08/06/2022)

W.P. (MD) No.7019 of 2022
07.06.2022

NA (CO)
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