



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.06.2022**

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.P.[MD]No.7664 of 2022

and

W.M.P.[MD]Nos.5783 & 5785 of 2022

J.Nisha

...Petitioner

/Vs./

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Revenue Division Officer,
Nagercoil,
Kanyakumari District.
- 3.The Assistant Engineer,
Water Resource Organization - Public Works Department,
Nagercoil,
Kanyakumari District.
- 4.The Tahsildar,
Agasteeswaram Taluk,
Nagercoil,
Kanyakumari District.
- 5.The Village Administrative Officer,
Putheri, (previously Vadaseri),
Agasteeswaram Taluk,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records related to the impugned proceedings of the Assistant Engineer, WRO - PWD, Irrigation Section, Nagercoil in Letter No.Ko.12/153/2022 dated 21.03.2022 (delivered on 01.04.2022) and Letter No.Ko.12/174/2022 dated 29.03.2022 (delivered on 09.04.2022) and quash them both 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.

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For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.T.Amjath Khan
Government Advocate

ORDER

[Order of the Court was made by **S.S.SUNDAR, J.**]

This writ petition is filed challenging the notice issued by the third respondent dated 21.03.2022 and the consequential order dated 29.03.2022 and to 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.

2.The petitioner states that she has put up a residential house, which lies in S.No.463/2, measuring to an extent of 3 cents (now classified in Survey No.463/2A1A1), Putheri, (previously Vadaseri), Agasteeswaram Taluk, Kanyakumari District.

3.It is the case of the petitioner that it is a patta land and no portion of her property, in which, she has put up a house, falls within the water body. However, the impugned notice has been issued by the third respondent directing the petitioner to remove the encroachment. In the notice impugned in this writ petition, the survey number mentioned is 494 and not survey number 463/2.

4.The petitioner has earlier filed a writ petition in WP(MD) No.4203 of 2022 challenging the letter dated 24.02.2022 along with annexure in Form III issued under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The said writ petition was allowed after following the judgment of the Hon'ble Division Bench of this Court in the case of **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in **2004 (3) MLJ 771** and the impugned proceedings were set aside and liberty was given to the respondents for taking action strictly in accordance with the directions issued by the Division Bench of this Court. However, even after the order of this Court in the writ petition filed by the petitioner earlier in WP(MD) No.4203 of 2022, a different notice has been issued once again by showing the encroachment by the petitioner in S.No.494 measuring to an extent of 0.01.17 h.a..



5.The grievance of the petitioner is that the respondents have not followed the procedure contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, ie., conducting survey in the presence of the petitioner or the persons who are interested in.

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6.From the Field Measurement Book (FMB) produced by the petitioner's counsel, this Court is unable to find any connection whatsoever, between the survey number claimed by the petitioner and the survey number, in respect of which notice in Form III was issued.

7.This Court, in the earlier round, quoted the Judgment of the Division Bench of this Court in **T.S.Senthil Kumar's** case and directed the respondents to follow the same in strict adherence, before taking any action. Unfortunately, the respondents have not produced any records to show that they conducted survey after issuing notice. It is not their case that the petitioner is aware of the survey, but did not participate at the time of inspection by officials for the purpose of survey.

8.The learned counsel appearing for the petitioner also relied upon the Judgment of Hon'ble Supreme Court, in the case of **Madhavrao Scindia vs. Ramesh Jatav and Others** reported in **2006 (1) SCC 379** wherein the Hon'ble Supreme Court, had taken note of a similar situation and passed the following order:

"1. The learned Senior Counsel for the petitioners submits that the impugned order of the High Court has been passed with undue haste. Some of the directions made by the High Court are vague and premature. As to para 11, it is submitted that no encroachment could have been directed to be removed and no demolition could have been ordered without recording a specific finding in that regard. The Municipal Corporation ought to have been directed to carry out a survey in the presence of the parties and identify encroachment and unauthorised construction, if any, so that the aggrieved party could have the remedy of approaching the civil court. As to para 10, it is submitted that that direction, if any, was called for against O.P.Saraswat who is in illegal possession of land in excess of what he is entitled to.

2. Issue notice to Respondents 1 to 11. The learned counsel for the petitioners submits that for the present notice is not required to be issued to Respondents 12 to 24.

3. Until further orders, it is directed that



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stayed until the Municipal Corporation has identified the boundaries of the land alleged to be public park and clearly identified, by taking measurements, the encroachment, if any. Needless to say such survey and identification shall have to be done in the presence of the parties likely to be affected adversely by the action of the Municipal Corporation."

9.Despite the Hon'ble Division Bench of this Court held that the encroachment should be identified after conducting survey in the presence of the persons, who are interested or the persons, who are found to be encroachers of water body, the respondents have not taken care to comply with the directions of this Court. Hence, the impugned notice and order, which are contrary to the statute as held by the Division Bench of this Court, are set aside.

10.However, liberty is given to the third respondent to make arrangements for survey/demarcation in the presence of the petitioner and to proceed further. After such survey, only if the survey report reveals that any portion of the petitioner's construction is encroaching into any part of the water body in S.No.494, the petitioner is entitled to be heard before passing an order, after conducting the survey as directed by this Court in **T.S.Senthil Kumar's** case.

11.As pointed out earlier, before conducting survey, the third respondent shall issue a notice as to the date and time on which, such survey is conducted. This Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Nagercoil,
Kanyakumari District.

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

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



3.The Assistant Engineer,
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+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-25128[F] dated 10/06/2022)

+1 CC to M/s.SPL GP (SR-25424[F] dated 13/06/2022)

W.P. (MD)No.7664 of 2022
09.06.2022

MGJ(20.06.2022) 5P 8C