



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.11687 of 2022

and

W.M.P. (MD)No.8265 of 2022

N.Babu

...Petitioner

-Vs-

1.The District Collector,
Thoothukudi District, Thoothukudi.

2.The Assistant Executive Engineer,
Water Resource Organisation,
South Channel Division, Tamiraparani Irrigation System,
Thoothukudi District.

3.The Assistant Engineer,
Water Resource Organisation,
South Channel Division,
Thirupperai, Thoothukudi District.

4.The Commissioner,
Thiruchendur Municipality,
Thoothukudi District.

5.The Tahsildar,
Thiruchendur Taluk, Thoothukudi District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice issued by the third respondent dated 25.05.2022 under Form III, under Rule 6(1) Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and to quash the same as illegal and consequently, forbearing the respondents or men or agents from entering into the property of the petitioner situated in Jeeva Nagar, Tiruchendur Village, Tiruchendur Taluk, Thoothukudi District.

For Petitioner

: Mr.A.Mohan

For R1 to R3 & R5

: Mr.S.P.Maharajan,

Special Government Pleader.

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

It is the case, wherein the impugned notice dated 25.05.2022, which is in the nature of directing the petitioner to remove the encroachment from the Water Body, is under challenge.



2.The grievance of the petitioner is that the third respondent did not give any opportunity of being heard before issuance of Form-III under Rule 6 (1) of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

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3.This Court after following the Judgment of this Court in **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in **2010 (3) MLJ 771**, and the Hon'ble Supreme Court of India in **Madhavarao Schindia's** case 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 even taken care to comply with the directions of this Court in **T.S.Senthil Kumar's** case. Hence, the impugned notice dated 25.05.2022, which is contrary to the statute as held by the Hon'ble Division Bench of this Court, is set aside.

4.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, 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.298/2, 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 and this Court following the Judgment of the Hon'ble Supreme Court of India.

5.As pointed out earlier, before conducting survey, the third respondent shall issue a notice to the petitioner as to the date and time on which, such survey is conducted.

6.This Writ Petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

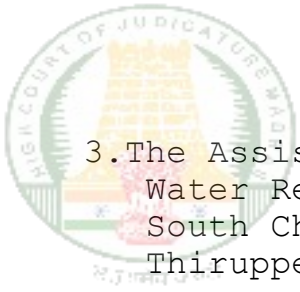
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To

1.The District Collector,
Thoothukudi District, Thoothukudi.

2.The Assistant Executive Engineer,
Water Resource Organisation,
South Channel Division, Tamiraparani Irrigation System,
Thoothukudi District.

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



3.The Assistant Engineer,
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South Channel Division,
Thirupperai, Thoothukudi District.

4.The Commissioner,
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Thoothukudi District.

5.The Tahsildar,
Thiruchendur Taluk,
Thoothukudi District.

+1 CC to M/s.A. MOHAN, Advocate (SR-25949[F] dated 15/06/2022)

+1 CC to M/s.SPL.GP (SR-26571[F] dated 17/06/2022)

W.P (MD) No.11687 of 2022

15.06.2022

MGJ(01.07.2022) 3P 8C