



WEB COPY

W.P.(MD)No.11825 of 2022

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.11825 of 2022

and

W.M.P (MD)No.8414 of 2022

R.Gurusamy

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Through its Secretary to Government,
Revenue and Disaster Management,
Secretariat, Fort St.George, Chennai-9.
- 2.The Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai -5.
- 3.The District Collector,
Madurai, Madurai District.
- 4.The Tahsildar,
Madurai North Taluk, Madurai.
- 5.The Assistant Engineer,
Water Resources Department,
Irrigation Section No.2(i/c)
Periyar Vaigai Basin Sub Division No.1,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the impugned Form-III notice passed by the fifth respondent, dated 03.06.2022 and to quash the same.

For Petitioner

:Mr.M.Subash Babu

For R1 to R5

:Mr.S.P.Maharajan

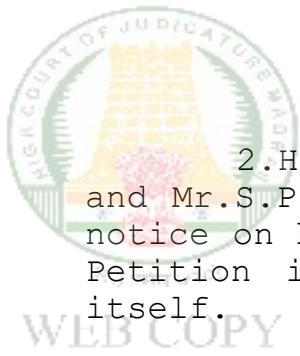
Special Government Pleader

ORDER

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

This Writ Petition has been filed for issuance of a Writ of Certiorari to quash the impugned Form-III notice issued by the fifth respondent, dated 03.06.2022.

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



2. Heard Mr.M.Subash Babu, learned Counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice on behalf of R1 to R5. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The grievance of the petitioner is that the fifth respondent in the earlier notice in Form-II directed the petitioner to vacate the construction put up by him on the ground that he had encroached a portion of the water body.

4.The order of the fifth respondent in Form-II notice was challenged by the petitioner and others before this Court in W.P. (MD)No.9682 of 2022 and batch and it was reported before this Court that the petitioners therein have submitted their objection to Form-II notice, but the same was not considered by the respondents. This Court, by order, dated 11.05.2022, disposed of the said Writ Petitions with a direction to the respondents, particularly, the fifth respondent, to consider the petitioners' objections, if any, in response to the notice issued in Form-II and to pass appropriate orders.

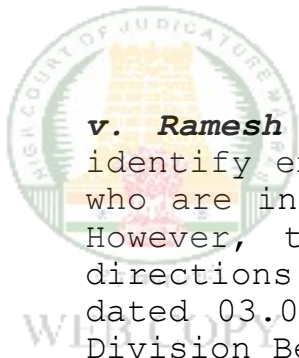
5.The grievance of the petitioner in this Writ Petition is that the fifth respondent has issued Form-III notice directing the petitioner to remove the encroachments within 21 days from the date of receipt of the notice without issuing a show cause notice. Challenging the notice issued in Form-III under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, dated 03.06.2022, the above Writ Petition is filed.

6.The learned Counsel for the petitioner submitted that the respondents have not considered the objection of the petitioner while issuing the Form-III notice impugned in this Writ Petition.

7.The learned Special Government Pleader, on instructions, submitted that the petitioner was given opportunity and the fifth respondent has issued the Form-III notice only after hearing the objection of the petitioner, as directed by this Court earlier.

8.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.

9.The Division Bench of this Court in the case of **T.S.Senthil Kumar vs. Government of Tamil Nadu** reported in **2010 (3) MLJ 771**, held that the encroachment should be identified after conducting survey. The Hon'ble Supreme Court in **Madhav Rao Schindia**



v. Ramesh Jatav [(2006) 1 SCC 379] has held that such survey to identify encroachment shall be done in the presence of the persons, who are interested or the persons, who are found to be encroachers. However, the respondents have not taken care to comply with the directions of this Court. Hence, the impugned Form-III notice, dated 03.06.2022, which is contrary to the statute as held by the Division Bench of this Court, is set aside.

10.However, liberty is given to the fifth respondent to make arrangements for survey/demarcation in the presence of the petitioner and to proceed further. After such survey, even if the survey report reveals that any portion of the petitioner's construction is encroaching into any part of the water body, the petitioner is entitled to be heard before passing an order, after conducting the survey as directed by this Court in the decisions referred to supra.

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

Sd/-

Assistant Registrar(T & P)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

cmr

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Revenue and Disaster Management,
Secretariat, Fort St.George, Chennai-9.
- 2.The Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai -5.
- 3.The District Collector,
Madurai, Madurai District.
- 4.The Tahsildar,
Madurai North Taluk, Madurai.



5.The Assistant Engineer,
Water Resources Department,
Irrigation Section No.2(i/c),
Periyar Vaigai Basin Sub Division No.1,
Madurai.

+1 CC to M/s.M. SUBASH BABU, Advocate (SR-26275[F] dated 16/06/2022)
+1 CC to M/s.SPL.GP. (SR-26420[F] dated 17/06/2022)

W.P (MD) No.11825 of 2022
15.06.2022

KMV(CO)
TR(01.07.2022) 4P 8C