



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.12013 of 2022

and

W.M.P(MD)No.8555 of 2022

P.Chandrasekaran

...Petitioner

Vs.

1.The District Collector,
Trichy District,
Trichy.

2.The Revenue Divisional Officer,
Musiri Taluk,
Trichy District.

3.The Thasildar,
Musiri Taluk,
Trichy District.

4.The Block Development Officer,
Musiri,
Trichy District.

5.The President,
Kattukulam Post,
Musiri Taluk,
Trichy District.

6.Ponnusamy

7.Thangavel

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 5 to take action to remove the encroachments made in a water body in the name of Aandi Kuttai in Survey No.57/2, measuring 4.071 Acres, Kattukulam Village, Musiri Taluk, Trichy District, by the private respondents or any other person and to implement the order passed by the fourth respondent vide proceedings in Na.Ka.A3/4209/2019 dated 15.07.2021, within a reasonable time period as to be fixed by this Court.

For Petitioners

For R-1 to R-3

For R-4 & R-5

: Mr.N.Dilip Kumar

: Mr.S.P.Maharajan,

Special Government Pleader

: Mr.N.Satheesh Kumar



ORDER

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

Heard Mr.N.Dilip Kumar, learned counsel appearing for the petitioner, Mr.S.P.Maharajan, learned Special Government Pleader for respondents 1 to 3, Mr.N.Satheesh Kumar, learned Additional Government Pleader for respondents 4 and 5.

2. Having regard to the nature of the order proposed to be passed by this Court, no notice is necessary to the respondents 6 and 7, who are impleaded as encroachers.

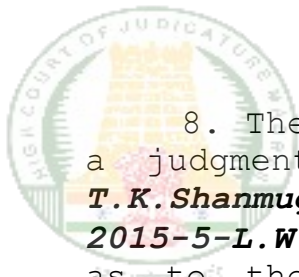
3. This writ petition is filed seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 5, to take action to remove the encroachments made in the water body namely 'Aandi Kuttai' in Survey No.57/2, measuring 4.071 Acres, Kattukulam Village, Musiri Taluk, Trichy District, by the respondents 6 and 7 or any other person and to implement the order passed by the fourth respondent vide proceedings in Na.Ka.A3/4209/2019 dated 15.07.2021, within a reasonable time that may be fixed by this Court.

4. It is the case of the petitioner that he is a resident of Udaiyampatti, Kattukulam Village and he is an agriculturist. It is the further case of the petitioner that a water body by name 'Aandi Kuttai' measuring an extent of 4.071 acres in Survey No.57/2 at Kattukulam Village, Musiri Taluk, Trichy District, is under the control of fifth respondent local body. The fifth respondent in the writ petition is the President of Kattukulam Village Panchayat.

5. The specific allegation of the petitioner is that encroachments have been made by the respondents 6 and 7 over the water body known as 'Aandi Kuttai' on the south & eastern side of the tank with the aid of their family members. It is further stated that eastern side of the tank is encroached by the respondents 6 and 7 by doing agricultural activities taking advantage of the position that they are having their own patta lands adjoining the water body.

6. The grievance of the petitioner and the other village people is that the respondents 6 and 7, by encroaching into the water body caused obstruction to the free access to the agricultural land of the village people.

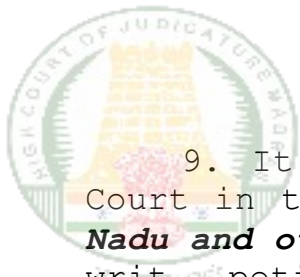
7. The petitioner has made several representations to the authorities to remove the encroachments made by the respondents 6 and 7 over the water body. It is the case of the petitioner that the third respondent though directed the fourth respondent to remove the encroachments after issuing due notice, no action has been taken by the fourth respondent. However, the fourth respondent has directed the fifth respondent to remove the encroachments.



8. The learned counsel appearing for the petitioner relied upon a judgment of the Full Bench of this Court in the case of **T.K.Shanmugam vs. the State of Tamil Nadu and others** reported in **2015-5-L.W.397**, wherein the Full Bench of this Court on a reference as to the applicability of the provision of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 (hereinafter referred to as 'the Act'), has held as follows:

"44.The Government Orders starting from 30.12.2006 in G.O.(Ms)No.854, Revenue Department and subsequent Government Orders in G.O.Ms.No.498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated."

45.In the light of the above, we answer the reference on the following terms:- The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations / directions issued in L.Krishnan vs. State of Tamil Nadu reported 2005-3-L.W. 313 = 2005(4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh vs. State of Punjab, reported in 2011-3-L.W.17=(2011) 11 SCC 396, and the observations contained in paragraph 20(d)(3) of the judgment of Division Bench in T.S.Senthil Kumar, vs. Government of Tamil Nadu, reported in 2010-3-MLJ 771] and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905.



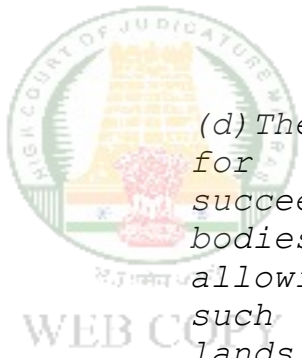
9. It is to be noted that earlier, a Division Bench of this Court in the case of **T.S.Senthil Kumar vs. the Government of Tamil Nadu and others reported in 2010 Wril L.R. 113**, while dismissing the writ petitions filed by several persons challenging the constitutional vires of Sections 4 to 10 of the Act, has held as follows:

"20.In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore vs. J.V. Bhat - 1975 (2) S.C.R. 407 and (ii)The Scheduled Caste & Weaker Section Welfare Association vs. State of Karnataka, - 1991 (1) U.J. (S.C.) 628 = AIR 1991 SC 1117 = 1991 (2) SCC 604., where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice.The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a)The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b)The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c)As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.



(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

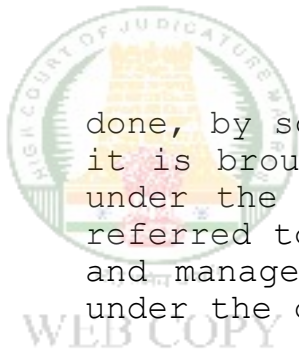
(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey 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.

10. The learned Additional Government Pleader on instructions submitted that the removal of encroachments in water bodies is being

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



done, by scrupulously following the provisions of the Act. However, it is brought to the notice of this Court that the Tank as defined under the Act, has a clear indication that the tank or water body referred to under the Act, are the tanks which are under the control and management of Public Works Department and the tanks which are under the control of local body, cannot be dealt with under the Act.

11. It was in the said context, the Full Bench of this Court had directed the action to be taken as per the provisions of the Tamil Nadu Land Encroachment Act, in case any tank or water body vests with the local body under the Panchayat Act or by the Executive order by the State.

12. In the peculiar circumstances of the case, this Court is of the view that it is appropriate to direct the official respondents to consider the representation of the petitioner after issuing notice to the respondents 6 and 7 or any one, who may have a say in the matter of removal of encroachments in the water body.

13. Hence, without expressing any opinion on the merits of the representation made by the petitioner and the contentions and statements made in the affidavit filed in support of this writ petition, this Court directs the third respondent Tahsildar to make a local inspection and survey the water body namely 'Aandi Kuttai' as per the revenue records and demarcate the boundary lines of the tank in the presence of the petitioner and the respondents 6 & 7. Such exercise shall be done by the third respondent within a period of four weeks from the date of receipt of a copy of this order. Upon the third respondent drawing a report after local inspection and enquiry, a copy of the report shall be served on the petitioner, the respondents 6 & 7 and the local body. It is thereafter, the third respondent has to initiate action for removal of encroachments as directed by the Full Bench of this Court in the case of ***T.K.Shanmugam vs. the State of Tamil Nadu and others*** as referred to supra.

14. It is made clear that before initiating action under the Tamil Nadu Land Encroachment Act, 1905, by the Tahsildar concerned, the respondents 6 & 7, shall be given an opportunity by way of show-cause notice. The entire exercise for removal of encroachments shall be completed by the local body, within a period of twelve weeks from the date of receipt of report from the Tahsildar concerned as indicated above.

15. In case, the respondents 6 and 7 are found to be in encroachments as per the report drawn by the Tahsildar after notice to the petitioner and the respondents 6 and 7, the respondents 6 and 7 raise any issue regarding title over the property, which is in their enjoyment, it may be open to the respondents 6 and 7, to approach the civil Court for appropriate relief and it is not for



them to resist the action for eviction on the basis of any self-serving document without declaration from civil Court.

With the above directions, the writ petition is disposed of. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

PM

To

1.The District Collector,
Trichy District,
Trichy.

2.The Revenue Divisional Officer,
Musiri Taluk,
Trichy District.

3.The Thasildar,
Musiri Taluk,
Trichy District.

4.The Block Development Officer,
Musiri,
Trichy District.

5.The President,
Kattukulam Post,
Musiri Taluk,
Trichy District.

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-26590[F] dated
17/06/2022)

+1 CC to M/s.SPL.GP (SR-26738[F] dated 20/06/2022)

W.P (MD) No.12013 of 2022
16.06.2022

SSR(CO)
KB(06.07.2022) 7P 8C