



W.P.(MD)No.12657 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2022

CORAM

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

W.P(MD)No.12657 of 2022
and
W.M.P.(MD)No.8968 of 2022

Balamurugan

... Petitioner

Vs.

1.The Tahsildar,
Taluk Office, Ilayangudi Taluk,
Sivagangai District.

2.The President,
Salaigramam Panchayat, Ilayangudi Taluk,
Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice issued under Section 131(2) of Tamil Nadu Panchayat Act, 1994, dated 15.06.2022 issued by the second respondent and to quash the same as illegal, improper, unlawful and unconstitutional and consequently, to direct the first respondent to issue patta to the petitioner's father based on the registered Will in Doc.No. 25/1974, dated 13.02.1974 in the name of petitioner's maternal uncle and the latest house tax receipt, dated 07.02.2020 in the name of the petitioner's father duly following the procedure established by law.



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For Petitioner :Mr.R.Murugan
For Respondents :Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

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

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus challenging the impugned order passed by the second respondent and for a direction to the first respondent to issue patta to the petitioner's father based on the registered Will in Doc.No.25/1974, dated 13.02.1974 in the name of petitioner's maternal uncle and the latest house tax receipt, dated 07.02.2020 in the name of the petitioner's father duly following the procedure established by law.

2.Heard Mr.R.Murugan, learned Counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader, who takes notice on behalf of the respondents. By consent of both parties, the present Writ Petition is taken for final disposal at admission stage itself.

3.It is not in dispute that the lands to which the petitioner claims title falls in S.No.1840/1 corresponding to Old Survey No.343/1. By the impugned order passed by the second respondent, dated



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15.06.2022, the second respondent has initiated proceeding for removal of encroachment in respect of the land, which is stated to be in the enjoyment of the petitioner in S.No.350 measuring to an extent of 0.01.00 hectare out of a total extent of 10.52.0 hectares, which is classified as Periya Orrani Vatta Kinaru, as per the revenue records. Challenging the same, the present Writ Petition is filed.

4.Though the petitioner has produced some documents before this Court, this Court is unable to correlate the properties covered in the documents to the property in S.No.350, which is classified as water body. Despite this Court pointed out certain discrepancies in the documents produced by the petitioner, the learned Counsel for the petitioner is unable to explain or atleast show some legitimacy in the claim of the petitioner.

5.The second respondent issued notice under Section 131(2) of Tamil Nadu Panchayats Act, 1994 to remove the encroachment in a water body. 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***, 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



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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."

6. The local body does not have the jurisdiction or authority to initiate action for removal of encroachment in water bodies, even if the same is vested in it. Though the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, can be applied for removal of encroachment in water bodies, which is under the control of Public Works Department, the provisions of the Act will not be applicable in respect of the water bodies that comes under the control of local body.



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Therefore, this Court holds that the Revenue Department should remove those encroachments by following the provisions under the Tamil Nadu Land Encroachment Act, in case, the encroachment is in respect of the water bodies, that vest with the local body. Therefore, the impugned orders challenged in this Writ Petition cannot be sustained.

7.However, the encroachment in water bodies cannot be permitted. Therefore, the impugned notice issued by the second respondent is quashed. It is not in dispute that the petitioner has encroached the land in S.No.350, which is classified as Periya Orrani Vatta Kinaru. There is no dispute that the entire encroachment in which the petitioner is in occupation falls within the water body. Therefore, there is no requirement of survey or demarcation of the encroachment in this case, as directed by this Court in the case of ***T.S.Senthil Kumar vs. Government of Tamil Nadu*** reported in ***2010 (3) MLJ 771***, and by this Court following the judgment of Honourable Supreme Court in the case of ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]***. However, the procedure contemplated under the Land Encroachment Act shall be strictly followed by the first respondent while removing the encroachment from the water body.

8.Considering the fact that the local body has no power or



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jurisdiction to initiate action for removal of encroachment in exercise of their power under Section 131(2) of the Act, this Court directs the first respondent to proceed further, as indicated in the judgment of Honourable Full Bench of this Court, referred to above. It is made clear that the petitioner is directed to submit his objection in response to the notice to be issued under Section 7 of the Tamil Nadu Land Encroachment Act. When the petitioner submit his representation or explanation or objection to the show cause notice issued under Section 7 of the Act, the first respondent may consider such objection of the petitioner before passing final order. The first respondent is directed to commence the proceedings within a period of two weeks and shall complete the same within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
10.08.2022

Index : Yes / No

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To

The Tahsildar,
Taluk Office, Ilaiyangudi Taluk,
Sivagangai District.



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and

S.SRIMATHY, J.

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