



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2022

CORAM

WEB COPY

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

W.P (MD) No.12785 of 2022
and
W.M.P (MD) No.9074 of 2022

Sudhan Jose

... Petitioner

Vs.

1. The Assistant Engineer (Water Resource Department),
Irrigation Section, Public Works Department,
Nagercoil, Kanyakumari District.

2. The Tahsildar, Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned eviction notice and Form III Notice in Ka.No.Ko.12/114/2022, dated 24.02.2022 issued by the first respondent and to quash the same.

For Petitioner :Mr.S.Karthikeyan

For Respondents :Mr.J.Ashok

Additional 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 eviction notice and Form III Notice, dated 24.02.2022 passed by the first respondent.

2.Heard Mr.S.Karthikeyan, learned Counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/> 3. In a similar situation, in the case of **R.Gurusamy vs The**



Government of Tamil and others, in **W.P. (MD)No.11825 of 2022**, dated 15.06.2022, this Court has passed an order in the following lines:

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."

4.In view of the same, the above Writ Petition is also allowed in the same lines and the impugned eviction order and Form III notice, dated 24.02.2022 are hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/07/2022

Sub Assistant Registrar (CS)



To

1. The Assistant Engineer (Water Resource Department),
Irrigation Section, Public Works Department,
Nagercoil, Kanyakumari District.

2. The Tahsildar, Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

+1 CC to M/s.S. KARTHIKEYAN, Advocate (SR-28532[F] dated
28/06/2022)

+1 CC to M/s.SPL.GP (SR-28479[F] dated 28/06/2022)

W.P (MD) No.12785 of 2022

27.06.2022

USK/05.07.2022/3P/5C