



W.P.(MD)No.13211 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED:24/06/2022

CORAM

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

W.P.(MD)No.13211 of 2022

and

W.M.P(MD)No.9384 of 2022

Arputham

... Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Block Development Officer,
(Village Panchayat),
Saanarpatti Village Panchayat Union),
Dindigul District.

3.The President,
T.Panjampatti Village Panchayat,
Saanarpatti Village Panchayat Union,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order passed by the third respondent in his impugned order, dated 18.06.2022 and quash the same as arbitrary and illegal.



W.P.(MD)No.13211 of 2022

For Petitioner

:Mr.K.Baalasundharam

For R-1

:Mr.S.P.Maharajan,
Special Government Pleader

For R-2 & R-3

:Mr.N.Satheesh Kumar,
Additional Government Pleader

ORDER

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

Heard Mr.K.Baalasundharam, learned counsel for the petitioner.
Mr.S.P.Maharajan, learned Special Government Pleader for the first respondent
and Mr.N.Satheesh Kumar, learned Additional Government Pleader for the
respondents 2 and 3.

2. By consent of parties, the writ petition is disposed of at the
admission stage itself.

3. The writ petition has been filed to quash the impugned order, dated
18.06.2022, passed by the third respondent, in and by which, the petitioner was
directed to remove the encroachment made by him.



W.P.(MD)No.13211 of 2022

4. According to the petitioner, he is residing in T.Panjampatti Village, Kosavapatti Post, Dindigul East Taluk, Dindigul District. It is further stated that he is having patta lands. However, he was issued with a notice by the President of the Panchayat namely, the third respondent herein, stating that in the case of one Sahaya Raj, the Honourable Supreme Court has passed an order directing to remove the encroachments made in the water bodies and therefore, the petitioner has to remove the encroachment made by him, within seven days from the date of receipt of the said order, otherwise, the encroachment will be removed by the panchayat.

5. The learned counsel appearing for the petitioner contended that in the impugned notice, not even the details of encroachment or the survey number of the lands in which such encroachment is made by the petitioner, is indicated and such a notice is not under any Statute.

6. The learned Special Government Pleader appearing for the first respondent/District Collector, submitted that this Court has earlier 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, issued directions to remove the encroachments from the water bodies following the survey being conducted. He further submitted



W.P.(MD)No.13211 of 2022

that the land in Survey No.488/2 is classified as 'kalam poromboke' and several encroachments in the water bodies are reported and the land belongs to the Government.

7. 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 observed as follows:

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.”



W.P.(MD)No.13211 of 2022

8. If there is any encroachment in any water body, if it is under the control of Public Works Department, the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, is attracted. Similarly, if there is any encroachment in the water body which vests with the local body, it is open to the Revenue Department to take action for removal of encroachment under the provisions of the Tamil Nadu Land Encroachment Act, 1905. Again, if there is any encroachment in respect of public street or road which vests with the local body, it is open to the local body to initiate proceedings under Section 131 of the Tamil Nadu Panchayats Act, 1994. In case, the local body is unable to secure possession, it has to get assistance of the Revenue Department, who in turn will proceed against the encroachers by invoking the provisions of the Tamil Nadu Land Encroachment Act. Under every enactment, for removal of encroachment, notice is mandatory.

9. Therefore, this Court suggests that the first respondent/District Collector, may issue suitable directions to the officials so that all encroachments in the water bodies or the public land which vests with the local body or the Government, can be removed under the respective Statute.



W.P.(MD)No.13211 of 2022

10. As suggested by this Court, following the judgment of the

Honourable Supreme Court in ***Madhav Rao Schindia v. Ramesh Jatav [(2006)***

1 SCC 379], before proceeding with the eviction, there shall be a survey conducted by the Revenue Officials in the presence of alleged encroachers.

11. As pointed out by this Court earlier in the judgment above referred to, the Tahsildar concerned shall conduct a survey and demarcation, by issuing a notice not only to the local body, but also to the person who is in encroachment of the property. On the basis of the report identifying encroachment, proceedings shall be initiated by issuing show-cause notice to the encroacher. Thereafter, final orders shall be passed after hearing the objections and representations of anyone, who is in possession and enjoyment over the public land. After passing the final order of eviction under the relevant Statute, it is open to the respondents to take coercive steps for removal of encroachment either in public or Government poramboke land or water bodies, in accordance with law, within a reasonable time.

12. Even assuming that the third respondent is entitled to take action under Section 131 of the Tamil Nadu Panchayats Act, 1994, proceedings for removal of eviction cannot be finalised by directing the encroacher to remove



W.P.(MD)No.13211 of 2022

the encroachment without issuing a show-cause notice. Therefore, the

impugned order cannot stand and the same is liable to be set aside.

13. In the result, the Writ Petition is allowed and the impugned eviction order, dated 18.06.2022, is hereby quashed. However, liberty is given to proceed further after conducting survey in the presence of petitioner and thereafter to proceed further as indicated above, following relevant Statute. If the encroachment is in kalam poromboke, provisions of the Tamil Nadu Land Encroachment Act, 1905, is applicable. If the land in which the encroachment noticed is a water body that vests with the Public Works Department, provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, shall be followed. If the water body is either under the control of Revenue or local body, it is appropriate to proceed under the Tamil Nadu Land Encroachment Act, 1905. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
24/06/2022

Index : Yes / No

pm



W.P.(MD)No.13211 of 2022

To

WEB COPY

- 1.The District Collector,
Dindigul District,
Dindigul.
- 2.The Block Development Officer,
(Village Panchayat),
Saanarpatti Village Panchayat Union),
Dindigul District.
- 3.The President,
T.Panjampatti Village Panchayat,
Saanarpatti Village Panchayat Union,
Dindigul District.



WEB COPY



W.P.(MD)No.13211 of 2022

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

pm

W.P(MD)No.13211 of 2022

24.06.2022