



W.P.(MD)No.13465 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2022

CORAM:

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

W.P(MD)No.13465 of 2022
and
W.M.P(MD)No.9562 of 2022

Alagammal

... 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.



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For Petitioner

: Mr.M.Subash Babu

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 Form-III notice issued by the fifth respondent, dated 03.06.2022.

2.Heard Mr.M.Subash Babu, learned Counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader, who takes notice on behalf of Respondents. 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 dated 27.04.2022 stating that the petitioner's licensee had encroached a portion of the water body. Subsequently, Form – III notice was also issued to one Sowtha, who is running a clay shop in her property, which is her patta land.



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4.The order of the fifth respondent in Form-II notice was challenged by the petitioner mainly on the ground that no survey was conducted and no opportunity was given to the petitioner.

5.The grievance of the petitioner in this Writ Petition is that the fifth respondent has issued Form-III notice directing one Sowtha, who is in occupation of petitioner's land to remove the encroachment within 21 days from the date of receipt of the 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 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 therein.

7.Following 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**, this Court in similar case has held that the encroachment should be identified after conducting survey. The Hon'ble Supreme Court



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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 done survey as per the dictum of Hon'ble Supreme Court. Hence, the impugned Form-III notice, dated 03.06.2022, which is also contrary to the statute as held by the Division Bench of this Court, is set aside.

8.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, if the survey report reveals that any portion of the water body is encroached, the petitioner is entitled to be heard before passing any order. Only after conducting the survey as directed by this Court, Form – II notice shall be issued to the petitioner and after considering the petitioner's objections, final order considering reasons for rejecting the objections shall be passed vide Form – III.

9.As pointed out earlier, before conducting survey, the fifth respondent shall issue a notice to the petitioners as to the date and time on which, such survey will be conducted. This Writ Petition is allowed accordingly and liberty is given to proceed further as directed above. If



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the petitioner raises any dispute/claim, she may establish the same before civil Court and shall not resist the eviction by following due process of law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
28.06.2022

Index : Yes / No

sj

To

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- 2.The Commissioner of Land Administration,
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and

S.SRIMATHY, J.

sj

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