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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2022

CORAM

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

W.P(MD)No.13509 of 2022
and
W.M.P(MD)Nos.9601 and 9603 of 2022

P.Selvam @ Selvaraj ... Petitioner

Vs.

1.The District Collector,
Tiruchirappalli District,
Tiruchirappalli – 620 001.

2.The District Revenue Officer,
Tiruchirappalli District,
Tiruchirappalli – 620 001.

3.The Revenue Divisional Officer,
Divisional Office, Paramasivapuram,
Lalgudi, Tiruchirappalli District 621 601.

4.The Tahsildar, Mannachanallur Taluk Office,
Mannachanallulr, Tiruchirappalli District 621 601.

5.The Panchayat President,
Panchayat Office, Aayikudi Village Panchayat,
Mannachanallur Taluk, Tiruchirappalli District 621 601.

6.The Superintending Engineer,
Water Resource Department/PWD,
Irrigation Section, Ariyaru Vadinila Kottai,
Subramaniyapuram, Tiruchirappalli-620 020.

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7.The Executive Officer,
Water Resource Department/PWD,
Irrigation Section, Ariyaru Vadinila Kottai,
Subramaniyapuram, Tiruchirappalli-620 020.

8.The Assistant Executive Engineer,
Water Resource Department/PWD,
Irrigation Section, Ariyaru Vadinila Kottai,
Subramaniyapuram, Tiruchirappalli-620 020.

9.The Assistant Engineer,
Water Resource Department/PWD,
Irrigation Section, Ariyaru Vadinila Kottai,
Subramaniyapuram, Tiruchirappalli-620 020. ... 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 eviction letter issued by the 9th respondent herein in his Letter No.Ko.17/2022/Vu.Po(Elaa), dated 30.05.2022 and to quash the same as illegal and consequently, to direct the respondents 1 to 4 to issue house site patta in respect of the petitioner house property comprised in Survey No.176/1, to the extent of 3 ½ cents, situated at Aayikudi Village Panchayat, Mannachanallur Taluk, Tiruchirappalli District by considering his representation, dated 09.05.2022.

For Petitioner :Mr.C.Abdulkalam Azad
For R1 to R4 and R6 to R9 :Mr.S.P.Maharajan
Special Government Pleader
For R5 :Mr.T.Amjad Khan
Government Advocate

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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 to quash the impugned order passed by the ninth respondent, dated 30.05.2022 and for a consequential direction to the respondents 1 to 4 to issue house site patta in respect of the petitioner's house property comprised in Survey No.176/1, to an extent of 3½ cents, situated at Aayikudi Village Panchayat, Mannachanallur Taluk, Tiruchirappalli District.

2.Heard Mr.C.Abdulkalam Azad, learned Counsel for the petitioner, Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice for R1 to R4 and R6 to R9 and Mr.T.Amjad Khan, learned Government Advocate, who takes notice on behalf of the fifth respondent. By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3.The petitioner herein is the resident of Mela Vangaram Lake near Samayapuram in Trichy District. Challenging the order of eviction directing the petitioner and others to remove the encroachment from the Government water body, namely, Mela Vangaram Lake, after issuance of

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Form-I, Form-II and Form-III under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, the above Writ Petition is filed.

4.The learned Counsel for the petitioner submitted that many poor people, like, the petitioner, have occupied and residing with their family by putting up a small structure for more than 100 years and that their fore-fathers have, in-fact, constructed such small thatched or tiled houses in the water body. It is further stated that the petitioner and others have obtained electricity service connection from the Electricity Department and also water connection from the local body.

5.Stating that all the houses put up by the petitioner and others in the water body are assessed to property tax and the petitioner is paying the property tax and other dues, the petitioner claims possessory right in respect of the land, which is in his enjoyment. The petitioner's residential address is given by referring to the street name indicating that the respective portion of the tank is in existence as a residential colony for a considerable time. It is admitted that the enjoyment and encroachment of the petitioner is in the water body, known as Mela Vangaram Lake.

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6.However, it is admitted that small extent of land, which is also the part of Mela Vangaram Lake, has been re-classified as Natham and that patta has been given to some of the persons by re-classifying the said portion of the land as Natham. It appears that they got patta either by misrepresentation to the Government or the Government by re-classifying the land has wrongly protected individual, who had also encroached land the. This is not permissible as per the judgment of Honourable Supreme Court, which clearly indicates that the water bodies should be protected and the encroachment in any form should be removed. Encroachment in water bodies cannot be regularised.

7.Mela Vangaram lake is classified as a water body as per the survey records and the water body exist as a Lake even before settlement. The entire extent of lake is 21.46.5 hectares in S.No.176/1 and during UDR survey, the lake was classified as PWD lake. Based on the classification of a small extent in S.No.176/2, as Natham, it appears that others also have encroached the same on the hope that they would also get patta in future, if they are in enjoyment of the property.

8.This Court, having regard to the facts narrated in the affidavit filed in support of this Writ Petition, is unable to accept the case that the entire extent of land, in which the petitioner and others are in

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encroachment, should be treated and classified as Natham. Merely because, another portion of water body is encroached by the villagers and an attempt is made to get patta subsequently on the strength of their possession by putting up construction, this Court cannot permit the encroachers, to claim possessory right or title on the basis of their enjoyment. The Public Works Department has failed to take action, despite the fact that the encroachment by several persons was under their nose. It is unfortunate to notice that revenue authorities have also failed in their responsibility and duty preventing encroachment in water bodies by their inaction.

9.The case of the petitioner that one aided school, ration shops and temples are located in the water body cannot be taken advantage to regularise the encroachment by the petitioner and others to continue the encroachment in water body. However, the learned Counsel for the petitioner submitted that the petitioner and other encroachers were called upon to vacate the houses within 21 days. In view of the fact that the petitioner is unable to get alternative accommodation and shifting of family and belongings is very difficult, the learned Counsel for the petitioner submitted that the time given by the respondents to vacate the premises is too short and seeks sufficient time to vacate the premises.

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10.Except the last submission seeking further time to vacate, this Court is unable to consider any of the submissions of the learned Counsel for the petitioner. The statement of facts found in the affidavit are contrary to the admitted facts and the records produced by the petitioner. The petitioner and other encroachers may have permanent address and their possession for a long time cannot be considered, as everyone knows that they are encroaching the water body at the time when they entered into possession. It is admitted that the petitioner and others have made representations for patta. Payment of property tax/house tax, water charges and electricity charges for their enjoyment will not confer the petitioner and other encroachers any right or title, especially when their encroachment is in the water body, which has to be protected by us for the future generation.

11.This Court 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, held 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."*

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12.In this case, the petitioner and others have admitted their enjoyment over the water body in S.No.176/1 and that therefore, there is no requirement of identifying the encroachment. It is not in dispute that all the encroachers have received notice in Form-III, dated 28.04.2022. In response to the same, the petitioner has submitted a detailed representation on 09.05.2022. It is only after considering the representation of the petitioner, the impugned order has been passed, which is challenged in this Writ Petition. Since the procedure contemplated under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, has been scrupulously followed, this Court is unable to find any illegality in the final order passed by the ninth respondent. Hence, this Writ Petition is dismissed. and the impugned order of eviction passed by the ninth respondent under the provision of Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, is confirmed.

13.As regards the time to vacate the premises, the learned Counsel for the petitioner seeks six months time. However, this Court has to consider the fact that the respondents have initiated proceedings long time earlier. Further, due to various reasons and the intervention of Court, they were unable to proceed with the eviction of encroachment in

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water body by the petitioner and others, who are aware that they have encroached into the water body. Despite several notices and warnings given to the petitioner and other encroachers, they did not choose to vacate the place by finding an alternative place.

14.However, this Court is inclined to grant six months time to vacate the premises provided the petitioner submit an undertaking affidavit indicating that he/she will remove the encroachment by taking away their belongings on or before the end of December 2022. In case of failure to give such undertaking, it is open to the respondents to remove the encroachment, as per the impugned order, which is confirmed by this order.

15.Considering the fact that there will be further encroachment in future, the respondents shall put up a notice board clearly indicating that removal of encroachment by passing orders has been upheld by this Court and giving a warning that there shall be no further encroachment. The same shall be monitored by the respondents by employing a temporary staff with the specific instruction to report any encroachment immediately, so that such encroachment is dealt with accordingly.

16.As regards alternative accommodation, irrespective of the

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order passed by this Court, it is open to the petitioner to approach the District Collector for any alternative accommodation, which can be considered by them independently. However, this Court does not find any statutory or constitutional right guaranteed to the petitioner for claiming alternative accommodation, as he/she is just an encroacher. The petitioner or other encroachers cannot be permitted to squat over the water body any further on the basis of their representations, which will not give them a fresh cause of action to file a Writ Petition regarding their possession or removal of encroachment. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
29.06.2022

Index : Yes / No (3/8)

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https://www.mhc.tn.gov.in/judis

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W.P(MD)No.13509 of 2022

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(3/8)

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