



W.P.(MD)No.13481 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.13481 of 2022
and
W.M.P(MD)No.9576 of 2022

- 1.S.Veerassamy
- 2.V.Shanthi
- 3.R.Duraipandi
- 4.R.Sivakumar
- 5.R.Krishnan
- 6.R.Pannaiaammal
- 7.M.Karupasamy
- 8.A.Iyyappan
- 9.K.Subramaniyan
- 10.S.Arumugam
- 11.K.Tamilarasi
- 12.K.Nehru
- 13.M.Arumugam
- 14.R.Narasinga Perumal
- 15.S.Shanmuga Thai
- 16.A.S.Ganesan
- 17.N.Kasirajan
- 18.A.Krishnan

... Petitioners

Vs.

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Public Works Department,
Rep. by its Executive Engineer,
Water Resource Division,
Periyar Vaigai Basin Section II,



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T.Andipatti,
Madurai District.

3.The Assistant Engineer,
The Public Works Department,
Water Resource Department,
Periyar Vaigai Basin Sub Division No.II,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus to forbear the respondents No.2 to 3 from evicting the petitioners from their residential house in Survey No.33/8, Paravai 2nd Bit Village, Madurai North Taluk, Madurai District without issuing the Form III Notice and without following the procedure contemplated by this Hon'ble Court in the case of T.S.Senthil Kumar v. Government of Tamil Nadu reported in (2010) 3 MLJ 771.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.P.Maharajan
Special 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 Mandamus, seeking to forbear the respondents No.2 to 3 from evicting the petitioners from their residential houses in Survey No.33/8, Paravai 2nd Bit Village, Madurai North Taluk, Madurai District without issuing the Form III Notice and without following the procedure contemplated by



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this Hon'ble Court in the case of ***T.S.Senthil Kumar v. Government of Tamil Nadu reported in (2010) 3 MLJ 771.***

2. Heard Mr.T.Lajapathi Roy, learned Counsel for the petitioners as well as Mr.S.P.Maharajan, learned Special 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 petitioners is that the respondents 2 and 3 are trying to evict them from their residential houses without issuing Form III Notice and without following the procedure contemplated by this Hon'ble Court in the case of ***T.S.Senthil Kumar v. Government of Tamil Nadu reported in (2010) 3 MLJ 771.***

4. It is useful here to refer to Sections 6 and 7 of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007:

“6. Report of Survey Officer. - (1) The Survey Officer shall after the completion of the survey of tanks, prepare a chart and a register pointing out the boundaries of the tanks and such other informations necessary for the purpose of identifying the limits of tank.



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(2) The chart and the register prepared under sub-section (1) shall be handed over to an Officer of the Public Works Department, having control over such tanks as may be specified by the Government.

(3) The officer referred to in sub-section (2), shall within one month from the date of handing over of the chart and register, publish a notice in such manner as may be prescribed pointing out the boundaries of the tank.

7. Eviction of encroachment. - (1) If the officer specified in sub-section (2) of Section 6 is of opinion that any person has encroached upon any land within the boundaries of the tank and that the encroacher should be evicted, the officer shall issue a notice in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice.

(2) Where, within the period specified in the notice under sub-section (1), the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the tank, the officer referred to in sub-section (2) of section 6 shall remove the encroachment and take possession of the land within the boundaries of the tank encroached upon, by taking such police assistance as may be necessary. Any police officer whose help is required for this purpose shall render necessary help to that officer.



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(3) Any crop or other product raised on the land within the boundaries of the tank shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by the encroacher after a notice under subsection (1), be liable to forfeiture.”

5. Following the decisions of the Hon'ble Supreme Court in ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]*** and 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 and 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.

6. Learned Special Government Pleader appearing for the respondents submitted that the survey was conducted. However, he is unable to substantiate the said contention. However, it is admitted that Form II notice was issued to the petitioners, who are parties to the eviction proceedings. Hence, the respondents are directed to issue notice to the petitioners as well as the learned counsel for the petitioners and



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make arrangements for survey/demarcation in the presence of the petitioners. After such survey, if the survey report reveals that the petitioners have encroached into any part of the water body, notice under Form – II shall be issued and the petitioners are entitled to be heard before passing any order after conducting the survey as directed by this Court in the decisions referred to supra. Thereafter, the respondents shall proceed further by issuing notices under Form – III after considering the objections and representations of the petitioners, in response to the Form – II notice, the respondents shall pass a speaking order dealing with the objections and proceed further as contemplated under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

7. With the above directions, this Writ Petition stands disposed of. 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

1.The District Collector,
Madurai District,
Madurai.



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2.The Public Works Department,
Rep. by its Executive Engineer,
Water Resource Division,
Periyar Vaigai Basin Section II,
T.Andipatti,
Madurai District.

3.The Assistant Engineer,
The Public Works Department,
Water Resource Department,
Periyar Vaigai Basin Sub Division No.II,
Madurai District.



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and

S.SRIMATHY, J.

sj

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